

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

**REVISED RULES FOR THE ISSUANCE OF LICENSES TO RETAIL
ELECTRICITY SUPPLIERS (RES)**

ERC CASE NO. 2010-008 RM

Pursuant to Sections 29 and 31 of Republic Act No. 9136, hereinafter referred to as the Act, its Implementing Rules and Regulations (IRR), the Philippine Distribution Code (PDC), and the Wholesale Electricity Spot Market (WESM) Rules, the Energy Regulatory Commission (ERC) hereby adopts the following “Revised Rules for the Issuance of Licenses to qualified Retail Electricity Suppliers (RES), hereinafter referred to as the “Revised Rules”.

**ARTICLE I
GENERAL PROVISIONS**

Section 1. Objectives

The following are the objectives of these Revised Rules:

- a. To promote free and fair competition and accountability of Electric Power Industry Participants to achieve greater operational and economic efficiency, thereby rationalizing electricity prices and making them competitive and transparent;
- b. To ensure consumer protection and enhance the competitive operation of the retail electricity market.

Section 2. Guiding Principles

No Person, other than Distribution Utilities (DUs) with respect to their existing franchise areas and those authorized to supply electricity in Economic Zones, may engage in the Supply of Electricity to End-users in the Contestable Market unless such Person has secured an RES License from the ERC.

The RES License shall stipulate all the obligations of an RES consistent with the qualifications and criteria required of an RES established herein and such other laws, rules and regulations pertinent thereto. An RES License shall be issued upon compliance with the standards and requirements herein set forth.

Section 3. Issuance of a License

The ERC shall issue a license to a qualified RES that complies with all applicable requirements stipulated herein such as, but not limited to, qualifications, conditionalities of cross-ownership, market power abuse, anti-competitive behavior and all other requirements which are deemed necessary for the proper implementation of these Revised Rules.

No RES shall be allowed to engage in selling, brokering, marketing or aggregating of electricity to End-users or to participate in the WESM without a valid license from the ERC. A license obtained by a qualified RES from the ERC shall be valid within Philippine territories where retail competition and open access exist.

Section 4. Scope

This set of Revised Rules shall apply to all Retail Electricity Suppliers (RES) and Local RES.

Any of the following may obtain a license to become an RES:

- a. A Generation Company or Affiliate thereof;
- b. A Distribution Utility that shall operate as an RES outside its franchise area or an Economic Zone suppliers that shall operate outside the Economic Zone;
- c. An Affiliate of a Distribution Utility with respect to the latter's Contestable Market within or outside its Franchise Area;
- d. An Independent Power Producer (IPP) Administrator; and
- e. Any other Person intending to engage in the selling, brokering or marketing of electricity to the Contestable Market, consistent with the Act and its Implementing Rules and Regulations.

The ERC shall issue a separate set of Rules for Retail Aggregation prior to the implementation of the second phase of retail competition and open access.

Section 5. Exempted from Securing an RES License

The following entities, referred as the Local RES, shall be allowed to engage in the retail supply of electricity without securing an RES license from the ERC:

- a. Distribution Utilities within their Franchise Areas; and
- b. Persons authorized by appropriate entities to supply electricity within their respective Economic Zones.

At least thirty (30) days prior to its intended operations as a Local RES, an entity shall notify the ERC in writing of the intended date of actual operation. Upon notification, said entity is deemed bound by the provisions of Article VI and Article VII

hereof, and shall be required to provide ERC with basic information provided in Section 3, Article III hereof. For purposes of these Rules, actual operations shall include advertising, marketing and brokering.

