

Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City

**RULES FOR THE IMPLEMENTATION OF
INTERIM OPEN ACCESS IN LUZON**

ERC CASE NO. 2008-013 RM

Pursuant to Section (43) of Republic Act No. 9136, its Implementing Rules and Regulations (IRR), the Energy Regulatory Commission (ERC) hereby promulgates the following Rules for the Implementation of Interim Open Access in Luzon.

**ARTICLE I
GENERAL PROVISIONS**

Section 1. Objectives

- 1.1 To provide the market and regulatory framework for Interim Open Access; and
- 1.2 To ensure the effective implementation of Interim Open Access in that the mitigating measures are established where no dominant players can enjoy undue advantage.

Section 2. Scope

These Rules shall apply to:

1. Eligible Interim Open Access Customers;
2. Retail Electricity Suppliers;
3. Eligible Distribution Utilities;
4. Eligible Generation Companies or Affiliate thereof;
5. National Transmission Corporation (TRANSCO);
6. Independent Power Producer (IPP) Administrators;
7. Market Operator;
8. Other relevant industry participants.

Section 3. Definition of Terms

As used in these Rules, the following terms shall have the following respective meanings:

Act	Republic Act No. 9136, otherwise known as "Electric Power Industry Reform Act of 2001".
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Business Day	A day other than a Saturday, a Sunday or an official or declared Philippine national or local public holiday.
Code of Conduct for Competitive Retail Market Participants	The set of rules promulgated by ERC to govern the conduct of RES', Local RES', Distribution Utilities (DUs), as well as their stockholders, directors, officers and employees, within the boundaries of fair competition.
Connection Agreement	Agreement between a connection customer and a DU governing distribution connection assets and services.
Contestable Customer	An End-user who has a choice of supplier of electricity, as may be determined by the ERC in accordance with the Act.
Cooling-off Period	The period of five (5) Business Days, or a longer period agreed upon by both parties, commencing from the signing of the Retail Supply Contract, within which the Eligible IOA Customer has the right to cancel the Retail Supply Contract it has entered into with the RES or the Local RES.
Directly Connected Customers	End-users whose connection facilities are directly connected to the transmission or sub-transmission system of the National Transmission Corporation.
Disclosure Statement	Document outlining information to be included in the terms and conditions of the Retail Supply Contract between a RES and Eligible Interim Open Access Customer, as provided in Section 2, Article V of these Rules.
Distribution Utility (DU)	Any electric cooperative, private corporation, government-owned utility or existing local government unit which has an exclusive franchise to operate a distribution system in accordance with its franchise and the Act.
Distribution Wheeling Service	The conveyance of power throughout a distribution system in a manner to meet the demand of End-users or generators.

Distribution Wheeling Service (DWS) Agreement

An agreement between an eligible DU and a Retail Electricity Supplier on behalf of an Interim Open Access Customer for the procurement of Distribution Wheeling Service. For the purpose of Interim Open Access, the Distribution Wheeling Service Agreement shall include the procurement of transmission services.

Eligible Distribution Utility

A DU which expresses its willingness to voluntarily participate in Interim Open Access through the Petition filed with ERC or through the mechanism provided under Section 2, Article II hereof.

Eligible Generation Company

A generating company that is qualified to participate in the Interim Open Access, as determined by the ERC.

Eligible Interim Open Access (IOA) Customer

An End-user who is qualified to participate in Interim Open Access, as certified by the ERC.

End-user

Any person or entity requiring the supply and delivery of electricity for its own use.

Energy Regulatory Commission (ERC)

The independent and quasi-judicial regulatory agency created under Section 38 of the Act.

Independent Power Producer (IPP)

An existing power generating entity which is not owned by the National Power Corporation.

Interim Open Access (IOA)

The voluntary implementation of Open Access in specific areas prior to the fulfillment of the conditions for Open Access and Retail Competition set by the Act.

Market Operator (MO)

The entity responsible for the operation of the Wholesale Electricity Spot Market.

National Power Corporation (NPC)

The government corporation created under Republic Act No. 6395, as amended.

National Transmission Corporation (TRANSCO)

The corporation organized pursuant to the Act to acquire all the transmission assets of NPC.

NPC-Successor Generating Company

A company that has acquired a privatized NPC generation asset pursuant to the provisions of the Act.

Open Access

The system of allowing any qualified person the use of transmission, and/or distribution system and associated facilities subject to the payment of transmission and/or distribution retail wheeling rates duly approved by the ERC.

Open Access Date

The commencement date of Open Access and Retail Competition in a grid, as determined by ERC, in accordance with the Act.

