

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



**RESOLUTION NO. 05, Series of 2008**

**A RESOLUTION ADOPTING THE RULES TO GOVERN THE  
ISSUANCE OF CERTIFICATE OF PUBLIC CONVENIENCE AND  
NECESSITY (CPCN) TO ENTITIES ENGAGED IN THE  
TRANSMISSION AND DISTRIBUTION OF ELECTRICITY**

**WHEREAS**, Section 16 of Commonwealth Act No. 146 (The Public Service Act), as amended, provides that the Public Service Commission (PSC) shall have the power to issue Certificates of Public Convenience and Necessity (CPCNs) authorizing the operation of public service within the Philippines whenever the PSC finds that the operation of the public service proposed and the authorization to do business will promote the public interest in a proper and suitable manner;

**WHEREAS**, Section 43 (p) of Republic Act No. 9136 (The Electric Power Industry Reform Act of 2001 or the EPIRA) empowers the Energy Regulatory Commission (Commission) to act on applications for or modifications of Certificates of Public Convenience and Necessity (CPCN) and revoke, review and modify such certificates;

**WHEREAS**, on October 15, 2007, the Commission conducted public consultation for the adoption and promulgation of the "Rules to Govern the Issuance of CPCN to Entities Engaged in the Transmission and Distribution of Electricity";

**WHEREAS**, the Rules seek to establish procedures, standards and criteria for the issuance of a CPCN to entities engaged in the transmission and distribution of electricity;

**NOW THEREFORE**, the Commission, after thorough and due deliberation, **RESOLVED**, as it hereby **RESOLVES** to **APPROVE** and **ADOPT** the "Rules to Govern the Issuance of Certificate of Public Convenience and Necessity (CPCN) to Entities Engaged in the Transmission and Distribution of Electricity" herein attached as "ANNEX A" and made an integral part of this Resolution.


This Resolution shall take effect fifteen (15) days following its publication in a newspaper of general circulation in the Philippines.

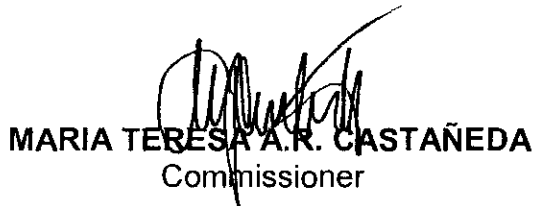
Let copies of this Resolution be furnished the University of the Philippines Law Center-Office of the National Administrative Register (UPLC-ONAR) and all entities engaged in the transmission and distribution of electricity.

**Pasig City, March 12, 2008.**

  
**RODOLFO B. ALBANO, JR.**  
Chairman

(On Official Travel)  
**RAUF A. TAN**  
Commissioner

  
**ALEJANDRO Z. BARIN**  
Commissioner

  
**MARIA TERESA A.R. CASTAÑEDA**  
Commissioner

(On Official Travel)  
**JOSE C. REYES**  
Commissioner

wf

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

**RULES TO GOVERN THE ISSUANCE OF  
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY (CPCN)  
TO ENTITIES ENGAGED IN THE  
TRANSMISSION AND DISTRIBUTION OF ELECTRICITY**

Pursuant to Section 43(p) of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 or the EPIRA, and Section 16 of Commonwealth Act No. 146, as amended, otherwise known as the Public Service Act, the Energy Regulatory Commission (ERC) hereby adopts and promulgates these Rules:

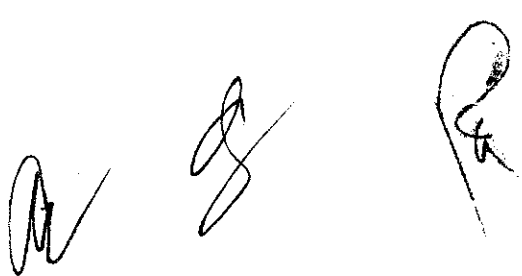
**ARTICLE I**

**GENERAL PROVISIONS**

**Section 1. Objectives.** These Rules seek to establish procedures, standards and criteria for the issuance of a Certificate of Public Convenience and Necessity (CPCN) to entities engaged in the transmission and distribution of electricity.

