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Republic of the Philippines

**ENERGY REGULATORY COMMISSION**

San Miguel Avenue, Pasig City

**BUSINESS SEPARATION AND UNBUNDLING PLAN**

**FILING PACKAGE**

**Draft**

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## 1. Introduction

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- 1.1 Section 36 of the Electric Power Industry Reform Act (Republic Act No.9136) (the **EPIRA**) and Rule 10 of the Implementing Rules and Regulations issued pursuant to that Act (the **IRR**) require electric power industry participants to structurally and functionally unbundle their business activities as between generation, transmission, distribution and supply, and also contemplate a further unbundling of those business activities between competitive (or non-regulated) and non-competitive (or regulated) activities.
- 1.2 The Energy Regulatory Commission (**ERC**) has determined that this unbundling should result in the creation of the separate business segments illustrated in the Attachment.
- 1.3 Such unbundling does not necessarily require that these business activities (or their component business segments) be conducted by different juridical entities, although this is an option available to electric power industry participants.
- 1.4 In order to facilitate this unbundling, Rule 10.3(b) of the IRR requires an electric power industry participant to prepare and submit to the ERC its business separation and unbundling plan (**BSUP**) for approval by the ERC. Rule 10.3(c) of the IRR requires the BSUP to contain at least the following information:
- (a) a complete description of the separation of books and records, including but not limited to, sources of revenues, costs as allocated, assets transferred, and information systems separation;
  - (b) a comprehensive description of the functional, structural or juridical separation of generation, distribution and supply as provided for in the BSUP;
  - (c) milestones and highlights of the planned structural and functional unbundling of the business activities in which the electric power industry participant is currently engaged;
  - (d) a plan for complying with all Code of Conduct provisions specified by the ERC, including training or developmental programs for its employees to help ensure compliance; and
  - (e) other documents or information as may be required by the ERC.

Rule 10.3(d) of the IRR provides that the ERC must render its decision regarding the approval of the BSUP within 6 months from the date of its filing. This decision may be to adopt the BSUP, recommend modifications to the BSUP, or reject the BSUP for revision and direct the electric power industry participant to file a new BSUP based on the ERC's comments. Rule 10.3(e) of the IRR requires the electric power industry participant to implement any such ERC decision fully and promptly upon its receipt. A failure to do so is punishable by (among other things) fines and penalties, that may be imposed by the ERC, of between P50,000 and P50,000,000.<sup>1</sup>

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<sup>1</sup> See IRR, r.10.3(f); EPIRA, s.46.

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- 1.5 The purpose of this Business Separation and Unbundling Plan Filing Package (**BSUP-FP**) is to set out the information that must be included in each BSUP.
  - 1.6 The ERC has by order extended the date for electric power industry participants to submit their BSUPs from 31 December 2002 (see Rule 10.3(b) of the IRR) to 6 months from the effectivity of the Business Separation Guideline.
  - 1.7 Terms used in this BSUP-FP which are defined in the EPIRA or the IRR have the same meaning as in the EPIRA or the IRR.

## **2. General Instructions**

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- 2.1 Each electric power industry participant must file with the ERC, on or before 6 months from the effectivity of the Business Separation Guideline, 6 copies of its BSUP. These copies should be delivered to:

Energy Regulatory Commission  
Docket Section  
16<sup>th</sup> Floor, Pacific Center Building  
San Miguel Avenue, Pasig City

both in hard copy and electronic form.

- 2.2 The BSUP must comprise the following sections (titled as such), together with a table of contents:

### Section 1: Current structure<sup>2</sup>

1. A diagrammatic representation of the corporate structure (including name, company registration number and ownership relationship) of the electric power industry participant and its affiliates (collectively, the "Corporate Group").
2. A description of each of the activities undertaken by each of the different juridical entities identified in the diagrammatic representation in item 1.

### Section 2: Details of business segments<sup>3</sup>

For each of the relevant business segments identified in the Attachment:

- (a) the number of individuals (whether employees or persons whose services are provided under a contract for service) who are engaged in the activities of the business segment, identifying in each case:
  - (i) the number of such individuals who are engaged in the activities of other business segments or other business activities of the Corporate Group; and
  - (ii) the other business segments or business activities in which such individuals are engaged; and

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<sup>2</sup> See IRR, r.10.3(a).

<sup>3</sup> See IRR, r.10.3(a).

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- (b) a description of any assets or facilities that are utilized in both that business segment and in any other business segments or other business activities of the Corporate Group, identifying in each case the other business segments or business activities in which such assets are utilized.