Petition for the Implementation of Interim Open Access in the Luzon and Visayas Grids

Petition docketed as ERC Case No. 2008-026 RC, filed by Petitioners composed of Philippine Independent Power Producers Association (PIPPA), Manila Electric Company (MERALCO), Visayan Electric Company (VECO), Davao Light and Power Co., Inc. (DLPC), Clark Electric Distribution Corp., Cagayan Electric Power and Light Company (CEPALCO), San Fernando Electric Light and Power Co. (SFELAPCO), and Panay Electric Company, Inc. (PECO).

Power Sector Assets and Liabilities Management Corporation (PSALM)

The corporation created pursuant to Section 49 of the Act.

Retail Competition

The provision of electricity to End-users in the Contestable Market by Retail Electricity Suppliers through Open Access.

Retail Electricity Supplier (RES)

Any person or entity authorized by the ERC to sell, broker, market or aggregate electricity to End-users in the Contestable Market.

Retail Supply Contract (RSC)

The contract entered into by and between the Contestable Customer and the Retail Electricity Supplier.

Rules for Contestability

The set of rules promulgated by ERC that prescribes the conditions and criteria for an End-user to qualify as a Contestable Customer.

Rules on Customer Switching (RCS)

The set of rules promulgated by ERC which prescribes the standardized business rules for interactions between and among the DU, Central Registration Body, RES, Market Operator and Supplier of Last Resort relating to the commercial transfer of a Contestable Customer from one competitive electricity supplier to another.

Single Premise

Any of the following shall constitute a Single Premise if owned or occupied by an End-user, under one business name registered with the utility and used by such End-user for the same business enterprise (not intended for re-selling):

- a) the whole of any single building or structure;
- b) a part of any single building or structure;
- c) two or more adjoining parts of any single building or structure;
- d) the whole of two or more buildings or structures that are on the same lot of land.

Terms of Reference (TOR)

The terms of reference attached to the Petition for the Implementation of Interim Open Access in the Luzon and Visayas Grids, signed by the Petitioners, except for SFELAPCO, and several business groups.

Wholesale Electricity Spot Market (WESM)

The Wholesale Electricity Spot Market established by the Department of Energy (DOE) pursuant to the Act.

Terms, not otherwise defined herein, which are defined in the Act or its Implementing Rules and Regulation (IRR) shall have the meaning ascribed to them in the Act or its IRR, as the case may be.

Section 4. Guiding Principles

To ensure the smooth implementation of Interim Open Access, the following policies shall be adhered to:

- 4.1 The Rules for Interim Open Access in Luzon (the “Rules”) shall be effective only for the duration of Interim Open Access. Once the ERC declares the establishment of actual Open Access and Retail Competition, Interim Open Access and all contracts and transactions related thereto shall automatically terminate upon Open Access Date.

- 4.2 The implementation of Interim Open Access being a voluntary act on the part of a DU, only End-users within the franchise areas of Eligible DUs shall be allowed to participate in Interim Open Access.
- 4.3 There shall be no Central Registration Body (CRB) during Interim Open Access. In the absence of a CRB, accounting and settlement of losses and energy imbalances sourced by Eligible IOA Customers shall be the responsibility of an Eligible DU.
- 4.4 A single billing policy shall be adopted. The RES shall contract with other service providers (i.e. Eligible DU for transmission and distribution wheeling and ancillary services) on behalf of its Eligible IOA Customers, except for the Connection Agreement, which shall subsequently be entered into by an Eligible IOA Customer with its Eligible DU.
- 4.5 The Eligible DU shall be the sole metering service provider for the Eligible IOA Customers. For purposes of these Rules, metering services shall include procurement of meter on behalf of an Eligible IOA Customer, meter installation, maintenance, repair, calibration with the supervision of ERC, meter reading, including data dissemination to the respective RES.

ARTICLE II ELIGIBILITY REQUIREMENTS

Section 1. Eligibility of Generating Companies and Retail Supply Companies

- 1.1 Only Eligible Generating Companies shall be allowed to sell their capacity through a duly licensed RES during Interim Open Access. Eligible Generating Companies include:
 - 1.1.1 All generation companies, including NPC-Successor Generating Companies, or their related groups, that are within the mandated market cap, i.e. owning, operating or controlling 30% or less of the installed generating capacity in a grid and/or 25% or less of the national installed capacity pursuant to Section 45 of the Act;
 - 1.1.2 NPC-IPPs with respect to the capacity which is not covered by contracts;
 - 1.1.3 IPP Administrators, with respect to the contracted energy output of NPC-IPP contracts; and
 - 1.1.4 NPC, upon compliance with the market share limitation as provided in Section 45 of the Act.
- 1.2 Subject to Section 1.1 hereof, NPC generating assets and generating capacity under NPC-IPP contracts shall not be eligible to sell their capacity to a licensed RES during Interim Open Access, whether directly or indirectly.

