

RESOLUTION ADOPTING AMENDMENTS TO ARTICLES I, II AND III OF THE REVISED RULES FOR THE ISSUANCE OF LICENSES TO RETAIL ELECTRICITY SUPPLIERS

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WHEREAS, on January 17, 2011, the Energy Regulatory Commission (ERC) promulgated Resolution No. 1, Series of 2011, entitled Adopting the Revised Rules for the Issuance of Licenses to Retail Electricity Suppliers (Rules for Issuance of RES Licenses), which aims to establish the standards and requirements for entities seeking to be authorized by the ERC to sell, broker, market or aggregate electricity to End-users;

WHEREAS, taking into consideration the issues and concerns of the Contestable Customers on the difficulties they encountered in getting fixed offers from RES, and the unavailable capacity of the RES and the generation companies, the ERC recognized the need to amend the Rules for Issuance of RES Licenses and provide necessary regulatory interventions in the initial implementation of open access and retail competition to ensure the smooth implementation of the competitive retail electricity market;

WHEREAS, the ERC is mandated to ensure that there is no abuse of market power and conflicts of interest by market participants and that there is compliance with the rules set to protect consumers;

WHEREAS, there is a need for ERC to exercise its regulatory authority and ensure that the retail market operates as it was intended by the Electric Power Industry Reform Act;

WHEREAS, on August 5, 2013, the ERC posted for comments the proposed Resolution Adopting Policies during the Transitory Period of Open Access and Retail Competition and Amending the Pertinent Provisions of Resolution No. 01, Series of 2011 (A Resolution Adopting the Revised Rules for the Issuance of Licenses to Retail Electricity Suppliers) as a Result Thereof;

WHEREAS, after a careful consideration of the various comments submitted by interested parties and the various views expressed by the electric power industry participants during the public consultation on September 4, 2013, the ERC deems it appropriate to adopt amendments to the Rules for the Issuance of RES Licenses;

NOW THEREFORE, pursuant to its mandate to promote competition and protect consumer interests, the ERC hereby resolves to adopt amendments to pertinent provisions to the Rules for the Issuance of RES Licenses, hereinafter referred to as the Amended Rules for the Issuance of Licenses to Retail Electricity Suppliers and hereto attached as “Annex A”.

Let copies of this Resolution be furnished all parties concerned and the University of the Philippines Law Center - Office of the National Administrative Register (UPLC-ONAR), all the licensed Retail Electricity Suppliers and all the Distribution Utilities.

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

Pasig City, November 25, 2013.

(SGD) ZENAIDA G. CRUZ-DUCUT
Chairperson

(SGD) ALFREDO J. NON

Commissioner

(SGD) GLORIA VICTORIA C. YAP-TARUC

Commissioner

(SGD) JOSEFINA PATRICIA A. MAGPALE-ASIRIT

Commissioner

“Annex A”

Amendments to Articles I, II, and III of the Revised Rules for the Issuance of
Licenses to Retail Electricity Suppliers

Pursuant to the provisions of Republic Act No. 9136, otherwise known as the Electric Power Industry Act, the Energy Regulatory Commission hereby promulgates the amendments to the Revised Rules for the Issuance of Licenses to Retail Electricity Suppliers.

Section 1. The following provisions of the Revised Rules for the Issuance of Licenses to Retail Electricity Suppliers (RES) are hereby amended to include the following provisions:

ARTICLE I

GENERAL PROVISIONS

Section 4. Scope

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Any of the following:

- A Generation Company or Affiliate thereof;
- An Affiliate of a DU with respect to the Contestable Customers within or outside its franchise area;
- An Independent Power Producer (IPPA) Administrator; and
- 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 Regulation.

However, during the transition period, or until such time as the ERC shall deem appropriate considering market conditions:

- No Generation Company or IPPA Company shall be issued a RES License;
- Generation Companies with existing RES Licenses shall be subject to the limitations imposed under Section 5, Article II hereof, and
- No Company affiliated to DUs shall be issued a RES License.

Further, the RES licenses earlier issued to Generation Companies shall be honored until they shall expire.

Moreover, Retail Supply Contracts (RSCs) of these Generation Companies whose licenses have expired shall be assigned to other licensed RES.

Notwithstanding paragraph no. 1 of Resolution 11, series of 2013, the ERC shall evaluate the market conditions

not later than June 25, 2015 for its readiness in connection to the full operations of the Retail Competition and Open Access (RCOA).

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ARTICLE II

QUALIFICATIONS, CRITERIA AND LIMITATIONS OF A RETAIL ELECTRICITY SUPPLIER

Section 5. Ownership Limitation and Restrictions

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d.

The capacity controlled by any or all of a business' conglomerate's RES entities shall be included in the limitations on the total capacity controlled by its Generation Companies. Such capacity shall be limited to 30% of the grid capacity and 25% on the national level;

e.

A RES may only sell up to 50% of its total capacity to all of its end-user affiliates;

f.

In no case shall a RES and affiliate RES, acting singly or collectively as one or as an aggregate, be allowed to purchase more than 50% of their capacity requirements from their affiliated Generation Companies."

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ARTICLE III

REQUIREMENTS AND PROCEDURES

Section 2. Basic Requirements for RES License Application:

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g.

Projected Five-year Financial Statements and a Five-year Business Plan detailing the applicant's target customers, capacity and energy allocations, and value-added services (outline to be provided by the ERC)."

ARTICLE VI

REPORTORIAL REQUIREMENTS

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Section 3. Monitoring. Sixty (60) working days from the effectivity of these Amendments, all licensed RES shall initially submit to ERC the following documents for monitoring purposes. Thereafter, all licensed RES shall submit these documents on an annual basis, without need of further notice.

- Retail Supply Contract. All existing retail supply contracts and those that are currently being transacted can be reviewed by the ERC to ascertain that they were negotiated on an arms-length basis and do not violate market control or anti-competitive rules;

- Five-Year Business Plan. For market monitoring and evaluation purposes, all licensed RES are required to

submit an updated business plan.”

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Section 2. Section 4, Article I; Section 5, Article II; Section 2, Article III and Section 3 of Article IV of the Revised Rules for the issuance of Licenses to Retail Electricity Suppliers are hereby modified accordingly. All rules, regulations, guidelines and other issuances not expressly revised herein or are not inconsistent herewith shall remain in force and effect.

Section 3. If for any reason, any section of these Amendments is declared unconstitutional or invalid, other parts or sections hereof not affected thereby shall continue to be in full force and effect.

Section 4. These Amendments to Articles I, II and II of the Revised Rules for the Issuance of Licenses to Retail Electricity Suppliers shall take effect fifteen (15) days following its publication in a newspaper of general circulation.

Pasig City, November 25, 2013.

(SGD) ZENAIDA G. CRUZ-DUCUT
Chairperson

(SGD) ALFREDO J. NON
Commissioner

(SGD) GLORIA VICTORIA C. YAP-TARUC
Commisioner

(SGD) JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner

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