

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



RESOLUTION NO. 23, Series of 2006

**A RESOLUTION ADOPTING THE RULES FOR THE REGISTRATION OF
WHOLESALE AGGREGATORS**

WHEREAS, Section 30 of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001", empowers the Energy Regulatory Commission (ERC) to authorize other similar entities to become eligible as members, either directly or indirectly, of the Wholesale Electricity Spot Market (WESM);

WHEREAS, there is a need to provide supply options for Distribution Utilities in order to facilitate their participation in the WESM;

WHEREAS, the participation of these Distribution Utilities in the WESM shall be facilitated through an entity referred to as a "Wholesale Aggregator";

WHEREAS, the ERC proposed a set of Rules for the Registration of Wholesale Aggregators whereby a public consultation was conducted on 31 March 2006;

WHEREAS, the set of Rules for the Registration of Wholesale Aggregators establishes (i) the qualifications, criteria and limitations of Wholesale Aggregators; (ii) the requirements and procedures for registration; and (iii) the obligations of Wholesale Aggregators;

WHEREAS, these Wholesale Aggregators shall be bound by the WESM Rules with respect to their transactions in the market;

NOW THEREFORE, the Commission, after thorough and due deliberation, hereby **RESOLVES**, as it is hereby **RESOLVED**, to **APPROVE** and **ADOPT** the set of Rules for the Registration of Wholesale Aggregators herein attached as ANNEX "A" and made an integral part of this Resolution;

A series of handwritten signatures in black ink, located at the bottom of the page. There are five distinct signatures, each appearing to be a stylized name or set of initials.

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

Pasig City, May 22, 2006.


RODOLFO B. ALBANO, JR.
Chairman


OLIVER B. BUTALID
Commissioner


JESUS N. ALCORDO
Commissioner


RAUF A. TAN
Commissioner


ALEJANDRO Z. BARIN
Commissioner

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

**RULES FOR THE REGISTRATION OF
WHOLESALE AGGREGATORS**

ERC CASE NO. 2006 – 003 RM

Pursuant to Section 30 of Republic Act No. 9136, hereinafter referred to as the Act, its Implementing Rules and Regulations, the Philippine Grid Code, Philippine Distribution Code, and the Wholesale Electricity Spot Market (WESM) Rules, the Energy Regulatory Commission (ERC) hereby adopts and promulgates the following Rules for the registration of qualified Wholesale Aggregators.

ARTICLE I

GENERAL PROVISIONS

Section 1. Objectives

The following are the objectives of these Rules:

- a. To promote free and fair competition and accountability of Electric Power Industry Participants;
- b. To provide supply options for Distribution Utilities, specifically small electric cooperatives;
- c. To provide for the qualifications of a Wholesale Aggregator and the requirements and procedures for registration with the ERC; and
- d. To establish the obligations of a Wholesale Aggregator.

Section 2. Guiding Principles

Section 30 of the Act empowers the ERC to authorize other similar entities to become eligible as members, either directly or indirectly, of the WESM. These entities authorized by the ERC shall be bound by the WESM Rules with respect to their transactions in the market.

Hence, no Person, other than a Generation Company, shall implement any contract for the sale of electricity to Distribution Utilities without having registered with the ERC as a Wholesale Aggregator.



Section 3. Registration

The ERC shall issue a Certificate of Registration to a qualified Wholesale Aggregator to become a member of the WESM and to comply with all applicable requirements stipulated herein.

Section 4. Scope

This set of Rules shall apply to any Person intending to become a Wholesale Aggregator consistent with the Act and its Implementing Rules and Regulations.

Section 5. Definition of Terms.

Act	Republic Act No. 9136, otherwise known as "Electric Power Industry Reform Act of 2001";
Applicant	A Person or entity seeking to obtain a Certificate of Registration to become a Wholesale Aggregator;
Certificate of Registration	The certificate granted by the ERC to any Person or entity authorized to act as a Wholesale Aggregator;
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;
Distribution Utility	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;
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 (with Distribution Utilities) and for purposes of these Rules only, shall be considered Distribution Utilities;
Generation Company	Refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity;

Person	A natural or juridical person, as the case may be;
Wholesale Electricity Spot Market (WESM)	The Wholesale Electricity Spot Market established pursuant to Section 30 of the Act;
Wholesale Aggregator	Any Person or entity, other than a Generation Company, issued a Certificate of Registration by the ERC to sell electricity to Distribution Utilities;
Wholesale Aggregation Contract	The contract entered into by a Wholesale Aggregator with Distribution Utilities.

