

**DEPARTMENT CIRCULAR\_\_\_\_\_**

**AMENDING CERTAIN PROVISIONS OF THE RULES AND REGULATIONS TO  
IMPLEMENT REPUBLIC ACT NO. 9136, ENTITLED “ELECTRIC POWER INDUSTRY  
REFORM ACT OF 2001”**

**WHEREAS**, Republic Act No. 9136, otherwise known as “Electric Power Industry Reform Act (EPIRA) of 2001” was enacted on 08 June 2001;

**WHEREAS**, Section 77 of the EPIRA states that the DOE shall, in consultation with relevant government agencies, the electric power industry participants, non-government organization and end-users, promulgate the Implementing Rules and Regulation (IRR) of the Act within six (6) months from the effectivity of this Act, subject to the approval by the Power Commission;

**WHEREAS**, upon consultation with various stakeholders, the Department of Energy (DOE) promulgated the “Rules and Regulations to Implement Republic Act No. 9136, Entitled “Electric Power Industry Reform Act of 2001” on 27 February 2002;

**WHEREAS**, the DOE, as mandated to supervise the implementation of the Act, restructured the electricity industry and formulated various policies and programs in accordance with the provisions of the said Act;

**WHEREAS**, under existing laws and jurisprudence, the Implementing Rules and Regulations may be amended in pursuit to clarify its provisions and carry out the objectives of the law;

**WHEREAS**, the DOE issued the first amendment of the Rules and Regulations of the Act on 21 June 2007;

**WHEREAS**, on 10 March 2017, the DOE issued Special Order No. SO2017-03-0021 or Creating a Technical Working Group to Review the Implementing Rules and Regulations (IRR) of Republic Act No. 9136 (EPIRA) and to Propose Amendments Thereto;

**WHEREAS**, after careful consideration of the various views and inputs provided by stakeholders and interested parties as to consistency with the provisions of the Act, the DOE deems it appropriate to adopt the attached *“Amended Rules and Regulations to Implement Republic Act No. 9136, entitled “Electric Power Industry Reform Act of 2001”*.

**NOW THEREFORE**, pursuant to its authority under Republic Act No. 9136 and after series of public consultations, the DOE hereby issues, adopts and promulgates the

following amendments to the *Rules and Regulations to Implement Republic Act No. 9136, entitled "Electric Power Industry Reform Act of 2001"*:

**Section 1. AMENDMENT TO RULE 1. TITLE AND SCOPE.** The following provisions are hereby amended:

**1.1 Section 2. Scope.**

1.1.1 These Rules are promulgated under the authority of the DOE to formulate, in consultation with relevant government agencies, Electric Power Industry Participants, non-government organizations, End-users and consumers, such rules and regulations as may be necessary to implement the objectives of the Act and pursuant to the exercise of such other powers as may be necessary or incidental to attain the objectives of the Act. These Rules shall govern the relation and responsibilities of Electric Power Industry Participants and governmental authorities, including but not limited to: the DOE, NPC, NEA, ERC, PSALM **and TRANSCO.**

**Section 2. AMENDMENT TO RULE 2. DECLARATION OF POLICY.** The following provisions are hereby amended :

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(d) To enhance the inflow of private capital, participation in the attendant risks, and broaden the ownership base of the power generation, transmission and distribution sectors **in order to minimize the financial risk exposure of the national government;**

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**Section 3. AMENDMENT TO RULE 3. RESPONSIBILITIES OF THE DOE, ERC, NPC, NEA AND PSALM.** The following provisions are hereby amended as follows:

**3.1 Section 1. Responsibilities of the DOE**

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(c) Prepare and update annually a Power Development Program (PDP) and integrate the same into the PEP. The PDP shall consider and integrate the individual or joint development plans of the transmission, generation, and distribution sectors of the electric power industry which are submitted to the DOE: Provided, however, That the ERC shall have exclusive authority covering the Grid Code and the Distribution Code; and the pertinent rules and regulations it may issue. The DOE, **shall review and approved** the Transmission

Development Plan (TDP) **to be** prepared by the National Transmission Corporation (TRANSCO) or its Buyer or Concessionaire **in coordination with the Electric Power Industry Stakeholders on the improvement and expansion of its transmission facilities, and** shall integrate the TDP with the annual development plans of Distribution Utilities and NPC, and other relevant data as are available to DOE, which shall be incorporated **in the PDP and** PEP;

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### 3.1.2 New Provision

**(s) Undertake non-pricing regulations of distribution and marketing of energy products and services pursuant to Republic Act No. 7638.**

## 3.2 Section 3. Responsibilities of the NEA.

3.2.1 (a) NEA shall continue to be under the supervision of the DOE and shall exercise its functions under Presidential Decree No. 269, as amended **by Republic Act No. 10531**, insofar as they are consistent with the Act. To this end, NEA, shall:

(i) Prepare Electric Cooperatives (ECs) in operating and competing under the deregulated electricity market, specifically in an environment of Open Access and Retail Competition. **For this purpose, NEA shall:**

