



RESOLUTION NO. ¹⁰ _____, SERIES OF 2011

A RESOLUTION DECLARING DECEMBER 26, 2011 AS THE OPEN ACCESS DATE TO MARK THE COMMENCEMENT OF THE FULL OPERATIONS OF THE COMPETITIVE RETAIL ELECTRICITY MARKET IN LUZON AND VISAYAS

WHEREAS, Section 31 of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001 (EPIRA)" specifically laid down the pre-conditions to open access and retail competition in this manner:

"Any law to the contrary notwithstanding, retail competition and open access on distribution wires shall be implemented not later than three (3) years upon the effectivity of this Act, subject to the following conditions:

- (a) Establishment of the wholesale electricity spot market;
- (b) Approval of unbundled transmission and distribution wheeling charges;
- (c) Initial implementation of the cross subsidy removal scheme;
- (d) Privatization of at least seventy (70%) percent of the total capacity of generating assets of NPC in Luzon and Visayas; and
- (e) Transfer of the management and control of at least seventy percent (70%) of the total energy output of power plants under contract with NPC to the IPP Administrators."

WHEREAS, Section 3, Rule 12 of the Implementing Rules and Regulations (IRR) of the EPIRA mandates the Energy Regulatory Commission (ERC) to declare the initial implementation of Open Access, as follows:

"The ERC shall, after due notice and public hearing, declare initial implementation of Open Access not later than three (3) years from the effectivity of the Act, subject to the following conditions:

- (a) Establishment of the WESM.

For this purpose, the "establishment" of the WESM shall be deemed to have occurred upon the effectivity of the Market Rules by the DOE and initial operation of the AGMO pursuant to Rule 9 on the Wholesale Electricity Spot Market (WESM).

A handwritten signature or mark, possibly initials, located at the bottom left of the page.

A handwritten signature or mark, possibly initials, located at the bottom right of the page.

- (b) Approval of the unbundled Transmission and Distribution Wheeling Charges.

The ERC shall approve the unbundled rates of NPC and Distribution Utilities, which shall include the transmission and wheeling charges, within one (1) year from the effectivity of the Act.

- (c) Initial implementation of the Cross Subsidy Removal scheme.

For this purpose, initial implementation of the cross subsidy removal scheme shall occur on the next billing period after the issuance of ERC approval. The scheme for cross subsidy removal shall include guidelines or a schedule for the removal of each type of cross subsidy and may be altered, modified and/or amended by the ERC pursuant to Rule 16 on Removal of Cross Subsidies.

- (d) Privatization of at least seventy (70%) percent of the total capacity of generating assets of NPC in Luzon and Visayas.
- (e) Transfer of the management and control of at least seventy percent (70%) of the total energy output of power plants under contract with NPC to the IPP Administrators."

WHEREAS, Section 47 (i) of the EPIRA mandates that "not later than three (3) years from the effectivity of this Act, and in no case later than the initial implementation of open access, at least seventy percent (70%) of the total capacity of generating assets of NPC and of the total capacity of the power plants under contract with NPC located in Luzon and Visayas shall have been privatized; Provided, That any unsold capacity shall be privatized not later than eight (8) years from the effectivity of this Act";

WHEREAS, on January 24, 2007, the ERC issued Resolution No. 3, Series of 2007, entitled "A Resolution Indicating the Timeline for Full Retail Competition and Open Access in Luzon" reiterating the legal pre-conditions to Open Access and identified two (2) other vital requirements that must be made in place prior to commencement of the market, viz: 1) the adequacy and establishment of all necessary infrastructures including but not limited to: transmission networks, generation supply and the customer switching system; and 2) the promulgation of all pertinent rules and regulations governing open access and retail competition;

WHEREAS, on various dates, the ERC issued resolutions and decisions on the various applications for the unbundling of transmission and distribution wheeling charges and removal of cross subsidy, and on the applications for the requisite regulatory approvals for the establishment and operation of the WESM both in the Luzon and Visayas Grids;

WHEREAS, pursuant to its mandate and in compliance with the "due notice and public hearing" requirement under Section 3, Rule 12 of the EPIRA IRR, the ERC *motu proprio* initiated the proceedings with the issuance on February 18, 2011 of an Order and a Notice of Public Hearing setting public hearings on March 7 to 11, 2011 to determine whether or not Retail Competition and Open Access may already be declared, which was docketed as ERC Case No. 2011-004 RM, entitled "*In the Matter of*



the Declaration of the Retail Competition and Open Access Pursuant to Section 31 of Republic Act No. 9136, Otherwise Known as the Electric Power Industry Reform Act of 2001 and Sections 3 and 4 of its Implementing Rules and Regulations". The said Notice of Public Hearing was published in the February 19 and 25, 2011 issues of the Manila Times and Daily Tribune;

