

A RESOLUTION ADOPTING THE RULES TO GOVERN THE SUBMISSION, EVALUATION AND APPROVAL OF LEASE OF PROPERTY BY DISTRIBUTION UTILITIES

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/80a46066af10/>

WHEREAS, Section 20 (g) of Commonwealth Act No. 146, as amended, (C.A. 146) provides that subject to established limitations and exceptions and saving provision to the contrary, it shall be unlawful for any public service or for the owner, lessee or operator thereof, without the approval and authorization of the Commission to sell, alienate, mortgage, encumber or lease its property, franchises, certificates, privileges, or rights, or any part thereof;

WHEREAS, Section 26 of Republic Act No. 9136 (R.A. 9136), otherwise known as the “Electric Power Industry Reform Act of 2001 ” (EPIRA) and Section 5 (c), Rule 7 of its Implementing Rules and Regulations (IRR) authorize distribution utilities (DUs) to engage, directly or indirectly, in any related business undertaking which maximizes the utilization of their assets: Provided, That a portion of the net income derived from such undertaking utilizing assets which form part of the rate base shall be used to reduce its distribution wheeling charges as determined by the Commission: Provided, further, That such portion of the net income used to reduce their distribution wheeling charges shall not exceed fifty percent (50%) of the net income derived from such undertaking: Provided, finally, That separate accounts are maintained for each business undertaking to ensure that the distribution business shall neither subsidize in any way such business undertaking nor encumber its distribution assets in any way to support such business;

WHEREAS, Rule 21 of the Commission’s Rules of Practice and Procedure allows any interested person to file a petition to initiate rule-making before the Commission for the adoption, amendment or repeal of a Rule;

WHEREAS, on July 30, 2009, the Manila Electric Company (MERALCO) and Private Electric Power Operators Association, Inc. (PEPOA) filed a Petition for the issuance of Guidelines to Govern the Submission, Evaluation and Approval of Lease of Property by DUs, which was docketed as ERC Case No. 2009-009 RM;

WHEREAS, on August 13 to 26, 2009, the Commission posted on its website the draft “Rules to Govern the Submission, Evaluation and Approval of Lease of Property by DUs (proposed Rules)” for comments from industry stakeholders. However, no comment was received from any stakeholder;

WHEREAS, the Commission issued an Order dated August 13, 2009 setting the said petition for public hearing on September 14, 2009 at the Commission’s Main Office. At the said hearing, MERALCO and PEPOA presented to the Commission their proposed Rules for approval;

WHEREAS, the following objectives necessitate the promulgation of the proposed Rules:

1. To provide the DUs with a uniform system of filing application for approval of lease of its properties;
2. To enable the DUs to maximize the utilization of their assets by allowing them to lease their available spaces/properties;
3. To protect public interest as it is affected by rates and services of DUs and other providers of electric power;

4. To ensure the economic, orderly and efficient development of DUs' resources that concern public interest; and
5. To ensure that the lease of equipment, materials and properties of DUs are transparent and compliant with applicable laws and accepted industry practices and standards.

NOW THEREFORE, the Commission, after thorough and due deliberation, RESOLVED, as it hereby RESOLVES to ADOPT the "Rules to Govern the Submission, Evaluation and Approval of Lease of Property by Distribution Utilities", copy of which is hereto attached as "Annex A".

This Resolution shall take effect fifteen (15) days following 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 Distribution Utilities.

(SGD.) ZENAIDA G. CRUZ-DUCUT
Chairperson

(SGD.) RAUF A. TAN
Commissioner

(SGD.) ALEJANDRO Z. BARIN
Commissioner

(SGD.) MARIA TERESA A.R. CASTAÑEDA
Commissioner

(SGD.) JOSE C. REYES
Commissioner

Annex "A"

Guidelines to Govern the Submission, Evaluation and Approval of Lease of Property by Distribution Utilities

Pursuant to Sections 26 and 43 of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001 (EPIRA)", Rules 3 and 7 of its Implementing Rules and Regulations (IRR), and Section 20 (g) of Commonwealth Act No. 146 (CA 146), as amended, the Energy Regulatory Commission (ERC) hereby promulgates and adopts the following guidelines to govern the submission, evaluation and approval of lease of property by a distribution utility (DU).

