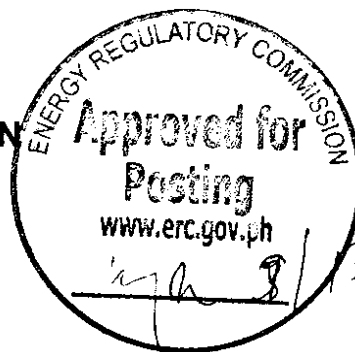


Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City



Resolution No. 06, Series of 2009.

A RESOLUTION ADOPTING THE RULES FOR THE DISTRIBUTION OF NET SETTLEMENT SURPLUS

WHEREAS, Section 30 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), provides for the establishment of the Philippine Wholesale Electricity Spot Market (WESM);

WHEREAS, commercial operations of the WESM commenced on 26 June 2006;

WHEREAS, there is a surplus or deficit resulting from the aggregate settlement transactions in the WESM termed as the Net Settlement Surplus or Deficit;

WHEREAS, there is a need to establish a suitable process for the immediate and equitable flow back of the Net Settlement Surplus by the Philippine Electricity Market Corporation (PEMC) to the party who paid for the same;

WHEREAS, the ERC proposed a set of Rules for the Distribution of Net Settlement Surplus;

WHEREAS, the set of Rules for the Distribution of Net Settlement Surplus establishes, among others, the (i) definition and allocation of Net Settlement Surplus; (ii) distribution period of Net Settlement Surplus; (iii) flow back computation of Net Settlement Surplus; (iv) treatment of interests incurred from the Net Settlement Surplus; and (v) reportorial requirements;

WHEREAS, the said Rules were posted on the ERC website to solicit comments from interested stakeholders and a public consultation was conducted on 29 October 2008;

WHEREAS, the revised Rules incorporating the comments of the industry stakeholders were again posted on the ERC website on 14 January 2009;

WHEREAS, the Rules were revised to consider the comments submitted on its second posting;

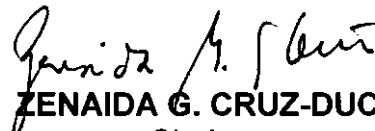
NOW THEREFORE, after careful deliberation on the issues relative thereto, the **ERC RESOLVED**, as it hereby **RESOLVES**, to **APPROVE** and **ADOPT** the "Rules for the Distribution of Net Settlement Surplus", herein attached as Annex "A" and made an integral part of this Resolution.

All previous Decisions, Issuances and Directives by the ERC contrary to the instant Resolution are deemed superseded.

This Resolution shall take effect immediately.

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 generation, transmission and distribution of electricity.

Pasig City, 23 February 2009.


ZENAIDA G. CRUZ-DUCUT
Chairman


RAUF A. TAN
Commissioner


ALEJANDRO Z. BARIN
Commissioner


MARIA TERESA A. R. CASTAÑEDA
Commissioner


JOSE C. REYES
Commissioner

Annex A

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

RULES FOR THE DISTRIBUTION OF NET SETTLEMENT SURPLUS

Pursuant to Section 2 (c), (f) and (j) of Republic Act No. 9136, the Price Determination Methodology (PDM) for the Wholesale Electricity Spot Market (WESM) and the WESM Rules, the Energy Regulatory Commission (ERC) hereby adopts and promulgates these Rules to establish a suitable process for the immediate and equitable flow-back of the Net Settlement Surplus (NSS) by the Philippine Electricity Market Corporation (PEMC) to the party who paid for the same.

ARTICLE 1

GENERAL PROVISIONS

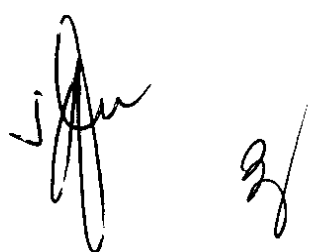
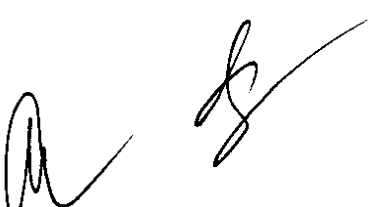
Section 1.1 Objectives

- 1.1.1 To ensure transparent and reasonable prices of electricity and enhance the competitive operation of the electricity market;
- 1.1.2 To protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power;
- 1.1.3 To provide a mechanism for the just and equitable distribution of the Net Settlement Surplus; and
- 1.1.4 To flow back the Net Settlement Surplus to End-users in the most immediate and equitable manner.