**(1) Assist the ECs in developing proposals to DOE regarding policies and regulations of the electric cooperatives such that the same would allow allow ECs to operate efficiently and be able to recover prudent cost of services and operations including guarantees and enable ECs to achieve and maintain viability;**

**(2) Review and endorse for the DOE's approval the distribution development plan of each EC containing programs for capital expenditure, full energization of unserved and underserved areas and rehabilitation plan for ailing ECs;**

**(3) Pursue the total electrification of the country through the electric cooperatives by way of enhancing distribution development and, in case of missionary areas, in coordination with the National Power Corporation;**

**(4) Prepare and submit for the DOE's approval an annual report on the performance of EC;**

- (5) **Comply with performance standards duly promulgated by the DOE and pertinent government agencies, consistent with the mandates under the Act and other pertinent laws.**
- (ii) To strengthen the technical capability and financial viability of ECs. **Towards this end, NEA shall:**
- (1) **By itself, or through accredited third party, conduct an annual institutional, technical and financial audit of all electric cooperatives and require and enforce compliance plan;**
  - (2) **Ensure compliance by the electric cooperatives to the financial and technical performance standards under these Rules, the Philippine Grid Code, the Philippine Distribution Code, the WESM Rules and other relevant issuances;**
  - (3) **Recommend to the DOE appropriate measures for rehabilitating problematic cooperatives which may include institutional changes on the same;**
  - (4) **Ensure compliance by the electric cooperative Board of Directors and Management to the performance standards duly approved by the DOE and enforce sanctions and penalties for non-compliance on the same; and**
  - (5) **Submit to the DOE an annual report of the performance of the ECs and provide recommendations addressing performance issues.**
- (iii) To review and upgrade regulatory policies with a view to enhancing the viability of the ECs as electric utilities
- (b) NEA may, in exchange for adequate security and a guarantee fee, act as a guarantor for purchases of electricity in the WESM by any EC or small Distribution Utility to support their credit standing consistent with the provisions of the Act. **The authorized capital stock of NEA is increased in accordance with the Republic Act No. 10531.**

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### 3.2.2 New Provision

**(d) NEA, as guarantor and loan institution for the electric cooperatives shall ensure that all returns for such undertakings shall be devoted to activities necessary to achieve the objectives of the EPIRA, primarily the total electrification of the country.**

### 3.3 Section 4. Responsibilities of the ERC.

3.3.1 (a) Pursuant to Section 43 of the Act, the ERC shall promote competition, encourage market development, ensure customer choice, and penalize abuse of market power in the electric power industry.

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(c) The ERC shall review and approve any plan for the expansion or improvement of transmission facilities **and services** submitted by TRANSCO or its Buyer or Concessionaire with due regard to the TDP **duly approved by the DOE and integrated in the Power Development Program. Provided, That the ERC approval shall correspond only to prudent cost recovery of TRANSCO or its Buyer or Concessionaire.**

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(e) Any application or petition for rate adjustment or for any relief affecting the consumers must be verified, and accompanied with an acknowledgement of receipt of a copy thereof by the LGU Legislative Body of the locality where the applicant or petitioner principally operates together with the certification of the notice of publication thereof in a newspaper of general circulation in the same locality.

The ERC may grant provisionally or deny the relief prayed for not later than seventy-five (75) calendar days from the filing of the application or petition, based on the same and the supporting documents attached thereto and such comments or pleadings the consumers or the LGU concerned may have filed within thirty (30) calendar days from receipt of a copy of the application or petition or from the publication thereof as the case may be. Thereafter, the ERC shall conduct a formal hearing on the application or petition, giving proper notices to all parties concerned, with at least one public hearing in the affected locality, and shall decide the matter on the merits not later than twelve (12) months from the issuance of the aforementioned provisional order.

**If no provisional approval is applied for or issued, the ERC shall decide on the merits of the application not later than fifteen (15) months from the filing thereof. If no decision is issued within the 15-month period, the application or petition shall be deemed approved.**

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(j) The ERC shall **formulate rules to** ensure that **the** Electric Power Industry Participants and NPC functionally and structurally unbundle their respective business activities and rates and determine the levels of cross subsidies in the

existing Retail Rates until the same is removed in accordance with the sectors as identified in and as required by Sections 5, 36 and 74 of the Act. ERC shall set a Lifeline Rate for the Marginalized End-users. In particular, the distribution rates should unbundle at least the following business activities or assets: **generation, transmission,** supply, distribution, and such other services as the ERC may determine.