- 1.3 Only a licensed RES which has filed its Business Separation and Unbundling Plan (BSUP) to the ERC shall be allowed to participate and supply electricity in the Interim Open Access.

Section 2. Eligibility of Distribution Utilities

- 2.1 No DU shall be allowed to participate in Interim Open Access without the appropriate authorization granted by the ERC conferring upon it the status of an Eligible DU.
- 2.2 All DUs who intend to participate in Interim Open Access shall notify the ERC in writing of such intent, with proof that the following requirements have been met:
 - 2.2.1 The relevant DU must have Eligible IOA Customers within its franchise area;
 - 2.2.2 The relevant DU must have ERC-approved unbundled rates;
 - 2.2.3 The relevant DU must have filed its Business separation and Unbundling Plan (BSUP);
 - 2.2.4 The DU must have initially implemented its inter-class cross subsidy removal scheme;
 - 2.2.5 The DU must have submitted a complete list of its Eligible IOA Customers with their respective information, as provided in Article III Section 1.1, Article III of these Rules; and
 - 2.2.6 The DU must have manifested that it shall abide by all the rules and guidelines of ERC.
- 2.3 DUs, which took part in the Petition and are signatories to its Terms of Reference (TOR), are deemed to have volunteered their participation in Interim Open Access and shall not be subject to Section 2.2 hereof.

Section 3. Eligibility of Interim Open Access Customers

- 3.1 The implementation of Interim Open Access being a voluntary act on the part of a DU, only End-users within the franchise areas of Eligible DUs shall be allowed to participate in Interim Open Access.
- 3.2 Subject to Section 1.2, Article III of these Rules, the following shall govern the eligibility of IOA Customers:
 - 3.2.1 Upon commencement of Interim Open Access, only End-users with a monthly average peak demand of at least one megawatt (1 MW) for the preceding twelve (12) months shall be eligible to participate. For

purposes of these Rules, the 12-month period shall be reckoned from the date of effectivity of these Rules.

- 3.2.2 An End-user whose demand requirements vary monthly and attains the 1 MW peak only a number of months within a year, but whose monthly average peak demand for the preceding twelve (12) months is one (1) MW shall be an Eligible IOA Customer.
- 3.2.3 Once Interim Open Access has commenced and is ongoing, eligibility for an End-user to be an Eligible IOA Customer will be as follows:
 - a. An existing End-user that has increased its demand and registered a historical monthly average peak demand of one (1) MW for the preceding twelve (12) months;
 - b. A newly-connected End-user whose forecasted monthly peak demand is three (3) MW and above; and
 - c. A newly-connected End-user whose forecasted monthly average peak demand is above one (1) MW but below three (3) MW shall need a registered historical monthly peak demand of at least one (1) MW for three (3) consecutive months before it becomes an Eligible IOA Customer.
- 3.2.4 An End-user that has been in operation for less than twelve (12) months upon commencement of Interim Open Access shall be considered a newly-connected End-user.
- 3.2.5 The eligibility of an End-user shall be based on the monthly average peak demand as indicated by a single utility meter. An End-user maintaining multiple utility meters in a Single Premise has the option to consolidate its demand by requesting the Eligible DU to install a single main utility meter, which may result in modifications in its connection agreement and DWS Agreement with the Eligible DU. In this case, the basis for eligibility is the consolidated forecasted demand, which shall be based on the historical coincident peak demand of all meters. However, an End-user that has a coincident peak demand totaling at least one (1) MW, but is not measurable by all its meters, will be treated as a newly-connected End-user.
- 3.2.6 An End-user whose actual demand reaches one (1) MW but partially sources its requirements from an Eligible DU where its demand as registered in the utility meter does not reach one (1) MW, shall inform the ERC and show proof of its eligibility to participate in Interim Open Access.
- 3.3 ERC reserves the right to refuse certification of a particular customer should the latter be found to have not complied with the eligibility requirements.

- 3.4 No RES shall be allowed to aggregate the demand requirements of its Eligible IOA Customers.
- 3.5 The threshold level for End-users to be eligible to participate will remain at one (1) MW throughout the duration of Interim Open Access.