Section 6. Definition of Terms

Act	Republic Act No. 9136, otherwise known as “Electric Power Industry Reform Act of 2001”.
Affiliate	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 another Person. Affiliates shall include a subsidiary company and parent company and subsidiaries, directly or indirectly, of a common parent.
Applicant	A Person or entity seeking to obtain a license to become a supplier of retail electricity to Contestable Markets.
Code of Conduct for Competitive Retail Market Participants	The set of rules promulgated by the ERC to govern the conduct of Competitive Retail Market Participants, their stockholders, directors, officers and employees, within the boundaries of fair competition.
Competition Rules and Complaint Procedures	The rules promulgated by the ERC to promote and ensure competition in the electric power industry pursuant to the Act and its Implementing Rules and Regulations.
Contestable Market	The electricity End-users who have a choice of a supplier of electricity, as may be determined by the ERC in accordance with the Act.
Control	The power to direct or cause the direction of the management policies of a Person by contract, agency, or otherwise.
Distribution Utility (DU)	Any electric cooperative, private corporation, government-owned utility or existing local government unit which has an exclusive franchise to operate a distribution system in accordance with its franchise and the Act,

including DUs operating in the Economic Zones.

Economic Zones (EZs)

Selected areas which are highly developed or have the potential to be developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers, including but not limited to the following: Industrial Estates (IEs), Export Processing Zones (EPZs), Free Trade Zones, Information Technology Parks and Tourist/Recreational Centers, the “Bases Conversion Development Authority” or “BCDA”, “Cagayan Economic Zone Authority” or “CEZA”, “Clark Development Corporation” or “CDC”, “Philippine Economic Zone Authority” or “PEZA”, “Phividec Industrial Authority” or “PIA”, and “Zamboanga City Economic Zone Authority” or “ZCEZA.

Electric Power Industry Participant

Any Person or entity engaged in the generation, transmission, distribution or supply of electricity.

End-user

Any Person or entity requiring the supply and delivery of electricity for its own use.

Energy Regulatory Commission (ERC)

The independent and quasi-judicial regulatory agency created under Section 38 of the Act.

Generation Company

Any Person or entity authorized by the ERC to operate facilities used in the generation of electricity.

Independent Market Operator (IMO)

A person who is financially and technically capable, with proven experience and expertise of not less than two (2) years as a leading independent market operator of similar or larger size electricity markets endorsed jointly by the Department of Energy (DOE) and Electric Power Industry Participants to assume the functions, assets and liabilities from the Autonomous Group Market Operator (AGMO), pursuant to Section 30 of the Act.

Independent Power Producer (IPP)

An existing power generating entity which is not owned by NPC.

IPP Administrator	Qualified independent entities appointed by PSALM Corporation which shall administer, conserve and manage the contracted energy output of NPC IPP contracts.
Local Retail electricity Supplier (Local RES)	The non-regulated business segment of the DU catering to the Contestable Market only within its franchise area, or Persons authorized by appropriate entities to supply electricity within their respective Economic Zones.
Market Operator	The “Autonomous Group Market Operator” or “AGMO” constituted by the DOE under Section 30 of the Act, with equitable representation from Electric Power Industry Participants, initially under the administrative supervision of the TRANSCO, which shall undertake the preparatory work and initial operation of the WESM until the creation of an Independent Market Operator which shall assume the functions, assets and liabilities of the AGMO.
National Power Corporation (NPC)	The government corporation created under Republic Act No. 6395, as amended.
National Grid Corporation of the Philippines (NGCP)	The corporation awarded the concession to operate the transmission facilities of the National Transmission Corporation pursuant to the Act and Republic Act No. 9511.
National Transmission Corporation (TRANSCO)	The corporation organized pursuant to Section 8 of the Act to acquire all the transmission assets of the NPC.
Person	A natural or juridical person, as the case may be.
Philippine Stock Exchange (PSE)	The corporate body duly organized and existing under Philippine law, licensed to operate as a securities exchange by the Securities and Exchange Commission (SEC);
Retail Aggregation	The joining of two or more End-users within a contiguous area into a single purchasing unit, wherein such purchasing unit shall be part of the Contestable Market, as provided

in Section 31 of the Act.

Retail Competition

The provision of electricity to the Contestable Market by the RES through Open Access.

Retail Electricity Supplier (RES)

Any Person or entity authorized by the ERC to sell, broker, market or aggregate electricity to the End-users.

Retail Electricity Supplier's (RES) License

The authority granted by the ERC to any person or entity to act as Retail Electricity Supplier.

Retail Rate

The total price paid by End-users consisting of the charges for generation, transmission and related ancillary services, distribution, supply and other related charges for electric service.