(k) The ERC shall promulgate rules and regulations prescribing the qualifications of Suppliers, which shall include among others their technical and financial capability and credit worthiness. **Provided, That the ERC shall have authority to require electricity Suppliers to furnish a bond or other evidence of the ability of a Supplier to withstand market disturbances or other events that may increase the cost of providing service. The ERC shall also promulgate rules and regulations governing Suppliers on their conduct of abuse of market power, cartelization and other anti-competitive and discriminatory behavior.**

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### 3.3.2 New Provision

**(t) The ERC shall set a lifeline rate for the marginalized end-users taking into account the proper targeting thereof in line with nationally accepted level of poverty threshold, as provided by the National Economic Development Authority or other duly authorized national government agencies.**

**Section 4. AMENDMENT TO RULE 4. DEFINITION OF TERMS.** The following provisions are hereby amended :

4.1 As used in these Rules, the following terms shall have the following respective meanings:

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(yy) "Lifeline Rate" refers to the subsidized rate given to Marginalized End-Users. **For this purpose, Marginalized End-users shall refer to low-income Captive household electricity consumer who cannot afford to pay at full cost and have levels of electricity consumption below a threshold level to be determined by the ERC;**

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(bbb) "Market Operator" refers to either the "Autonomous Group Market Operator" (AGMO) constituted by the DOE under Section 30 of the Act, with equitable representation from Electric Power Industry Participants, or the

**Independent Market Operator** (IMO), the entity jointly endorsed by the DOE and Electric Power Industry Participants to assume the functions, assets and liabilities from AGMO;

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(hhh) “Open Access” refers to the system of allowing any qualified Person the use of transmission, and/or Distribution System and associated facilities subject to the payment of transmission and/or distribution retail wheeling rates duly approved by the ERC;

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(vvv) “Retail Competition” refers to the **system where Suppliers of electricity compete to provide services** to a Contestable Market;

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(hhhh) “Stranded Debts of NPC” or “Stranded Debts ” refer to any unpaid financial obligations of NPC which have not been liquidated by the proceeds from the sales and Privatization of NPC assets;

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(pppp)“Transmission Development Plan” or TDP refers to the program for managing the transmission system through efficient planning for expansion, upgrading, rehabilitation, repair and maintenance, to be formulated by the DOE and implemented by TRANSCO or its Buyer or Concessionaire pursuant to the Act.

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(tttt) “Wholesale Electricity Spot Market” or “WESM” refers to **a centralized venue for buyers and sellers to trade electricity** in accordance with the Act;

#### 4.1.2 New Definitions

**(www) “Self-Generating Entity” refers to any Person or entity operating Self-Generation Facilities;**

#### 4.1.3 Deleted Definitions

(zz) “Marginalized End-users” refer to low-income, captive, household electricity consumers who cannot afford to pay at full cost and have levels of electricity consumption below a threshold level to be determined by the ERC;

**Section 5. AMENDMENT TO RULE 5. GENERATION SECTOR.** The following provisions are hereby amended as follows:

### 5.1 Section 1. Guiding Principle

5.1.1 Pursuant to Section 6 of the Act, generation of electric power, a business affected with public interest, shall be competitive and open to all qualified Generation Companies. **Power** generation shall not be considered a public utility operation. For this purpose, any Person **or entity** engaged or intending to engage in Generation of Electricity shall not be required to secure a national franchise. No Person **or entity** may engage in the Generation of Electricity as a new Generation Company unless such Person has received a COC from the ERC to operate facilities used in the Generation of Electricity. A Person that demonstrates compliance with the standards and requirements of this Rule 5, and such other terms and conditions as determined by the ERC to be appropriate to ensure that Persons comply with all applicable legal and regulatory requirements, shall be issued a COC.

### 5.2 Section 2. Scope of Application

5.2.1 This Rule shall apply to all facilities used or to be used for the Generation of Electricity, including but not limited to the following:

(a) Existing Generation Facilities. Existing Generation Facilities shall include:

- (i) Spin-off Facilities of NPC or their transferees, including Generation Facilities owned by NPC transferred to PSALM and subsequently privatized pursuant to the Act;
- (ii) Agus and Pulangui Complexes;
- (iii) Facilities owned and operated by SPUG;
- (iv) Accredited facilities under BOT arrangement and other variants **with Government Owned and/or Controlled Corporations (GOCCs)** and other government agencies;
- (v) Accredited facilities under BOT arrangement and other variant with Distribution Utilities;
- (vi) Facilities Owned or Operated by a Distribution Utility;
- (vii) Facilities under Contract with a Distribution Utility;
- (viii) Self-Generation Facilities;



- (ix) Facility operating in EZs;
- (x) Facility operating in isolated areas; **and**
- (xi) **Facilities owned and/or operated by any private entity including Embedded Generation Facilities.**

(b) Generation Facilities Under Construction. Generation Facilities under construction shall include:

- (i) DOE-Accredited Facility under BOT arrangement and other **variants with GOCCs** and other government agencies;
- (ii) DOE-Accredited Facility under BOT arrangement and other variants with Distribution Utilities;
- (iii) Non DOE-Accredited Facility under contract with Distribution Utilities;
- (iv) Self-Generation Facility;
- (v) Facility locating in EZs; and
- (vi) Facility **locating** in isolated areas; **and**

(xii) **Facilities owned and/or operated by any private entity including Embedded Generation Facilities.**

(c) New Generation Facilities New Generation Facilities shall include:

- (i) Any newly-constructed facility with appropriate health, safety and environmental clearances; **and**
- (ii) Any facility that shall operate in **missionary and** isolated area.