Terms, not otherwise defined herein, which are defined in the Act or its Implementing Rules and Regulation (IRR) shall have the meaning ascribed to them in the Act or its IRR (as the case may be).

ARTICLE II

QUALIFICATIONS, CRITERIA AND LIMITATIONS OF A WHOLESALE AGGREGATOR

Section 1. Any natural or juridical person, other than a Generation Company, duly organized to engage in the wholesale aggregation business may register as a Wholesale Aggregator.

Section 2. Upon registration with the ERC, the Applicant must demonstrate that it has the personnel and business structure in place necessary to manage and operate its wholesale aggregation business.

Section 3. Ownership Limitation and Restrictions.

- a. A Wholesale Aggregator 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;
- 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 a Wholesale Aggregator or an officer, director or stockholder of any Wholesale Aggregator.

ARTICLE III

REQUIREMENTS AND PROCEDURES

Section 1. The Applicant shall register with the ERC prior to implementing its Wholesale Aggregation Contract. Provided all the requirements shall have been complied with, the ERC shall approve or reject an application 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. A Certificate of Registration shall be issued upon approval of an application.

Section 2. 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) or Business Name Registration Certificate (for single proprietorship);
- b. All applicable contracts already signed and executed in relation to the wholesale aggregation business, if any;
- c. List of affiliates engaged in the generation, distribution and retail supply of electricity, and their corresponding business addresses, if any;
- d. List of shareholders and their shareholdings, directors and officers, including curriculum vitae, if any; and
- e. Duly accomplished Application Form for registration (*copy available for downloading at the ERC website or can be secured at the Spot Market Division*).

Section 3. An Applicant shall incorporate in its Wholesale Aggregator Contracts provisions for the protection of Distribution Utilities against fraud, gross negligence, bad faith or malicious intent. An Applicant shall be required to provide and maintain a security deposit based on its one (1) month actual energy sales under an escrow account subject to the terms and conditions acceptable to the ERC. The security deposit may be in the form of either cash or any applicable bank guaranty issued by any universal commercial bank. For its first month of operation, the one (1) month total projected energy sales will initially set the required security deposit and shall be updated every end of June and December each year, in which case, will be set to the highest actual energy sales occurring during the previous six (6) month period. The Applicant shall submit to the ERC a certification from any universal commercial bank stating the amount deposited in escrow. An Applicant shall also incorporate in its Wholesale Aggregator Contracts provisions on the establishment as well as drawdown of such security deposit.



Section 4. In case of renewal of registration, the Wholesale Aggregators shall submit the following requirements:

- a. Duly accomplished Application Form for Renewal of registration (*copy available for downloading at the ERC website or can be secured at the Spot Market Division*);
- b. Recent annual report to shareholders together with Audited Financial Statements; and
- c. Such other information or documents that ERC may require.

Section 5. All contracts entered into by Distribution Utilities with the Wholesale Aggregators shall be considered as bilateral contracts and shall be subject to review and approval by the ERC pursuant to Section 45 (b) of the Act.

Section 6. Failure to submit the requirements to the ERC shall be a ground for denial of the application or renewal of registration.

Section 7. All submissions shall be certified under oath by the Applicant or its duly authorized officer, in case of a juridical person.

ARTICLE IV

PAYMENT OF FEES

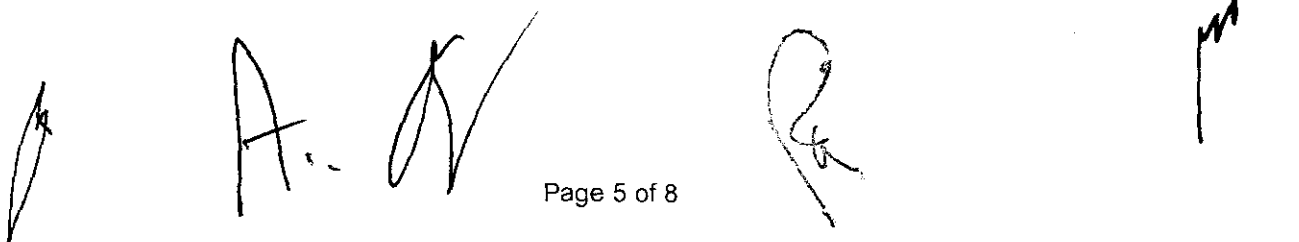
The Applicant shall pay the registration fee in the amount of Ten Thousand Pesos (PhP10,000.00) upon the filing of its application or renewal of registration.