Retail Supply Contract (RSC)

The contract entered into by and between the RES or Local RES and the Contestable Customer.

Rules on Customer Switching (RCS)

The set of rules promulgated by ERC which prescribes the standardized business rules for interaction between and among the DU, Central Registration Body (CRB), RES or Local RES, and Supplier of Last Resort (SOLR) relating to the commercial transfer of a Contestable Customer from one competitive electricity supplier to another.

Supply of Electricity

The sale of electricity by a party other than a generator or a distributor in the franchise area of a distribution utility using the wires of the distribution utility concerned;

Universal Charge

The charge, if any, imposed for the recovery of the stranded cost and other purposes pursuant to Section 34 of the Act.

Wholesale Electricity Spot Market (WESM)

The wholesale electricity spot market established pursuant to Section 30 of the Act.

ARTICLE II
QUALIFICATIONS, CRITERIA AND LIMITATIONS
OF A RETAIL ELECTRICITY SUPPLIER

Section 1. The following may apply as an RES:

- a. A natural person of legal age, duly registered with the Department of Trade and Industry (DTI) as engaged in the retail electricity supply business.
- b. A juridical person duly registered with the Department of Trade and Industry (DTI), Securities and Exchange Commission (SEC) and/or the Cooperative Development Authority (CDA) as an entity engaged in the retail electricity supply business.

Section 2. Credit Standards

An Applicant must possess any of the following credit standards to demonstrate that it has the financial capability required to undertake this business:

- i. Investment grade credit rating by a reputable credit bureau; or
- ii. Unused cash resources in an amount equivalent to the Applicant's expected monthly billings, or Five Million Pesos (PhP 5,000,000.00), whichever is higher, with an attached proof of creditworthiness confirmed through the certification of companies (including Generation Companies, NGCP and Distribution Utilities) that have extended credit line to the Applicant; or if the Applicant is an affiliate or subsidiary and the Applicant has yet to commence operations as an RES, a sworn statement from the parent company that it shall infuse the required working capital of the Applicant for its RES business, with supporting documents regarding the parent company's capability to support the Applicant.

Once an Applicant has been issued a RES license and has started operations, the RES shall update its unused cash resources to approximate the actual monthly billings on a quarterly basis to reflect the changes in the number of Contestable Customer it serves.

Section 3. Security Deposit Requirements

An Applicant who has collected cash deposits from its customers based on its projected sales, shall be required to deposit the actual cash amount collected in an escrow, making said cash deposit unavailable for use in financing said Applicant's working capital requirements. The escrow amount shall be reconciled every close of each month to ensure that it is equal to the customer's cash deposit at the end of the month, and such amount shall be maintained until the next reconciliation. An Applicant shall submit to the ERC a certification from a commercial bank that it can

avail of said bank's escrow facility, or a certification stating the cash amount deposited in escrow. Likewise, Applicant shall be required to pay its customers an annual interest on collected deposits equivalent to the interest earnings of the amount in escrow. Such interest may also be deducted to the customer's current billing.

A Local RES shall likewise comply with the security deposit requirements in the same manner as an RES license applicant.

The above notwithstanding, the Applicant may draw sufficient funds from the escrow account in case the customer commits a breach of its obligations to the Applicant, details of which should be subject to agreement between the parties and shall be consistent with the process in Section 4.8.4.3, Article IV of the Distribution Services and Open Access Rules on RES Customer Failure to Pay the RES. On the other hand, should the RES/Local RES fail in its obligation to supply its customer, as provided in their escrow agreement, the latter may claim refund on its deposit and interest earned, less any outstanding obligations.

Section 4. Technical and Managerial Requirements

The Applicant shall submit documents in support of its technical and managerial capability to ensure reliable electricity supply in accordance with its customer contracts, such as but not limited to the following:

- a. Ability and knowledge to operate and manage an electricity supply business, which involves the requirement to understand the Commission's rules, codes and guidelines, and their application.
- b. Ability to set-up and operate within the customer switching system approved by ERC, an automated information exchange associated with business to business (B2B) communications and transactions.
- c. Technical ability to enter into any necessary access or interconnection arrangements or other required contracts with NGCP and one or more Distribution Utilities;
- d. Technical ability to secure generation through compliance with all applicable requirements of the Market Operator, if applicable;
- e. Technical ability to meet transactional requirements with the Market Operator or contractual obligations with any industry participant, if applicable;
- f. Adequate staffing and employee training to meet all service level commitments.

