

RESOLUTION NO. 03, Series of 2009

RESOLUTION AMENDING THE GUIDELINES TO GOVERN THE IMPOSITION OF ADMINISTRATIVE SANCTIONS IN THE FORM OF FINES AND PENALTIES PURSUANT TO SECTION 46 OF REPUBLIC ACT NO. 9136

This is to amend Sections 4 and 5, Article III of the GUIDELINES TO GOVERN THE IMPOSITION OF ADMINISTRATIVE SANCTIONS IN THE FORM OF FINES AND PENALTIES PURSUANT TO SECTION 46 OF REPUBLIC ACT NO. 9136 ("Guidelines") approved on May 17, 2002 to read as follows:

"ARTICLE III

ADMINISTRATIVE SANCTIONS

SECTION 4. NON-SUBMISSION OF DOCUMENTS. - Any person who, without justifiable reason, fails to submit the documents in compliance with the ERC's List of Reportorial Requirements or any other documents which the ERC may require from time to time, shall be subject to the following sanctions:

No. of Violation	Basic Amount of Penalty	Additional Penalty to be Imposed for the Delay in the Compliance from Notification
1st violation	PhP50,000.00	a) More than 1 (one) month but less than three (3) months - 10% of the basic amount of penalty
2nd and 3 rd violations	PhP100,000.00	b) Three (3) months to six (6) months - 50% of the basic amount of penalty.
4th and subsequent violations	PhP200,000.00	c) More than six (6) months - 50% of the basic amount of penalty for every month of delay

(Handwritten signatures and initials)

If the reports/documents submitted contain fraudulent information/data, the same shall be treated as non-compliance with the preceding paragraph and shall be subject to the following sanctions:

No. of Violation	Basic Amount of Penalty	Additional Penalty
1st violation	PhP200,000.00	a) 50% of the basic amount of penalty if there were Financial benefits that may be derived as a result of the violation b) 75% of the basic amount of penalty if the violation is intended to conceal illegal acts c) 100% of the basic amount of penalty if the violation directly affects the consumers
2nd violation	PhP300,000.00	
3rd violation and subsequent violations	PhP500,000.00 and Cancellation of the Certificate of Public Convenience and Necessity (CPCN), License and the Franchise for Consortium	

The official or personnel of the juridical entity solely responsible for the submission of the fraudulent reports shall be subject to the following sanctions:

No. of Violation	Amount of Penalty
1st violation	PhP100,000.00
2nd violation	PhP200,000.00
3rd and subsequent violations	PhP400,000.00

For purposes of these Guidelines, the responsible officer being referred to in the preceding paragraph are those who have directly participated in, or have authorized the preparation of such reports/documents.

No compromise agreement shall be allowed in cases where the same violation was committed more than once.

SECTION 5. NON COMPLIANCE WITH THE PROVISIONS OF THE ACT AND ITS IRR, GRID AND DISTRIBUTION CODES, RULES, REGULATIONS, ORDERS, RESOLUTIONS AND OTHER LAWS OF THE ERC. Any person who has been found to have committed a violation of any provisions of the Act and its IRR, the Philippine Grid and Distribution Codes (PGDC), rules,

regulations, orders, resolutions and other laws the implementation and enforcement of which are delegated to the ERC, including but not limited to the following, shall be subject to the following sanctions:

x x x

No. of violation	Basic Amount of Penalty	Additional Penalty Shall be Imposed for Any Willful Delay in the Implementation
1st and 2 nd violation	PhP100,000.00	a) 10% of the basic amount of penalty if the compliance was made after one (1) month from notice.
3 rd and 4 th violation	PhP300,000.00	b) 50% of the basic amount of penalty if the compliance was made after two (2) months from notice.
5 th and subsequent violations	PhP500,000.00 and Cancellation of the Certificate of Public Convenience and Necessity (CPCN), License and the Franchise for Consortium	c) 100% of the basic amount of penalty if the compliance was made after three (3) months from notice.