Section 3: Accounting separation<sup>4</sup>

1. Rule 10.1 of the IRR requires that there be a clear separation of accounts between regulated and non-regulated business activities (see also Rule 10.3(c)(i)). In furtherance of this obligation, the ERC has promulgated a Business Separation Guideline which sets out (among other things) the accounts required to be prepared for each of the business segments identified in the Attachment, the principles according to which those accounts are to be prepared, the format and content of those accounts, and the requirement for those accounts to be audited.
2. For the purposes of its BSUP, an electric power industry participant must include an express statement that it incorporates by reference Articles II, III and IV of the Business Separation Guideline as the provisions regarding accounting separation with which it and its affiliates will comply.
3. If the electric power industry participant considers that compliance with any parts of Articles II, III and IV of the Business Separation Guideline is not reasonably practicable, it must set out:
  - (a) the precise parts of those Articles with which it considers compliance is not reasonably practicable;
  - (b) the reasons for such compliance not being reasonably practicable; and
  - (c) any alternative to any such part which is proposed by the electric power industry participant as being an alternative with which compliance is reasonably practicable.

Section 4: Description of separation<sup>5</sup>

1. The manner in which the electric power industry participant intends to effect the separation of the business segments identified in the Attachment and a description of the assets, facilities and employees to be utilized in, or engaged in the activities of, those business segments. This may be achieved in one or more of the following ways (or any combination thereof):
  - (a) the creation of separate divisions or departments, within the same juridical entity, that undertake the activities the subject of each such business segment; or
  - (b) the creation of separate juridical entities which undertake each such activity.
2. An express undertaking that the electric power industry participant will comply with the obligations imposed on it under Article V of the Business Separation Guideline.

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<sup>4</sup> See IRR, r.10.3(c)(i).

<sup>5</sup> See IRR, r.10.3(c)(i),(ii).

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3. In the case of a distribution utility, the manner in which it will ensure compliance with the obligation imposed on it under Section 5.2.1 of the Business Separation Guideline. This should include:
- (a) to the extent reasonably practicable, the separation of information systems that contain the two categories of information referred to in that Section; and
  - (b) the giving by relevant employees of undertakings that they will not use information in a way that contravenes that obligation.

Section 5: Milestones and highlights<sup>6</sup>

The milestones and highlights in the implementation of the separation of the business segments as contemplated by item 1 of section 4 and in the implementation of the measures referred to in item 3 of section 4 (to the extent relevant).

[Note that an electric power industry participant who does not implement the requisite separation is not eligible to participate in retail competition and open access.<sup>7</sup> Electric cooperatives must implement the requisite separation no later than 21 June 2006<sup>8</sup>].

Section 6: Code of conduct<sup>9</sup>

An express undertaking by the electric power industry participant that it will develop for approval by the ERC a plan for complying with the code of conduct that is to be promulgated by the ERC to regulate matters relating to end users, such plan to include training and developmental programs for employees to help ensure compliance with that code.

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<sup>6</sup> See IRR, r.10.3(c)(iii).

<sup>7</sup> See IRR, rr.10.3(c)(iii), 10.4(a).

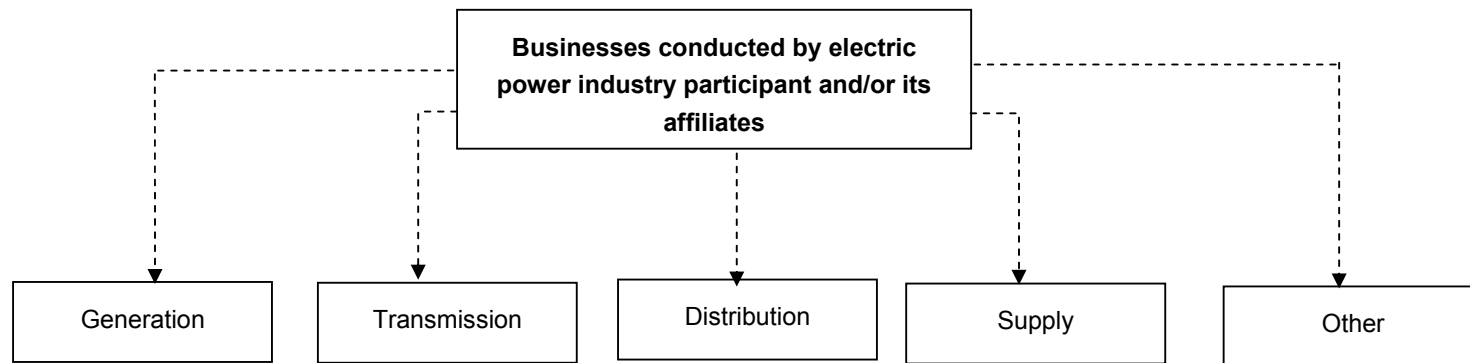
<sup>8</sup> See IRR, r.10.4(b).

<sup>9</sup> See IRR, r.10.3(c)(iv).

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## ATTACHMENT: BUSINESS SEGMENTS

The business activities of electric power industry participants and their affiliates are to be unbundled into the following business activities:



These business activities are to be further unbundled in the following business segments (each business segment is represented by a box).