(d) This Rule shall also apply to the PSALM-appointed IPP Administrators.

### 5.3 Section 3. Ownership Limitation.

5.3.1 No Generation Company or its respective subsidiary or Affiliate or stockholder or official within the fourth civil degree of consanguinity or affinity, legitimate or common law, shall be allowed to hold any interest, directly or indirectly, in TRANSCO or its Buyer or Concessionaire, **or the IMO**. Except for ex officio government-appointed representatives, no Person who is an officer or director of the TRANSCO or its Buyer or Concessionaire shall be an officer or director of any Generation Company. This Section shall not apply to PSALM during the

period that its generation assets are being privatized pursuant to Section 47 of the Act.

#### 5.4 Section 4. Obligations of a Generation Company.

5.4.1 (a) A COC shall be secured from the ERC before commercial operation of a new Generation Facility. The COC shall stipulate all obligations of a Generation Company consistent with this Section and such other operating guidelines as ERC may establish. The ERC shall establish and publish the standards and requirements for issuance of a COC. A COC shall be issued upon compliance with such standards and requirements.

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(ii) A Generation Facility which has been previously issued a **new** COC shall not be required to secure a COC even if acquired by a new owner: Provided, That **the COC is valid and** such new owner shall register with ERC as specified above. Upon registration, such Person shall be deemed authorized to operate such Generation Facility.

(b) A Generation Company shall comply with the following operating standards:

(i) Technical Standards.

A Generation Company shall ensure that all its facilities connected to the Grid **or distribution system** meet the technical design and operational criteria of the Grid Code, Distribution Code, **WESM Rules and other relevant issuances by the DOE and** ERC, Philippine Electrical Code, and the TRANSCO or its Buyer or Concessionaire including, among others, standards for voltage fluctuation, frequency, harmonics, security, reliability, unplanned outages and provision of Ancillary Services and shall operate in accordance with such **technical design and** operational criteria.

(ii) Financial Standards.

A Generation Company with facilities connected to the Grid **or distribution system** shall conform to the financial standards provided in the Grid Code. These standards shall take into consideration the nature and function of a Generation Facility. Furthermore, such standards are set to ensure that the Generation Company meets the minimum financial standards to protect the public interest and any customer procuring services from the said Generation Company.

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(e) The prices charged by a Generation Company on the Retail Rates charged by Distribution Utilities for the Supply of Electricity to the Captive Market shall be subject to ERC regulation including the rates specified under the NPC transition supply contracts (TSCs) as specified in Section 67 of the Act.

Upon introduction of Open Access and Retail Competition the prices charged by a Generation Company for the supply of electricity by a Supplier to the Contestable Market shall not be subject to regulation by the ERC.

The Generation Rates charged by the Generation Company operating a facility within isolated distribution system, shall likewise be fixed and determined by ERC as set forth in Rule 13 on Missionary Electrification.

(f) A self-generating entity not connected to a Distribution Utility, unless otherwise provided under these Rules, shall remit directly to TRANSCO the corresponding Universal Charge set by ERC. In relation to this, TRANSCO or its Buyer or Concessionaire or the appropriate Distribution Utility, when connected to the self-generation company, shall have access to the customer side of the meter in order to determine the utilization of such Generation Facility for the purpose of assessing the corresponding Universal Charge as provided in Rule 18 on Universal Charge.

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(i) Pursuant to Section 9(e) of the Act, a Generation Company with facilities connected, directly or indirectly, to the transmission system shall make information available to the Market Operator and Grid Operator to enable the Market Operator to prepare the appropriate central dispatch schedule to be implemented by the Grid Operator in accordance with the WESM Rules, subject to Technical Constraints, as may be identified by the grid operator.

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(l) A Generation Company shall submit to DOE any information as may be required by the DOE for the purpose of preparation of the PDP and policy-making.

(m) A Generation Company that fails to comply with any of these obligations, including compliance with technical standards, shall be subject to fines and penalties as may be imposed by the ERC in accordance with Section 46 of the Act.

## **5.5 Section 5. Dedicated Point-to-Point Limited Transmission Facility of a Generation Company.**

5.5.1 (a) Subject to prior authorization from ERC, TRANSCO or its Buyer or Concessionaire may allow a Generation Company to develop, own and/or operate dedicated point-to-point limited transmission facilities: Provided, That:

(i) Such dedicated point-to-point limited transmission facilities are required only for the purpose of connecting to the Grid which will be used solely by the Generation Facility, and are not used to serve **other Generation Facilities**, End-users or Suppliers directly; **and**

(ii) The facilities are included and consistent with the TDP as certified by TRANSCO or its Buyer or Concessionaire.

(b) In the event that such assets are required for competitive purposes, **or other Generation Companies, End-users and Suppliers shall be allowed to connect to such dedicated point-to-point limited transmission facilities**, ownership, **operation and maintenance** of the same shall be transferred to the TRANSCO **or its buyer or concessionaire** at a fair market price. In case of disagreement on the fair market price, the ERC shall determine the fair market value of such asset, either directly or through such dispute resolution mechanisms as ERC may specify.