Section 5. Ownership Limitation and Restrictions

- a. An RES or Affiliate thereof or any stockholder, director or officer or any of their relatives within the fourth (4th) civil degree of consanguinity or affinity, legitimate

or common law, shall not own any interest, directly or indirectly, in the Philippine Electricity Market Corporation (PEMC) and the IMO.

- b. Except for ex-officio government-appointed representatives, no Person who is an officer or director of the TRANSCO or NGCP shall be an officer or director of any RES.
- c. An RES or Local RES, or its stockholders, directors or officers thereof, or any of their relatives within the fourth civil degree of consanguinity and their respective spouses, shall not be allowed to hold any shares of stock in NGCP: *Provided*, That the cross-ownership prohibition under this provision shall not apply to a relative by blood or marriage, if such relative of any stockholder, director or officer of NGCP has no employment, consultancy, fiduciary, contractual, commercial or other economic relationship or interest in NGCP, or conversely, if such relative of any stockholder, director or officer of an RES or Local RES has no employment, consultancy, fiduciary, contractual, commercial or other economic relationship or interest in the RES or Local RES: *Provided, further*, That this prohibition on cross-ownership shall not apply to: (a) ownership of shares of stock in a company listed in the Philippine Stock Exchange (PSE) even if such listed company is an RES or Local RES, if such share ownership is not more than one *per centum* (1%) of the total outstanding shares of such listed RES or Local RES; or (b) ownership of shares of stock which is not more than one *per centum* (1%) in a company listed in the PSE which owns or controls shares of stock in NGCP: *Provided, moreover*, That such owner of shares of stock in the listed corporate stockholder of the NGCP shall not own more than one per centum (1%) of the shares of stock or equity interest in any RES or Local RES.

ARTICLE III REQUIREMENTS AND PROCEDURES

Section 1. The Applicant shall secure an RES License from the ERC prior to engaging in the Supply of Electricity to End-users in the Contestable Market. Provided all the requirements shall have been complied with, the ERC shall approve, disapprove, or reject an application within sixty (60) working days from the date of application unless ERC shall have required the submission of additional information, or ordered on reasonable grounds, the postponement of final action on an application.

Section 2. Basic Requirements for RES license application. The following documents and information are required to be submitted by an Applicant:

- a. Articles of Incorporation/Partnership with Certificate of Registration (for juridical person);
- b. Business Name Registration Certificate (for single proprietorship);
- c. Mayor's Permit;
- d. RES Information Sheet (form to be prescribed by ERC);

- e. Certified true copies of audited balance sheet, cash flow, and income statement for the two most recent twelve (12)-month periods, or for the life of the business if it has been in existence for less than two (2) years, if applicable;
- f. If an Affiliate, certified true copies of audited balance sheet, cash flow and income statements for the two most recent 12-month periods of its parent company;
- g. Projected Five-year Financial Statements and Five-year Business Plan (outline to be provided by ERC);
- h. List of Affiliates engaged in the generation, distribution and retail Supply of Electricity, and their corresponding business addresses;
- i. Sworn Statement that the Applicant shall comply with the Code of Conduct for Competitive Retail Market Participants and the Competition Rules and Complaint Procedures;
- j. Sworn statement that the Applicant shall comply with the ownership limitations as provided in Section 5, Article II hereof;
- k. Proof of payment of application fees;
- l. Documents referred to in Sections 2,3 and 4, Article II hereof;
- m. List of directors and officers, including curriculum vitae; and
- n. Such other information or documents that the ERC may require.

Section 3. Basic Requirements for an intending Local RES

- a. Local RES Information Sheet (form as prescribed by the ERC);
- b. List of Affiliates engaged in the generation, distribution and retail Supply of Electricity, and their corresponding business addresses;
- c. List of directors and officers, including curriculum vitae; and
- d. Such other information or documents that the ERC may require.

