

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

RULES FOR CONTESTABILITY

ERC CASE NO. _____

Pursuant to Section 43 of Republic Act No. 9136, its Implementing Rules and Regulations (IRR), the Energy Regulatory Commission (ERC) hereby promulgates the following Rules for Contestability.

ARTICLE I
GENERAL PROVISIONS

Section 1. Objective

These rules shall clarify and establish the conditions and eligibility requirements for End-users to be part of the Contestable Market.

Section 2. Scope

These Rules shall apply to:

1. End-Users in the Contestable Market;
2. Retail Electricity Suppliers (RES’);
3. Local Retail Electricity Suppliers (Local RES’);
4. Distribution Utilities (DUs); for purposes of these Rules, DUs include entities authorized to supply electricity within their respective economic zones;
5. Supplier of Last Resort (SOLR); and
6. All other relevant industry participants.

Section 3. Definition of Terms

As used in these Rules, the following terms shall have the following respective meanings:

Act Republic Act No. 9136, otherwise known as
“Electric Power Industry Reform Act of 2001”

Captive Market	The electricity End-users who do not have the choice of a supplier of electricity, as may be determined by the ERC in accordance with the Act.
Central Registration Body (CRB)	<p>The entity designated by the ERC to develop and manage the B2B system which facilitates Customer Switching and keeps track of the movement of End-users in the Contestable Market.</p> <p>The ERC, through Resolution No. 15, Series of 2006, designated the Philippine Electricity Market Corporation (PEMC) as the Central Registration Body.</p>
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.
Contiguous Area	Refers to areas which are located within certain geographical 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.
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.
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, and not intended for resale.
Energy Regulatory Commission (ERC)	The independent and quasi-judicial regulatory agency created under Section 38 of the Act.
Last Resort Supply Event	An event where a Customer ceases to receive service from its RES or Local RES, or an event where a Customer fails to choose a RES or Local RES as stated in Article II, Sections 1 and 2 of the Rules for the Supplier of Last Resort.

Local Retail Electricity Supplier (Local RES)	The business segment of the DU catering to the Contestable Market only within its franchise area. As such, a license for a Local RES is not required.
Market Operator (MO)	The entity responsible for the operation of the Wholesale Electricity Spot Market.
Open Access	The system of allowing any qualified person the use of transmission, and/or distribution system and associated facilities subject to the payment of transmission and/or distribution retail wheeling rates duly approved by the ERC.
Open Access Date	The commencement date of Open Access and Retail Competition in a particular area, as determined by ERC.
Retail Competition	The provision of electricity to End-Users in the Contestable Market by Retail Electricity Suppliers through Open Access.
Retail Supply Contract (RSC)	The contract entered into by and between the Retail Electricity Supplier and the End-users.
Retail Electricity Supplier (RES)	Any person or entity authorized by the ERC to sell, broker, market or aggregate electricity to the End-user.
Rules for Contestability	A set of rules that provides the conditions and eligibility requirements for an End-user to become part of the Contestable Market.
Rules for the Supplier of Last Resort (SOLR)	The set of rules promulgated by ERC that provides the policies and procedures for the provision of supply to End-Users in the Contestable Market in case of a Last Resort Supply Event
Rules on Customer Switching	The set of rules promulgated by ERC which prescribes the standardized business rules for interactions between and among the DU, CRB, RES or Local RES, Market Operator and SOLR relating to the commercial transfer of a Customer from one RES/Local RES to another.
Single Connection Point	The point of connection of an End-user to a single circuit in the distribution network.
Single Premise	Any of the following shall comprise a Single Premise if owned or occupied by an End-user,

under one business name registered with the utility and used by such End-user for the same business enterprise (not intended for re-selling):

- a) the whole of any single building or structure;
- b) a part of any single building or structure;
- c) two or more adjoining parts of any single building or structure;
- d) the whole of two or more buildings or structures that are on the same lot of land.

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.

**ARTICLE II
DETERMINATION OF CONTESTABILITY**

Section 1. Full Retail Competition Timeline

Retail Competition and Open Access shall initially be implemented in the franchise areas of both the private utilities and electric cooperatives, and the economic zones in the Luzon Grid. The Contestable Market shall consist initially of electricity End-users with a monthly average peak demand of at least one megawatt (1MW) for the twelve-month period immediately preceding the Open Access Date.

The second phase of Retail Competition and Open Access shall occur two (2) years after the first phase. Thus, the threshold level for the Contestable Market in the Luzon grid shall be reduced to seven hundred fifty kilowatts (750 kW). At this level, aggregators shall be allowed to supply electricity to End-users whose aggregate demand within a contiguous area is at least 750 kW.

The ERC shall gradually reduce the threshold level until it reaches the household demand level within a period of seven (7) years. Thus, seven (7) years after the second phase, the Contestable Market shall already cover End-users at the household level.

Section 2. Eligibility Requirements of End-users to be part of the Contestable Market

- 2.1 Upon declaration of the Open Access Date, all End-users that are eligible to be part of the Contestable Market shall choose a RES or Local RES, and is deemed to have switched to its chosen RES or Local RES upon commencement of Retail Competition and Open Access, subject to the Rules issued by the ERC.
- 2.2 An End-user whose demand requirements vary monthly and achieves the threshold level only a number of months within a year, but whose average

peak demand for twelve (12) months meet the required threshold level shall be qualified to be part of the Contestable Market.