Section 1.2 Scope

These Rules shall apply to:

- 1.2.1 Generation Companies;
- 1.2.2 Distribution Utilities;



- 1.2.3 Default Wholesale Suppliers;
- 1.2.4 Wholesale Aggregators;
- 1.2.5 End-users of electricity;
- 1.2.6 Retail Electricity Suppliers (RES), including the Local RES and the Supplier of Last Resort (SoLR), and other suppliers of electricity;
- 1.2.7 Philippine Electricity Market Corporation (PEMC); and
- 1.2.8 Relevant industry participants, as applicable.

Section 1.3 Definition of Terms

For purposes of these Rules, the following terms shall have the respective meanings:

| | |
|---|--|
| Act | Refers to Republic Act No. 9136 also known as the "Electric Power Industry Reform Act of 2001 (EPIRA)". |
| Bilateral Power Supply Contracts | The contracts for the physical supply of electricity as contemplated under Section 45(c) of R.A. 9136, which do not include a financial derivative contract nor a contract for the sale of electricity from a distribution utility to a person who requires the supply and delivery of that electricity for its own consumption nor power supply contracts entered into by NPC or its Assignee and End-users who are directly connected to the grid. |
| Default Wholesale Supplier | The entity which shall provide the supply of electricity to cover the imbalances of indirect members in the WESM. This could be the National Power Corporation, Power Sector Assets and Liabilities Management or an Assignee, as per ERC Resolution No. 11, Series of 2008. |
| Direct WESM Member | A person or an entity who is registered with the Market Operator under Section 2.3. of the WESM 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 the Act. |
| 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. |
| Generation Company | Refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity. |
| Independent Power Producer (IPP) | Refers to an existing power generating entity which is not owned by NPC. |
| Indirect WESM Member | A person or an entity who is allowed to indirectly trade in the WESM through a Direct WESM Member. |
| IPP Administrator | Refers to qualified independent entities appointed by PSALM Corporation who shall administer, conserve and manage the contracted energy output of NPC IPP contracts. |
| Local Retail Electricity Supplier (Local RES) | The non-regulated business segment of the DU catering to the contestable market only in its franchise area. As such, a license for a Local RES is not required. |
| Market Operator | The entity responsible for the operation of the spot market governed by the PEM Board of Directors which, for the avoidance of doubt, is the Autonomous Group Market Operator (AGMO) for a period of twelve months from the spot market commencement date and thereafter the entity to which the functions, assets and liabilities of the AGMO are transferred in accordance with Section 30 of R.A. 9136. |

| | |
|---|--|
| National Power Corporation (NPC) | The government corporation created under Republic Act No. 6395, as amended. |
| Net Settlement Surplus (NSS) or Deficit | The settlement surplus or deficit remaining after all market transactions have been accounted for, including the assignment of transmission line rentals to Network Service Providers. This surplus or deficit is assumed to be attributable to economic rentals arising from other binding constraints, and accounted for in accordance with the WESM Rules provision on the Treatment of Net Settlement Surplus. |
| Network Service Provider | A person who engages in the activity of owning, controlling, or operating a transmission or distribution system and who is registered with the Market Operator. |
| Nodes | Connection points in a network, or junction points within a network model, whether physical or notional. |
| Non-WESM Member | A person or entity who is not registered with the Market Operator either as a Direct WESM Member or an Indirect WESM Member but continues to withdraw/inject power and energy from/into the grid through the WESM. |
| NPC-Successor Generating Company / Assignee | Otherwise known as the winning bidder, to which PSALM has successfully turned over any NPC-owned power plant privatized in accordance with Section 47 of the Act. As such, said assignee shall have complied with all the deliverables as provided in the Asset Purchase Agreement including the required up-front payment generally amounting to forty percent (40%) of the bid price. |
| Philippine Electricity Market Corporation (PEMC) | The entity responsible for governing and administering the operations of the WESM, also referred to in these Rules as the Market Operator, provided, |