ARTICLE I GENERAL PROVISIONS

1.1 Objectives

- 1.1.1 To provide the DUs with a uniform system of filing application for approval of leases of its properties.
- 1.1.2 To enable the DUs to maximize the utilization of their assets by allowing them to lease available spaces/properties.
- 1.1.3 To protect public interest as it is affected by rates and services of DUs and other providers of electric power.
- 1.1.4 To ensure the economic, orderly and efficient development of DUs' resources that concern public interest.
- 1.1.5 To ensure that the lease of equipment, materials and properties of DUs are transparent and compliant

with applicable laws and accepted industry practices and standards.

1.2 Guiding Principles

Section 26 of the EPIRA and Rule 7, Section 5(c) of its IRR provide that a DU may, directly or indirectly, engage in any related business undertaking which maximizes the utilization of its assets: Provided that, a portion of the net income derived from such undertaking which utilizes assets that are part of the rate base shall be used to reduce its distribution wheeling charges as determined by the ERC, and that quality of service shall not deteriorate pursuant to the standards provided in the Distribution Code and Rule 10 of the IRR of the EPIRA on Structural and Functional Unbundling of Electric Power Industry Participants.

To this end, the DU shall submit to the ERC the appropriate documents to effect the following: (i) A portion of the net annual income derived from such undertaking which utilizes assets that are part of the rate base shall be used to reduce its Distribution Wheeling Charges: Provided that, such portion shall not exceed fifty percent (50%) of the net income derived from such undertaking. (ii) Separate accounts shall be maintained for each business undertaking to ensure that the distribution business shall neither subsidize in any way such business undertaking nor encumber its distribution assets in any way to support such business. The Business Separation Guidelines (BSG) provides the framework and rules for the implementation of the requirements of these sections of the EPIRA and its IRR.

Furthermore, Section 20 (g) of CA 146 provides that it shall be unlawful for any public service or for the owner, lessee or operator thereof, without the approval and authorization of the Commission previously had to, among other things, sell, alienate, mortgage, encumber or lease its property, franchises, certificates, privileges, or rights, or any part thereof or merge or consolidate its property, franchises, privileges or rights, or any part thereof, with those of any other public service.

1.3 Scope of Application

These Guidelines apply to the following:

- 1.3.1 Electric Cooperatives;
- 1.3.2 Privately-Owned Distribution Utilities;
- 1.3.3 Local Government Unit (LGU) Owned-and-Operated Distribution Systems; and
- 1.3.4 Qualified Third Parties (QTPs) operating in waived areas of franchised DU.

1.4 Definition of Terms

Act – Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001 or EPIRA.”

Business Separation Guidelines – The rules and principles for the clear separation of accounts between regulated and non-regulated business activities and the structural and functional unbundling requirements that must be implemented and observed by electric power industry participants.

Distribution Related Business – A business undertaking by a DU utilizing its system and non-system assets/facilities/staff/ lots for non-electricity related business.

Distribution System – The system of wires and associated facilities belonging to a franchised DU, extending between the delivery points on the transmission, sub-transmission system, or generating plant connection and the point of connection to the premises of the end-user.

Distribution System Assets – Those assets which form part of the DU’s Regulatory Asset Base (RAB) and are part of its electric distribution system.

Distribution Utility – Any electric cooperative, private corporation, government-owned utility, or existing LGU that has an exclusive franchise to operate a distribution system in accordance with the Act.

Distribution Wheeling Charge – Cost or charge regulated by the ERC for the use of a distribution system and/or availment of related services.

Energy Regulatory Commission (ERC) – The regulatory agency created under the Act.

Non-Regulatory Asset Base (Non-RAB) Property – Assets owned by the DU but not included in the DU's RAB and not used to provide Distribution Services.

Non-System Assets – The DU's RAB assets or properties which do not form part of its distribution system, but are essential in the conduct and operation of electric service business.

Philippine Distribution Code (PDC)/Distribution Code – The set of basic rules, requirements, procedures, and standards to ensure the safe, reliable, secured and efficient operation, maintenance, and development of the distribution systems in the Philippines. It also defines and establishes the technical aspects of the working relationship of the DUs and all users of the Distribution System.

Pole Space Rental – An undertaking by a DU to allow the use of free spaces in its distribution and sub-transmission poles for information and communications technology infrastructure, upon reasonable compensation.

Regulatory Asset Base (RAB) Property – Those assets employed by a Regulated Entity to provide efficient Regulated Distribution Services. It covers the Regulated Distribution System assets as well as the Non-System Assets required to support the delivery of Regulated distribution Services.

1.5 Classification of Property / Asset for Lease

1.5.1 Regulatory Asset Base Property

DUs shall file with the ERC applications for authority to lease its RAB properties, classified according to the following:

- (1) Pole space rental/pole attachment;
- (2) Lease of lots/space; and/or
- (3) Lease of other facilities/equipment/materials.