- 2.3 After the Open Access Date, an End-user in the Captive Market, whose average monthly peak demand for the most recent 12-month period reaches 1 MW, shall be eligible to be part of the Contestable Market.
- 2.4 Likewise, a newly connected End-user after the Open Access Date with a forecasted monthly average peak demand for the first year of its business operation that satisfies the threshold level will form part of the Contestable Market.
- 2.5 The eligibility of an End-User shall be based on the monthly average peak demand of a Single Premise with a Single Connection Point. Once aggregation is allowed, it may be based on the aggregated consumption of a group of End-users within a Contiguous Area.
- 2.6 If a condominium/commercial building has utility meters for each End-user, only the End-user whose demand reaches the threshold shall be qualified to be part of the Contestable Market.
- 2.7 Once an End-user is qualified to be part of the Contestable Market, it shall no longer be allowed to revert to the Captive Market. However, in instances where the End-user's demand level has permanently decreased below the threshold level, it may send a written request to the ERC, with a certification from the RES or Local RES that the demand level of such End-user has permanently decreased. It may be reverted to the Captive Market, subject to ERC approval. If approved, the End-user shall settle its obligations with its RES or Local RES as stated in the Retail Supply Contract before it is transferred back to the Captive Market.
- 2.8 Where an End-user connected to the sub-transmission system is without a legitimate purchased power contract sufficient to provide all its energy requirements and that End-user is not part of the Contestable Market, the End-user shall be considered to be part of the Captive Market and shall be served as such by the relevant DU. Similarly, in the case of a legitimate contract that has expired and that End-user is not part of the Contestable Market, the End-user shall be considered to be part of the Captive Market and shall be served as such by the relevant DU.
- 2.9 In the second phase of the Retail Competition, End-users within a Contiguous Area may aggregate their demand to reach the threshold level and become part of the Contestable Market. Procedures for aggregation shall be dealt with in detail by the Rules for Aggregation.

Section 3. Basic conditions for a DU prior to the declaration of Retail Competition and Open Access in its franchise area

An End-user who is qualified on the basis of the threshold level shall nevertheless be prohibited from participating in the Contestable Market where the DU which operates within its franchise area has failed to comply with any of the following conditions:

- a) The relevant DU must have approved unbundled rates;
- b) The relevant DU must have implemented its approved Business Separation and Unbundling Plan (BSUP);
- c) The DU must have initially implemented its inter-class cross subsidy removal scheme; and
- d) The DU must have complied with the Business-to-Business (B2B) system requirements.

Section 4. Procedures in Informing Eligibility of End-users in the Contestable Market

- 4.1 A DU shall regularly submit to the ERC and CRB information on End-users which have satisfied the threshold levels, as provided in Section 1, Article II of the Rules for Customer Switching.
- 4.2 Upon declaration of the Open Access Date by the ERC, and until the start of Retail Competition, DUs shall inform in writing, all End-users within their respective franchise areas of their eligibility to be part of the Contestable Market. If an End-user has not entered into a Retail Supply Contract with a RES or Local RES thirty (30) days prior to the Open Access Date, such Customer shall be served by the SOLR, otherwise, it shall be physically disconnected by the DU, as provided in the Rules for the SOLR.
- 4.3 Once Retail Competition has commenced, DUs shall, within ten (10) days after the meter reading date, notify the End-user within its franchise area that meets the eligibility requirements in Section 2 hereof, that the End-user shall be part of the Contestable Market.
- 4.4 For Section 4.2 and 4.3 above, the concerned DU shall send written notice to the qualified End-user via registered mail, to ensure that the notice is received by the End-user. The return card provided after the registered mail has been received by the End-user shall serve as proof that the latter has been properly notified.
- 4.5 The End-user shall enter into a Retail Supply Contract with a RES or Local RES within one billing cycle after being informed of its eligibility to be part of the Contestable Market. After the billing cycle has lapsed and the End-user has not been switched to a RES or Local RES, it shall be served by the Supplier of Last Resort (SOLR), subject to the Rules for the SOLR.
- 4.6 End-users that are eligible to become part of the Contestable Market, but have not been informed by the DU within its franchise area in writing, shall not be subject to the SOLR Rate. Instead, it shall be charged the existing DU retail rate, until such time that the End-user is properly informed and is switched to a RES or Local RES. The non-complying DU shall submit a written explanation to ERC on the failure to inform the concerned End-user.

Section 5. Metering Requirements

- 5.1 End-users in the Contestable Market for the first phase shall have installed time-of-use metering facilities capable of measuring energy use and demand in a fashion consistent with WESM energy settlement intervals, and distribution and transmission demand charge intervals.
- 5.2 Metering facilities shall be installed by the concerned DU upon declaration by the ERC of the Open Access Date.
- 5.3 End-users in the Contestable Market and/or its RES shall have the right to own advanced metering equipment and select their own contractor or equipment vendor provided that it meets all ERC requirements and standards.
- 5.4 The entity procuring the meter shall have the option to own the meter, and an Agreement for Meter Ownership shall be entered into between the owner and the DU, as provided by the Distribution Services and Open Access Rules.
- 5.5 The ERC shall issue a separate policy on metering requirements for the second and succeeding phases of retail competition.

ARTICLE III AMENDMENTS

The ERC shall amend and/or expand the coverage of these Rules from time to time where this may be necessary to meet the needs of the Electric Power Industry Participants and End-users. Before making any significant revisions of these Rules, the ERC will undertake public consultation as appropriate.

ARTICLE IV SANCTIONS

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".

ARTICLE V SEPARABILITY

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 were not affected thereby shall continue to be in full force and effect.

**ARTICLE VII
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, _____, 2007.

RODOLFO B. ALBANO, JR.
Chairman

RAUF A. TAN
Commissioner

ALEJANDRO Z. BARIN
Commissioner

MA. TERESA A.R. CASTAÑEDA
Commissioner

JOSE C. REYES
Commissioner