

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

**GUIDELINES FOR THE ISSUANCE OF LICENSE TO RETAIL ELECTRICITY  
SUPPLIERS (RES)**

Pursuant to Sections 29 and 31 of Republic Act No. 9136, hereinafter referred to as the Act, its Implementing Rules and Regulations (IRR), the Philippine Grid and Distribution Code (PGDC), and the Wholesale Electricity Spot Market (WESM) Rules, the Energy Regulatory Commission (ERC) hereby adopts and promulgates the following Guidelines for the issuance of license to qualified Retail Electricity Suppliers (RES).

**ARTICLE I**

**GENERAL PROVISIONS**

**Section 1. Objectives**

The following are the objectives of this Guidelines:

- a. To promote free and fair competition and accountability of Electric Power Industry Participants to achieve greater operational and economic efficiency thereby rationalizing electricity prices and making them competitive and transparent;
- b. To ensure consumer protection and enhance the competitive operation of the retail electricity market.

**Section 2. Guiding Principles**

No Person may engage in the supply of electricity to End-users in a Contestable Market unless such person has secured a Supplier's License from the Energy Regulatory Commission.

The Supplier's License shall stipulate all the obligations of a Retail Electricity Supplier (RES) consistent with the qualifications and criteria required of a RES established herein and such other laws, rules and regulations pertinent thereto. A Supplier's License shall be issued upon compliance with the standards and requirements herein set forth.

**Section 3. Issuance of a License.**

ERC shall issue a license to a qualified RES that complies with all applicable requirements stipulated herein such as, but not limited to, qualifications, obligations, conditionalities of cross-ownership, market power abuse, anti-

competitive behavior and all other requirements which are deemed necessary for the proper implementation of these Guidelines.

No RES shall be allowed to engage in selling, brokering, marketing or aggregating of electricity to end-users or to participate in the WESM without a valid license from the ERC. The license issued by ERC to qualified RES may be used in any part of the country where retail competition and open access exists.

#### **Section 4. Scope**

This set of Guidelines shall apply to the following:

- a. A Generation Company or Affiliate thereof;
- b. A Distribution Utility that shall operate as a RES outside its franchise area;
- c. An Affiliate of a Distribution Utility with respect to the latter's Contestable Market within or outside its Franchise Area;
- d. An IPP Administrator; and
- e. Any other Person intending to engage in the selling, brokering or marketing of electricity to the Contestable Market, consistent with the Act and its Implementing Rules and Regulations.

The ERC shall issue separate Guidelines for Aggregators.

#### **Section 5. Exempted from the Coverage**

- a. Distribution Utilities within their Franchise Areas; and
- b. Persons authorized to supply electricity within their respective Economic Zones.

#### **Section 6. Definition of Terms.**

- a. **"Act"** unless otherwise stated, refers to, Republic Act No. 9136, otherwise known as "Electric Power Industry Reform Act of 2001";
- b. **"Affiliate"** means any Person which, alone or together with any other Person, directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with another Person. Affiliates shall include a subsidiary company and parent company and subsidiaries, directly or indirectly, of a common parent;
- c. **"Aggregator"** refers to a Person or entity engaged in consolidating electric power demand of End-users in the Contestable Market for the purpose of purchasing and reselling electricity on a group basis.

- d. **“Applicant”** refers to a Person or entity seeking to obtain a license to become a supplier of retail electricity to Contestable Markets;
- e. **“Buyer” or “Concessionaire”** refers to a qualified party awarded the sale agreement or concession contract for transmission assets;
- f. **“Code of Conduct”** refers to the set of rules promulgated by ERC to govern the conduct of Retail Electricity Suppliers, Distribution Utilities, their stockholders, directors, officers and employees, within the boundaries of fair competition.
- g. **“Competition Rules”** refer to the rules promulgated by ERC to promote and ensure competition in the electric power industry pursuant to the Act and its Implementing Rules and Regulations.
- h. **“Contestable Market”** refers to the electricity End-users who have a choice of a supplier of electricity, as may be determined by the ERC in accordance with the Act;
- i. **“Contiguous Area”** refers to areas which are within the same boundaries such as subdivisions, villages, Economic Zones, business districts and other similarly situated End-users in which Supply of Electricity can be measured through metering devices;
- j. **“Control”** shall mean the power to direct or cause the direction of the management policies of a Person by contract, agency, or otherwise;
- k. **“Distribution Utility” or “DU”** refers to 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;
- l. **“Economic Zones” or “EZs”** refer to selected areas which are highly developed or have the potential to be developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers, including but not limited to the following: Industrial Estates (IEs), Export Processing Zones (EPZs), Free Trade Zones, Information Technology Parks and Tourist/Recreational Centers, the “Bases Conversion Development Authority” or “BCDA”, “Cagayan Economic Zone Authority” or “CEZA”, “Clark Development Corporation” or “CDC”, “Philippine Economic Zone Authority” or “PEZA”, “Phividec Industrial Authority” or “PIA”, and “Zamboanga City Economic Zone Authority” or “ZCEZA”;
- m. **“Electric Power Industry Participant”** refers to any Person or entity engaged in the generation, transmission, distribution or supply of electricity;
- n. **“End-user”** refers to any Person or entity requiring the supply and delivery of electricity for its own use;