ARTICLE V

TERM OF CERTIFICATE OF REGISTRATION

The Certificate of Registration issued by the ERC shall have a term of five (5) years, renewable at the end of every term. The registration shall be non-transferable and shall be valid for the stated term unless otherwise revoked by the ERC.

A Wholesale Aggregator shall apply for the renewal of registration not later than sixty (60) days before the expiration of its Certificate of Registration. The ERC shall issue the renewed registration within thirty (30) days upon receipt of the documents required. The term of the renewed Certificate of Registration shall commence immediately after the end of the preceding term of registration.



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ARTICLE VI

REPORTORIAL REQUIREMENTS

Section 1. Information. Each Wholesale Aggregator shall file a report every end of June and December each year, or any other report as may be deemed necessary by the ERC containing the following information, in a form prescribed by the ERC:

- a. Monthly energy sales to its Distribution Utilities;
- b. Monthly revenues from energy sales to its Distribution Utilities;
- c. Any new contracts signed and executed as well as any amendments to the previously filed contracts or agreements, in relation to its wholesale aggregation business;
- d. Certification from any universal commercial bank stating the updated amount deposited in escrow referred to in Article III, Section 3 hereof; and
- e. Other information that the ERC deems necessary or useful in carrying out its duties and obligations.

ARTICLE VII

OBLIGATIONS OF WHOLESALE AGGREGATORS

Section 1. A Wholesale Aggregator who is also engaged in the generation and distribution businesses shall ensure that its wholesale aggregation business activities 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 Wholesale Aggregator shall ensure that there is no cross subsidization between and among its power supply business activities, in accordance with the ERC-approved Business Separation and Unbundling Plan.

Section 2. A Wholesale Aggregator shall comply with the provisions of the Act and its Implementing Rules and Regulations, the applicable provisions of the Philippine Grid Code, Philippine Distribution Code, the Open Access Transmission Service (OATS) and Distribution Services and Open Access Rules (DSOAR), the Competition Rules and all applicable rules and regulations prescribed by ERC, including the reportorial requirements prescribed in these Rules.

Section 3. A Wholesale Aggregator shall register and comply with the requirements and procedures set by the Market Operator as a WESM trading participant and shall comply with the WESM Rules and all relevant manuals, policies and guidelines.

Section 4. A Wholesale Aggregator shall inform the ERC of any material change in the information supplied in its application for registration within thirty (30) days from the occurrence of such event.

Section 5. A Wholesale Aggregator that intends to cease operations shall notify the ERC and the Distribution Utilities it has contracted with, at least sixty (60) days prior to ceasing operations. A Wholesale Aggregator shall likewise submit a settlement plan or proof of payment of any amount owed to the Market Operator, Generation Companies, Distribution Utilities or any other entities which the Wholesale Aggregator has contracted with relative to its wholesale aggregation business. The security deposit under Article III Section 3 hereof shall account for purchases of the Distribution Utilities from other sources resulting from the cessation of its operations until such time that the amount of deposit has been fully exhausted or the affected Distribution Utility has entered into a new contract with another party, whichever comes earlier. Thereafter, the Certificate of Registration is deemed cancelled.

ARTICLE VIII

SANCTIONS

The ERC shall impose the appropriate fines and penalties, including the suspension or revocation of the Certificate of Registration, 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".

ARTICLE IX

SEPARABILITY

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



ARTICLE X

EFFECTIVITY

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

Pasig City, 22 May 2006



RODOLFO B. ALBANO, JR.
Chairman



OLIVER B. BUTALID
Commissioner



JESUS N. ALCORDO
Commissioner



RAUF A. TAN
Commissioner



ALEJANDRO Z. BARIN
Commissioner