

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



IN RE: RESOLUTION NO. \_\_\_\_\_,  
SERIES OF 2007

RESOLUTION CLARIFYING  
RESOLUTION NO. 23,  
SERIES OF 2007  
(RESOLUTION ADOPTING  
THE POLICY THAT THE  
GRANT OF  
PREFERENTIAL RATES TO  
QUALIFIED CUSTOMERS  
SHALL BE CONSIDERED  
AS MANAGEMENT  
PREROGATIVES)

ERC CASE NO. 2007-007 RM

DOCKETED  
Date: NOV 27 2007  
By: [Signature]

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### NOTICE OF PUBLIC CONSULTATION

Notice is hereby given that on October 25, 2007, the Commission issued a Notice setting the proposed Resolution Clarifying Resolution No. 23, Series of 2007 (Resolution Adopting the Policy that the Grant of Preferential Rates to Qualified Customers Shall be Considered as Management Prerogatives) for public consultation on December 5, 2007.

However, there is an urgent need to reschedule the consultation to a later date due to the unavailability of the Commissioners on said date.

Accordingly, the public consultation scheduled on December 5, 2007 is hereby cancelled and reset to **January 9, 2008 (Wednesday) at two o'clock in the afternoon (2:00 P.M.), at the ERC Hearing Room, 15<sup>th</sup> Floor Pacific Center Building, San Miguel Avenue, Pasig City.**

All interested parties may submit their comments (in both hard and soft copies) on the proposed Resolution on or before December 21, 2007. Electronic copies may be sent to [tariffsrates@erc.gov.ph](mailto:tariffsrates@erc.gov.ph). Parties who have filed their written comments on or before the prescribed period would be given priority during the above-scheduled public consultation. The said Resolution may be photocopied at cost, during the regular office hours at the Energy Regulatory Commission (ERC) Main Office at 15<sup>th</sup> Floor, Pacific Center, San Miguel Avenue, Pasig City.

**Pasig City, November 27, 2007.**

FOR AND BY AUTHORITY  
OF THE COMMISSION:

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

**DRAFT**

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

**RESOLUTION NO. \_\_\_\_\_, Series of 2007**

**RESOLUTION CLARIFYING RESOLUTION NO. 23,  
SERIES OF 2007 (RESOLUTION ADOPTING THE POLICY THAT  
THE GRANT OF PREFERENTIAL RATES TO QUALIFIED  
CUSTOMERS SHALL BE CONSIDERED AS  
MANAGEMENT PREROGATIVES)**

**WHEREAS**, Section 25 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), states that: *“The retail rates charged by distribution utilities for the supply of electricity in their captive market shall be subject to regulation by the ERC x x x.”*;

**WHEREAS**, Section 7 of the same Act provides that the transmission of electric power shall be a regulated common electricity carrier business, subject to the ratemaking powers of the ERC;

**WHEREAS**, Section 45 of the same Act states that: *“No participant in the electricity industry or any other person may engage in any anti-competitive behavior including, but not limited to cross-subsidization, price or market manipulation, or other unfair trade practices detrimental to the encouragement and protection of contestable markets x x x.”*;

**WHEREAS**, Section 18 of Republic Act No. 7638, otherwise known as an Act Creating the Department of Energy, Rationalizing the Organization and Functions of Government Agencies Related to Energy, and for Other Purposes, transferred to the then Energy Regulatory Board (now Energy Regulatory Commission) the power of the National Power Corporation (NPC) to determine, fix, and prescribe the rates being charged to its customers;

**WHEREAS**, Article V, Section 10 of ERC Resolution No. 04, Series of 2007 states in part: *“In evaluating the petition of PSALM for the NPC’s Stranded Debts share in the UC, the ERC may consider whether or not PSALM has exercised best efforts in minimizing the effective NPC’s Stranded Debts x x x.”*;

**WHEREAS**, in its previous Decisions, the ERC has resolved that the grant of preferential rates to qualified customers shall be considered as a business decision.

**NOW, THEREFORE**, be it **RESOLVED**, as the ERC hereby **RESOLVES** to **ADOPT** the policy that the grant of preferential rates to qualified customers shall be considered as a management prerogative, hence, shall not require the ERC's prior approval, subject to the following conditions:

1. Preferential rates shall only be offered to the following qualified customers:
  - a. Directly connected customers of NPC
    - i. Non-distribution utilities
      1. At least 1 MW of demand
  - b. Customers of Distribution Utilities located within Economic Development Zones
    - i. At least 1 MW of demand;
2. Any reduction of revenues on the part of the Distribution Utilities (DUs), the National Transmission Corporation (TRANSCO) and the NPC must not be recovered from or passed on to their other customers;
3. Any reduction of revenues on the part of the NPC must not be recovered through the Universal Charge for NPC stranded debt and contract cost;
4. Any reduction of revenues on the part of DUs must not be recovered through the Universal Charge for Distribution Utilities stranded contract costs;
5. Any reduction of revenues on the part of the DUs, TRANSCO and NPC should not give rise to any form of cross-subsidy;
6. Contracts containing preferential rates shall not be assignable to the NPC successor generation companies; and
7. The term of any contract containing preferential rates shall not extend beyond the introduction of retail competition and open access.

Finally, all DUs, TRANSCO and NPC are hereby directed to submit, on a semestral basis, their respective lists of customers who are granted preferential rates every fifteenth (15<sup>th</sup>) day of January and July of each year.

This Resolution shall take effect immediately following its publication in a newspaper of general circulation in the Philippines.

Resolution No. \_\_\_\_\_, Series of 2007

**Resolution Clarifying Resolution No. 23, Series of 2007 (Resolution Adopting the Policy That the Grant of preferential Rates to Qualified Customers Shall be Considered As Management Prerogatives)**

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Let copies of this Resolution be furnished the University of the Philippines Law Center-Office of the National Administrative Register (UPLC-ONAR), all DUs, TRANSCO and NPC.

Pasig City, October 25, 2007.

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

**RAUF A. TAN**  
Commissioner

**ALEJANDRO Z. BARIN**  
Commissioner

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

**JOSE C. REYES**  
Commissioner