- o. **“Energy Regulatory Commission”** or **“ERC”** refers to the independent and quasi-judicial regulatory agency created under Section 38 of the Act;
- p. **“Generation Company”** refers to any Person or entity authorized by the ERC to operate facilities used in the generation of electricity;
- q. **“Generation of Electricity”** refers to the production of electricity by a generation company or co-generation facility pursuant to the provisions of the Act;
- r. **“Independent Market Operator”** or **“IMO”** refers to a person who is financially and technically capable, with proven experience and expertise of not less than two (2) years as a leading independent market operator of similar or larger size electricity markets endorsed jointly by the Department of Energy (DOE) and Electric Power Industry Participants to assume the functions, assets and liabilities from the Autonomous Group Market Operator (AGMO), pursuant to Section 30 of the Act;
- s. **“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;
- t. **“Licensee”** refers to the Person or entity which has already been granted a Supplier’s License by the ERC.
- u. **“Market Operator”** refers to either the “Autonomous Group Market Operator” or “AGMO” constituted by the DOE under Section 30 of the Act, with equitable representation from Electric Power Industry Participants, initially under the administrative supervision of the TRANSCO, which shall assume the functions, assets and liabilities of the AGMO or the IMO, the entity jointly endorsed by the DOE and Electric Power Industry Participants to assume the functions, assets and liabilities from AGMO pursuant to Section 30 of the Act;
- v. **“National Power Corporation”** or **“NPC”** refers to the government corporation created under Republic Act No. 6395, as amended;
- w. **“National Transmission Corporation”** or **“TRANSCO”** refers to the corporation organized pursuant to the Act to acquire all the transmission assets of the NPC;
- x. **“Person”** refers to a natural or juridical person, as the case may be;
- y. **“Philippine Stock Exchange”** or **“PSE”** refers to the corporate body duly organized and existing under Philippine law, licensed to operate as a securities exchange by the Securities and Exchange Commission (SEC);

- z. **“Power Sector Assets and Liabilities Management Corporation”** or **“PSALM Corp.”** or **“PSALM”** refers to the corporation created pursuant to Section 49 of the Act;
- aa. **“Related Group”** refers to a Person and any business entity controlled by that Person, along with the Affiliates of such business entity, and the directors and officers of the business entity or its Affiliates, and relatives by consanguinity or affinity, legitimate or common law, within the fourth civil degree, of the Person or any of the foregoing directors or officers;
- bb. **“Retail Competition”** refers to the provision of electricity to a Contestable Market by RES through Open Access;
- cc. **“Retail Electricity Supplier”** refers to any Person or entity authorized by the ERC to sell, broker, market or aggregate electricity to the End-users;
- dd. **“Retail Rate”** refers to the total price paid by End-users consisting of the charges for generation, transmission and related ancillary services, distribution, supply and other related charges for electric service;
- ee. **“Retail Supply Contract”** refers to the contract entered into by and between the Retail Electricity Supplier and the End-user;
- ff. **“Self-Generation Facility”** refers to a power Generation Facility owned and constructed by an End-user for such End-user’s own consumption or internal use excluding Generation Facilities for use by households, clinics, hospitals and other medical facilities;
- gg. **“Supplier’s License”** as used in this Guidelines, refers to the authority granted by the ERC to any person or entity to act as Retail Electricity Supplier;
- hh. **“Supply of Electricity”** means the sale of electricity by a party other than a generator or a distributor in the franchise area of a distribution utility using the wires of the distribution utility concerned;
- ii. **“Uniform Business Practices”** refers to the set of rules promulgated by ERC which prescribes the standardized business practices of retail market participants.
- jj. **“Universal Charge”** refers to the charge, if any, imposed for the recovery of the stranded cost and other purposes pursuant to Section 34 of the Act.
- kk. **“Wholesale Electricity Spot Market”** or **“WESM”** refers to the wholesale electricity spot market established pursuant to the Act.

## ARTICLE II

### QUALIFICATIONS, CRITERIA AND LIMITATIONS OF A RETAIL ELECTRICITY SUPPLIER

**Section 1.** Any person, whether natural or juridical, may apply as a RES:

- a. A natural person shall be of legal age and residing in the country for the last six (6) months prior to the filing of application;
- b. A juridical person shall be duly registered with the Department of Trade and Industry and/or Securities and Exchange Commission as an entity engaged in retail electricity supply business.