Section 4. In case of renewal of its RES License, the RES shall submit the following requirements:

- a. Application for Renewal of License;
- b. Proof of Payment of Renewal Fees;
- c. Security Deposit commensurate to amount collected from customers, if applicable;

- d. Business Permit;
- e. Latest RES Information Sheet;
- f. Recent annual report to shareholders together with Audited Financial Statements;
and
- g. Such other information or documents that ERC may require.

Section 5. All submissions shall be certified under oath by the Applicant or any duly authorized officer in case of a juridical person.

Section 6. Failure to submit the above requirements to the ERC shall be a ground for denial of application or renewal of license.

Section 7. In order to avoid potential customer abuse by licensed RES, the ERC may take action regarding the non-renewal and/or revocation of RES license for just cause, which includes, but is not limited to, the following:

- a. Providing false or misleading information to customers and the ERC;
- b. Failure to maintain credit standards in accordance with Section 2, Article 2 hereof;
- c. Bankruptcy, insolvency, or the inability to meet financial obligations on a reasonable and timely basis;
- d. A pattern of not responding to ERC inquiries or customer complaints in a timely fashion;
- e. Conviction of a criminal charge by the licensee, a person controlling the RES, or principal employed by the RES, or any crime involving fraud, theft, or deceit related to the RES' service;
- f. Not providing RES service to any customer within sixty (60) months of the issuance of a RES license once retail competition and open access has commenced;
- g. Other significant violations, including the failure or a pattern of failures to meet the requirements of these Rules and violations to other retail competition rules and ERC issuances.

ARTICLE IV PAYMENT OF FEES

The Applicant shall pay the application fee of Three Thousand Pesos (Php3,000.00) upon its filing of application or renewal of license. Upon issuance or renewal of an RES License, the Applicant shall likewise pay the RES License fee equivalent to whichever is higher among the following:

a. Seventy five (P 0.75) centavos for each one hundred pesos of whichever is applicable of the following:

1. The capital stock subscribed and paid up or if the applicant is a Partnership or Sole Proprietorship, the capitalization or the total capital invested into the business; or
2. In the event an Applicant has two or more businesses which are electricity related, the capitalization allocated for the supply business in accordance with the Business Separation Guidelines (BSG), As Amended,; or

b. Ten Thousand Pesos (PhP10,000.00).

ARTICLE V TERM OF LICENSE

The RES License issued by the ERC after the promulgation of these Revised Rules shall have a term of five (5) years, renewable at the end of every term. The RES License shall be non-transferable and shall be valid for the stated terms unless otherwise revoked by ERC.

The RES shall apply for a renewal of License not later than sixty (60) days before the expiration of its current license.

ARTICLE VI REPORTORIAL REQUIREMENTS

Section 1. Information. From commencement of Retail Competition, each RES and Local RES shall file a monthly report or when deemed necessary by ERC containing the following information, in a form prescribed by the ERC:

- a. **Average prices.** Average retail sale prices broken down by residential, small general service, and large general service customers and by transmission and distribution service territories; for each category, the average retail sale price is the total revenue divided by the total kilowatt-hour sales;
- b. **Revenues.** Total revenues from kilowatt-hour sales to customers;
- c. **Customers.** List and type of customers served, and amount of deposits that have been collected from each customer.
- d. **Bank certification.** Certification from reputable bank, stating the amount deposited in escrow.
- e. **Mayor's permit.** Annual requirement for RES.
- f. **Other information.** Other information that the ERC deems necessary or useful in carrying out its duties and obligations.

Section 2. Confidentiality. For good cause shown, the ERC shall treat certain information identified by the RES and/or Local RES as restricted with strict confidentiality by subjecting the same to appropriate protective measures.