1.5.2 Non-Regulatory Asset Base Property

Since these pertain to assets which are not included in the DU's RAB, then its lease does not have any significant impact or effect on the operations of the DU in providing efficient Regulated Distribution Services. For this reason, the lease of non-RAB property is deemed approved by the ERC upon implementation or execution of the lease contract.

ARTICLE II

APPLICATIONS AND REQUIREMENTS

2.1 Application

DUs shall file applications with the ERC for authority to lease RAB properties.

Such application shall be verified by an authorized representative of the DU and shall be filed with the ERC together with properly labeled three (3) hard copies and three (3) electronic copies of the following requirements:

2.1.1 Standard Lease Contract that will govern the transactions between the DU, as lessor, and the prospective lessee specifying the standards of the DU which the lessee must comply with;

2.1.2 Description of the properties to be leased; and

2.1.3 Secretary's Certificate approving the lease and the filing of the application.

2.2 Evaluation and Approval

Within fifteen (15) days from the receipt of the verified application, the ERC shall determine the completeness of the documents submitted and notify the concerned applicant of the results of its findings in writing. In so doing, the ERC shall undertake either of the following:

- i. Notify the concerned DU to submit additional documents necessary for the complete evaluation of the application; or
- ii. Notify the concerned DU to pay the required filing/docketing fee, if all the submitted requirements were found in order.

Upon filing of the application, the Commission may, on its own or upon motion, grant the issuance of a Provisional Authority (PA) based on the allegations of the application and on such other documents attached thereto or submitted by the parties.

During the ERC review, its staff may request additional documents from the DU on issues that the ERC believes need more clarification.

Any petition, application or action to be filed herein shall be governed by the existing Rules of Practice and Procedure governing hearings before the ERC, the pertinent provisions of the EPIRA or its IRR and other related laws.

Any application for authority to lease RAB property shall be decided by the ERC within ninety (90) days from the time the application is submitted for resolution of the Commission.

2.3 Reportorial Requirements

In addition to the requirements in Article II, Section 2.1 hereof, a DU that engages in the lease of its RAB property shall every year from the execution or renewal of the lease contract, submit to the ERC its written compliance with Section 26 of the Act and Rule 7, Section 5 of its Implementing Rules and Regulations, requiring that not more than 50% of its net annual income derived from distribution-related business undertakings shall be used to reduce its Distribution Wheeling Charges.

For DUs that are governed by the Performance Based Regulation (PBR), the annual verification report that it submits to the ERC pursuant to the Rules for Distribution Wheeling Rates Guidelines (RDWR) and the annual submission of accounting separation statements as required by the BSG shall be sufficient compliance for purposes of this section.

Moreover, the DUs granted with authority to lease their RAB property shall submit the signed and notarized copy of every lease contract, within thirty (30) days from its execution. In the same vein, DUs should notify the ERC of the lease of non-RAB property within 30 days from the implementation or execution of the lease contract through the submission of its signed and notarized copy.

ARTICLE III

TRANSITORY PROVISIONS

All contracts of lease on RAB and non-RAB properties executed prior to the effectivity of these guidelines which

have not been covered by any application filed before the ERC shall be submitted to the ERC for approval within three (3) months from the effectivity of these Guidelines.

ARTICLE IV

ADMINISTRATIVE SANCTIONS

Any violation of these Guidelines shall be subject to the penalty which the ERC may impose in accordance with its Guidelines to Govern the imposition of Administrative Sanctions in the form of Fines and Penalties pursuant to Section 46 of the EPIRA.

ARTICLE V

SEPARABILITY CLAUSE

If for any reason, any provision of these Guidelines is declared unconstitutional or invalid by final judgment of a competent court, the other parts or provisions hereof which were not affected thereby shall continue to be in full force and effect.

ARTICLE VI

REPEALING CLAUSE

Any rule or regulation inconsistent with the provisions of these Guidelines is hereby repealed and modified accordingly.

ARTICLE VII

EFFECTIVITY

These Guidelines shall take effect fifteen (15) days after its publication in a newspaper of nationwide circulation.

Pasig City, July 19, 2010

(SGD.) ZENAIDA G. CRUZ-DUCUT

Chairperson

(SGD.) RAUF A. TAN

Commissioner

(SGD.) ALEJANDRO Z. BARIN

Commissioner

(SGD.) MARIA TERESA A.R. CASTAÑEDA

Commissioner

(SGD.) JOSE C. REYES

Commissioner

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.