

ANNEX "A"

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

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

ERC CASE NO. 2005-02 RM

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 Distribution Code (PDC), and the Wholesale Electricity Spot Market (WESM) Rules, the Energy Regulatory Commission (ERC) hereby adopts and promulgates the following Guidelines for the issuance of licenses to qualified Retail Electricity Suppliers (RES).

ARTICLE I

GENERAL PROVISIONS

Section 1. Objectives

The following are the objectives of these 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, other than a Distribution Utility serving its franchise area and those authorized to supply electricity in Economic Zones, 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, 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. A license obtained by a qualified RES from the ERC shall be valid within Philippine territories where retail competition and open access exist.

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 Independent Power Producer (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 a separate set of Guidelines for Aggregators prior to the implementation of the second phase of retail competition and open access.

Section 5. Exempted from Securing a Supplier's License

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

Section 6. Definition of Terms

Act	Republic Act No. 9136, otherwise known as “Electric Power Industry Reform Act of 2001”;
Affiliate	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;
Aggregator	A Person or entity duly licensed by the ERC to engage in consolidating electric power demand of End-users in the Contestable Market for the purpose of purchasing and reselling electricity on a group basis;
Applicant	A Person or entity seeking to obtain a license to become a supplier of retail electricity to Contestable Markets;
Buyer or Concessionaire	A qualified party awarded the sale agreement or concession contract for transmission assets;
Code of Conduct	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;
Competition Rules	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;
Contestable Market	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;
Control	The power to direct or cause the direction of the management policies of a Person by contract, agency, or otherwise;

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;
Economic Zones (EZs)	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”;
Electric Power Industry Participant	Any Person or entity engaged in the generation, transmission, distribution or supply of electricity;
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	Any Person or entity authorized by the ERC to operate facilities used in the generation of electricity;
Generation of Electricity	The production of electricity by a generation company or co-generation facility pursuant to the provisions of the Act;
Independent Market Operator (IMO)	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;
Independent Power Producer (IPP)	An existing power generating entity which is not owned by NPC;
IPP Administrator	Qualified independent entities appointed by PSALM Corporation which shall administer, conserve and manage the contracted energy output of NPC IPP contracts;
Licensee	The Person or entity which has already been granted a Supplier's License by the ERC;
Market Operator	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;
National Power Corporation (NPC)	The government corporation created under Republic Act No. 6395, as amended;
National Transmission Corporation (TRANSCO)	The corporation organized pursuant to Section 8 of the Act to acquire all the transmission assets of the NPC;
Person	A natural or juridical person, as the case may be;
Philippine Stock Exchange (PSE)	The corporate body duly organized and existing under Philippine law, licensed to operate as a securities exchange by the Securities and Exchange Commission (SEC);
Power Sector Assets and Liabilities Management Corporation (PSALM)	The corporation created pursuant to Section 49 of the Act to take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets;

Related Group	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 (4 th) civil degree, of the Person or any of the foregoing directors or officers;
Retail Competition	The provision of electricity to a Contestable Market by RES through Open Access;
Retail Electricity Supplier (RES)	Any Person or entity authorized by the ERC to sell, broker, market or aggregate electricity to the End-users;
Retail Rate	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;
Retail Supply Contract	The contract entered into by and between the Retail Electricity Supplier and the End-user;
Self-Generation Facility	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;
Supplier's License	The authority granted by the ERC to any person or entity to act as Retail Electricity Supplier;
Supply of Electricity	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;
Uniform Business Practices (UBP)	The set of guidelines promulgated by ERC which prescribes the standardized business rules for DU-RES interactions, relating to customer enrollments, switching, exchange of metering, billing and payment information, etc.;

Universal Charge

The charge, if any, imposed for the recovery of the stranded cost and other purposes pursuant to Section 34 of the Act;

Wholesale Electricity Spot Market (WESM)

The wholesale electricity spot market established pursuant to Section 30 of the Act;

ARTICLE II

QUALIFICATIONS, CRITERIA AND LIMITATIONS OF A RETAIL ELECTRICITY SUPPLIER

Section 1. The following may apply as a RES:

- a. A natural person of legal age, duly registered with the Department of Trade and Industry (DTI) as engaged in the retail electricity supply business.
- b. A juridical person duly registered with the Department of Trade and Industry (DTI), Securities and Exchange Commission (SEC) and/or the Cooperative Development Authority (CDA) as an entity engaged in retail electricity supply business.