**ARTICLE III
PROCEDURES ON INFORMING
END-USERS OF THEIR ELIGIBILITY**

Section 1. Notification Process Prior to the Commencement of Interim Open Access

- 1.1 Eligible DUs, shall submit an updated list of Eligible IOA Customers, with corresponding customer information, to the ERC within fifteen (15) days upon ERC's issuance of a Decision on the implementation of Interim Open Access, to wit:
 - a. Customer name;
 - b. Billing and service addresses;
 - c. Customer's account number;
 - d. Meter number;
 - e. Meter type (interval meter, etc.);
 - f. Meter reading date or cycle and reporting period;
 - g. Billing period and payment due date;
 - h. Standardized Customer classification as approved and promulgated by the ERC;
 - i. The most recent twelve (12) months of historical usage, i.e. monthly registered peak demand (in kW) and monthly total registered energy consumption (in kWh); and
 - j. Customer contact information such as telephone number/s and e-mail addresses.
- 1.2 No Eligible IOA Customer shall be allowed to participate in Interim Open Access without the appropriate certification issued by the ERC for it to act as such.
 - 1.2.1 The ERC shall issue certifications for Eligible IOA Customers based on the data submitted by the DUs, within twenty (20) days upon issuance of the Decision. The certification to be issued by the ERC may be universal, referring to the Eligible IOA Customers included in the list with certain exceptions, or specific to an individual Eligible IOA Customer.
 - 1.2.2 The Eligible DUs shall notify the End-user of its eligibility, in writing, within five (5) days from receipt of certification from the ERC. Such notification must likewise apprise the End-user that voluntary participation in Interim Open Access constitutes a waiver of

confidentiality relative to the information provided in Section 1.1 (a), (b) and (j), Article III of these Rules.

1.2.3 End-users that have become eligible by virtue of Section 3.2.6, Article II shall request a certification directly from ERC.

1.2.4 End-users that meet the eligibility requirements but have not been certified may directly request the ERC to evaluate their eligibility and issue the corresponding certification.

1.3 Retail Supply Contracts shall commence on the first day of the Eligible DU's billing period following the certification of an End-user's eligibility to participate in the Interim Open Access.

1.4 All Eligible DUs shall continue complying with the provisions of the Rules on Customer Switching regarding the submission of customer information to ERC, for the entire duration of the Interim Open Access.

Section 2. Notification Process for the Duration of the Interim Open Access

2.1 Where Interim Open Access has already commenced and is ongoing, Eligible DUs shall submit an updated list of Eligible IOA Customers to ERC for certification. The ERC shall issue certifications for new Eligible IOA Customers within five (5) Business Days from receipt of information from the Eligible DU.

2.2 The Eligible DU shall notify the End-user of its eligibility, in writing, within five (5) days from receipt of certification from the ERC.

2.3 Henceforth, Sections 1.2.2 to 1.2.4 and Sections 1.3 to 1.4, Article III of these Rules shall apply.

ARTICLE IV OBLIGATIONS OF INTERIM OPEN ACCESS PARTICIPANTS

Section 1. Obligations of Eligible Generation Companies

1.1 Eligible Generation Companies shall comply with the ownership limitation as provided in Section 45 of the Act.

1.2 Eligible Generation Companies shall sell power only through a licensed RES, and not contract directly with an Eligible IOA Customer unless it has been issued a valid RES license by the ERC.

1.3 Power supply contracts between an Eligible Generation Company and a RES do not require ERC approval, but shall be filed with the ERC consistent with Section 3, Article VI of the Guidelines for the Recovery of Costs for the Generation Component of the Distribution Utilities' Rates.

Section 2. Obligations of Eligible Distribution Utilities

- 2.1 Eligible DUs shall provide non-discriminatory access to its distribution system, and shall provide all regulated services at rates, terms and conditions that are just and reasonable.

Metering and Data Dissemination Services

- 2.2 Eligible DUs shall provide metering related services to Eligible IOA Customers within its franchise area. WESM compliant interval metering facilities for Eligible IOA Customers participating in the Interim Open Access shall be completely installed by the Eligible DU at the start of the Interim Open Access as declared by the ERC.
- 2.3 Eligible DUs shall continue to own, operate, maintain and access the meters used by Eligible IOA Customers participating in the Interim Open Access.
- 2.4 Eligible DUs shall continue with the regular meter reading schedules for the Eligible IOA Customers, and provide the meter reading data of each Eligible IOA Customer to its respective RES, within three (3) Business Days from the meter reading date.
- 2.5 Eligible DUs shall only disseminate meter reading data to an Eligible IOA Customer's current RES. It shall not release meter reading data and other details to other RES or any other entity without the Eligible IOA Customer's authorization.
- 2.6 Eligible DUs shall abide by Section 14, Article II of the Code of Conduct for Competitive Retail Market Participants.

