NATIONAL ADMINISTRATIVE REGISTER · AUGUST 10, 2009

A RESOLUTION CLARIFYING RESOLUTION NO. 01, SERIES OF 2009, ENTITLED "A RESOLUTION ADOPTING THE AMENDMENTS TO THE GUIDELINES TO THE SALE AND TRANSFER OF TRANSCO'S SUBTRANSMISSION...

ERC RESOLUTION NO. 18, S. 2009, August 10, 2009

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WHEREAS, on October 17, 2003, the Energy Regulatory Commission (ERC) issued the "Guidelines to the Sale and Transfer of the TRANSCO's Subtransmission Assets and the Franchising of Qualified Consortiums"

WHEREAS, on March 17, 2005, the ERC amended the said Guidelines in Resolution No. 03, Series of 2005, entitled "In the Matter of Amending the Guidelines for the Sale and Transfer of the TRANSCO's Subtransmission Assets and the Franchising of Qualified Consortiums";

WHEREAS, on January 26, 2009, the ERC further amended the said Guidelines in Resolution No. 01, Series of 2009, entitled "A Resolution Adopting the Amendments to the Guidelines to the Sale and Transfer of TRANSCO's Subtransmission Assets and the Franchising of Qualified Consortiums'.

WHEREAS, on March 6, 2009 TRANSCO sought clarification regarding several provisions of the said amended Guidelines, particularly Article V, Sections 2, 5 and 6 thereof;

NOW THEREFORE, the ERC, after thorough and due deliberation, RESOLVED, as it hereby RESOLVES to Clarify Resolution No. 1, Series of 2009, as follows;

1. Section 5, Article V which reads;

"TRANSCO Rates – TRANSCO will continue to bill or collect any uncollected connection and residual charges resulting from the one (1) year deferred charges as approved by the ERC. The acquiring DU shall have the following payment options;

1. To pay any uncollected subtransmission charges upon transfer of possession of the subtransmission asset. The amount shall be based on previous year's consumption."

The phrase "previous year's consumption" refers to customers' "previous year's charges", i.e. "previous year's Connection and Residual Sub-transmission Charges (CC/RSTC)". Said charges are fixed amounts payable monthly by the connected customers;

2. Section 5, Article V which reads:

"The sub-transmission assets of TRANSCO/Concessionaire which have not been sold or disposed of by December 31, 2010 shall remain as its assets which shall be included in its Regulatory Assets Base (RAB)."

The phrase "subtransmission assets of TRANSCO/Concessionaire" refers to "Residual Subtranmission Assets (RSTAs)" or the transmission assets which are shared by and between two (2) or more connected distribution utilities (DUs). By the year 2010, the RSTAs should have already been transferred to qualified DUs, otherwise , they could no longer acquire the said subtransmission assets. Hence, RSTAs which have not been disposed by

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the end of 2010 will be included in TRANSCO's RAB under another category and shall be reclassified as transmission/network assets to be recovered consistent with the Open Access Transmission Service (OATS) Rules.

The Connection Assets (CA) shall continue to be charged directly to connected customers pursuant to the Connection Charging Policy in the OATS Rules until transferred to a qualified DU;

3. Section 6, Article V which provides:

'The rates to be imposed to end-users directly connected to the subject asset shall be the TRANSCO's approved connection and residual charges for a period not exceeding six (6) months from the date the parties execute and implement a Deed of Conditional Sale or Transfer of Possession or similar documents over the sale of the subtransmission asset. Within the said six (6) months period, the DU and the directly connected end-users shall endeavor to come up with a mutually acceptable rate and file said agreement with the ERC for approval, otherwise, the same cannot be charged to the end-user. In case of disagreement, the ERC shall resolve the same. In the event ERC's approval of the said agreement is secured after the six (6) month period, the DU shall continue to charge the approved connection and residual charges until the approval of said agreement by the ERC.'"

The intent of the said provision is for the DU and the directly connected end-user to come up with an agreement, within the six-month period, on the rate to be charged or passed on by the DU to the directly connected end-user. Said agreement shall then be filed for approval of the ERC.

Pending approval thereof, the DU shall be allowed to continue collecting the approved connection and residual charges. However, in case the parties failed to file the said application within the six-month period, the DU shall not be allowed to charge the TRANSCO's approved CC/RSTC to the directly connected end-user. Moreover, the absence of an agreement between the DU and the directly-connected end-user, the DU will continue to be billed by TRANSCO with connection and residual charges but the DU cannot pass on the surcharges to the directly connected end-users pursuant to Article V, Section 5, which provides that "TRANSCO shall continue to bill and collect any uncollected connection and residual charges resulting from the one (1) year deferred charges as approved by the ERC"; and

4. Section 2, Article V which states:

"If the contract was entered into after June 13, 2006, the subtransmission asset shall be valued in reference to the Sinclair Knight Merz (SKM) valuation or any subsequent valuation as approved by the Commission."

The ERC has only set a reference value for STAs. This, however, should not be considered as a limitation to the capability of the DUs to negotiate for better terms and conditions in the agreement for the benefit of their end-users.

This Resolution shall take effect 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 TRANSCO.

Adopted: 10 Aug. 2009

(SGD.) ZENAIDA G. CRUZ-DUCUT
Chairperson

(SGD.) RAUF A. TAN
Commissioner

(SGD.) ALEJANDRO Z. BARIN

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