No compromise agreement shall be allowed in cases where the same violation was committed more than once.

This Resolution shall take effect fifteen (15) days after publication in two (2) newspapers of general circulation in the country.


Let copies of this Resolution be furnished the University of the Philippines Law Center-Office of the National Administrative Register (UPLC-ONAR) and all entities engaged in the generation, transmission, distribution and supply of electricity.


Pasig City, February 23, 2009.


ZENAIDA G. CRUZ-DUCUT
 Chairperson


RAUF A. TAN
 Commissioner


ALEJANDRO Z. BARIN
 Commissioner


MARIA TERESA A.R. CASTAÑEDA
 Commissioner


JOSE C. REYES
 Commissioner

Copy furnished:

1. **All distribution utilities**
2. **GN POWER LTD. CO.**
Daniel R. Chalmers
Chairman and CEO
1905 Orient Square Building
Don Francisco, Ortigas Road
Ortigas Center, Pasig City
3. **Aboitiz Energy Solutions, Inc.**
110 Legaspi St., Legaspi Village, Makati City
4. **Trans-Asia Oil and Energy Devt. Corp.**
11th Floor, Phinma Plaza, 39 Plaza Drive
Rockwell Center, Makati City
5. **First Gen Energy Solutions, Inc.**
3rd/F Benpres Bldg., Exchange Road
cor. Meralco Ave., Ortigas Ctr., Pasig City
6. **Masinloc Power Partners Ltd. Co.**
30th Floor, Philamlife Tower
8767 Paseo De Roxas, Makati City
7. **Premier Energy Resources Corp.**
SM Corporate Offices, Bldg.
A, J.W. Diokno Blvd., Mall of Asia Complex, Pasay City
8. **National Transmission Corporation**
Power Center, Quezon Ave.
cor. BIR Road, Diliman, Quezon City
9. **National Power Corporation**
Corner Quezon Avenue and Agham Road
Diliman, Quezon City
10. **Avon River Power Holdings Corporation**
20th Floor, GT Tower International
6813 Ayala Avenue
corner H.V. dela Costa St. Salcedo Village
Makati City
11. **Bicol Hydropower Corporation**
San Jose, Milaor, Camarines Sur
12. **Cebu Private Power Corporation**
20th Floor, OMM Citra Condominium, San Miguel Avenue, Ortigas Center, Pasig City
13. **CIP II Power Corporation**
Lot C4-1 Carmelray Industrial Park II
Brgy. Punta, Calamba City, Laguna
14. **Delta P., Inc.**
No. 6 Diode St. LISP 1
Bo. Diezmo, Cabuyao, Laguna
15. **EEI - Power Corporation**
#12 Manggahan Street, Bagumbayan, Quezon City
16. **First Cabanatuan Ventures Corporation**
Sitio Mampulog, Bgy. Bitas Cabanatuan City, Nueva Ecija

17. **GBH Power Resources, Inc.**
(formerly Mirant (Philippines) Island generation Corporation)
20th Floor, GT Tower International, 6813 Ayala Avenue corner H.V. dela Costa St.
Salcedo Village, 1227 Makati City
18. **Ilocos Norte Electric Cooperative , Inc.**
(Agua Grande Mini Hydro Power Plant)
Suyo, Dingras, Ilocos Norte
19. **Island Power Corporation**
23 Ponce cor. Lippay, San Lorenzo Vill.
Makati City
20. **Lazard Power Corporation**
S - 705 Royal Plaza Twin Towers
648 Remedios Street, Malate Manila
21. **Linberg Philippines, Inc.**
20th Flr., 20-D Rufino Pacific Tower]
6784 Ayala Avenue corner V.A. Rufino St., Makati City
22. **Lubang Electric Cooperative, Inc.-Cabra Diesel Power Plant**
Baguabag, Vigo, Lubang, Occidental Mindoro
23. **Mid-Islands Power Generation Corporation**
15th Floor, Belvedere Tower
San Miguel Avenue, Ortigas Center, Pasig City
24. **Northern Mini Hydro Corporation**
214 Ambuklao Road, Beckel, La Trinidad, Benguet
25. **NorthWind Power Development Corporation**
Rm. 310 Jollibee Plaza Bldg.
Emerald Avenue, Ortigas Centre, Pasig City
26. **People's Energy Services (Barit Hydroelectric Power Plant**
Sta. Justina, Buhí, Camarines Sur
27. **San Roque Power Corporation**
36th Floor, Tower 1, The Enterprise Center
Ayala Avenue, Makati City
28. **Southern Philippines Power Corporation**
3rd Flr., Solid House
2285 Pasong Tamo Extension, Makati City
29. **Sta. Clara Power Corp. (Loboc Hydroelectric Power Plant)**
97 E. Delos Santos Avenue, Makati City
30. **Tarlac Power Corporation**
No. 123 Mabini Street, Tarlac City, Tarlac
31. **Philippine Independent Power Producers Association**