Energy Wheeling, System Losses and Imbalances

- 2.7 Eligible DUs shall continue contracting with the transmission company for transmission wheeling service on behalf of RES' Eligible IOA Customers. The Eligible DU shall bill the RES for both transmission and distribution wheeling and other regulated services of each Eligible IOA Customer.
- 2.8 Eligible DUs shall be responsible for procuring all energy related to distribution system losses, as provided for under Section 5.4 of the Distribution Services and Open Access Rules. The system loss charges should be based on blended purchased power costs of the Eligible DU and shall be based on the ERC-approved rates.
- 2.9 Eligible DUs shall be responsible for the accounting and settlement of line rentals and energy imbalances sourced by Eligible IOA Customers.
- 2.10 Eligible DUs shall file with the ERC for its approval the settlement and pricing mechanism for transmission wheeling and ancillary services, as well as the charging of line losses, energy imbalances and net settlement surplus accounting for purchases of an Eligible IOA Customer within its franchise

area. Such mechanism shall ensure that costs will be properly charged and will not result in cross-subsidies.

Non-payment

2.11 In cases of non-payment by Eligible IOA Customer, the Eligible DU may disconnect the Eligible IOA Customer within 24 hours upon receipt of request for disconnection from the RES.

The Eligible IOA Customer may settle its obligations to the RES at the time of disconnection and advise the Eligible DU to desist from disconnecting service.

2.12 An Eligible DU shall conduct an information dissemination campaign on Interim Open Access within its franchise area for the entire duration of the effectivity of Interim Open Access.

Default Supply

2.13 Eligible DUs shall provide supply services to its Eligible IOA Customers in the event a RES fails to provide such services for the following reasons:

2.13.1 The RES has ceased to operate;

2.13.2 The RES' license has been revoked by ERC;

2.13.3 The Distribution Wheeling Service Agreement between the RES and the Eligible DU had been terminated;

2.13.4 The RES is no longer permitted to trade electric energy through the WESM;

2.13.5 The RES has given notice to the ERC that it will no longer provide supply services.

2.14 Should any of the events under Section 2.13 hereof occur, the rate to be charged shall be the ex-post WESM nodal energy price or the bilateral contract price, whichever is higher, for the energy consumed by an Eligible IOA Customer during all hours that it has been supplied by the Eligible DU. No additional costs shall be charged by Eligible DUs to Eligible IOA Customers for this service.

Section 3. Obligations of Eligible Distribution Utilities and their Affiliate RES

3.1 An Eligible DU shall be a separate, independent entity, from its Affiliate RES.

3.2 An Eligible DU shall not accord, and must ensure that its Affiliate RES is not accorded, preferential treatment in relation to the distribution of electricity, connection to the distribution system operated by the Eligible DU, maintenance of the system, the provision, installation, commissioning, testing, repair or maintenance of meters, or the reading of meters, between:

- a. Eligible IOA Customers who acquire electricity from a RES that is not an Eligible DU's Affiliate RES; and
 - b. Eligible IOA Customers who acquire electricity from the Eligible DU's Affiliate RES.
- 3.3 An Eligible DU's Affiliate RES shall not use the name, brand name, business name, trademark, logo or other name or symbol of, or used by, the Eligible DU.
- 3.4 Eligible DUs shall not provide to Eligible IOA Customers, in the same communication or envelope, information about the sale of electricity by any of their Affiliate RES.
- 3.5 An Eligible DU's Affiliate RES shall not participate in joint advertising, joint marketing or joint promotional activities, including joint sales calls, joint stalls or presentations at tradeshow or other information or marketing events, or joint or linked websites.
- 3.6 In cases where an Eligible IOA Customer requests general information from an Eligible DU about the sale of electricity, the Eligible DU shall not promote the sale of electricity by its Affiliate RES, or offer any opinion regarding the sale of electricity by any other person, but must instead direct the Eligible IOA Customer to the ERC website for the purpose of obtaining a list of all RES'. The Eligible DU shall likewise not give any negative comment nor remark against any of its competitors.
- 3.7 Eligible DUs may participate in meetings with the Affiliate RES to discuss technical or operational matter regarding the Eligible DU's provision of distribution services to the Eligible IOA Customer, but only in the same manner and to the same extent the Eligible DU participates in such meetings with other RES and their Eligible IOA Customers. The Eligible DU shall not listen to, view, or otherwise participate in any way in a sales discussion between an Eligible IOA Customer and its Affiliate RES or other RES'.
- 3.8 Eligible DUs shall not allow preferential access by the Affiliate RES to information about their distribution system or operation. Information obtained by an Eligible DU in the course of conducting its regulated business shall not be shared directly or indirectly with its Affiliate RES unless the same is also made available to other RES operating within its franchise area on the same terms, conditions, form and manner.
- 3.9 An Eligible DU must ensure that any of its directors, officers or employees is not also a director, officer or employee of its Affiliate RES.
- 3.10 If an Eligible DU shall collect a fee from its Affiliate RES for services, products, property, equipment or facilities which the latter utilized, said fee shall be based on the market price or what the Eligible DU will charge other RES.

