

Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City



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RESOLUTION NO. _____, Series of 2018

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 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 43 (t) of the EPIRA and Rule 3, Section 4 (m) of its IRR* provide that the Energy Regulatory Commission (the "Commission" or "ERC") 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 generation companies and DUs 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 or their respective holding companies that are already listed in the 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 August 17, 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 the generation companies and DUs which are not publicly listed in the PSE, to offer

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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 May 10, 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, after publishing notices to solicit comments from interested parties and after holding a public consultation, the Commission, considering all the comments received from various interested parties, formulated the Rules on public offering and on May 23, 2011, issued *Resolution No. 9, 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)*”;

WHEREAS, Section 2.3 of Article II of Resolution No. 9, Series of 2011, provided as follows:

ARTICLE II PUBLIC OFFERING PROVISIONS

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2.3 Modes of Public Offering

The EPIRA mandates that generation companies and DUs which are not publicly listed shall offer and sell

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to the public a portion of not less than fifteen percent (15%) of their common shares of stocks. Any offer of common shares of stocks for sale to the public through any of the following modes shall be deemed as public offering:

- a. Listing of the generation companies and DUs in the PSE; and
- b. Listing of the shares of stock in any accredited stock exchange or direct offer of a portion of registered enterprises' capital stock to the public and/or their employees, when deemed feasible and desirable by the Board of Investments.

However, the offer of the common shares of stock through an Employee Stock Option Plan (ESOP) or any other plan analogous thereto shall not be deemed as public offering since the offer is limited only to the employees of the generation companies and DUs, as against the general public to whom the offer is to be made. Said offer and sale of shares of stock, through ESOP, is considered as public offering only when the generation company or DU is a "registered enterprise" under the Omnibus Investment Code.

Generation companies under the Build Operate and Transfer (BOT) scheme shall not be deemed in compliance with the public offering requirement given that the privatization provisions of the EPIRA has the effect of transferring the ownership of the privatized BOT projects to the new owners. Thus, the new owners shall comply with the public offering requirement.

WHEREAS, the Private Electric Power Operators Association (PEPOA) sought clarification from the Commission, through a letter filed on July 4, 2011, whether registration of common shares at the Securities and Exchange Commission (SEC) was inadvertently omitted as a mode of public offering;

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WHEREAS, on October 13, 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. 9, Series of 2011*, pending the final resolution on the Petition;

WHEREAS, on February 24, 2016, a letter was filed with the Commission seeking confirmation whether the implementation of *ERC Resolution No. 9, Series of 2011*, will be held in abeyance pending final resolution of 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;

WHEREAS, on March 8, 2016, *Resolution No. 18, Series of 2016*, entitled “*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)*” was promulgated whereby the Commission extended the period of compliance, which was set to end on June 29, 2016, for a period of one (1) year, or until June 29, 2017;

WHEREAS, the Commission while in the process of completing the required public consultation 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 June 1, 2017, Petitioners under ERC Case No. 2015-006 RM filed an Omnibus Motion praying among others that

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the deadline for compliance of ERC Resolution No. 9, Series of 2011 be extended further for another year from June 29, 2017, or until June 29, 2018 or that the implementation of said ERC resolution be suspended until the final resolution of the subject petition;

WHEREAS, on June 27, 2017, *Resolution No. 10, Series of 2017* entitled “*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)*” was promulgated whereby the Commission extended the period of compliance for one (1) year or until the resolution of the petition whichever is earlier;

WHEREAS, Public Consultations were conducted on the following dates:

22 May 2017	Pasig City	Luzon Stakeholders
25 May 2017	Cebu City	Visayas Stakeholders
11 August 2017	Davao City	Mindanao Stakeholders
04 May 2018	Pasig City	Comments of Mr. Borja

WHEREAS, the Commission is still in the process of evaluating the petition in **ERC Case No. 2015-006 RM**;

WHEREAS, the Commission sought clarification from SEC dated 13 June 2014 on the issue of allowed Modes of Public Offering under existing laws and rules in relation to Section 43 (t) of RA 9136 (EPIRA) on Public Offering. In a letter dated 19 June 2018, the Commission again sought for updated opinion on the same subject matter;

WHEREAS, the Commission is awaiting the response of SEC;

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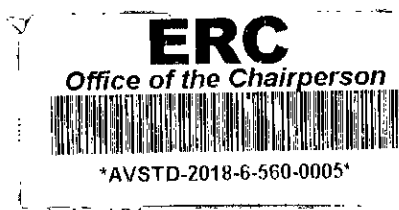
NOW THEREFORE, the Commission, after thorough and due deliberation, **RESOLVED**, to **EXTEND for a period of six (6) months** or until 29 December 2018, for generation companies and DUs to offer and sell to the public a portion of not less than fifteen percent (15%) of their common shares of stocks.


This Resolution shall take effect 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), the Department of Energy, and Generation Companies and Distribution Utilities.

Pasig City, June 21, 2018.


AGNES VST DEVANADERA
Chairperson and CEO




ALFREDO J. NON
Commissioner


GLORIA VICTORIA C. YAP-TARUC
Commissioner


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner


GERONIMO D. STA. ANA
Commissioner