

MERALCO COMMENTS ON THE GUIDELINES REGARDING TRANSMISSION AND SUBTRANSMISSION ASSETS

We welcome ERC's invitation for us to comment on the guidelines that will impact on the present configuration of the electric industry as well as pave the way for future technological developments in the electric systems. For this purpose, we would like to emphasize our position as written in our February 27 letter to ERC. We have attached the said letter as part of the comments.

Based on the arguments presented in our letter, we would like to clarify some points and suggest modifications in the following sections:

Article II, Section 1 --- nothing in these guidelines shall be interpreted as limiting a customer's ability to wheel power over subtransmission facilities nor affecting any contractual relationship the customer may have for unbundled generation and/or supply service.

- It appears that this section does not coincide with Rule 7, Section 4 of the IRR which states that "Any existing End-user within the Franchise Area of a Distribution Utility that is connected to TRANSCO facilities shall be served by the franchised Distribution Utility upon acquisition of the subtransmission facilities. Provided, however, that the Distribution Utility which acquired the subtransmission facilities shall be paid by the End-user the corresponding subtransmission rates or wheeling charge imposed by NPC in accordance with its contract to the End-user as approved by ERC". We propose to replace the guidelines with this particular provision in the IRR.

Article II, Section 2c --- "Consortium" shall refer to the juridical entity formed by and composed of two or more Qualified Distribution Utilities each of whom is connected to one or more Subtransmission Assets in common with one or more other Qualified Distribution Utilities

- As defined, consortium is a juridical entity. Is it similar to juridical persons with juridical personality separate and distinct from that of each shareholders as defined under the Civil Code?
- This section already defines "consortium" and therefore there is no need to repeat its definition in the succeeding sections, particularly Article IV, Section 1 and 2; Article V, Section 1 and 2; and Article VI, Section 1.
- Further clarification is required on the status of the subtransmission asset disposal if the one connected distribution utility turns out to be unqualified or if a consortium cannot be formed due to an unqualified member.

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Article II, Section 2.k --- "Qualified Distribution Utility" shall refer to a Distribution Utility that is technically and financially capable of owning, operating, maintaining, upgrading and expanding subtransmission facilities in accordance with the requirement of the Act.

- There is a need to clarify whether "qualified distribution utility" will be solely based on the criteria set in the distributor's statement of compliance. If so, there is a possibility that distributors will have to wait up to 3 years or until such time when they are fully compliant before they will be eligible to acquire subtransmission assets. Further clarification is required if the distribution utility needs an application to be "qualified"

Article III --- FUNCTIONAL AND VOLTAGE SUBTRANSMISSION STANDARDS

- We strongly propose that the whole article III be replaced by the technical and functional criteria stated in Rule 6, Section 4 of the IRR. In doing this, a voltage standard will no longer be necessary since appropriate operating voltages will naturally follow the function of the lines. Furthermore, transmission, subtransmission and even distribution voltages cannot be fixed since the progress of science and technology may render existing voltage configurations obsolete. To illustrate, Meralco system backbone voltage in the past started at 13.8 kV, then was changed to 34.5 kV and finally converted to 115kV.
- It is important that the distributor has discretion to construct and use facilities of distribution voltages equal to or higher than 69 kV if necessary. This is required for purposes of system reliability, system flexibility, and to meet customer requirements. As such, the guidelines should be clear that distribution utilities would not be limited on the choice of voltages. In fact, Meralco maintains a 115 kV system to specifically address system and customer requirements.
- The proposed voltage threshold disregards the negotiations being undertaken by the Transco and Meralco. As such, both parties already recognize some 115-kV and 69-kV facilities which are to be included in the sale. Joint inventory and surveys have in fact been conducted together with representatives from COA.

Article V, Section 1 --- An application for a franchise shall be filed with the ERC by the Consortium or Juridical Entity formed by and composed of two or more Qualified Distribution Utilities to operate, upgrade and expand one or more subtransmission assets

- RA 9136 gives Congress the sole authority to grant franchises for transmission and distribution businesses and at the same time gives the ERC the authority to grant

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franchises for operation of subtransmission assets by a consortium of distribution utilities. We need some clarification on the difference between the franchise given by ERC vis-à-vis that given by Congress. It will be important for the ERC to elaborate the reason on why not all franchise-granting authority for regulated businesses was given to Congress.

- It should be clear in this section that if only one qualified distribution utility is connected to a subtransmission asset, then this distribution utility would no longer be required to apply for a separate franchise.
- Further clarification is needed if a qualified distribution utility will no longer be required to apply for a franchise when other commonly connected distribution utilities have not shown interest in the acquisition.

Article VI, Section 1 --- Dispute Resolution Petition – In case of disagreement in valuation, the TRANSCO or its Buyer or Concessionaire, a Qualified Distribution Utility or a Consortium of Qualified Distribution Utilities, may file with the ERC a petition for dispute resolution

- This section should not be limited to disagreement in valuation since RA 9136, Section 8 already states “In case of disagreement in valuation, procedures, ownership participation and other issues”. Ownership issues in reference to Rule 22, Section 13 of the IRR and other contentious issues such as asset classification, may arise among the distribution utilities connected to a common subtransmission asset.

Article VI, Section 2 --- Liability for Cost – All costs arising from, incidental to, or otherwise attributable to the resolution of any petition for dispute resolution shall be borne by the petitioner

- During disputes in valuation, liability for cost should not be borne by the petitioner alone. Since Transco will be determining the disposal value of the subtransmission assets, disputes on cost will most probable arise among parties involved.