**Section 2.** The Applicant shall meet the following Financial Standards applicable pursuant to the Philippine Distribution Code:

- a. **Credit Standards.** An Applicant must possess any of the following to demonstrate that it has the financial capability required for credit quality:
  - i. Investment grade credit rating by a reputable credit bureau;
  - ii. Assets in excess of liabilities (*minimum value to be determined by the ERC after public consultation*);
  - iii Proof of creditworthiness confirmed through the certification of companies (including Distribution Utilities), which have imposed credit terms on the applicant.

An Applicant, newly established for the purpose of engaging in business as RES shall have a period of one (1) year from the date of its initial operation within which to comply with the prescribed Credit Standards.

Should the Applicant comply with all other requirements, the Applicant shall be issued a conditional Supplier's License, pending compliance with such Credit Standards. No Supplier's License shall be issued until after the said Applicant shall have complied with the Credit Standard requirements.

- b. **Financial Standards for Customer Protection.** An Applicant shall have the financial capacity to put up bonds or security deposits, as required in Article III, in order to protect the customers.

**Section 3.** The Applicant shall possess the technical and managerial capability to ensure reliable electricity supply in accordance with its customer contracts, such as but not limited to the following:

- a. Technical ability to enter into any necessary access or interconnection arrangements or other required contracts with one or more Distribution Utilities;
- b. Technical ability to secure generation through compliance with all applicable requirements of the Market Operator and TRANSCO, if applicable;
- c. Technical ability to meet its transactional requirements with the Market Operator or its contractual obligations with any industry participant, if applicable;
- d. Adequate staffing and employee training to meet all service level commitments.

#### **Section 4. Ownership Limitation and Restrictions.**

- a. A RES or Affiliate thereof or any stockholder, director or officer or any of their relatives within the fourth (4<sup>th</sup>) civil degree of consanguinity or affinity, legitimate or common law, shall not own any interest, directly or indirectly, in TRANSCO or its Buyer or Concessionaire, or Independent Market Operator.
- b. Except for ex-officio government-appointed representatives, no Person who is an officer or director of the TRANSCO or its Buyer or Concessionaire shall be an officer or director of any RES.

### **ARTICLE III**

#### **REQUIREMENTS AND PROCEDURES**

**Section 1.** The Applicant shall secure a Supplier's License from the ERC prior to engaging in the supply of electricity to End-users in the Contestable Market. Provided all the requirements shall have been complied with, ERC shall notify the applicant of its action within thirty (30) working days from the date of application unless ERC shall have required the submission of additional information, or ordered on reasonable grounds, the postponement of final action on an application.

**Section 2.** Basic Requirements. The following documents and information are required to be submitted by an applicant:

- a. Articles of Incorporation/Partnership with Certificate of Registration (for juridical person);
- b. Business Name Registration Certificate (for natural person);
- c. Mayor's Permit;
- d. RES Information Sheet (form to be prescribed by ERC)
- e. Certified true copies of audited balance sheet, cash flow, and income statement for the two most recent twelve (12)-month periods, or for the life of the business if not in existence for at least two (2) years, if applicable.
- f. If affiliate, certified true copies of audited balance sheet, cash flow and income statements for the two most recent 12-month periods of parent company.
- g. Projected Five-year Financial Statement and Five-year Business Plan (outline to be provided by ERC)
- h. List of affiliates engaged in the generation, distribution and retail supply of electricity, and their corresponding business addresses.
- i. Sworn Statement that the applicant shall comply with the Code of Conduct and the Competition Rules.
- j. Such other information or documents that the ERC may require.

**Section 3.** Security Deposit Requirements. An Applicant who intends to collect advance payments or deposits, or who has collected such advance payments or deposits from its customers based on its projected sales, shall be required to post a security deposit in an amount based on the sales value that the Applicant will collect or has collected from its customers. (The amount of deposit shall be determined by the ERC after public consultation).

The security deposit must be issued by a reputable bonding company accredited by the Insurance Commission.

In case the amount of security deposits posted with the ERC is no longer sufficient to cover the projected sales, the Applicant shall immediately inform the Commission within three (3) days from the contracting of additional sales thereof. Said Applicant shall likewise submit additional security deposits covering the increase in sales.

**Section 4.** In case of renewal of License, the RES shall submit the following requirements:

- a. Application for Renewal of License;
- b. Payment of Renewal Fees;

- c. Security Deposit commensurate to amount collected from customers, if applicable;
- d. Business Permit;
- e. Latest RES Information Sheet;
- f. Recent annual report to shareholders together with Audited Financial Statements; and
- g. Such other information or documents that ERC may require.

