NATIONAL ADMINISTRATIVE REGISTER · MAY 23, 2011

A RESOLUTION ADOPTING THE RULES REQUIRING GENERATION COMPANIES AND DISTRIBUTION UTILITIES WHICH ARE NOT PUBLICLY LISTED TO OFFER AND SELL TO THE PUBLIC A PORTION OF NOT LESS THA...

ERC RESOLUTION NO. 09, S. 2011, May 23, 2011

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WHEREAS, Section 2 (d) of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA) provides that it is the policy of the State to enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and distribution sectors;

WHEREAS, Section 43 (t) of the EPIRA and Rule 3, Section 4 (m) of its IRR provide that the Energy Regulatory Commission (ERC) shall perform such other regulatory functions as are appropriate and necessary in order to ensure the successful restructuring and modernization of the electric power industry, such as, but not limited to, the rules and guidelines under which generation companies and DUs which are not publicly listed shall offer and sell to the public a portion of not less than fifteen percent (15%) of their common shares of stock: Provided, however, That generation companies, DUs or their respective holding companies that are already listed in the PSE are deemed in compliance. For existing companies, such public offering shall be implemented not later than five (5) years from the effectivity of this Act. New companies shall implement their respective public offerings not later than five (5) years from the issuance of their certificate of compliance.

WHEREAS, on August 17, 2005, the ERC promulgated Resolution No. 18, Series of 2005, entitled "Implementing Section 43(t) of Republic Act No. 9136 and Rule 3, Section 4(m) of the Implementing Rules and Regulations (IRR) of the said Act" directing the generation companies and DUs which are not publicly listed in the PSE, to offer and sell to the public a portion of not less than fifteen percent (15%) of their common shares of stocks, and to submit, within thirty (30) days from public offering, reports to the ERC on the extent of their compliance therewith together with Certifications from the PSE showing the number of shares listed, names of the shareholders presently owning said shares and other relevant information for monitoring and verification;

WHEREAS, on May 10, 2006, Resolution No. 21, Series of 2006, entitled "A Resolution Suspending the Effectivity and Implementation of Certain Rules Issued by the Energy Regulatory Commission" was promulgated whereby the ERC suspended the effectivity and implementation of Resolution No. 18, Series of 2005, pending the conduct and termination of public hearings thereon;

WHEREAS, the ERC sees the need to issue these Rules to implement the mandate of the EPIRA on public offering;

WHEREAS, on September 7, 2010, the ERC posted on its website the proposed Rules to solicit comments from interested parties until September 22, 2010. Various parties submitted their respective comments thereon;

WHEREAS, on October 4, 2010, a public consultation on the proposed Rules was conducted by the ERC which was attended by various interested parties;

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WHEREAS, on December 15, 2010, the proposed Rules was again posted on the ERC's website to solicit comments from interested parties not later than January 31, 2011;

WHEREAS, after considering all the comments received from various interested parties, the ERC formulated the Rules on public offering;

NOW, THEREFORE, be it RESOLVED, as the Energy Regulatory Commission (ERC) hereby RESOLVES, to ADOPT the "Rules Requiring Generation Companies and Distribution Utilities Which Are Not Publicly Listed to Sell and Offer to the Public a Portion of Not Less than Fifteen Percent (15%) of Their Common Shares of Stock Pursuant to Section 43(t) of Republic Act No. 9136 and Rule 3, Section 4(m) of its Implementing Rules and Regulations (IRR)", hereto attached as Annex "A"[*] and made an integral part of this Resolution.

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

Let copies of this Resolution be furnished the University of the Philippines Law Center-Office of the National Administrative Register (UPLC-ONAR) and all generation companies and distribution utilities.

Adopted: 23 May 2011

(SGD.) ZENAIDA G. CRUZ-DUCUT

Chairperson

(SGD.) RAUF A. TAN (SGD.) ALEJANDRO Z. BARIN

Commissioner Commissioner

(SGD.) MARIA TERESA A.R. CASTANEDA (SGD.) JOSE C. REYES

Commissioner Commissioner

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