REPORTORIAL REQUIREMENTS

DOCUMENTS		DEADLINE OF SUBMISSION
1.	Purchased Power Adjustment (PPA) Refund Summary Report	Annually (Every 30th day of January)
2.	Progress/ 5% Reinvestment Report	Annually One year after the date of its UFR Decision and every year thereafter
3.	Depreciation Fund Report for PUs	On or before the 30th day of the month
4.	Annual Report	Annually On or before May 31st of every year
5.	Preferential Rates	Semi-Annually (15th day of July and January of every year)
6.	DU-M-001	Every 20 th day of the month
7.	DU-M-002	Every 20th day of the month
8.	TRUE-UP MECHANISM	
9.	Inter Class Cross Subsidy Charge	No later than sixty (60) days from the end of inter-class cross subsidy removal soft and hard copies of all calculations
10.	Automatic Generation Rate Adjustment (AGRA)	On or before the 20th day of each month
11.	System Loss Rate (SLR) <ul style="list-style-type: none"> • Invoices from power supplier/s • 5 copies of sample bills to end-users • Official receipts of payment of power supplier/s invoices • ERC Forms M-001 & M-002; and • Other documents deemed relevant by ERC 	On or before the 20th day of each month
12.	Tax Recovery Adjustment Charge (TRAC) sample bills of its customer class and summary of the tax imposition and collection for every locality within its franchise area	On or before the 25th day of the month
13.	Lifeline Rate Adjustment <ul style="list-style-type: none"> • Frequency distribution by kWh Consumption and number of customers for the DU's lifeline customers • Sample bills to end-users • Official receipts of payment of NPC Genco, other generation sources and TRANSCO's invoices • Other documents deemed relevant by ERC 	On or before the 30th day of the month On or before the twenty-fifth (25th) day of the month
14.	Transmission Rates Adjustment <ul style="list-style-type: none"> • Photocopies of invoices from TRANSCO certified by the DU's Finance Manager • Photocopies of Official Receipts (ORs) of payment to TRANSCO certified by the DU's Finance Manager • Other documents deemed relevant by ERC 	On or before the 20th day of each month
15.	Mandatory Rate Reduction (MRR)	On or before the 20th day of each month
16.	Monthly Collection of PPD Recovery	On or before the 30th day of the month
17.	Annual Progress Report of DUs PGDC Compliance - Quarterly Interruption Report using the prescribed format	1 st quarter – not later than 30 th day of April 2 nd quarter – not later than 31 st day of July 3 rd quarter – not later than 31 st day of October 4 th quarter – not later than 31 st day of January