**Section 2. Scope.** These Rules shall apply to all entities engaged in the transmission and distribution of electricity, including but not limited to the following:

- (a) National Transmission Corporation (TransCo)/Buyer/Concessionaire;
- (b) Privately-Owned Distribution Utilities;
- (c) Electric Cooperatives; and
- (d) Other duly authorized entities engaged in the distribution and transmission of electricity including Consortium of Distribution Utilities (Consortium) that is allowed to acquire subtransmission assets from TransCo and operate the same.



**Section 3. Definition of Terms. –**

- (a) **“Act”** unless otherwise stated, refers to Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 or the EPIRA;
- (b) **“Buyer”** or **“Concessionaire”** refers to a qualified party awarded the sale agreement or Concession Contract for transmission assets;
- (c) **“Certificate of Public Convenience and Necessity”** or **“CPCN”** refers to the authorization issued to entities engaged in the transmission or distribution of electricity for the operation of a transmission or distribution system for which a franchise is required by law;
- (d) **“Commonwealth Act No.146”** or **“Public Service Act”**, otherwise known as the Act to reorganize the Public Service Commission (PSC), prescribe its powers and duties, define and regulate public services, provide and fix the rates and quota of expenses to be paid the same, and for other purposes;
- (e) **“Consortium”** refers to the juridical entity formed by and composed of two (2) or more Distribution Utilities each of whom is connected to one or more Subtransmission Assets in common with one or more other Distribution Utilities;
- (f) **“Distribution of Electricity”** refers to the conveyance of electric power by a distribution utility through its distribution system;
- (g) **“Distribution System”** refers to the system of wires and associated facilities belonging to a franchised distribution utility extending between the delivery points on the transmission or sub-transmission system or generator connection and the point of connection to the premises of the end-user;
- (h) **“Distribution Utility”** refers to any electric cooperative (EC), private corporation, Consortium of Distribution Utilities or duly authorized entity engaged in the distribution of electricity which has an exclusive franchise to operate an electric distribution system in accordance with its franchise and the Act;
- (i) **“Franchise Area”** refers to a geographical area exclusively assigned or granted to a utility for the transmission or distribution of electricity;
- (j) **“Island Grid”** refers to a generating plant or a group of generating plants and its associated load, which is isolated from the rest of the grid but is capable of generating and maintaining a stable supply of electricity to the customers within the isolated area;

- (k) **“Isolated Distribution System”** refers to the backbone system of wires and associated facilities not directly connected to the national transmission system;
- (l) **“National Power Corporation”** or **“NPC”** refers to the government corporation created under Republic Act No. 6395, as amended;
- (m) **“National Transmission Corporation”** or **“TransCo”** refers to the corporation organized pursuant to the Act to acquire all the transmission assets of the NPC; and
- (n) **“Supervision and Regulation Fee”** refers to the amount paid by entities engaged in the distribution of electricity for annual reimbursement of the expenses incurred by the ERC in the supervision of electric utilities, and in the regulation or fixing of their rates. This shall likewise apply to any future buyer and/or concessionaire of TransCo, as provided for in Item V of the Schedule of ERC Fees and Charges adopted on July 17, 2007.

## ARTICLE II

### FILING OF APPLICATIONS

**Section 1. *Filing of Application.*** All entities engaged in the transmission and distribution of electricity shall secure a CPCN before it operates. They shall file their formal application for the issuance of a CPCN in accordance with these Rules and the ERC Rules of Practice and Procedure.

**Section 2. *Qualifications.*** Only those applicants that possess the following qualifications shall be issued a CPCN:

- (a) Filipino citizenship or corporations, co-partnerships, associations or joint-stock companies constituted and organized under the laws of the Philippines: *Provided*, that sixty (60) per centum of the stock or paid up capital of any such corporation, co-partnership, association or joint stock company must belong entirely to citizens of the Philippines;
- (b) Technical capability;
- (c) Financial capability; and
- (d) Franchise for operating and maintaining a transmission or distribution system issued by the Congress of the Philippines, or the ERC pursuant to Section 8 of the Act.