Section 4. Obligations of Retail Electricity Suppliers

- 4.1 A RES who is also engaged in other electricity-related business activities as defined in the Business Separation Guidelines, As Amended, shall ensure that its business activities are functionally and structurally unbundled. In said unbundling, the RES shall ensure that there is no cross subsidization between and among its business activities, in accordance with the ERC-approved Business Separation and Unbundling Plan.
- 4.2 A RES shall procure power only from Eligible Generation Companies, or through the WESM.
- 4.3 A RES shall provide all power requirements of its customers and ensure continuous supply at all times.
- 4.4 A RES shall identify and segregate in its bills to End-users the components of the Retail Rate as follows: generation, transmission, distribution, supply and other related charges for electric service. It shall likewise identify and segregate the components of its Supplier's Charge as required by the Act.
- 4.5 A RES who sources power from the WESM shall comply with the provisions of the WESM Rules at all times.
- 4.6 A RES shall comply with the Competition Rules as may be prescribed by the ERC concerning abuse of market power, cartelization and any other anti-competitive or discriminatory behavior.
- 4.7 A RES shall abide by the Code of Conduct for Competitive Retail Market Participants.
- 4.8 A RES is required to collect Universal Charge from all of its Eligible IOA Customers on a monthly basis, and shall comply with the Rules Governing the Collection of Universal Charge and the Guidelines and Procedures Governing Remittances and Disbursements of Universal Charge, issued by ERC.
- 4.9 A RES shall inform the ERC of any material change to the information supplied in the RES License application within thirty (30) days from the occurrence of such event.
- 4.10 A RES that intends to cease operations shall notify the ERC at least thirty (30) days prior to ceasing operations and shall provide proof of refund of any monies owed to customers, as well as a settlement plan or proof of payment of any amount owed to the DU, TRANSCO, WESM or any generation company. Thereafter, the RES License is deemed cancelled.
- 4.11 In cases of non-payment by the Eligible IOA Customer, a RES may send a 48-hour written notice of disconnection to such customer. The RES shall inform the Eligible DU of such notice at the same time it sends notice of disconnection to the Eligible IOA Customer.

- 4.12 The Eligible DU shall reconnect the Eligible IOA Customer upon the settlement of all obligations owed by the Eligible IOA Customer to the RES.
- 4.13 Upon reconnection, the Eligible IOA Customer shall be supplied by the Eligible DU according to Section 3.13, Article IV of these Rules, until such time the Eligible IOA Customer contracts with a RES.

Section 5. Rights and Responsibilities of Eligible Interim Open Access Customers

- 5.1 Upon receipt of ERC certification from the Eligible DU, the Eligible IOA Customer shall send a written notice thirty (30) days before its meter reading date to its Eligible DU expressing its intention to participate in Interim Open Access. Eligible IOA Customers who do not opt to participate need not send a notice to their DU.
- 5.2 The Eligible IOA Customer shall provide a written authorization to the Eligible DU to provide a potential RES with information on its historical consumption and other details only if such Eligible IOA Customer wishes to negotiate with such RES. The Eligible DU shall not release such information to any RES or Eligible Generation Company without the Eligible IOA Customer's authorization. Only information stated in the Eligible IOA Customer's authorization will be released by the Eligible DU.
- 5.3 During negotiations, the Eligible IOA Customer should require the prospective RES to issue a Disclosure Statement provided under Section 2, Article V of these Rules.
- 5.4 Eligible IOA Customer may cancel a Retail Supply Contract it has entered into with a RES within the Cooling-off Period, as prescribed in Article II Section 13 of the Code of Conduct for Competitive Retail Market Participants. Otherwise, Eligible IOA Customer shall be subject to applicable termination fees as provided in its Retail Supply Contract.
- 5.5 Eligible IOA Customers shall be provided with a copy of the Retail Supply Contract upon its signing.
- 5.6 An Eligible IOA Customer may file a complaint with the ERC regarding its RES transactions, provided that a complaint concerning the same issue was previously filed with the respective RES, and such Eligible IOA Customer was adversely affected by the RES' resolution of the complaint.