**Section 5.** Failure to submit the requirements to the ERC shall serve as ground for denial of application or renewal of license.

**Secton 6.** All submissions shall be certified under oath by the Applicant or any duly authorized officer in case of juridical person.

#### **ARTICLE IV PAYMENT OF FEES**

The application fees and Supplier's License fees as provided under the Schedule of ERC Fees and Charges shall be imposed on all Applicants/Licensees upon the filing of application and issuance of a Supplier's License.

#### **ARTICLE V TERM OF LICENSE**

The Supplier's License issued by the ERC shall have a term of one (1) year. The first renewal by a RES of its Supplier's License shall likewise have a term of one (1) year. Thereafter, the Supplier's License issued by the ERC to said RES shall have a term of three (3) years.

The Supplier's License shall be non-transferable and shall be valid for the stated terms unless otherwise revoked by ERC.

The RES shall apply for a renewal of License not later than sixty (60) days before the expiration of its current license.

## ARTICLE VI

### REPORTORIAL REQUIREMENTS

Section 1. **Information.** Each RES shall file a report monthly or as may be deemed necessary by ERC containing the following information, on a form prescribed by the ERC:

- a. **Average Prices.** Average retail sale prices broken down by residential, small general service, and large general service customers and 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 customers;
- c. **Customers.** List and type of customers served.
- d. **Other information.** Other information that the ERC deems necessary or useful in carrying out its duties and obligations.

Section 2. **Confidentiality.** The ERC may treat any information required by this Article with strict confidentiality by subjecting the same to appropriate protective orders.

## ARTICLE VII

### OBLIGATIONS OF SUPPLIERS

**Section 1.** A RES who is also engaged in power generation and distribution businesses shall ensure that its supply business activities and rates are functionally and structurally unbundled from its generation and distribution businesses, as provided for in Rule 10 of the IRR of the Act on the Structural and Functional Unbundling of Electric Power Industry Participants. In said unbundling, the RES shall ensure that there is no cross subsidization between and among its business activities.

**Section 2.** 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.

**Section 3.** A RES shall comply with the Financial Standards, Creditworthiness Criteria and such financial security to secure proper performance as a RES as provided in Section 2 (b) Article II of this Guidelines and as may be determined by ERC to protect the interest of End-users in Contestable Markets. Further, a RES

shall ensure that the advance deposits collected from its customers are sufficiently covered by security deposits at all times.

**Section 4.** A RES who sources power from the wholesale electricity spot market shall comply with the WESM Rules at all times.

**Section 5.** 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.

**Section 6.** A RES is required to collect Universal Charge from all of its End-users on a monthly basis and shall remit directly to PSALM on or before the fifteenth (15<sup>th</sup>) day of the succeeding month.

**Section 7.** 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. Thereafter, the Supplier's License is deemed cancelled.

**Section 8.** A RES shall inform the ERC of any material change to the information supplied in the Supplier's License application within thirty (30) days from the occurrence of such event.

**Section 9.** A RES shall comply with the provisions of the Act and its Implementing Rules and Regulations, the applicable provisions of the Philippine Distribution Code, the Code of Conduct i.e. rules governing ethical and truthful advertising, conflict of interest, etc., Uniform Business Practices i.e. day to day technical rules like information/data transfer between RES, switching, etc., and all applicable rules and regulations prescribed by ERC, including the reportorial requirements prescribed in these Guidelines.

## **ARTICLE VIII**

### **SANCTIONS**

All Persons already engaged in retail supply of electricity are required to secure a license from the ERC within ninety (90) days from the declaration of open access. Any Person acting as a RES without a valid license issued by ERC shall be subjected to appropriate sanctions provided under existing laws, rules and regulations.

The ERC shall impose the appropriate fines and penalties, including the revocation or suspension of license, for any violation or non-compliance with these Guidelines, as provided in 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 IX**

**MONITORING**

ERC shall monitor the compliance of RES with the terms and conditions of their License and the provisions of these Guidelines.

**ARTICLE X**

**SEPARABILITY**

If for any reason, any section of these Guidelines is declared unconstitutional or invalid, other parts or sections hereof which are not affected thereby shall continue to be in full force and effect.

**ARTICLE XI**

**EFFECTIVITY**

This Guideline shall take effect on the fifteenth (15<sup>th</sup>) day following its publication in a newspaper of general circulation.

Pasig City, \_\_\_\_\_, 2005

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

**JESUS N. ALCORDO**  
Commissioner

**OLIVER B. BUTALID**  
Commissioner

**RAUF A. TAN**  
Commissioner

**ALEJANDRO Z. BARIN**  
Commissioner