

Rule 14 – Entitlement to installed generating capacity and sourcing of demand

(1) To promote true market competition and prevent harmful monopoly and market power abuse:

- (a) section 45(a) of the EPIRA and rule 11.4 of the IRR prohibit a company, related group or IPP administrator, singly or in combination, from owning, operating or controlling more than:
 - (i) 30% of the installed generating capacity of a grid (as defined therein or otherwise determined pursuant thereto); or
 - (ii) 25% of the national installed generating capacity;
- (b) section 45(b) of the EPIRA and rule 11.5(b) of the IRR (subject to certain exceptions) prohibit a distribution utility from sourcing from bilateral power supply contracts more than 50% of its total demand from an associated firm engaged in generation; and

CLTPSJ: The word “associated firm” is not defined in these Rules but in the EPIRA. For completeness, I suggest that its definition be appended after the last sentence in section (b), to wit:

An associated firm with respect to another entity refers to any person which, alone or together with any other person, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such entity; and

- (c) section 45(c) of the EPIRA and rule 11.6 of the IRR prohibit a distribution utility, for the first 5 years from the establishment of the wholesale electricity spot market, from sourcing more than 90% of its total demand from bilateral power supply contracts.

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(2) For the purposes of the prohibition referred to in subsection (1)(a)(i), the installed generating capacity of a grid is the sum of the installed generating capacities of the generation facilities which are connected to a transmission system or distribution system that forms part of that grid. For these purposes:

- (a) the installed generating capacity of a generation facility is the sum of the generating capacities of the installed generating units that comprise the generation facility;
- (b) the generating capacity of an installed generating unit is the MW rated capacity of that generating unit as provided under clause 6.4.3.3 of the Grid Code from time to time, except that:
 - (i) the generating capacity of an installed generating unit will be deemed to be reduced to the extent that there is a permanent reduction in its MW rated capacity and details of that reduction are provided under clause 6.4.3.3 of the Grid Code; and
 - (ii) the generating capacity of an installed generating unit will be deemed to be zero where the generating unit is temporarily closed, but only if the generating unit cannot reasonably be returned to service within 12 months at a cost of less than 10% of the full cost of constructing and commissioning a similar generating unit; and
- (c) a generating unit will be deemed to be installed only if it has been physically connected to the transmission system or distribution system that forms part of the grid and has injected energy into that system (even if it has not generated electricity at its MW rated capacity as provided under clause 6.4.3.3 of the Grid Code).

(3) For the purposes of the prohibition referred to in subsection (1)(a)(ii), the national installed generating capacity is the sum of the installed generating capacities of each grid (as defined in section 45(a) of the EPIRA and rule 11.4 of the IRR or otherwise determined pursuant thereto).

(4) For the purposes of the prohibitions referred to in subsection (1)(a):

- (a) the installed generating capacity of a generation facility will be credited to the entity that controls the terms and conditions on which the output of such capacity is sold in the market (in which case, for the purposes of this subsection (4), such entity will be referred to as controlling the installed generating capacity of that generation facility);
- (b) where the terms and conditions of the sale in the market of the output of the capacity of the installed generating units that comprise the generation facility are controlled by different

entities (in which case, for the purposes of this subsection (4), each such entity will be referred to as controlling the generating capacity of the relevant installed generating unit) – the installed generating capacity of the generation facility will be credited as between those entities such that each entity is credited with the generating capacity of the installed generating unit which it controls; and

- (c) where the entity which controls the installed generating capacity of a generation facility or the generating capacity of an installed generating unit is an incorporated or unincorporated joint venture, partnership or association, that capacity will be credited as between the entities that are parties to the joint venture, partnership or association as follows:

- (i) where one of those entities has greater than a 50% equity interest in the joint venture, partnership or association, all of that capacity will be credited to that entity; and
(ii) in any other case, that capacity will be credited as between those entities in proportion to their equity interest in the joint venture, partnership or association.

- (5) For the purposes of the prohibitions referred to in subsections (1)(b) and (c):

- (a) a bilateral power supply contract is a contract for the physical supply of electricity and, for the avoidance of doubt, does not include a financial derivative contract or a contract for the sale of electricity from a distribution utility to a person who requires the supply and delivery of that electricity for its own consumption;
- (b) the total demand of a distribution utility is determined for each trading interval and is the aggregate of the gross ex-post settlement quantities of electricity for all customer nodes for which the distribution utility is financially responsible as a customer under the WESM Rules; and
- (c) the quantities of electricity which are sourced by a distribution utility from a bilateral power supply contract will be the quantities of electricity, expressed in MWh, which are purchased by the distribution utility pursuant to that bilateral power supply contract in each trading interval. For the purposes of subsections (5)(b) and (c), words which are defined in the WESM Rules have the same meaning in those subsections.