ARTICLE VII OBLIGATIONS OF RETAIL ELECTRICITY SUPPLIERS

Section 1. An RES and/or Local RES that is also engaged in power generation, distribution and other electricity related businesses shall ensure that its supply business activities and rates are functionally and structurally unbundled, as provided for in Rule 10 of the IRR of the Act on the Structural and Functional Unbundling of Electric Power Industry Participants. In said unbundling, the RES shall ensure that there is no cross subsidization between and among its business activities, in accordance with the ERC-approved Business Separation and Unbundling Plan.

Section 2. An RES and/or Local RES shall provide updated information in a format prescribed by ERC to enable the contestable market to make informed choices.

Section 3. An RES and/or Local RES shall, at all times, adopt the business to business (B2B) interface system approved by ERC.

Section 4. An RES and/or Local RES shall identify and segregate in its bills to End-users the components of the Retail Rate as follows: generation, transmission, distribution, supply and other related charges for electric service. It shall likewise identify and segregate the components of its Supplier's Charge as required by the Act.

Section 5. An RES shall comply with the Creditworthiness Criteria and such financial security to secure proper performance as an RES as provided in Section 2, Article II of these Rules and as may be determined by ERC to protect the interest of End-users in Contestable Markets.

Section 6. An RES and/or Local RES shall ensure that the advance deposits collected from its customers are sufficiently covered by security deposits on escrow at all times.

Section 7. An RES and/or Local RES which sources power from the wholesale electricity spot market shall comply with the WESM Rules at all times.

Section 8. An RES and/or Local RES shall comply with the Competition Rules and Complaint Procedures as may be prescribed by the ERC concerning abuse of market power, cartelization and any other anti-competitive or discriminatory behavior.

Section 9. An RES and/or Local RES is required to collect Universal Charge from all of its End-users on a monthly basis, and shall comply with the Rules Governing the Collection of Universal Charge and the Guidelines and Procedures Governing Remittances and Disbursements of Universal Charge, issued by ERC.

Section 10. An RES or Local RES that intends to cease operations shall notify the ERC at least thirty (30) days prior to ceasing operations and shall provide proof of refund of any monies owed to customers, as well as a settlement plan or proof of payment of any amount owed to a DU, NGCP, WESM or a Generation Company. Thereafter, the RES License, or authority of Local RES to supply, is deemed cancelled.

Section 11. An RES and/or Local RES shall inform the ERC of any material change to the information supplied in its documentary requirements under Article II and III hereof within three (3) days from the occurrence of such event.

Section 12. An RES and/or Local RES shall comply with the provisions of the Act and its Implementing Rules and Regulations, the applicable provisions of the Philippine Distribution Code, the Distribution Services and Open Access Rules (DSOAR), As Amended, the Code of Conduct for Competitive Retail Market Participants, and all applicable rules and regulations prescribed by ERC, including the reportorial requirements prescribed in these Rules.

ARTICLE VIII SANCTIONS

All Persons already engaged in retail supply of electricity are required to secure a license from the ERC within ninety (90) days from the declaration of open access by the ERC. Any Person acting as an RES without a valid license issued by ERC, except those persons or entities mentioned in Article I, Section 2 hereof, shall be subjected to appropriate sanctions provided under existing laws, rules and regulations.

The ERC shall impose the appropriate fines and penalties, including the revocation or suspension of license, for any violation or non-compliance with these Revised Rules, pursuant to the “Guidelines to Govern the Imposition of Administrative Sanctions in the Form of Fines and Penalties Pursuant to Section 46 of R.A. 9136” .

ARTICLE IX MONITORING

ERC shall monitor the compliance of RES with the terms and conditions of their License and the provisions of these Revised Rules.

ARTICLE X SEPARABILITY

If for any reason, any section of these Revised Rules is declared unconstitutional or invalid, other parts or sections hereof not affected thereby shall continue to be in full force and effect.

**ARTICLE XI
EFFECTIVITY**

These Revised Rules shall take effect on the fifteenth (15th) day following its publication in a newspaper of general circulation in the country.

Pasig City, _____, 2010.

ZENAIDA G. CRUZ-DUCUT
Chairperson

RAUF A. TAN
Commissioner

ALEJANDRO Z. BARIN
Commissioner

MARIA TERESA A.R. CASTAÑEDA
Commissioner

JOSE C. REYES
Commissioner