

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

**-DRAFT-
20 October 2008**

RESOLUTION NO. ____, Series of 2008

**A RESOLUTION ADOPTING POLICIES TO GOVERN THE
TRANSITION SUPPLY CONTRACTS WHICH HAVE BEEN
ASSIGNED AND TRANSFERRED TO NATIONAL POWER
CORPORATION (NPC) SUCCESSOR GENERATING COMPANIES**

WHEREAS, Section 67 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), requires the NPC to file for the approval of the Commission Transition Supply Contracts (TSCs) duly negotiated with the Distribution Utilities (DUs);

WHEREAS, under the said provision, the term of the TSCs shall not extend beyond one (1) year from the introduction of open access and that said contracts shall be assignable to the NPC successor generating companies;

WHEREAS, on separate dates, NPC filed applications for the approval of these TSCs, which were correspondingly approved by the Commission on 19 October 2006 for TSCs covering the Visayas and Mindanao grids and on 06 February 2007 for TSCs covering the Luzon grid;

WHEREAS, as a result of the privatization process envisioned under Section 47 of the EPIRA, several NPC generation assets have been successfully privatized as a consequence of which several TSCs were assigned and transferred to the NPC successor generating companies;

WHEREAS, the Commission is cognizant that there are several TSCs whose terms are to expire even before one (1) year from introduction of open access and that the NPC successor generating companies and the concerned DUs or other customers may require sufficient time to negotiate for the execution of new bilateral power supply contracts;

WHEREAS, the Assignability Clause of the TSCs states that any assignment shall not affect or impair the DUs' rights and obligations with respect to quantity and price of electricity, contract effectivity, incentives, discounts and other terms and conditions of the contract where the assumption of the rights and obligations shall be made through a written instrument;

WHEREAS, issues have been raised with the Commission on the rates to be imposed by the DUs as a consequence of such transfer and assignment of

TSCs particularly on (1) the Deferred Accounting Adjustment that the NPC-Successor Generating Companies may be authorized to implement; (2) the entitlement of the residential end-users of the affected DU to the Mandatory Rate Reduction under Section 72 of the EPIRA; and (3) the corresponding Value Added Tax (VAT) that should be applied;

NOW THEREFORE, the Commission, after thorough and due deliberation, **RESOLVED**, as it hereby **RESOLVES** to **ADOPT** the following policies that should govern these TSCs which have been assigned and transferred to the NPC successor generating companies:

1. TSCs assigned and transferred to NPC successor generating companies shall retain their nature as such until the expiration of the term originally agreed upon in the contract or the extension granted by the Commission, provided that these contracts shall not extend beyond one (1) year from actual retail competition and open access;

2. Prior to the expiration of the TSC, the NPC successor generating companies and the DUs are not precluded from negotiating for and entering into a new bilateral power supply contract that should govern the transactions of the parties;

3. Upon expiration of the term of the assigned and transferred TSC, the parties are allowed to extend the duration of the TSC under the same terms and conditions or to enter into new bilateral power supply contracts should changes, apart from the term of the contract, be introduced on such other terms and conditions of the TSC.

4. At least forty five (45) days prior to the expiration of a particular TSC assigned to an NPC successor generating company, without a new bilateral contract being approved by the Commission, the parties to the contract are hereby allowed to extend the contract period, under the same terms and conditions, subject to notice made to, and approval granted by the Commission;

5. For TSCs which are set to expire within forty five (45) days from the effectivity of this Resolution, without a new bilateral contract being approved by the Commission, the terms and conditions of the contract are deemed to have been extended for an additional period of one (1) month, and the parties to the contract are hereby allowed to further extend the contract period, subject to notice made to, and approval granted by the Commission;

6. In no case shall the contract period be extended longer than six (6) months from expiration of the original term of the TSC which has been assigned and transferred, unless expressly allowed by the Commission by virtue of the pendency of the approval of a new bilateral supply contract between the parties.

7. In all cases, the execution of a new bilateral supply contract should be made and filed with the Commission prior to the expiration of the term of the TSC or any extension made thereto;

8. The applicable TSC rate shall be the Commission-approved NPC-Time-of-Use (TOU) rate which shall not include adjustments made on the Generation Rate Adjustment Mechanism (GRAM) and the Incremental Currency Exchange Rate Adjustment (ICERA) or the Deferred Accounting Adjustments covering the test periods after the Notice of Award to the Winning Bidder in accordance with the privatization sale process issued by the Power Sector Assets and Liabilities Management Corporation (PSALM). For the avoidance of doubt, the Commission-approved NPC-TOU rate shall be the prevailing NPC-TOU rate at the time of Notice of Award to the Winning Bidder.

9. For the duration of the assigned TSCs, the NPC successor generating companies shall continue to implement Section 72 of the EPIRA and the residential end-users of the affected DUs shall continue to enjoy the rate reduction of thirty centavos per kilowatthour (PhP0.30/kwh) subject to the execution of a written instrument between the NPC and the concerned NPC successor generating company containing the assumption of such obligation. In the absence of such written instrument, the rights of the residential end-users shall not be impaired and NPC shall bear the cost of the rate reductions implemented by the NPC successor generating company. However, should any extension of the original term of the assigned and transferred TSC be made by the concerned DU and the NPC successor generating company, the latter shall bear the cost of the rate reduction as a result of implementing Section 72 of the EPIRA.

10. While the provisions of the TSC state that any assignment thereof shall not affect or impair DU's rights and obligations with respect to, among others, quantity and price of electricity, the provisions of Republic Act No. 9337 are specific as to the applicability of the Value Added Tax (VAT) upon gross receipts derived from sales of electricity by generating companies. Thus, in the case of power generated from renewable and non-renewable sources, the said VAT rates shall apply to the power generated by the NPC successor generating companies depending on the nature and characteristic of the plant acquired from NPC, which VAT rate shall be imposed on or passed on to the DUs under the assigned TSCs.

This Resolution shall take effect fifteen (15) days following its publication in a newspaper of general circulation in the Philippines.

Resolution No. ____, Series of 2008

A Resolution Adopting the Policies to Govern the Transition Supply Contracts Which Have Been Assigned and Transferred To National Power Corporation (NPC) Successor Generating Companies

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Let copies of this Resolution be furnished the University of the Philippines Law Center-Office of the National Administrative Register (UPLC-ONAR) and all entities engaged in the generation, distribution and supply of electricity.

Pasig City, (day) (month) 2008.

ZENAIDA G. CRUZ-DUCUT
Chairperson

RAUF A. TAN
Commissioner

ALEJANDRO Z. BARIN
Commissioner

MARIA TERESA A.R. CASTAÑEDA
Commissioner

JOSE C. REYES
Commissioner