Section 2. An Applicant must possess any of the following credit standards to demonstrate that it has the financial capability required to undertake this business:

- i. Investment grade credit rating by a reputable credit bureau; or
- ii. Unused cash resources with an amount equivalent to the Applicant's expected monthly billings, or Php 5 million; or
- iii. Proof of creditworthiness confirmed through the certification of companies (including Generation Companies, Transco and Distribution Utilities) that have extended credit line to the Applicant.

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 Transco one or more Distribution Utilities;

- b. Technical ability to secure generation through compliance with all applicable requirements of the Market Operator , 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 (4th) 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 approve, disapprove, or reject an application within sixty (60) 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 single proprietorship);
- 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 Statements 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. Sworn statement that: a) the Applicant or Affiliate thereof or any stockholder, director or officer or any of their relatives within the fourth (4th) civil degree of consanguinity or affinity, legitimate or common law, does not own any interest, directly or indirectly, in TRANSCO or its Buyer or Concessionaire, or Independent Market Operator; and b) no officer or director of the Applicant is an officer or director of the Transco or its Buyer or Concessionaire;
- k. Proof of payment of application fees;
- l. List of directors and officers, including curriculum vitae; and
- m. Such other information or documents that the ERC may require.

Section 3. Security Deposit Requirements. An Applicant who intends to collect deposits, or who has collected such 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 Applicant shall be required to deposit the amount collected in an escrow, making said deposit unavailable for use in financing said Applicant's working capital requirements. An Applicant shall submit to ERC a certification from a commercial bank that he/she can avail of said bank's escrow facility, or a certification stating the amount deposited in escrow. Likewise, Applicant shall be required to pay its customers an annual interest on collected deposits equivalent to the interest earnings of the amount in escrow.

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

- a. Application for Renewal of License;

- b. Proof of 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 be a 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 Applicant shall pay the application fee of One Thousand Five Hundred Pesos (PhP1,500.00) upon its filing of application or renewal of license. The Applicant shall likewise pay the RES license fee equivalent to seventy five percent (75%) of each one hundred pesos of the capital stock subscribed and paid up, or Ten Thousand Pesos (PhP10,000.00) whichever is higher, upon the issuance of a Supplier's License.

ARTICLE V TERM OF LICENSE

The Supplier's License issued by the ERC shall have a term of three (3) years, renewable at the end of every term. 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, and amount of deposits collected from each.
- d. **Bank certification.** Certification from reputable bank, stating the amount deposited in escrow.
- f. **Other information.** Other information that the ERC deems necessary or useful in carrying out its duties and obligations.

Section 2. Confidentiality. For good cause shown, the ERC shall treat certain information identified by the Applicant as restricted with strict confidentiality by subjecting the same to appropriate protective measures.

ARTICLE VII

OBLIGATIONS OF RETAIL ELECTRICITY SUPPLIERS (RES)

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, in accordance with the ERC-approved Business Separation and Unbundling Plan.

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. It shall likewise identify and segregate the components of its Supplier's Charge as required by the Act.

Section 3. A RES shall comply with the Creditworthiness Criteria and such financial security to secure proper performance as a RES as provided in Section 2, Article II of these 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 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.

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, as well as a settlement plan or proof of payment of any amount owed to a DU, Transco, WESM or a Generation Company. 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 Open Access Distribution Service (OADS) Rules, the Code of Conduct i.e. rules governing ethical and truthful advertising, conflict of interest, etc., Uniform Business Practices, 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 by the ERC. Any Person acting as a RES without a valid license issued by ERC, except those persons or entities mentioned in Article I, Section 5 hereof, 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, 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 IX

MONITORING

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

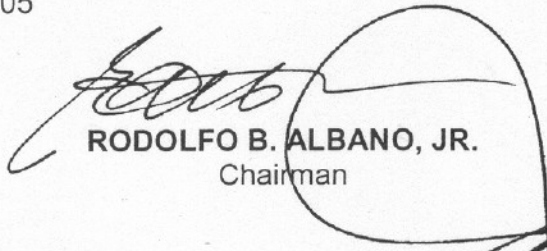
ARTICLE X

SEPARABILITY

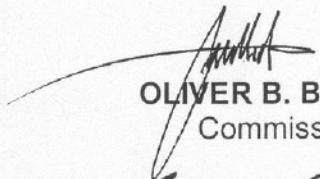
If for any reason, any section of these Guidelines is declared unconstitutional or invalid, other parts or sections hereof not affected thereby shall continue to be in full force and effect.

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

Pasig City, _____, 2005



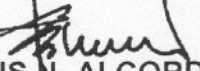
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