**Section 3. Term of CPCN.** The CPCN shall be valid only for the term of the entity's franchise.

**Section 4. Renewal of CPCN.** The application for the renewal of a CPCN shall be filed one (1) year before its expiration.

### **ARTICLE III**

### **REQUIREMENTS AND PROCEDURES**

**Section 1. Submission of Required Data.** The following documents shall be submitted by an applicant for CPCN:

(a) **General Documents**

- (1) *Copy of Franchise Issued by the Congress of the Philippines, or the ERC in the case of a consortium of distribution utilities*

In the event that the CPCN application is filed prior to the grant of a franchise to operate a transmission or distribution system, the applicant shall submit a copy of the proposed House and/or Senate Bill pending approval of its franchise by the Congress of the Philippines or the application for a franchise filed with the ERC, in the case of a Consortium.

- (2) *Key Management Officials*

The list of names, titles, and responsibilities of all key management officials as submitted to the Securities and Exchange Commission (SEC), and the Philippine Stock Exchange (PSE). In the absence of the foregoing, the list of names, titles, and responsibilities of major stockholders and officers of the applicant shall be submitted.

- (3) *Corporate or Partnership Documents*

- (i) For a corporation –

- a. Certificate of Incorporation;

- b. Articles of Incorporation; and
- c. By-laws.
- (ii) For a partnership –
  - a. Certificate of Partnership; and
  - b. Articles of Partnership.
- (iii) For a Consortium -
  - a. Certificate of Incorporation;
  - b. Articles of Incorporation or Shareholders' Agreement; and
  - c. By-laws.

(4) *Service Area Map*

- (i) For entities engaged in the transmission of electricity – a map clearly showing the boundary of the applicant's service area
- (ii) For entities engaged in the distribution of electricity and Consortium–
  - a. Map clearly showing the boundary of the applicant's service area;
  - b. Total number of energized municipalities or barangays; and
  - c. Total number of unenergized municipalities or barangays.

(5) *Utility Practices and Procedures*

- (i) For New CPCN –
  - a. Proposed tariff or practices and procedures of the applicant, showing all rates, deposits and charges associated with providing the proposed service to the general public; and

The bottom left of the page contains two handwritten signatures in black ink. To the right of these signatures is a circular stamp, which appears to be a seal or official mark, though its details are not clearly legible.

b. Standard practices the applicant will follow when dealing with its customers, *i.e.*, *billing practices, conditions of disconnection, etc.*

(ii) For Renewal of CPCN –

a. Statement to the effect that it adopts its previously submitted utility practices and procedures unless there are changes thereon at the time of renewal. In which case, the new standard practices and procedures have to be submitted; and

b. Statement of its effective tariff.

**(b) Technical Documents/Information**

(1) *For New CPCN*



(i) For entities engaged in the transmission of electricity –

a. The list of names and addresses of personnel responsible for the design, installation, maintenance, and repair of equipment for the proposed system;

b. Information regarding the power supply for the proposed service area indicating the contracted demand and energy;

c. Single line diagram of the transmission system drawn in adequate scale on the map of the franchise area to be supplied with electricity, showing the location of substation, poles, and lines indicating substation name and capacity; designation of feeders or circuits; type of poles used (wood, steel or concrete); voltage level in kilovolt (kV) per feeder or circuit; length of each feeders in circuit-kilometers; and number of customers connected to each feeders or circuits; and

d. Copy of submitted Statement of Compliance and Compliance Plan to the PGC.



- (ii) For entities engaged in the distribution of electricity –
- a. The list of names and addresses of personnel responsible for the design, installation, maintenance, and repair of equipment for the proposed system;
  - b. Information regarding the power supply for the proposed service area indicating the contracted demand and energy;
  - c. Single line diagram of the distribution system drawn in adequate scale on the map of the franchise area to be supplied with electricity, showing the location of substation, poles, distribution transformers and lines indicating substation name and capacity; designation of feeders or circuits; type of poles used (wood, steel or concrete); voltage level in kilovolt (kV) per feeder or circuit; length of each feeders in circuit-kilometers; size of distribution transformers; and number of customers connected to each feeders or circuits;
  - d. Copy of submitted Statement of Compliance and Compliance Plan to the PGC and PDC; and
  - e. Description of any negotiations with telephone and/or cable television utilities on the joint use of pole lines.