18.	Power Quality Standards Compliance Report of DUs - Records of voltage tests conducted shall be recorded using the prescribed format	On or before the end of the month following the month that the voltage tests were conducted
19.	Supervision and Regulation Fees of DUs	The payment shall be made on or before 30 th day of September of every year
20.	Filing of Capital Expenditure Program	Regulated Entity shall submit its proposed three (3) year capital expenditure program in accordance with the prescribed groupings and schedule. The CAPEX application shall be filed by Group 1, 3 and 5 on the first quarter or on before the 31 st day of March of the year before the start of the next 3-year period CAPEX application. CAPEX applications of Group 2, 4 and 6 shall be filed on the 3 rd quarter or on or before 30 th day of September of the year before the start of the next 3-year period CAPEX application.
21.	The Wholesale Aggregator (WA) shall file a report or any other report as may be deemed necessary by the ERC containing the following information, in a form prescribed by the ERC. a) Monthly energy sales to its Distribution Utilities; b) Monthly revenues from energy sales to its DUs; c) Any new contracts signed and executed as well as any amendments to the previously filed contracts or agreements, in relation to its wholesale aggregation business; d) Certification from any universal commercial bank stating the updated amount deposited in escrow; and e) Other information that the ERC deems necessary or useful in carrying out its duties and obligations	Every end of June and December each year
22.	The Generation Company shall submit a management report or discussion on operations and financial results which shall include the following: a) Report on capacity utilization, electricity dispatch/sales volume, maintenance schedules, and unscheduled downtimes during the period; b) Report on energy revenues during the period, detailing volumes, the identity/ies of the buyer/s and prices broken down as follows: fuel cost, fixed operating and maintenance expenses, variable operating and maintenance expenses, and capital recovery charge; and c) Any material information affecting the operations, ownership, management, and financial condition and results of the Generation Company.	Within 30 days after the end of each fiscal period
23.	The Generation Company shall submit a complete set of its audited financial statements (i.e., balance sheet, income statement, statement of cash flows, notes), including the audit opinion and the statement of management's responsibility on the financial statements. The income statement should include a detailed schedule of operating expenses for the period.	Within 30 days from the filing of its Income Tax Return with the Bureau of Internal Revenue

	DEADLINE OF SUBMISSION
<p style="text-align: center;">DOCUMENTS</p> <p>24. Each generation company must file a statement under oath containing the following information:</p> <ul style="list-style-type: none"> a. A list, current as of the preceding 31 December, of all of the generating units of the generation company which are commissioned and connected, and their maximum capacity, fuel type, and location; b. A list, current as of the preceding 31 December, of all of the generating units of the generation company which will be commissioned and connected during the filing year, and their proposed maximum capacity, fuel type, and location; c. For each of the generating unit referred to in a paragraph (a) or (b), if ownership and control is vested in or shared with another or some other entities other than the generation company, the persons or entities which have equitable or legal title thereto, pursuant to whatever arrangement entered into by and between them; d. For each of the entities referred to in paragraph (c): <ul style="list-style-type: none"> i. The names and addresses of the stockholders and their respective shareholdings, the current directors and officers; ii The name and registered office of any holding company, and the name and registered or principal office of any parent undertaking; and iii. The list of all the affiliates and their addresses and of the names and addresses of their current directors and officers. <p>The statement under oath referred to in the preceding paragraph shall be jointly filed by the entities owning the generation facility and those exercising control over the capacity thereof. The latest Audited Financial Statements and General Information Sheets shall likewise be submitted to validate the information referred to in paragraph 1(d) above.</p>	<p>On or before 30 January of each year</p>
<p>25. To enable the ERC to monitor the actual generating capacity in the system, it shall be the obligation of all generation companies and/or entities which exercise control over the capacity of such generation companies to inform the ERC through electronic mail of any changes in their maximum capacity on a per unit basis.</p>	<p>Within five (5) days from the occurrence thereof.</p>
<p>26. RES Application for Renewal of License</p> <ul style="list-style-type: none"> a. Application for Renewal of License; b. Proof of Payment of Renewal Fee; c. Security Deposit commensurate to amount collected from customers, if applicable; d. Business Permit; e. Latest RES Information Sheet; f. Recent Annual Report to shareholders with Audited; Financial Statements; g. Such other documents that ERC may require; 	<p>Not later than sixty (60) days before three (3) years from the date of approval of license.</p>
<p>27. Report of any violation of law or business ethics by the RES in connection with the provision of electricity or energy related products or services that results in a conviction or acceptance of penalty for said behavior.</p>	<p>Within fifteen (15) business days from conviction or acceptance of penalty whichever comes earlier.</p>
<p>28. Report of any material change to the information supplied in a RES's License Application.</p>	<p>Within thirty (30) days from the occurrence of such event.</p>

