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March 7, 2003

Energy Regulatory Commission
Pacific Center Building,
San Miguel Ave., Ortigas Center,
Pasig City

Attention: Atty. Maria Teresa R. Castaneda
Legal Services

Please find below our initial comments on the proposed Competition Rules and Competition Guidelines. We will be sending a representative to the consultations scheduled on March 19, 2003.

Competition Guidelines:

a. Purpose of the Guidelines

Suggest the provision to include the underlined portion.

"Section 45 of the EPIRA provides that no participant in the electricity industry or any other person may engage in any anti-competitive behavior including. One of the objectives of this prohibition is to enhance the welfare electricity consumers, without compromising the efficiency and viability of the electric power industry participants; effective competition lead to benefits in the form of lower prices, greater choice and better service.

1.2 Overview

- Mergers and Acquisitions – a person is prohibited from acquiring shares or assets, merging or consolidating with another corporation, if that acquisition, merger or consolidation would have, or would be likely to have, the effect of substantially lessening competition in a market. This prohibition is discussed in section 6 of this Guideline.

- COMMENT: Does this apply retroactively? What if a corporation, after the purchase of shares or merger, will not have control of the new company anyway?

Competition Rules:

Section 1 prohibits any agreement; arrangement or understanding that would have, or would be likely to have, the effect of substantially lessening competition in the market. Section 2 is not very clear in defining when a provision of an agreement, arrangement or understanding would have, or would be likely to have, the effect of substantially lessening competition in the market. Hence, we suggest a clearer definition or measures that would indicate an effect of substantially lessening competition in the market.

Rule 4 Section 2 "For the purposes of the application of subsection (1) in relation to a particular person, a provision of an agreement, arrangement or understanding is deemed to have, or be likely to have, the effect of substantial lessening competition in a market if that provision and any one or more of the following provisions, namely:

- (a) the other provision of that agreement, arrangement or understanding; and
- (b) the provisions of any other agreement, arrangement or understanding to which that person or any affiliate of the person is a party, together have, or are likely to have that effect.

- **COMMENT:** Section 2 does not clearly define when a provision of an agreement, arrangement or understanding is deemed to have, or be likely to have, **the effect of substantial lessening competition in a market.**

Rules 8 & 9 – Clearances and Authorizations

- Does the ERC have a specified time frame in which to go over applications for clearances and authorizations? Will there be approval if not acted upon within a specified number of days?
- Under Rule 8(11) and 9(12)(13), Inquiries by the ERC, will the applicant be given the opportunity to address and/or challenge the findings of the ERC consultant?
- Under Rule 8(18) and 8(18), if the applicant is made to shoulder the expense of ERC's external consultants, will the applicant be able to recover these costs? If the applicant is a DU, then this is critical as the costs/expenses of the DU are scrutinized by the ERC. Suggest that the Rules be worded in such a way that these costs - which are to be shouldered by the applicant - are to be readily recovered.

Rule 12 – Information Gathering

The Rules allow for any person as ordered by the ERC to submit any information/data to the commission to matters relating to a possible violation of the Competition Rules. Suggest that a provision be included that while the ERC is in the process of evaluating a possible violation of the Competition Rules, the documents/data submitted be kept in strict confidentiality by the ERC.

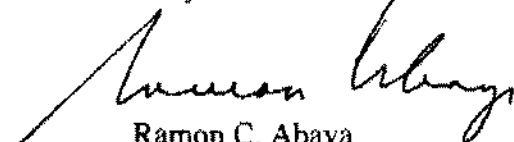
Rule 15(b) – Cross-subsidies

“Requires TRANSCO (or its buyer concessionaire) and DUs to ensure that, subject to certain expenditures, the assets comprising the networks operated by them are not encumbered.”

- **COMMENT:** Please clarify. Possible conflict with the BSUP guidelines. Section 5.3b of the BSUP guidelines specifically states, “the assets comprising the Distribution system operated by the Distribution Utility are not encumbered except with the approval of the ERC or for purposes of securing financial accommodation which is used solely to fund maintenance, repair, augmentation, extension, replacement or operation of that Distribution System.”

We look forward to the consultations and we hope that you consider our request of sending additional comments even after March 7, 2003.

For your consideration.



Ramon C. Abaya
Chairman