however, that should the market operations functions of the WESM be transferred to an Independent Market Operator (IMO), all references to PEMC or the Market Operator shall refer to such Independent Market Operator without need of amendment of these Rules.

Power Sector Assets and Liabilities Management Corporation (PSALM)

The corporation created pursuant to Section 49 of the Act.

Retail Electricity Supplier (RES)

Any person or entity licensed by ERC to sell, broker, market or aggregate electricity to End-users.

Supplier of Last Resort (SoLR)

A regulated entity designated by the ERC to serve End-users in the Contestable Market following a Last Resort Supply Event.

Wholesale Aggregator

Any Person or entity which has been issued a Certificate of Registration by the ERC to sell electricity to Distribution Utilities.

Wholesale Electricity Spot Market (WESM)

The electricity market established by the Department of Energy (DOE) in accordance with Section 30 of the Act.

Terms not otherwise defined in Section 1.3 hereof, which are defined in the Act, its Implementing Rules and Regulations, or the WESM Rules, have the same meaning ascribed to them therein.

ARTICLE 2

DESCRIPTION OF NET SETTLEMENT SURPLUS

Section 2.1 The adoption of locational marginal pricing for the WESM under different market trading nodes, accounts for congestion and losses in the transmission system. As a result, price differences occur between generator nodes and customer nodes due to these losses and congestion. The surplus resulting from the aggregate WESM settlement

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transactions is the Net Settlement Surplus. This may also result in a settlement deficit.

Section 2.2 The Net Settlement Surplus amount shall be calculated on a nodal and hourly basis as follows:

$$NSS_k = \text{Collectibles}_k - \text{Payables}_k$$

Where:

NSS_k – Net Settlement Surplus for trading interval k

Collectibles – total amount to be collected by the Market Operator from the trading participants for energy transactions in the market (including loss and congestion charges for both spot and bilateral quantities) for all nodes at trading interval k

Payables – total amount to be paid by the Market Operator to the trading participants for energy transactions in the market for the trading interval k

Section 2.3 The WESM Rules, as amended, defines "Net Settlement Surplus (NSS)" as the settlement surplus remaining after all market transactions have been accounted for, including the assignment of transmission line rentals to Network Service Providers. This remainder is assumed to be attributable to economic rentals arising from other binding constraints, and accounted for in accordance with the WESM Rules provision on the Treatment of Remaining Settlement Surplus.

ARTICLE 3

APPLICATION OF THE NET SETTLEMENT SURPLUS

Section 3.1 The NSS remaining after replenishing the 10% retention under Article 6 hereof shall be allocated and distributed at the wholesale level by PEMC to the following WESM participants:

3.1.1 Distribution Utilities (DUs) which are Direct WESM Members;



- 3.1.2 Wholesale Aggregators (WA), Retail Electricity Suppliers (RES), including the Local RES and the Supplier of Last Resort (SoLR), and other electricity suppliers that are Direct WESM Members;
- 3.1.3 National Power Corporation (NPC) and Power Sector Assets and Liabilities Management Corporation (PSALM) as the Default Wholesale Suppliers (DWS) of Indirect WESM Members and Non-WESM Members;
- 3.1.4 Generation Companies which are Direct WESM Members;
- 3.1.5 NPC Successor Generating Companies who have agreed to act as the DWS for the assigned Transition Supply Contracts with Indirect WESM Members and Non-WESM Members;
- 3.1.6 IPP Administrators who will be assigned Transition Supply Contracts and assume the default wholesale supply functions for the assigned TSC customers; and
- 3.1.7 Other parties which have paid line loss and congestion charges.