	DOCUMENTS	DEADLINE OF SUBMISSION
29.	RES Notice of Ceasing Operations	At least thirty (30) days before ceasing operations
30.	Proof of refund of any money owed to customers, as well as a settlement plan or proof of payment of any amount owed to a DU, Transco, WESM, or a Generation Company.	At least thirty (30) days before ceasing operations
31.	RES procedures to resolve complaints by customers in relation to Retail Supply Contracts	At least twenty (20) business days prior to its commercial operations.
32.	On a form prescribed by the ERC a. Average Prices b. Revenues c. Customers d. Bank Certification e. Other Information as described in the RES License Guidelines	Monthly
33.	RES Annual Report of Trainings	Upon commencement of commercial operations and annually thereafter
34.	RES Compliance Report to be accompanied by a. Accounting Separation Statements b. Management Responsibility Statement c. Auditor's Report d. General Information Sheet e. Compliance Report f. Consolidated ACAM	Annually within five (5) months from the end of its Financial Year
Rules on Contestability (Article II)		
35.	TRANSCO's submission of accurate information on Contestable Customers that have accounts with them which have satisfied the threshold levels, as provided in Section 1, Article II of Rules for Contestability.	Monthly
Guidelines for the Issuance of Licenses to Retail Electricity Suppliers (RES)		
36.	Each RES shall file a report containing the following information as described in the said Guidelines, in a form prescribed by the ERC: a. Average prices b. Revenues c. Customers d. Bank Certification e. Other Information	Monthly or as may be deemed necessary
37.	Notice of Ceasing of Operations and proof of refund of any money owed to customers, as well as a settlement plan or proof of payment of any amount owed to a DU, Transco, WESM, or a Generation Company	At least thirty (30) days before ceasing operations
38.	Report of any material change to the information supplied in a RES's License Application	Within 30 days from the occurrence of such event.
Code of Conduct for Competitive Retail Market Participants		
39.	Trainings and evaluations of Sales personnel	Annual
40.	A RES or Local RES shall submit for approval its procedures to resolve complaints by customers in relation to Retail Supply Contracts	Twenty (20) Business Days prior to its commercial operation
Rules on Customer Switching		
41.	All DUs in Luzon and TransCo/WMSP (for directly connected customers in Luzon) shall submit to the ERC and CRB, information on End-users with: 1) monthly average peak demand of at least one megawatt (1 MW) for the preceding twelve (12) months; and 2) monthly average peak demand of seven hundred fifty kilowatts (750 kW) but not greater than nine hundred ninety nine kilowatts (999 kW), which include the following: a. Customer name; b. Billing and service addresses; c. Customer's account number; d. Meter number; e. Meter type (interval meter, etc.); f. Meter reading date or cycle and reporting period; g. Billing period and payment due date;	All DUs in Luzon and TransCo/WMSP (for directly connected customers in Luzon) shall submit an update of the said data to the Commission and CRB every fifteenth (15 th) day of the subsequent months without need of further notice.