- (6) For the purposes of the prohibitions referred to in subsection (1) an isolated grid is a transmission system or a distribution system which is not connected to a grid (as defined in section 45(a) of the EPIRA and rule 11.4 of the IRR or otherwise determined pursuant thereto) and:

- (a) for the purposes of the prohibition referred to in subsection (1)(a), the generating capacity of a generation facility that is connected to an isolated grid will not be included in calculating the installed generating capacity of a grid, the national installed generating capacity or the percentage of such capacity that is owned, operated or controlled by a company, related group or IPP administrator;
- (b) for the purposes of the prohibition referred to in subsection (1)(b), such part of the demand of a distribution utility which is sourced from a generation facility that is connected to an isolated grid will not be included in calculating either the total demand of that distribution utility or the percentage of that total demand which is sourced from any associated firms engaged in generation; and
- (c) for the purposes of the prohibition referred to in subsection (1)(c), such part of the demand of a distribution utility which is sourced from a generation facility that is connected to an isolated grid will not be included in calculating either the total demand of that distribution utility or the percentage of that total demand which is sourced from bilateral power supply contracts.

- (7) The prohibitions referred to in subsection (1) are deemed to be incorporated in these Competition Rules as if they were set out in full in these Competition Rules, and a violation of any of these prohibitions is a violation of these Competition Rules.

Rule 15 – Cross-subsidies

- (1) Section 5.3 of the Business Separation Guideline:

- (a) requires TRANSCO (or its buyer or concessionaire) and distribution utilities to ensure that the only costs that are included in the prices charged by them for the provision of regulated services are costs which are properly allocated to those services; and
- (b) requires TRANSCO (or its buyer or concessionaire) and distribution utilities to ensure that, subject to certain exceptions, the assets comprising the networks operated by them are not encumbered.

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[CLTPSJ: For clarity and uniformity, exceptions to prohibition on encumbrance of network assets of TRANSCO (or its buyer or concessionaire) and distribution utilities should be enumerated]

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(2) The requirements referred to in subsection (1) are deemed to be incorporated in these Competition Rules as if they were set out in full in these Competition Rules, and a violation of any of these requirements is a violation of these Competition Rules.

Rule 16 – Reportorial requirements

(1) The ERC may, from time to time and by written notice, require a person to provide it with information relating to that person's compliance with a condition of an authorization or clearance granted or given under these Competition Rules or with an order made by the ERC under these Competition Rules, and that person must comply with that request within such time as the ERC specifies in that notice.

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[CLTPSJ: For uniformity, the phrase should be revised to read “compliance with a condition of a clearance or authorization granted.” It should be noted that while there are many provisions in the Rules, on the grant of authorizations subject to conditions, i.e. Rules 8(25)(a), 8(35)(b), 9(24)(a), and 9(31)(b), there is only one provision on a grant of clearance subject to a condition, i.e. Rule 9(30) on a written undertaking given by the applicant to dispose of assets or shares specified in the same in cases of acquisitions, mergers and consolidations.]

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(2) In order to enable the ERC to monitor compliance with the prohibitions referred to in rule 14(1)(a), each generation company must file the following information with the ERC on or before 30 January of each year:

- (a) a list, current as at the preceding 31 December, of all of the generating units of the generation company which are commissioned and connected, and their rated installed capacity, fuel type and location;
- (b) a list, current as at the preceding 31 December, of all of the generating units of the generation company which will be commissioned and connected during that year, and their proposed rated capacity, fuel type and location;
- (c) for each of the generating units referred to in subsection (2)(a) or (b):
 - (i) the entities which will operate the generating unit;
 - (ii) the entities which will control the generating unit; and
 - (iii) the entities which will own the generating unit;
- (d) for each of the entities referred to in subsection (2)(c):
 - (i) the names and addresses of its current directors and corresponding officers;
 - (ii) the name and registered office of any holding company, and the name and registered or principal office of any parent undertaking; and
 - (iii) a list of all its affiliates and their addresses and of the names and addresses of their current directors and corresponding officers.