Section 3.2 Any NSS distributed at the wholesale level to the DUs directly by PEMC or indirectly through the DWS, shall be subject to immediate re-distribution to the corresponding End-users at the retail level.

Section 3.3 Generation units that have been designated as Must Run-Units (MRUs) are not settled in accordance with the usual settlement formula, and as such, do not share in the costs of congestion and losses. Hence, generation units are not entitled to allocation of the NSS or deficit during the trading intervals that they are designated as MRUs.

ARTICLE 4

DISTRIBUTION AND RE-DISTRIBUTION PERIOD OF NET SETTLEMENT SURPLUS

Section 4.1 Upon effectivity of these Rules, PEMC shall immediately include the NSS for distribution and reflect the same in the corresponding billing statement on the current billing period, from the time of computation and determination of the NSS amount. The End-users are deemed to have received the re-distribution by virtue of the deduction in the billed amount for the DUs and DWS.



- Section 4.2 The distribution shall be in the form of an immediate deduction from or adjustment of the total settlement amount to be paid by or due the recipients of the NSS for their WESM transactions.
- Section 4.3 Subject to Article 6 hereof, any other NSS amount retained by PEMC including the interests earned on the said retained amount, and due to be distributed prior to the effectivity of these Rules shall be distributed to the appropriate recipients within thirty (30) days from effectivity of these Rules.
- Section 4.4 Any NSS amount received from PEMC and retained by the DUs and DWS prior to the effectivity of these Rules shall be re-distributed by the DUs – Direct WESM Members to their End-users, and by the DWS to the Indirect WESM Members and Non-WESM Members, and eventually to the End-users under the following procedures:
- 4.4.1 The DWS shall distribute to the corresponding Indirect WESM members and Non-WESM Members, the entire amount of the NSS received on the next billing period after receipt of the NSS.
- 4.4.2 DUs, which are recipients of the NSS shall immediately re-distribute to their End-users the NSS starting on the next billing period after receipt of the NSS where the period of re-distribution shall correspond to the number of months that the NSS has accumulated.

ARTICLE 5

FLOW BACK COMPUTATION OF NET SETTLEMENT SURPLUS

- Section 5.1 Subject to the distribution period under Article 4 hereof, PEMC shall distribute the NSS remaining after replenishing the 10% retention under Article 6 hereof to the WESM participants that paid for the loss and congestion charges. The allocation shall be on a pro-rata basis, depending on each recipient's contribution to the total NSS. The monthly amount ($\sum R_{jk}$) to be distributed to each recipient shall be equal to the sum of the NSS amounts computed per trading interval, which in turn is equal to the total NSS amount per trading interval multiplied by the ratio of the recipient's line loss and congestion charges payments for the trading interval to the total line loss and congestion charges payments for the trading interval of all recipients. This rule shall apply regardless of the distribution method, whether outright deduction or otherwise.

This is represented by the following formula:

$$R_{jk} = \text{NSS}_k \times \left(\frac{\sum \text{LLCC}_{jk}}{\sum \text{LLCC}_k} \right)$$

Where:

R_{jk} = rebate amount or NSS allocation for recipient j for trading interval k

NSS_k = the Net Settlement Surplus for the trading interval k

$\sum \text{LLCC}_{jk}$ = sum of the line loss and congestion charges payments of recipient j for the trading interval k

$\sum \text{LLCC}_k$ = sum of line loss and congestion charges payments of all paying WESM customers for the trading interval k

k = hourly trading interval

j = any WESM customer paying line loss and congestion charges to which a pro-rated amount of NSS will be returned.

$\sum R_{jk}$ = sum of all R_{jk} for all trading intervals (k) in the billing period, to arrive at the rebate amount or NSS allocation for recipient j for the billing period.

Section 5.2 Any NSS amount which is due for distribution by PEMC, the same having accumulated prior to the effectivity of these Rules and/or any amount retained after effectivity of these Rules which has not been included in the outright deduction or adjustment under Section 4.2 hereof, shall be allocated also in accordance with Section 5.1 of these Rules, i.e. pro-rated depending on each recipient's contribution to the total NSS.

