

Republic of the Philippines  
**ENERGY REGULATORY COMMISSION**  
Pasig City



**IN THE MATTER OF THE  
APPLICATION FOR  
APPROVAL OF THE  
BUSINESS SEPARATION  
AND UNBUNDLING PLAN  
(BSUP) PURSUANT TO THE  
PROVISION OF REPUBLIC  
ACT NO. 9136**

**ERC CASE NO. 2004-451**

**IBAAN ELECTRIC AND  
ENGINEERING  
CORPORATION (IEEC),**  
*Applicant.*

**Promulgated:**  
July 19, 2021

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**ORDER**

On 06 December 2004, the Ibaan Electric and Engineering Corporation (IEEC) filed an *Application*, seeking the Commission's approval of its Business Separation and Unbundling Plan (BSUP), in accordance with Section 36 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), and Rule 10 of its Implementing Rules and Regulations (IRR).

On 22 December 2004, the Commission issued an *Order* dated 16 December 2004, directing IEEC to submit the following documents/data:

1. Current Organizational Structure/Chart;
2. The breakdown of assets among the applicable business segments, including the corresponding value of each asset;
3. A statement of Compliance with the Code of Conduct and signed by Applicant's Chief Operating Officer (COO) or equivalent officer;

4. The Accounting and Cost Allocation Manual (ACAM) to include the following: (i) Allocation Methodology and Factors used to allocate costs and revenues among the applicable business segment, including the basis for adopting the same, (ii) depreciation policies and the corresponding depreciation per asset, and (iii) transfer pricing policy used for transactions between business segments, if any; and
5. Filled-out formats using the Financial Statements for the year 2003.

On 14 February 2005, the Commission issued an *Order* and a *Notice of Public Hearing*, both dated 01 February 2005, setting the case for determination of compliance with the jurisdictional requirements, pre-trial conference, and presentation of evidence on 06 April 2005.

On 18 March 2005, IEEC filed a *Letter* dated 17 March 2005, attaching therewith the aforementioned documents, as directed by the Commission in its *Order* dated 16 December 2004.

On 13 April 2005, IEEC filed a *Letter* dated 11 April 2005 and attached therewith the following documents, as required by the Commission during the 06 April 2005 hearing:

1. The original copy of the *Affidavit of Publication* dated 06 April 2005, executed by Ms. Lourdes Diaz of the Philippine Daily Inquirer;
2. The copy of the 30 March 2005 issue of the Philippine Daily Inquirer where the Notice of Public Hearing appeared; and
3. The breakdown of assets among the applicable business segments, including the corresponding value of its assets.

On 05 May 2005, the Commission issued an *Order* dated 04 May 2005, directing IEEC to submit the following data/documents:

1. Amended 2003 Unbundled Financial Statements in accordance with the format prescribed in the Business Separation Guidelines (BSG), incorporating therewith the Non-Regulated and Related Businesses in preparation for the Wholesale Electricity Spot Market (WESM);

2. Transfer Pricing Policy used for transaction between each business segment (not affiliates); and
3. Allocation Methodologies used to allocate costs and revenues to and between business segments as specified in the BSG, as follows: (i) a description of the basis, formula and/or methodology/ies used; (ii) reason for choosing the basis; and (iii) quantification of any factors applied in allocating unattributable costs of revenues.

On 04 August 2005, IEEC submitted a *Letter* dated 20 July 2005, explaining the reasons for its exemption from submitting the data/documents required under item numbers 1 and 2; while for item number 3, it informed the Commission that it had already submitted the required data/document on 18 March 2005, together with the other documents, in compliance with the *Order* of the Commission dated 16 December 2004.

In an *Order* dated 26 October 2010, the Commission directed IEEC to submit its formal offer of evidence. However, based on available records, no filing was made by IEEC.

The Commission now resolves the instant *Application*.

## **DISCUSSION**

As mandated under Section 36 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), an Electric Power Industry Participant<sup>1</sup> shall functionally and structurally unbundle its business activities in accordance with the sectors identified in Section 5 of the EPIRA, namely, generation, transmission, distribution, and supply.

Likewise, Rule 10, Section 1 of the EPIRA's Implementing Rules and Regulations (IRR) further provides for the guiding principle of structural and functional unbundling of the business activities of an Electric Power Industry Participant, to wit:

**RULE 10. — Structural and Functional Unbundling of Electric Power Industry Participants**

**SECTION 1. Guiding Principle. —**

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<sup>1</sup> Refers to any Person or entity engaged in the generation, transmission, distribution, or supply of electricity (Rule 4, (ff), EPIRA IRR, Definition of Terms).