ARTICLE V
CONTRACTS BETWEEN INTERIM OPEN ACCESS PARTICIPANTS

Section 1. Supply Contract between Eligible Generation Company and Retail Electricity Supplier

1.1 The supply contracts between Eligible Generation Companies and RES' during the Interim Open Access shall have a term that will commence on the effective date of implementation of Interim Open Access, or as otherwise agreed upon by the parties, and shall automatically end upon Open Access Date.

Section 2. Provision of Disclosure Statement and Retail Supply Contract to the Customer

2.1 A RES shall ensure that, at the time an Eligible IOA Customer expresses its interest to enter into a Retail Supply Contract with the RES, a Disclosure Statement is provided to the Eligible IOA Customer, covering the following information:

- a. The full name, business address, telephone and facsimile numbers and e-mail address of the RES;
- b. The type, frequency of bills and payment methods the Eligible IOA Customer will receive;
- c. The details of all applicable prices, charges, and service levels that will apply to the Eligible IOA Customer, where the RES must declare that the price offered is inclusive of all costs in connection with the sale of electricity;
- d. Any price and charges payable under or in connection with the Retail Supply Contract other than for the electricity that is to be sold under said contract;
- e. The price adjustment mechanism, if a RES is adopting a variable pricing offer;
- f. Any additional charge of any type which is or may become payable under the Retail Supply Contract including penalties, fees, interest and other expenses which may be payable by the Eligible IOA Customer if it defaults or is late in making payments that are due under the Retail Supply Contract;
- g. Any requirement for the payment of funds or security deposit, the amount of such funds or security deposit, the circumstances in which that fund or security deposit (or any part of it) may be retained by the RES, and the circumstances and the period in which that security deposit, and the interest earned by such deposit, must be returned to the Eligible IOA Customer;

- h. The circumstances in which the RES or the Eligible IOA Customer may terminate the Retail Supply Contract;
 - i. The early termination charges which may apply if the Eligible IOA Customer terminates the Retail Supply Contract prior to its expiry date, and the method of calculation of those charges;
 - j. Provision that Eligible IOA Customers have the right to refer complaints to the ERC if they are not satisfactorily resolved by the RES.
- 2.2 A RES shall ensure that upon signing of the Retail Supply Contract, the Eligible IOA Customer is provided with a copy of said contract.
- 2.3 The Retail Supply Contracts shall provide for the supply of electricity to commence on the first day of the next billing cycle, as agreed upon by both RES and Eligible IOA Customer.
- 2.4 The rates and any terms and conditions of a Retail Supply Contract between an Eligible IOA Customer and a RES may only be modified by agreement in writing between the Eligible IOA Customer and the RES.
- 2.5 For the avoidance of doubt, if the amount of the contract price is allowed to vary in accordance with some term or condition of a Retail Supply Contract previously agreed between the Eligible IOA Customer and the RES, no further agreement shall be required.
- 2.6 A Retail Supply Contract between a RES and Eligible IOA Customer shall have a minimum term of six (6) months, after which the parties shall be allowed to renew their contract, or the Eligible IOA Customer shall elect another RES, subject to the provisions of these Rules.
- 2.7 In relation to Section 2.6 hereof, should an Eligible IOA Customer elect switching to another RES, the former shall submit a 30-day notice to its incumbent RES and ERC.
- 2.8 All Retail Supply Contracts executed pursuant to Interim Open Access shall automatically expire upon Open Access Date.

Section 3. Distribution Wheeling Service Agreement Between Distribution Utility and Retail Electricity Supplier

- 3.1 A DWS Agreement shall be entered into between the RES and the Eligible DU on behalf of the Eligible IOA Customer. Said DWS Agreement shall commence only on the effective date of the Retail Supply Contract between the RES and the Eligible IOA Customer.
- 3.2 Aside from the transmission and distribution wheeling services, the DWS Agreement between a RES and Eligible DU shall include the following items:

- 3.2.1 Pass-through costs related to generation charges, systems loss and other deferred charges incurred by such Eligible DU prior to the commencement of Retail Supply Contracts entered into by Eligible IOA Customers within its franchise area, subject to ERC-approved rules;
 - 3.2.2 Lifeline subsidies;
 - 3.2.3 Bill deposits equivalent to forecasted monthly consumption on DUs charges to RES, subject to yearly adjustment as provided in the Distribution Service and Open Access Rules (DSOAR);
 - 3.2.4 Net settlement surplus; and
 - 3.2.5 Charges for energy imbalances.
- 3.3 The term of the DWS Agreement shall end upon the commencement of Open Access and Retail Competition as prescribed in the Act.