**Section 6. AMENDMENT TO RULE 6. TRANSMISSION SECTOR.** The following provisions are hereby amended :

### **6.1 Section 3. Ownership Limitation.**

6.1.1 The TRANSCO or its Buyer or Concessionaire or any of its stockholders, directors, officers or any of their relatives within the fourth civil degree of consanguinity or affinity, legitimate or common law, shall not hold any interest, whether directly or indirectly, in any Generation Company, Distribution Utility, IPP Administrator, Supplier, **and IMO**.

### **6.2 Section 7. Functions and Responsibilities of TRANSCO or its Buyer or Concessionaire.**

6.2.1 xxx

(c) Ensure and maintain the reliability, adequacy, security, stability and integrity of the Grid in accordance with the performance standards for the operation and maintenance of the Grid, as set forth in the Grid Code and the Distribution Code.

(d) Improve and expand its transmission facilities, consistent with the TDP **duly approved by the DOE**, to adequately serve Generation Companies, Distribution Utilities and Suppliers requiring transmission service and/or Ancillary Services through the transmission system. TRANSCO or its Buyer or Concessionaire shall

submit any plan for expansion or improvement of its facilities for approval by the ERC;

(e) Provide Central Dispatch, through its grid operator, to all Generation Facilities and loads connected, directly or indirectly, to the transmission system in accordance with the dispatch schedule submitted by the Market Operator, subject to Technical Constraints.; **and**

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#### 6.2.2 New Provision

**(f) Undertake planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections, interconnections of viable isolated areas to the Grid, and provision of Ancillary Services.**

### 6.3 Section 8. Obligations of TRANSCO

6.3.1 The TRANSCO shall have, among others, the following obligations:

(a) Prepare the TDP in consultation with **its Buyer or Concessioner and the Electric Power Industry Participants. Provided, That, the TDP shall be submitted to the DOE for approval and integration with the Power Development Program and the Philippine Energy Plan.**

(b) Submit an updated TDP **proposal** to the DOE **not later than March 15 of** each year for integration with the PDP and PEP.

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### 6.4 Section 10. Transmission Development Plan

6.4.1 (a) The TDP refers to a plan for managing the transmission system through efficient planning for expansion, upgrading, rehabilitation, repair and maintenance, to be **formulated by the DOE** and implemented by TRANSCO or its Buyer or Concessionaire **pursuant to the Act.**

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(c) Any plan for expansion or improvement of transmission facilities shall be approved by the ERC: Provided, That such approval shall **only cover prudent cost recovery and shall** not be unreasonably withheld.

### 6.5 Section 11. TRANSCO Related Businesses

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(b) **Fifty percent (50%)** of the annual net income derived from such undertaking utilizing assets which form part of the rate base shall be used to reduce the transmission wheeling charges as determined by ERC; and

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## 6.6 Section 12. Transmission Charges

6.6.1 (a) Transmission Charges shall be paid to TRANSCO or its Buyer or Concessionaire for the use of the transmission system. **Transmission Charge may include the payment by the Grid Users.**

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**Section 7. AMENDMENT TO RULE 7. DISTRIBUTION SECTOR.** The following provisions are hereby amended :

### 7.1 Section 1. Guiding Principles.

7.1.1 Pursuant to Section 22 of the Act, the Distribution of Electricity to End-users shall be a regulated common carrier business, requiring a national franchise. For purposes of these Rules, distribution franchise shall mean the privilege **and obligation** of a Distribution Utility to convey electric power through its Distribution System in a given geographical area granted by the Congress of the Republic of the Philippines. The Distribution of Electricity is a business affected with public interest.

### 7.2 Section 4. Obligations of a Distribution utility

7.2.1 (a) A Distribution Utility shall provide distribution services and connections to its systems for any End-user within its Franchise Area consistent with the Distribution Code. Any existing End-user within the Franchise Area of a Distribution Utility that is connected to TRANSCO facilities shall be served by the franchised Distribution Utility upon acquisition of the subtransmission facilities: Provided, however, That the Distribution Utility which acquired the subtransmission facilities shall be paid by the End-user the corresponding subtransmission rates or wheeling charge imposed by **TRANSCO or its Buyer or Concessionaire** in accordance with its contract to the End-user as approved by ERC.

(b) A Distribution Utility shall structurally and functionally unbundle its distribution business activities and rates from its generation and supply businesses. A

Distribution Utility shall comply with Rule 10 on Structural and Functional Unbundling of Electric Power Industry Participants.

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(d) A Distribution Utility shall comply with the technical specifications and financial standards prescribed in the Distribution Code and the performance standards prescribed in these Rules. To this end, ERC shall issue submission requirements for Distribution Utilities to comply with the technical specifications, financial and the performance standards after the effectivity of these Rules and the Distribution Code.