(3) In order to enable the ERC to monitor compliance with the prohibitions referred to in rules 14(1)(b) and (c), each distribution utility must file the following information with the ERC on or before 31 March, 30 June, 30 September and 31 December of each year (such information to be current as at the seventh day preceding each such date):

- (a) the names and addresses of its current directors and corresponding officers;

- (b) the name and registered office of any holding company, and the name and registered or principal office of any parent undertaking;
- (c) a list of all its affiliates and their addresses and of the names and addresses of their current directors and corresponding officers;
- (d) a copy of each bilateral power supply contract to which the distribution utility is a party or (if a copy of such contract has previously been filed with the ERC under this subsection (3)) a copy of any subsequent variation to that contract;
- (e) a report containing the following information:

(i) for each trading interval occurring during the relevant calendar quarter, the aggregate of the quantities of electricity, expressed in MWh, which are purchased by the distribution utility from any of its affiliates during that trading interval pursuant to a bilateral power supply contract;
[CLTPSJ: The prohibition under Rule 14(1)(b) uses the term “associated firm” not “affiliates.” It should be noted that an associated firm is defined differently under Section 45(b) of the EPIRA where control as regards another entity is wielded through one or more intermediaries.]

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(ii) for each trading interval occurring during the relevant calendar quarter, the aggregate of the quantities of electricity, expressed in MWh, which are purchased by the distribution utility during that trading interval pursuant to a bilateral power supply contract;
 (iii) the total demand of the distribution utility for each trading interval occurring during the relevant calendar quarter; and
 (iv) the percentage of (i) to (iii) and the percentage of (ii) to (iii) (for the purposes of this subsection (3)(e), words which are defined in or for the purposes of rule 14(5) have the same meaning in this subsection); and

- (f) a letter from the market operator certifying that the total demand data used for the purposes of subsection (3)(e) are consistent with the gross ex-post settlement quantities of electricity determined by the market operator or a copy of the final settlement statements issued to the distribution utility by the market operator that are used to calculate that total demand.

(4) In order to enable the ERC to monitor potential anti-competitive behaviour, the market operator must file its calculation of the market monitoring indices specified in the schedule to these Competition Rules with the ERC in accordance with the guideline promulgated by the ERC and entitled “Market Monitoring Indices Guideline”.

(5) In order to enable the ERC to monitor compliance with section 28 of the EPIRA, each distribution utility which:

- (a) is not an electric co-operative; and
- (b) is not listed on the Philippine Stock Exchange or a holding company of which is not listed on the Philippine Stock Exchange, must file the following information with the ERC on or before 30 January of each year:
- (c) the name and address of each shareholder in the distribution utility and in any holding company of the distribution utility who holds 25% or more of the voting shares in that distribution utility or holding company (as the case may be);
- (d) the number of voting shares held by each person referred to in subsection (5)(c) and the percentage of the total voting shares in the distribution utility or holding company (as the case may be) which is represented by the relevant voting shares held by that person; and
- (e) whether or not each person referred to in subsection (5)(c) is listed on the Philippine Stock Exchange.

(6) A violation of subsection (1), (2), (3), (4) or (5) is a violation of these Competition Rules.

[CLTPSJ: Redundant and may be deleted]

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(7) If the ERC determines that a person has violated subsection (1), (2), (3), (4) or (5), the ERC may, after due notice and hearing, make an order requiring the person to pay to the ERC a fine or penalty of not more than P5,000,000.00.

[CLTPSJ: Phraseology may be improved, to wit:

If after due notice and hearing, the ERC determines that a person has violated any of the preceding reportorial requirements, the ERC may make an order requiring payment of fine or penalty of not more than P5,000,000.

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Rule 17 - Amendment

Subject to the provisions of any other applicable law:

- (a) these Competition Rules may be amended from time to time by the ERC but no such amendment may operate retrospectively; and
- (b) an amendment to these Competition Rules takes effect 15 days after its publication in two newspapers of general circulation.

Rule 18 – Interpretation and Application

(1) In these Competition Rules, unless the contrary intention appears:

- (a) the singular includes the plural and conversely;
- (b) where a term is defined, its other grammatical forms have a corresponding meaning;
- (c) a reference to any law or the rules and regulations issued implementing such a law or to any particular provision of a law or of any rules and regulations issued implementing such a law is taken to include:
 - (i) any modification, consolidation, amendment, re-enactment, replacement or codification of the law, rules and regulations, or provisions; and
 - (ii) any substituted law, substituted rules and regulations, or substituted provision; and
- (d) mentioning anything after include, includes or including does not limit what else might be included.