ARTICLE VI
REDUCTION OF CONTRACTED VOLUME BETWEEN
GENERATION COMPANY AND ELIGIBLE DISTRIBUTION UTILITY

- 1.1 Where the Eligible DU's energy requirement is reduced due to the transfer of an Eligible IOA Customer to a RES, such DU may reduce its Transition Supply Contract (TSC) volume equivalent to the energy requirement of the said Eligible IOA Customer if such reduction, without the payment of the corresponding buy-out fee, is so stipulated in the TSC.
- 1.2 Any other reduction in the TSC volume on account of the transfer by an Eligible IOA Customer to a RES shall be made in accordance with the provisions of the TSC.
- 1.3 If an Eligible DU has an existing mix of contracted supply from NPC and other IPPs, the TSC volumes will be subject to reduction.
- 1.4 The Eligible DU shall provide the NPC or NPC Successor Generating Company with the corresponding monthly energy requirement of an Eligible IOA Customer intending to transfer to a RES, and the energy that will be reduced under the TSC, at least ten (10) days prior to the billing date of NPC or NPC Successor Generating Company.
- 1.5 In relation to Section 1.4 hereof, a RES shall notify the Eligible DU of the effectivity date of the Retail Supply Contract and Distribution Wheeling Service Agreement for an Eligible IOA Customer, at least thirty (30) days prior to such effectivity date, to ensure that NPC or NPC Successor Generating Company is provided sufficient notice in reducing the Eligible DU's TSC volume.

ARTICLE VII REPORTORIAL REQUIREMENTS

Section 1. Once Interim Open Access commences, Eligible DUs shall submit the following information to the ERC:

- a. Names of Eligible IOA Customers within its franchise area;
- b. Names of Eligible IOA Customers that have opted to participate in Interim Open Access; and
- c. Name of RES serving each participating Eligible IOA Customer.

Eligible DUs shall submit an updated list of Eligible IOA Customers to the ERC on a monthly basis.

Section 2. Each RES shall file a monthly report to the ERC containing the following information:

- a. **Average prices.** Average retail sale price broken down by transmission and distribution service territories; for each category, the average retail sale price is the total revenue divided by the total kilowatt-hour sales;
- b. **Revenues.** Total revenues from kilowatt-hour sales to Eligible IOA Customers;
- c. **Customers.** Name of Eligible IOA Customers served, and amount of deposits collected from each.
- d. **Bank certification.** Certification from reputable bank, stating the amount deposited in escrow.
- e. **Other information.** Other information that the ERC deems necessary or useful in carrying out its duties and obligations.

ARTICLE VIII EFFECTIVITY OF INTERIM OPEN ACCESS

Interim Open Access shall commence upon declaration by the ERC pursuant to a Decision issued resolving the Petition docketed as ERC Case No. 2008-026 RC filed by the industry players. In no case shall Interim Open Access commence earlier than the date of transfer of the operation of Calaca and Masinloc privatized NPC generation assets to the private generation companies concerned. Interim Open Access shall end upon Open Access Date.

All contracts entered into by entities participating in the Interim Open Access shall be deemed terminated upon Open Access Date. Electric power industry participants shall then enter into new contracts under the Open Access regime, in accordance with the rules and policies for Open Access and Retail Competition.

**ARTICLE VIII
AMENDMENTS**

The ERC shall amend and/or expand the coverage of these Rules from time to time where this may be necessary to meet the needs of the electric power industry participants and End-users. Before making any significant revisions of these Rules, the ERC will undertake public consultation as appropriate.

**ARTICLE IX
SANCTIONS**

The ERC shall impose the appropriate fines and penalties for any violation or non-compliance with these Rules, pursuant to the “Guidelines to Govern the Imposition of Administrative Sanctions in the Form of Fines and Penalties Pursuant to Section 46 of R.A. 9136”.

**ARTICLE X
SEPARABILITY**

If for any reason, any provision of these Rules is declared unconstitutional or invalid by final judgment of a competent court, the other parts or provisions hereof which were not affected thereby shall continue to be in full force and effect.

**ARTICLE XI
EFFECTIVITY**

These Rules shall take effect on the fifteenth (15th) day following its publication in a newspaper of general circulation in the country.

Pasig City, ____ (date) ____.

ZENAIDA G. CRUZ-DUCUT
Chairperson

RAUF A. TAN
Commissioner

ALEJANDRO Z. BARIN
Commissioner

MARIA TERESA A.R. CASTAÑEDA
Commissioner

JOSE C. REYES
Commissioner