5.2.1 The interests earned on the accumulated NSS prior to the effectivity of the Rules shall be returned and allocated on a pro-rata basis depending on each recipient's contribution to the total NSS for the

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billing month. The allocation shall follow the same computation for distribution of interest earned on the ten percent (10%) retention of the NSS as stated in Section 6.3 of these Rules.

Section 5.3 The DWS shall re-distribute the NSS to their customers, also on a pro-rata basis, depending on each recipient's contribution to the total NSS. The amount to be returned to each recipient shall be equal to the total NSS amount received from PEMC, multiplied by the ratio of the recipient's line loss and congestion charges payments for the billing month to the total line loss and congestion charges payments for the billing month of all recipients.

Section 5.4 The DUs, which are recipients of an NSS amount including interests, shall deduct the said NSS amount from the generation cost to be recovered by the DU from its End-users for the current billing month. This automatically pro-rates the NSS based on kWh consumption per month since the generation cost shall be billed to End-users based on each End-user's kWh consumption. The monthly NSS to be re-distributed shall be computed based on the total kWh consumption of all customers during the month wherein the NSS resulted.

This is represented by the following formula:

Conversion of total NSS amount to monthly:




$$NSS_k = NSS_T \times (\sum kWh_k / \sum kWh_T)$$

Where:

NSS_k = the Net Settlement Surplus including interests to be distributed corresponding to the billing month k

NSS_T = the total Net Settlement Surplus including interests received

$\sum kWh_k$ = total kWh consumption of all customers for the billing month k



$\sum kWh_T$ = total kWh consumption of all customers for all billing months wherein the NSS amount to be returned has resulted

k = DU billing month corresponding to the WESM billing month wherein the NSS amount to be returned has resulted

T = all months wherein the NSS amount to be returned has resulted

Re-distribution of monthly NSS to the End-users:

The resulting monthly NSS, NSS_k , shall be re-distributed by the DU to its End-users by deducting the computed monthly NSS_k from the generation cost that it will recover from its End-users for the current billing month.

ARTICLE 6


TEN PERCENT (10%) RETENTION BY PEMC OF THE NSS

Section 6.1 PEMC shall be allowed to retain ten percent (10%) of the total NSS amount for the previous three (3) months preceding the current WESM billing or invoice cycle to cover settlement adjustments. The 10% retention shall be reckoned per market participant.

Section 6.2 Any Net Settlement Deficit shall be funded from the ten percent (10%) retention.

Section 6.3 Any amount in excess of the allowed ten percent (10%) to be retained shall be returned as a deduction in the WESM Members' billing statement following the procedures in these Rules. Any deficit in the said allowed retention shall be taken from the NSS in the current billing month and the next billing months until the amount allowed to be retained is achieved.

Section 6.4 The interest earned on the retained NSS amount shall be allocated on a pro-rata basis depending on each recipient's contribution to the total NSS for the current billing month. The amount to be returned to each



recipient shall be equal to the total amount of interest earned, multiplied by the ratio of the recipient's NSS contribution for the current billing month to the total NSS contribution of all recipients for the current billing month.

This is represented by the following formula:

$$Int_{jk} = \sum Int_k \times \left(\frac{\sum LLCC_{jk}}{\sum LLCC_k} \right)$$

Where:

Int_{jk} = Interest rebate amount for recipient j and for the current billing period k

$\sum Int_k$ = the total interest earned to be distributed on the current billing period k

$\sum LLCC_{jk}$ = sum of the line loss and congestion charges payments of recipient j for the current billing period k

$\sum LLCC_k$ = sum of line loss and congestion charges payments of all paying WESM customers for the current billing period k

k = 28/29/30/31 days or one WESM billing or invoice cycle

j = any WESM customer paying line loss and congestion charges to whom a pro-rated amount of interest earned on the retained NSS will be returned

Section 6.5 The total interest earned on the allowed NSS retention shall also be returned to the recipients in the form of immediate deduction from a recipient's bill immediately on the billing period after the interest income is received by or credited to PEMC, pro-rated to the recipient's contribution to the total NSS in accordance with Section 6.3 hereof.

