



Republic of the Philippines

**ENERGY
REGULATORY
COMMISSION**



10

Resolution No _____, Series of 2017

A RESOLUTION EXTENDING THE COMPLIANCE PERIOD UNDER RESOLUTION NO.09, SERIES OF 2011, FOR GENERATION COMPANIES AND DISTRIBUTION UTILITIES WHICH ARE NOT PUBLICLY LISTED TO OFFER AND SELL TO THE PUBLIC A PORTION OF NOT LESS THAN FIFTEEN PERCENT (15%) OF THEIR COMMON SHARES OF STOCK, PURSUANT TO SECTION 43(t) OF REPUBLIC ACT NO. 9136 AND RULE 3, SECTION 4(m) OF ITS IMPLEMENTING RULES AND REGULATIONS (IRR)

WHEREAS, *Section 2(d) of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA)*, provides that it is the policy of the State to enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and distribution sectors;

WHEREAS, *Section 24(t) of the EPIRA and Rule 3, Section 4(m) of its IRR* provide that the Energy Regulatory Commission (the Commission) shall perform such other regulatory functions as are appropriate and necessary in order to ensure the successful restructuring and modernization of the electric power industry, such as, but not limited to, the rules and guidelines under which are not publicly listed shall offer and sell to the public a portion of not less than fifteen percent (15%) of their common shares of stock: Provided, however, that generation companies, DUs of their respective holding companies that are already listed in the Philippine Stock Exchange (PSE) are deemed in compliance. For existing companies, such public offering shall be implemented not later than five (5) years from the effectivity of this Act. New companies shall implement their respective public offerings not later than five (5) years from the issuance of their certificate of compliance;

WHEREAS, on 17 August 2005, the Commission promulgated *Resolution No. 18, Series of 2005, entitled Implementing Section 43(t) of Republic Act No. 9136 and Rule 3, Section 4(m) of the Implementing Rules and Regulations (IRR) of the said Act* directing generation companies and DUs which are not publicly listed in the PSE, to offer and sell to the public a portion of not less than fifteen percent (15%) of their common shares of stocks, and to submit, within thirty (30) days from public offering, reports to the Commission on the extent of their compliance therewith together with Certifications from the PSE showing the number of shares listed, names of the

shareholders presently owning said shares, and other relevant information for monitoring and verification;

WHEREAS, on 10 May 2006, *Resolution No. 21, Series of 2006*, entitled *A Resolution Suspending the Effectivity and Implementation of Certain Rules Issued by the Energy Regulatory Commission* was promulgated whereby the Commission suspended the effectivity and implementation of *Resolution No. 18, Series of 2005*, pending the conduct and termination of public hearings thereon;

WHEREAS, on 23 May 2011, *Resolution No. 09, Series of 2011* entitled *A Resolution Adopting the Rules Requiring Generation Companies and Distribution Utilities Which Are not Publicly Listed to Offer and Sell to the Public a Portion of Not Less Than Fifteen Percent (15%) of their Common Shares of Stock Pursuant to Section 43(t) of Republic Act No. 9136 and Rule 3, Section 4(m) of its Implementing Rules and Regulations (IRR)* was promulgated to implement the mandate of the *EPIRA* on public a portion of not less than fifteen percent (15%) of their common shares of stocks.

WHEREAS, *Resolution No. 09, Series of 2011*, provides a period of five (5) years from its effectivity for generation companies and DUs to offer and sell to the public a portion of not less than fifteen percent (15%) of their common share of stocks. The *Resolution* was published on 14 June 2011 and became effective on 29 June 2011. The five-year period will end on 29 June 2016;

WHEREAS, the Private Electric Power Operators Association (PEPOA) sought clarification from the Commission, through a letter filed on 04 July 2011, whether registration of common shares at the Securities and Exchange Commission (SEC) was inadvertently omitted as a mode of public offering;

WHEREAS, on 13 October 2015, a Petition was filed before the Commission praying that the registration in the SEC (under *Section 8 of Republic Act No. 8799 or the Securities Regulation Code*) be included among the modes of public offering allowed by the Commission, and to hold in abeyance the implementation of *ERC Resolution No. 09, Series of 2011*, pending the final resolution on the Petition;

WHEREAS, on 24 February 2016, a letter was filed with the Commission seeking confirmation whether the implementation of *ERC Resolution No. 09, Series of 2011*, will be held in abeyance pending final resolution on the Petition;

WHEREAS, the Commission in order to afford all affected parties the opportunity to comply with the requirement, has resolved, in lieu of suspending the effectivity of *Resolution No. 9, Series of 2011*, to extend for one (1) year the compliance period provided in said Resolution pending final resolution on the Petition or until 29 June 2017;

WHEREAS, the Commission while in the process of completing the required public consultations on the petition, a fortuitous event occurred as Martial Law was declared for the whole Mindanao Island thereby interrupting the conduct of hearings prescribed under the ERC Rules of Practice;

WHEREAS, on 1 June 2017 Petitioners under ERC Case No. 2015-006 RM filed an Omnibus Motion praying among others that the deadline for compliance of ERC Resolution No. 9, Series of 2011 be extended further for another year from 29 June 2017, or until 29 June 2018 or that the implementation of said ERC resolution be suspended until the final resolution of the subject petition;

WHEREAS, the Commission in order to complete the required public consultations on the instant petition and due to the fortuitous event mentioned, has resolved, to extend for one (1) year the compliance period provided in said Resolution pending final resolution on the Petition;

NOW, THEREFORE, the Commission hereby **RESOLVES**, as it is hereby **RESOLVED**, to **EXTEND** for a period of one (1) year or until the resolution of the petition whichever is earlier, for generation companies and DUs to offer and sell to the public a portion of not less than fifteen percent (15%) of their common shares of stocks.

This *Resolution* shall take effect immediately following its publication in a newspaper of general circulation.

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), the Department of Energy, and all Generation Companies and Distribution Utilities.

Pasig City, 27 June 2017


JOSE VICENTE B. SALAZAR*
Chairman and CEO



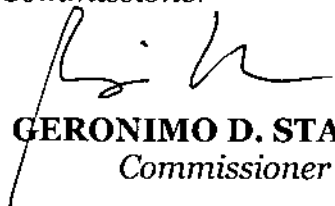
ALFREDO J. NON
Commissioner



GLORIA VICTORIA C. YAP-TARUC
Commissioner



JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner



GERONIMO D. STA. ANA
Commissioner

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The Chairman was placed on preventive suspension as per Order of the Office of the President (OP-DC Case No. 17-D-094) dated 2 May 2017 and received on 04 May 2017.