(2) *For renewal of CPCN*

- (i) For entities engaged in the transmission of electricity –
- a. The list of names and addresses of additional personnel responsible for the design, installation, maintenance, and repair of equipment for the proposed system;
  - b. Updated information regarding the power supply for the proposed service area indicating the contracted demand and energy;
  - c. Copy of the existing single line diagram of the transmission system drawn in adequate scale on the map of the franchise area to be supplied with electricity, showing the location of substation, poles, and lines indicating substation name and

capacity; designation of feeders or circuits; type of poles used; voltage level in kilovolt (kV) per feeder or circuit; length of each feeders in circuit-kilometers in electronic format or hard copy; and

- d. Statement confirming that the existing transmission system meets the technical requirements of the PGC or a Statement to the effect that compliance with some technical requirements are still pending approval by the ERC.

(ii) For entities engaged in the distribution of electricity –

- a. The list of names and addresses of additional personnel responsible for the design, installation, maintenance, and repair of equipment for the proposed system;
- b. Updated information regarding the power supply for the proposed service area indicating the contracted demand and energy;
- c. Copy of the existing single line diagram of the distribution system drawn in adequate scale on the map of the franchise area to be supplied with electricity, showing the location of substation, poles, distribution transformers and lines indicating substation name and capacity; designation of feeders or circuits; type of poles used; voltage level in kilovolt (kV) per feeder or circuit; length of each feeders in circuit-kilometers; size of distribution transformers; and number of customers connected to each feeders or circuits in electronic format or hard copy;
- d. Statement confirming that the existing distribution system meets the technical requirements of the PGC and PDC or a Statement to the effect that compliance with some technical requirements are still pending approval by the ERC; and
- e. Description of any new negotiations with telephone and/or cable television utilities on the joint use of pole lines.

(c) **Financial Information**

(1) *Financial Status*

- (i) Copies of the most recent year's audited balance sheet and income statement if the applicant is an existing business which previously has not operated as a public utility or has not been previously authorized to operate as a public utility;
- (ii) Copies of the most recent year's balance sheet and income statement of the principal owners of the business if the applicant is a new business which proposes to operate as a utility; and
- (iii) Copies of the appropriate pages from its annual report submitted to the Commission, if those pages still reflect the current financial status of the utility, or copies of current statements to other agencies or copies of its most recent internal documents which contain substantially the same information if the applicant is authorized to operate as a public utility.

Failure on the part of a distribution utility, Consortium or the Buyer/Concessionaire to submit any of the required data/information shall be a ground for the denial of the application.

## ARTICLE IV

### OBLIGATIONS OF THE CPCN GRANTEE

**Section 1.** *Compliance with pertinent laws and rules.* The distribution utility, Consortium or the TransCo/Buyer/Concessionaire shall ensure that during the term of the CPCN, it meets all the technical and financial standards provided in the PGC and PDC and all other pertinent rules and regulations issued by the ERC.

**Section 2.** *Payment of Supervision Fees.* All entities engaged in the transmission (Buyer/Concessionaire) and distribution of electricity shall pay the Supervision Fees, on or before the 30<sup>th</sup> day of September each year. Staggered payment will be accepted as long as the last payment shall be made not later than September 30 of the same year.

**Section 3. *Submission of Annual Report.*** All entities engaged in the transmission and distribution of electricity shall submit their respective Annual Reports in the format prescribed by the ERC on or before the 31<sup>st</sup> day of May each year.