	DOCUMENTS	DEADLINE OF SUBMISSION
	<p>h. Standardized Customer classification as approved and promulgated by the ERC;</p> <p>i. The most recent twelve (12) months of historical usage, i.e. monthly registered peak demand (in kW) and monthly total registered energy consumption (in kWh); and</p> <p>j. Customer contact information such as telephone number/s and e-mail addresses, subject to agreement on confidentiality.</p>	All DUs in Visayas and Mindanao shall submit the said information within one (1) month from declaration of Open Access Date in their respective regions, or as otherwise directed by the ERC.
42.	<p>The CRB shall submit the following information:</p> <p>a. Number and names of Contestable Customers served by each RES or Local RES;</p> <p>b. Number of Contestable Customers that switched, sorted by DU franchise area;</p> <p>c. Percent (%) increase in Switching per DU franchise area;</p> <p>d. Number of Switch Requests received per DU franchise area;</p> <p>e. Number of Switch Requests approved per DU franchise area;</p> <p>f. Number of Switch Requests rejected per DU franchise area, and reasons for rejection;</p> <p>g. Average Switching time (no. of hours or days from receipt of Switch Request to date Switching took effect); and</p> <p>h. Maximum and minimum switching time.</p>	Regular update of the above data - every 15 th day of the following month.
Rules for the Supplier of Last Resort for the Contestable Market		
43.	Information on the cessation of operation of RES	At least thirty (30) days advance written notice to the ERC
44.	Notice to the Commission if the Market Operator suspends the RES or Local RES.	
45.	The SOLR shall submit its pro forma terms and conditions for the supply of electricity to the ERC for its approval.	At least ninety (90) days prior to the commencement of retail competition and open access, or thereafter within one (1) month after having been qualified to serve as SOLR.
46.	The SOLR shall file and submit for ERC approval the proposed SOLR rate.	At least six (6) months prior to the commencement of retail competition and open access, or thereafter within three (3) months from having been qualified to serve as SOLR.
47.	<p>Each SOLR shall submit to ERC the following information:</p> <p>For each month of the reporting quarter:</p> <p>a. List of Customers per customer class, which were serviced by the SOLR.</p> <p>b. List of customers per customer class whose service was disconnected for non-payment of SOLR bill, and the amount owed to the SOLR at the time of disconnection.</p> <p>c. List of customers per customer class that transferred from SOLR to new RES, and the names of new RES to which each Customer has transferred.</p> <p>d. Each customer's reason(s) for resorting to SOLR.</p> <p>e. Length of time each Customer was served by the SOLR.</p>	Within thirty (30) days after the end of every quarter.

	DOCUMENTS	DEADLINE OF SUBMISSION
	f. Such other information or documents that the ERC may require	
	Rules on Rate Filing by the Supplier of Last Resort	
48.	In the event that a particular DU disputes its capability to serve as SOLR outside its franchise area, such DU shall submit to the ERC the justification for its incapability to serve as SOLR.	Within fifteen (15) days from receipt of notice by ERC.
49.	<p>The SOLR shall file and submit for ERC approval its proposed SOLR Rate for the Contestable Market. Where a DU is qualified to act as SOLR outside its franchise area, its proposed SOLR Rate shall be filed and submitted to the ERC within three (3) months from having qualified as such.</p> <p>The Applicant shall file its application to the ERC, together with the following:</p> <ol style="list-style-type: none"> 1. Itemized expenses for SOLR service and its justification; 2. Proposed reasonable return on investment and its justification; 3. Proposed Premium and its justification; and 4. All other basic requirements as prescribed in the ERC Rules of Practice and Procedure. <p>The Applicant shall include in its filing a recovery formula or a mechanism to recoup a cost that is not due to the absence of a SOLR customer, or to refund an over-recovery arising from the collection of SOLR Rate</p>	Within sixty (60) days from receipt of notification from the ERC
50.	<p>The SOLR shall submit the following information:</p> <ol style="list-style-type: none"> 1. Energy Purchased for SOLR service* 2. Energy Sold to SOLR Customers* 3. Sample bill per customer segment <p>*Following the table provided in the Rules</p>	Within twenty (20) days following the first month of the implementation of retail competition
51.	<p>The SOLR shall provide the ERC with the following (if any):</p> <ol style="list-style-type: none"> 1. All calculations and collections made related to Article II, Sec. 1.2, together with the supporting documents, which shall include, but not limited to the following: <ol style="list-style-type: none"> a. Amount not recovered from its SOLR operation; and b. Total amount recovered or intended to be recovered through the mechanism. 	On or before the 30 th day of January of the following year