(i) A Distribution Utility shall submit to ERC a statement of compliance **with the technical specifications prescribed in the distribution code and performance standards prescribed in these Rules, the WESM Rules and in other issuances by the DOE and the ERC, in accordance with the Act.**

(ii) A Distribution Utility that does not comply with the technical specifications, performance standards and financial capability standards as prescribed in **these Rules**, the Distribution Code, **the WESM Rules and other issuances by the DOE and the ERC**, shall submit to ERC a plan to comply within three (3) years therewith. The ERC shall, within sixty (60) days from receipt of such plan, evaluate the same and notify the Distribution Utility concerned of its action.

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(m) A Distribution Utility shall identify and segregate in its **Captive Customer** billing statements the components of the Retail Rate.

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(p) A Distribution Utility shall prepare and submit to the DOE its distribution development plan not later than the fifteenth (15th) of March of every year, for integration with the PDP and PEP.

(q) A Distribution Utility shall pay a **local** franchise tax only on its distribution wheeling.

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### 7.3 Section 5. Privileges of a Distribution Utility

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7.3.1 (c) A Distribution Utility may, directly or indirectly, engage in any related business undertaking that maximizes the utilization of its assets: Provided, That quality of service shall not deteriorate pursuant to the standards provided in **these Rules**, the **Philippine** Grid Code, **Philippine** Distribution Code, **the WESM Rules and other relevant issuances by the DOE and the ERC in accordance with the Act**. To this end, the Distribution Utility shall submit to the ERC the appropriate documents to effect the following:

- (i) **Fifty percent (50%)** 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.

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#### **7.4 Section 6. Provision of Service in Unviable Areas.**

7.4.1 (a) Unenergized areas that a Distribution Utility does not find viable may be transferred to another Distribution Utility, if any is available, which will provide the service, subject to approval by ERC. In cases where a Distribution Utility failed or refused to service any area within its Franchise Area and allows another utility to service the same, the arrangements between the Distribution Utilities shall not affect their respective Franchise Areas. The ERC shall issue the appropriate guidelines to implement this provision. **to this end, distribution utilities shall submit to the doe their plans for electrification as part of their Distribution Development Plan.**

(b) In remote and Unviable Areas where the **franchised** Distribution Utility is unable to serve for any reason, the areas shall be opened to other qualified third parties **authorized by the ERC** to provide the service pursuant to Rule 14 on Provision of Electricity by Qualified Third Parties.

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#### **7.5 Section 7. Structural and Operational Reforms Between and Among Distribution Utilities.**

7.5.1 (a) Pursuant to Section 23 of the Act, the ERC shall issue the appropriate guidelines for the structural and operational reforms of a Distribution Utility. Such reforms shall include, but not limited, to merger, consolidation, integration, **concession, investment management contracts or the like**, bulk procurement and joint ventures. **Provided, That the structural and operational reforms shall not result to excessive or unreasonable increase in rates of the distribution utility.**

**Section 8. AMENDMENT TO RULE 8. SUPPLY SECTOR.** The following provisions are hereby amended :



## 8.1 Section 2. Scope of Application

8.1.1 Subject to the qualifications set by the ERC, any of the following may obtain a license to become a Supplier:

- (i) A Generation Company or Affiliate thereof;
- (ii) An Affiliate of a Distribution Utility;
- (iii) Aggregators;
- (iv) An IPP Administrator; and
- (v) Any other Person authorized by the ERC to engage in the selling, brokering or marketing of electricity to the Contestable Market, consistent with the Act and these Rules.

## 8.2 Section 3. Ownership Limitation and Restrictions

8.2.1 New Provision

**(c) A Supplier or Affiliate thereof shall be subjected to the Rules and Regulation concerning abuse of market power, cartelization, and other anti-competitive behavior, including but not limited to market share limitations, to be promulgated by the ERC.**

## 8.3 Section 4. Obligation of a Supplier

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(d) A Supplier shall comply with the WESM Rules **and other relevant issuances by the DOE and the ERC, in accordance with the Act.**

(e) A Supplier shall comply with any reportorial requirements prescribed by **the DOE and** the ERC for monitoring, **policy making, and non-pricing regulation** purposes.

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## 8.4 Section 5. Licensing of Supplier

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(b) Qualification Criteria

- (i) Compliance with Section 3 of this Rule 8.
- (ii) Technical and Financial Standards, Creditworthiness Criteria and such financial security to secure proper performance as a Supplier **or such other evidence of its ability to withstand market disturbances or other events that may increase the cost of providing service,** as may be determined by the ERC to protect the interests of End-users in Contestable Markets.
- (iii) **Full structural unbundling of its supply business from its distribution business.**
- (iv) Such other qualification or criteria as may be determined by the ERC to protect the public interest.