Consistent with the last paragraph of Section 36 of the Act, any Electric Power Industry Participant shall structurally and functionally unbundle its business activities in accordance with Section 5 of the Act, namely: generation, transmission, distribution and supply. **Structural unbundling shall mean the separation of different activities through the creation of separate divisions or departments within a single company or, at the option of any Electric Power Industry Participant, a separation into different juridical entities, with a clear separation of accounts between regulated and non-regulated business activities. Functional unbundling shall mean the separation of functions into different components. For this purpose, business activities resulting from the initial unbundling process may be further unbundled to widen the scope for competitive activities.** The ERC shall formulate the appropriate guidelines and shall ensure full compliance with this provision. **(Emphasis Supplied)**

In addition, Rule 10, Section 3 thereof requires the submission of a Business Separation and Unbundling Plan (BSUP) for approval by the Commission.

Pursuant to the foregoing mandate in the EPIRA and its IRR, the Commission adopted the BSG on 22 September 2003. Article II, Section 2.2 of the BSG requires each Electric Power Industry Participant to submit an ACAM for approval by the Commission.

On 21 June 2006, the Commission amended the BSG and issued Resolution No. 49, Series of 2006,<sup>2</sup> to incorporate additional business segment and activities, and to make it consistent with the Code of Conduct for Competitive Retail Market Participants which prescribes the operational separation between a Distribution Utility's regulated and non-regulated business activities.

The Commission, based on its evaluation of the instant *Application*, determined that it covers IEEC's business segments and accounting and cost allocation system based on its 2003 Audited Financial Statements (AFS). Moreover, it was also verified that the said *Application* was filed prior to IEEC's entry to the Performance Based Rate-Setting methodology (PBR methodology).

As a background, on 10 December 2004, the Commission promulgated Resolution No. 12-02, Series of 2004,<sup>3</sup> which governs the setting of distribution wheeling rates of privately-owned distribution utilities under the PBR methodology. This was subsequently followed

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<sup>2</sup> Entitled, "Business Separation Guidelines, as Amended".

<sup>3</sup> Adopting the "Guidelines on the Methodology for Setting Distribution Wheeling Rates for Privately Owned Distribution Utilities."

on 01 August 2006 by ERC Resolution No. 39, Series of 2006, or the “Rules for Privately Owned Distribution Utilities Entering Performance Based Regulation (First Entry Point).”

Under the PBR methodology, privately-owned distribution utilities shall propose operating and maintenance expenditure and capital expenditures as forecasted to meet projected demand. Such information, which are relevant under the present PBR regime but are not present in this *Application*, are necessary in the evaluation of the instant case. Simply put, the instant *Application* was filed at the time when the PBR methodology and the amended BSG were not yet in place.

As such, the data contained in the *Application* are insufficient to enable the Commission to make a reasonable determination of Applicant’s BSUP and ACAM, pursuant to the BSG, as amended, and to the PBR methodology. It is, therefore, imperative for IEEC to file a new application using the latest data according to the current rules and requirements, for the Commission to properly render a sound decision. Stated otherwise, the information offered in this case are insufficient for the *Application* to be granted.

Hence, considering that the instant *Application* has already been overtaken by supervening events by reasons of the pertinent Resolutions adopted by the Commission as discussed herein, the instant *Application* is hereby dismissed, without prejudice to IEEC’s filing of new application using sufficient data in compliance with the current rules and requirements of the Commission.

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In view of the foregoing, the Commission is hereby constrained to **DISMISS** the instant *Application* of Ibaan Electric and Engineering Corporation (IEEC), subject to the filing of a new application for approval of a Business Separation and Unbundling Plan (BSUP) and Accounting and Cost Allocation Manual (ACAM) based on the current policies, regulations, business segments, and accounting and cost allocation system promulgated by the Commission.

**SO ORDERED.**

Pasig City, 17 February 2021.



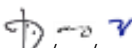
  
**AGNES VST DEVANADERA**  
*Chairperson and CEO*

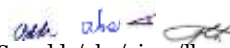
  
**ALEXIS M. LUMBATAN**  
*Commissioner*

  
**CATHERINE P. MACEDA**  
*Commissioner*

  
**FLORESINDA G. BALDO-DIGAL**  
*Commissioner*

  
**MARKO ROMEO L. FUENTES**  
*Commissioner*

  
LS: ema/arg/mccg

  
ROS: addr/abs/ajmo/lfg

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