## ARTICLE V

### AMENDMENT AND REVOCATION OF CPCN

**Section 1. *Amendment/Revocation and Issuance of CPCN*** - Any provision or matter stated in the CPCN may be amended by the ERC on account of sale, transfer, assignment, disposition or any other conveyance of the rights of a CPCN grantee to another entity qualified to operate a transmission or distribution system. In such eventuality, the CPCN grantee and the buyer, transferee or assignee of the rights of the CPCN grantee shall jointly file an application, within thirty (30) days from the date of sale, transfer, assignment, disposition or any other conveyance, for the amendment or revocation of the CPCN issued to the grantee, to the extent that it was affected by the sale, transfer, assignment, disposition or conveyance, and for the issuance of a CPCN in favor of the buyer, transferee, assignee of the rights of the CPCN grantee, in accordance with these Rules.

**Section 2. *Revocation for Causes other than Sale or Transfer.*** – Pursuant to Section 43 (e) and (p) of the Act, the ERC may revoke the CPCN of any entity engaged in the transmission and distribution of electricity for the following grounds:

- a. Failure, without any justifiable reason, to comply with the provisions of the Act, its IRR, or any of the Commission's Orders or Resolution;
- b. Failure, without any justifiable reason, to pay the Annual Supervision Fee;
- c. Failure, without any justifiable reason, to submit its Annual Report; and
- d. Failure, without any justifiable reason, to comply with the provisions of the PGC and PDC.

**Section 3. *Procedure for and Effect of Revocation.*** – The ERC may amend or revoke the CPCN of any entity engaged in the transmission and distribution of electricity after due notice and hearing. Such proceedings shall be governed by the ERC Rules of Practice and Procedure.

If the ERC finds the revocation to be warranted, it shall revoke the CPCN and recommend to Congress of the Philippines the revocation of the franchise granted to such entity.

In case the CPCN of a Consortium is revoked, the ERC, *motu proprio* or upon the instance of any third party, and after due notice and hearing, may revoke the franchise granted to it.

In the public interest, the entity whose CPCN is revoked shall be provisionally allowed to continue its operations notwithstanding such revocation, until a new entity applies for and is granted a CPCN to engage in the transmission and distribution of electricity in the affected area. This is without prejudice to the imposition of appropriate fines and penalties upon the concerned entity and to such other conditions that the ERC may impose.

## **ARTICLE VI**

### **CONSOLIDATED FRANCHISE**

If an entity with several CPCNs issued to it secures a consolidated franchise to supersede the several franchises earlier issued, it shall file an application for a consolidated CPCN to cover its entire franchise area under such consolidated franchise, within six (6) months from issuance of the consolidated franchise or from effectivity of these Rules, whichever comes later.

## **ARTICLE VII**

### **PENALTIES**

Violations of any provisions of these Rules shall be subject to the imposition of fines and penalties in accordance with the Guidelines to Govern the Imposition of Administrative Sanctions in the Form of Fines and Penalties Pursuant to Section 46 of the Act promulgated by the ERC on May 17, 2002.

## **ARTICLE VIII**

### **TRANSITORY PROVISION**

Entities that are already operating a transmission or distribution system without a CPCN shall file their respective applications to the ERC within thirty (30) days from the effectivity of these Rules. CPCNs that were already approved before the effectivity of these Rules shall remain valid until its renewal date. Applications for CPCN filed with and still pending resolution by the ERC prior to the effectivity of these Rules shall be governed by and resolved in accordance with the provision of these Rules, as may be applicable.

**ARTICLE IX**  
**FINAL PROVISIONS**

**Section 1. Separability Clause.** If for any reason, any part or section of these Rules is declared unconstitutional or invalid, the other parts or sections hereof which are not affected thereby shall continue to be in full force and effect.


**Section 2. Effectivity Clause.** These Rules shall take effect after fifteen (15) days following the completion of its publication in a newspaper of general circulation in the Philippines.

Pasig City, March 12, 2008.

  
**RODOLFO B. ALBANO, JR.**  
Chairman

(On official travel)  
**RAUF A. TAN**  
Commissioner

  
**ALEJANDRO Z. BARIN**  
Commissioner

  
**MARIA TERESA A.R. CASTAÑEDA**  
Commissioner

(On official travel)  
**JOSE C. REYES**  
Commissioner