WHEREAS, on March 2, 2011, the ERC issued subpoenas to the Department of Energy (DOE), the National Power Corporation (NPC), the Power Sector Assets and Liabilities Management Corporation (PSALM), the National Grid Corporation of the Philippines (NGCP) and the Philippine Electric Market Corporation (PEMC), directing them to submit pertinent information and/or documents relating to the pre-conditions for the declaration of Open Access and to attend and testify thereon at the scheduled public hearings;

WHEREAS, the ERC conducted public hearings on March 7 and 8, 2011 and April 6, 2011, attended by various industry stakeholders, namely: NPC, PSALM, PEMC, NGCP, DOE, Manila Electric Company (MERALCO), Philippine Chamber of Commerce and Industry (PCCI), Masinloc Power Partners Co., Ltd. (MPPCL), Aboitiz Energy Solutions, Inc. (AESI), Retail Electricity Suppliers Association of the Philippines, Inc. (RESA) and First Gen Energy Solutions, Inc. (FGES);

WHEREAS, in the said public hearings, PSALM, PEMC and NGCP presented their respective evidence;

WHEREAS, on various dates, as directed by the ERC, the parties submitted their respective Legal Memoranda on the following issues:

1. The particular agency's interpretation of the provisions of Section 31 (d) and (e), in relation to Section 47 of the EPIRA, including related provisions in its IRR;
2. The respective agency's calculation of the percentage of privatization of (a) the generating assets of NPC; and (b) the transfer of contracts with NPC to the IPP Administrators, both on the basis of their respective interpretations; and
3. Their respective positions on whether or not the conditions under Sections 31 (d) and (e) of the EPIRA have been fulfilled, by virtue of their own interpretations.

WHEREAS, based on the resolutions and decisions rendered by the ERC on the various applications for the unbundling of transmission and distribution wheeling charges and removal of cross subsidy and the applications for the requisite regulatory approvals for the establishment and operation of the WESM both in the Luzon and Visayas Grids and on the evidence presented by the parties in ERC Case No. 2011-004 RM, the ERC found that all the legal pre-conditions provided in Section 31 of the EPIRA and Section 3, Rule 12 of its IRR have been fulfilled. Thus, Open Access and Retail Competition may already be declared;

NOW, THEREFORE, be it **RESOLVED**, as the Energy Regulatory Commission (ERC) hereby **RESOLVES**, to **DECLARE DECEMBER 26, 2011** as the Open Access Date to mark the commencement of the full operations of the competitive retail electricity market in Luzon and Visayas. All electricity end-users with an average monthly peak demand of one (1) MW for the twelve (12) months preceding December 26, 2011, as certified by the ERC to be contestable customers, shall have the right to

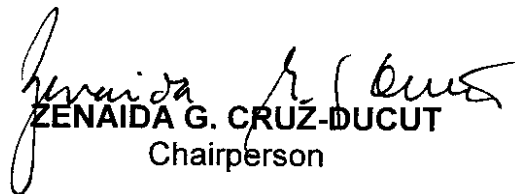


choose their own electricity suppliers and are, thus, enjoined to exercise such right to their full benefit.

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

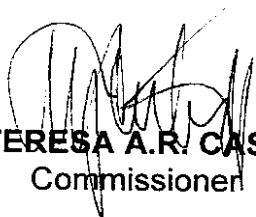
Let copies of this Resolution be furnished the University of the Philippines Law Center-Office of the National Administrative Register (UPLC-ONAR) and all licensed Suppliers, contestable customers, generation companies, distribution utilities, NGCP, National Transmission Corporation (TRANSCO), NPC, PSALM, DOE and PEMC.

Pasig City, June 6, 2011.


ZENAIDA G. CRUZ-DUCUT
Chairperson


RAUF A. TAN
Commissioner

(On Leave)
ALEJANDRO Z. BARIN
Commissioner


MARIA TERESA A.R. CASTAÑEDA
Commissioner


JOSE C. REYES
Commissioner


MVA/NLS