**Section 9. AMENDMENT TO RULE 10. STRUCTURAL AND FUNCTIONAL UNBUNDLING OF ELECTRIC POWER INDUSTRY PARTICIPANTS.** The following provisions are hereby amended :

**9.1 Section 2. Scope of Application.**

9.1.1 This Rule shall apply to all Electric Power Industry Participants that are currently engaged or will be engaged in any of the following business activities:

- (a) Power generation;
- (b) Transmission;
- (c) Distribution;
- (d) Supply;
- (e) Related businesses which utilize the generation, transmission, distribution or supply assets for non-electricity related services; and Other electricity related services that may be identified and authorized by the ERC, **which may include collection and metering services.**

**Section 10. STRUCTURAL AND FUNCTIONAL UNBUNDLING OF ELECTRIC POWER INDUSTRY PARTICIPANTS.** The following provisions are hereby amended :

Consistent with the last paragraph of Section 36 of the Act, any Electric Power Industry Participant, **as required hereunder these rules,** shall structurally and functionally unbundle its business activities in accordance with Section 5 of the Act, namely: generation, transmission, distribution and supply.

Structural unbundling shall mean the separation into different **juridical entities of each of the business** activities of any electric power industry participant. **Structural unbundling shall be required for any Electric Power Industry Participants undertaking both competitive and regulated business activities.**

Functional unbundling shall mean the separation **of the different** activities **within a company through the creation of separate divisions or departments with a clear separation of accounts between regulated and non-regulated business activities.**

For this purpose, business activities resulting from the initial unbundling process may be further unbundled to widen the scope for competitive activities. The ERC shall formulate the appropriate guidelines and shall ensure full compliance with this provision.

**Section 11. AMENDMENT TO RULE 11. CROSS OWNERSHIP, MARKET ABUSE AND ANTI-COMPETITIVE BEHAVIOR.** The following provisions are hereby amended :

**11.1 Section 3. Prohibition of Cross Ownership.**

11.1.1 xxx

(b) TRANSCO or its Buyer or Concessionaire and any of its stockholders, directors or officers or any of their relatives within the fourth civil degree of consanguinity or affinity, legitimate or common law, shall not hold any interest, whether directly or indirectly, in any Generation Company, IPP Administrators, **IMO**, Distribution Utility or Supplier.

xxx

**11.2 Section 7. ERC Responsibility**

11.2.1 (a) ERC shall enforce the competitive safeguards specified in this Rule in order to promote true market competition and prevent harmful monopoly and market power abuse. However, ERC shall not apply the limitations specified in this Rule to **Electric Power Industry Participants serving areas** that are not connected to the Grid.

xxx

**Section 12. AMENDMENT TO RULE 12. RETAIL COMPETITION AND OPEN ACCESS.** The following provisions are hereby amended :

**12.1 Section 2. Scope of Application**

12.1.1 (a) WESM Participants;

- (b) TRANSCO or its Buyer or Concessionaire;
- (c) Distribution Utilities;
- (d) **Entities duly authorized to develop and operate distribution system and supply within the EZs, in accordance with the Republic Act No. 7916;**
- (e) Suppliers;
- (f) IPP Administrators;
- (g) Market Operator; and
- (h) End-users in Contestable Markets.

**Section 13. RULE 13. MISSIONARY ELECTRIFICATION.** The following provisions are hereby amended :

**13.1 Section 1. Guiding Principle.**

13.1.1 xxx

(c) The DOE's Missionary Electrification Development Plan (MEDP) shall include capital investment and operations regarding capacity additions **and the facilities to be provided** in existing **and new** missionary areas **that are** not connected to the transmission system. **Provided, That the MEDP shall facilitate the gradual reduction and to the extent possible, the removal of UC subsidy in the missionary areas. Provided further, That prioritization of subsidy support shall be implemented giving due regards to the marginalized end-users in the missionary areas.**

xxx

**13.2 Section 4. Source of Funds.**

13.2.1 xxx

(d) In accordance with DOE's MEDP, the proposed five- (5) year annual budget for operating and capital expenditures of SPUG shall be submitted **for the approval of** ERC.

**13.3 Section 5. Reliability Improvement.**

13.3.1 xxx

(b) SPUG shall also collect revenues in providing power delivery and Ancillary Service to Generation Companies or Distribution Utilities **operating in missionary areas** at a rate to be filed with and approved by ERC;

(c) SPUG shall cease providing Missionary Electrification to areas interconnected to the transmission system. **For this purpose, TransCo or its buyer or Concessionaire shall be allowed to operate, maintain, and develop the transmission system in any SPUG area that has been identified by the DOE as viable in accordance with the Rules. Subject to the approval of the ERC, TransCo or its buyer or Concessionaire shall connect the area to the main grid.**

**Section 14. RULE 14. PROVISION OF ELECTRICITY BY QUALIFIED THIRD PARTIES.** The following provisions are hereby amended:

**14.1 Section 3. Determination of Remote and Unviable Areas.**

Every September, the DOE shall issue a declaration of all the remote and Unviable Areas that cannot be served by a Distribution Utility. The declaration shall be consistent with the PDP and made in consultation with the NEA and Distribution Utilities. The remote and Unviable Areas specified in the declaration shall be open for participation by qualified third parties.

