

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

**ERC RESOLUTION NO. \_\_\_\_\_**

**Implementing the Recovery of Value Added Tax (VAT) and Other Provisions  
of Republic Act No. 9337 Affecting the Electric Power Industry**

**WHEREAS**, the Congress of the Philippines has enacted Republic Act No. 9337 (An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237, and 288 of the National Internal Revenue Code (NIRC) of 1997, as amended, and for other Purposes);

**WHEREAS**, Section 6 of R. A. No. 9337 provides that “Section 108 of the NIRC of 1997, as amended, is hereby further amended to read as follows:

Section 108. Value Added Tax (VAT) on Sale of Services and Use or Lease of Properties.

“(A) Rate and Base of Tax. – There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties: *Provided*, That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:

(i) Value-added tax collection as a percentage of Gross Domestic Product (GDP) of the previous year exceeds two and four-fifth (2 4/5%); or

(ii) National government deficit as a percentage of GDP of the previous year exceeds one and one-half percent (1 ½%).

The phrase ‘sale or exchange of services’ means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by xxx xxx xxx, **sales of electricity by generation companies, transmission, and distribution companies; services of franchise grantees of electric utilities**, xxx xxx xxx.”

“xxx xxx xxx.”

“The term ‘gross receipts’ means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value added tax.”

“(B) **Transactions Subject to Zero Percent (0%) Rate.** - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

(1) xxx xxx xxx.; and

(7) **Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels.**"

**WHEREAS**, Section 15 of R. A. No. 9337 further amended Section 119 of the NIRC of 1997, as amended, exempts franchise grantees of electricity from franchise taxes.

**WHEREAS**, Section 24 of R. A. No. 9337 provides that "***The following laws or provisions of laws are hereby repealed and the persons and/or transactions affected herein are made subject to the value-added tax*** subject to the provisions of Title IV of the NIRC of 1997, as amended:

(A) Section 13 of R.A. No. 6395 on the **exemption** from value-added tax of the **National Power Corporation (NPC)**;

(B) Section 6, fifth paragraph of R.A. No. 9136 on the ***zero rate imposed on the sales of generated power by generation companies***; and

(C) All other laws x x x which are contrary to x x x ."

**WHEREAS**, Section 26 of the said R. A. No. 9337 provides that it shall take effect on July 1, 2005;

**WHEREAS**, the Commission in the exercise of its power and authority had previously authorized Private Distribution Utilities (DUs) to collect National Franchise taxes;

**WHEREAS**, in the Bureau of Internal Revenue (BIR) Ruling No. 020-02, said agency ruled that the collection of Universal Charge by the Power Sector Assets and Liabilities Management (PSALM) Corporation will not be considered as taxable income nor will it form part of its gross receipts for VAT purposes;

**WHEREAS**, in the same BIR ruling, said agency opined that gross receipt of a taxpayer do not include monies or receipt entrusted to the taxpayer which do not belong to them and do not redound to the taxpayer benefit. Further, gross receipt of a taxpayer should not include any money which although delivered to it has been specially earmark by law or regulation for some person other than the taxpayer;

**WHEREAS**, this Commission is vested with the power and authority to determine, fix and regulate the rates charged by all electric distribution utilities, the National Power Corporation (NPC) and the National Transmission Corporation (TRANSCO), pursuant to Republic Act No. 9136 and Section 18 of Republic Act No. 7638;

**NOW, THEREFORE**, be it resolved, as this Commission hereby resolves, to implement, as it hereby implements, Section 4, 6, 15 and 24 of Republic Act

No. 9337 by allowing the Generation Companies (GC), TRANSCO and all DUs to impose the appropriate VAT rate subject to the following conditions:

- 1) The imposition of VAT directed herein shall be based on the gross receipts of GC, TRANSCO and DUs concerned and shall be reflected as a separate item in their individual billing statements to their customers;
- 2) Accordingly, the appropriate VAT rate shall be imposed as follows:
  - (a) For GC – The appropriate VAT rate shall be based on the Gross Receipts (GR) charge to its customers. For GC, GR shall mean the total charges for the electricity sold from mixture of energy sources including but not limited to hydropower, geothermal, natural gas coal, bunker oil, diesel and renewable energy;
  - (b) For TRANSCO – The 10% VAT rate shall be based on the GR charge by TRANSCO to its customers. TRANSCO's GR shall mean total charges on the power service delivery, system operations, supply and metering services, ancillary services, intra-grid cross-subsidy and/or revenue components consistent with Open Access Transmission Service (OATS) and as defined under the Transmission Wheeling Rates Guidelines (TWRG).
  - (c) For Distribution – The 10% VAT rate shall be based on the GR charge by DU to its customers. DU's GR shall mean the total charges for the electricity sold which includes:
    - (1) Generation charge;
    - (2) Transmission charge;
    - (3) System loss;
    - (4) Distribution charge;
    - (5) Metering charge;
      - 5.1 retail customer charge
      - 5.2 metering system charge
    - (6) Supply charge;
    - (7) Lifeline rate subsidy;
    - (8) Inter-class cross-subsidy;
    - (9) Power Act Reduction;
    - (10) CERA;
    - (11) Energy Tax;
    - (12) Franchise Tax
      - 12.1 Local
    - (13) Universal Charge
      - 13.1 Missionay
      - 13.2 Environmental
- 3) GC, TRANSCO and all distribution utilities shall submit to this Commission a report of their compliance with this resolution, on or before the twentieth (20<sup>th</sup>) day of each quarter following said compliance.

Likewise, the Commission resolved as it is hereby resolves, to revoke the authority granted to all private DUs to collect National Franchise Taxes on its consumers.

Let copies of this resolution be furnished all DUs for the appropriate posting thereof in the bulletin boards of the respective cities/municipalities within their franchise areas. Likewise, let copies of this resolution be furnished the NPC, TRANSCO, the Committees on Energy of both Houses of Congress, the National Economic Development Authority (NEDA), Department of Finance (DOF), Bureau of Internal Revenue (BIR), Department of Energy (DOE), National Electrification Administration (NEA), Department of Justice (DOJ), and other concerned agencies for their information and guidance.

This resolution shall take effect immediately.

Pasig City, June \_\_\_\_\_, 2005.

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

**OLIVER B. BUTALID**  
Commissioner

**JESUS N. ALCORDO**  
Commissioner

**RAUF A. TAN**  
Commissioner

**ALEJANDRO Z. BARIN**  
Commissioner