[CLTPSJ: It is unclear how substitution of laws, rules and regulations, or provision is different from amendment of the same in Philippine jurisdiction. Absent any legal basis for such a term, it may be more prudent to delete the phrase altogether.]

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(2) These Competition Rules extend to things done, or omitted or refused to be done, outside the Philippines to the extent that the doing of, or the omitting or refusing to do, those things affects a market.

(3) Without limiting subsection (2), rule 6 extends to:

- (a) the acquisition outside the Philippines of shares or assets, whether or not such shares are shares in the capital stock of a corporation that is a Philippine National or such assets are assets of a Philippine National;
- (b) the merger outside the Philippines of two or more corporations, whether or not any of those corporations is a Philippine National; and
- (c) the consolidation outside the Philippines of two or more corporations to form a new corporation, whether or not any of those corporations is a Philippine National or the new corporation is a Philippine National, to the extent that the acquisition affects a market.

(4) The ERC must apply these Competition Rules consistently with such policies relating to the electric power industry as may be promulgated from time to time by the Department of Energy.

Rule 19 – Separability

If, for any reason, any rule or part of a rule of these Competition Rules is declared unconstitutional or invalid, those provisions which are not thereby affected will continue to be in full force and effect.

Rule 20 – Effectivity

Subject to the provisions of any other applicable law, these Competition Rules take effect 15 days after their publication in two newspapers of general circulation.

Pasig City, [] 2003

Schedule - Market Monitoring Indices

Index description Independent variable By Measure(s) Report frequency

Market Efficiency

offer price ratio (final offers only)
 MWh in merit at SRMC vs MWh in merit at offer
 trading interval station, company ratio weekly
 SMP vs SMC trading interval grid ratio weekly
 stack error ratio: spot price vs stack price trading interval grid ratio weekly
 ex-post price vs ex-ante price trading interval grid ratio weekly
 redispatch activity trading interval grid TBD weekly
 other dispatch efficiency [TBD]
 day-ahead demand forecast error lead time grid bias, standard error, outliers
 weekly
 week-ahead demand forecast error lead time grid bias, standard error, outliers
 weekly
 day-ahead price forecast error lead time grid bias, standard error, outliers
 weekly
 week-ahead price forecast error lead time grid bias, standard error, outliers
 weekly

^s For a more detailed description of each indice, see Energy Regulatory Commission, Market Monitoring Indices Guideline.

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Index description Independent variable By Measure(s) Report frequency

day-ahead supply (in-merit volume) forecast error lead time grid bias, standard error, outliers
 weekly
 week-ahead supply (in-merit volume) forecast error lead time grid bias, standard error, outliers
 weekly
 stack price day-ahead forecast error lead time grid bias, standard error, outliers
 weekly
 stack price week-ahead forecast error lead time grid bias, standard error, outliers
 weekly
 spot-price vs LRMC baseload, mid-merit, peaking
 grid time-weighted average
 annually
 annual congestion price: price difference across constraint boundaries
 year major constraint summated difference
 (\$/kW/year)
 annually

Market Compliance

Various measures [see table in section 3.1 of the Market Monitoring Indices Guideline]
 Check data changes offer parameter station, company count of changes annual
 Non-scheduled generation forecast error (week ahead and day ahead)
 lead time station, company bias, standard

error, outliers
 weekly
 locational market activation hourly sub-zone average nodal spot
 price
 weekly

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Index description Independent variable By Measure(s) Report frequency

probability of adverse changes [see section 3.5 of the
 Market Monitoring Indices Guideline]
 breach of dispatch tolerances week unit, company count weekly
 SO recommended constraints n/a event description weekly

Market Structure

locational market concentration:
 for energy (CRN and HHI only) and capacity;
 for competitive and monopolistic interconnect
 trading interval active sub-zone
 CR1, CR4, HHI,
 RD1, RD2
 weekly
 average locational market concentration during active
 periods
 weekly: sub-zone CR1, CR4, HHI,
 RD1, RD2
 weekly
 temporal market concentration trading interval active temporal market CR1, CR4, HHI,
 RD1, RD2
 weekly