**Section 15. AMENDMENT TO RULE 15. UNBUNDLING OF RATES.** The following provisions are hereby amended:

**15.1 Section 3. Parameters for Unbundling Rates and Costs of Service.**

**15.1.1 xxx**

(e) TRANSCO or its Buyer or Concessionaire and Distribution Utilities may directly or indirectly engage in any related business which maximizes the utilization of their assets. **Provided, That fifty percent (50%) of the net income derived from such undertaking utilizing assets which form part of the rate base shall be used to reduce wheeling rates as determined by the ERC. Proved, Further, That separate accounts are maintained for each business undertaking to ensure that the transmission business shall neither subsidize in any way such business undertaking nor encumber its transmission assets in any way to support such business.**

**Section 16. AMENDMENT TO RULE 18. THE UNIVERSAL CHARGE.** The following provisions are hereby amended:

**16.1 Section 2. Scope of Application.**

16.1.1 This Rule shall apply to the following:

(a) Petitioners for availments from the Universal Charge.

(i) PSALM for the Stranded Debts and Stranded Contract Costs of NPC;

(ii) Distribution Utilities with respect to their Stranded Contract Costs of Eligible Contracts;

(iii) Missionary Electrification **which includes cash incentive for renewable energy developers pursuant to Section 15 (h) of the RA 9513, also known as RE Act of 2008;**

(iv) Qualified Generation Companies with respect to the equalization of taxes and royalties between indigenous or Renewable Energy Resources and imported fuels;

(v) NPC, with respect to the environmental charge of P0.0025 per kilowatt-hour sales to be used for the rehabilitation and management of watershed areas; and

(vi) NPC/PSALM and Distribution Utilities with respect to the mitigation of the removal of cross subsidies.

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**16.2 Section 4. Procedures for Petitions Against the Universal Charge.**

16.2.1 xxx

(b) Petitions for availment under the Universal Charge for the succeeding years shall be submitted to the ERC on or before **July 31** of every year.

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**16.3 Section 6. Administration of the Universal Charge.**

16.3.1 (a) Pursuant to the last paragraph of Section 34 of the Act, PSALM shall act as the administrator of the funds generated from the Universal Charge. For this purpose, the PSALM shall create a STF to be established in the Bureau of Treasury (BTr) or in a Government Financing Institution (GFI) that is acceptable to the DOF. Separate STFs shall be established for each of the intended purposes of the Universal Charge. Funds shall be disbursed in an open and transparent manner and shall only be used for the intended purposes specified in Section 3 of this Rule. **Provided, That upon the expiration of the Corporate life of PSALM, the administration of the funds shall be turned over to the**

**Department of Finance, its qualified attached agency or another government entity who has the competency to manage such funds.**

xxx

(c) The PSALM shall transfer funds from the STF and shall distribute to the beneficiaries on or before the **twenty-fifth (25th) day of each month, except for the cash incentive which shall be disbursed to the RE developers within a reasonable period to be provided by the ERC in a separate Guidelines for the purpose.**

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#### 16.4 Section 7. Deferment. As Amended

16.4.1 All Self-Generation **Entity** whether new, existing or under construction shall not be covered by the imposition of Universal Charge **until the ERC and PSALM determined that it is technically and economically feasible:** Provided, That, **all** Self-Generation Facilities shall register with the ERC, **DOE** and PSALM.

**Section 17. AMENDMENT TO RULE 20. LIFELINE RATE.** The following provisions are hereby amended:

#### 17.1 Section 3. Application.

##### 17.1.1 New Provision

(c)The ERC shall determine and approve **the applicable** levels of consumption and cross-subsidy support **to the Marginalized End-users in** each Distribution Utility **taking into account the capacity of the subsidizing End-users to support the cross-subsidy. Provided, That only End-Users falling within the nationally accepted level of poverty threshold, as provided by the National Economic Development Authority or other duly authorized national government agencies, shall be qualified to avail of the lifeline rate.**

**Section 18. AMENDMENT TO RULE 21. POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION (PSALM).** The following provisions are hereby amended:

#### 18.1 Section 2. Purpose and Objective.

18.1.1 The principal purpose of the PSALM is to manage the orderly sale, disposition, and Privatization of NPC generation assets, **transmission facilities,** real estate and other disposable assets, and IPP contracts with the objective of managing and liquidating all NPC financial obligations and stranded contract costs in an optimal manner.

18.2 **Section 5. Powers.**

18.2.1 xxx

(s) To ensure that SPUG conduct proper monitoring, accounting and control of expenditures, and efficient utilization of the missionary electrification funds from the Universal Charge. **SPUG shall submit to PSALM, copy furnish the DOE and ERC audited report on the same not later than 15 April of every year;**  
and

xxx

18.2.2 Deleted Provision

(n) To issue other forms of financial instruments such as warrants, options, convertibles and to create Special Purpose Vehicles (SPVs) to maximize proceeds and value, as well as efficiently manage its liabilities;

This Circular shall take effect 15 days following its publication in a newspaper of general circulation.

Taguig City, \_\_\_\_\_, 2018

**ALFONSO G. CUSI**  
Secretary