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Section 6.6 The interest amount to be returned to the NSS recipients shall be the actual interest amounts received, net of applicable taxes and charges.

ARTICLE 7

SUBMISSION, VERIFICATION AND REPORTORIAL REQUIREMENTS

Section 7.1 Upon effectivity of these Rules, PEMC shall comply with the following reportorial requirements:

7.1.1 Regular monthly summary reports on the amount of NSS being generated and distributed. Regular monthly summary reports on the amount of NSS or deficit being generated and distributed, the ten percent (10%) retention, the corresponding value added tax (VAT) and interest amounts, as well as the date when the interests were earned or credited to PEMC. This report shall be made available to all Market Participants and shall be published in the market information website. A verified copy of the report shall likewise be submitted to the ERC on a monthly basis including interest earned in all billing periods; and

7.1.2 Annual report on the monthly levels of the NSS and review of the underlying factors giving rise to any NSS identifying, if possible, any binding constraints which may have caused or contributed to the NSS. This report shall be made available to the market participants and will be submitted to the PEM Board of Directors and the ERC.

Section 7.2 PEMC shall contract a qualified external auditor who shall conduct an annual audit of the NSS or deficit, the ten percent (10%) retention, the corresponding value added tax (VAT) and interest amounts as well as the procedure used by PEMC, and submit to the ERC the audit report immediately upon its completion but no later than three (3) months after calendar year end.

Section 7.3 DWS and DUs which are recipients of any NSS amount shall also submit monthly reports to the ERC of said amount including the corresponding reports on NSS re-distributed to customers, i.e. Indirect and Non-WESM Members for DWS and End-users for DUs.



ARTICLE 8

INTERESTS AND PENALTIES

- Section 8.1 Subject to Article 6 hereof, should PEMC be unable to return the amount of the NSS due to be returned to WESM recipients and/or the interest incurred in the retained 10% during the specified period under these Rules, the retained amount will be imposed an interest at the rate of the prevailing 91-day T-bill rate plus 300 basis points.
- Section 8.2 The DUs and DWS which are recipients of the NSS and have not complied with the re-distribution process under these Rules during the period specified shall be subject to the same interest rates, the return of which shall be in accordance with Article 5 and Article 6 hereof.
- Section 8.3 The undistributed part of the NSS through the course of the DU's redistribution of NSS to its End-users shall also incur interests at the rate of the prevailing 91-day T-bill rate plus 300 basis points.

ARTICLE 9



PERIOD OF EFFECTIVITY

- Section 9.1 These Rules shall be implemented in Luzon and will take effect fifteen (15) days following its publication in a newspaper of general circulation in the Philippines and will continue until otherwise directed by the ERC.

ARTICLE 10

SEPARABILITY

- Section 10.1 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 are not affected thereby shall continue to be in full force and effect.



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ARTICLE 11

SANCTIONS

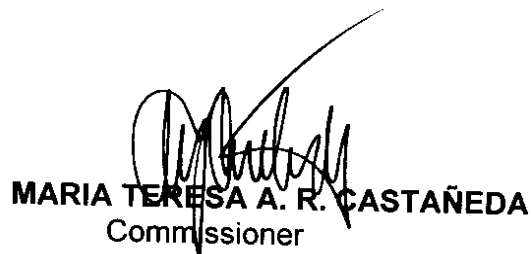
Section 11.1 The ERC shall impose the appropriate fines and penalties for any violation or non-compliance with these Rules, pursuant to the "Guidelines to Govern the Imposition of Administrative Sanctions in the Form of Fines and Penalties Pursuant to Section 46 of R.A. 9136".

Pasig City, 23 February 2009

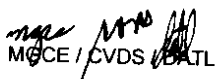

ZENAIDA G. CRUZ-DUCUT
Chairman


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