

REVISED GUIDELINES FOR THE FINANCIAL STANDARDS OF GENERATION COMPANIES

ARTICLE I

GENERAL PROVISIONS

1.1 Background

1.1.1 Philosophy / Rationale

Pursuant to Section 6 of Republic Act No. 9136 and its Implementing Rules and Regulations, electric power generation, a business affected with public interest, shall be competitive and open. Primarily guided by its mandate to ensure quality and reliable delivery of power service to the public and to protect electricity consumers, the Energy Regulatory Commission (ERC) hereby prescribes and implements the financial standards required by law for the generation sector of the electricity industry.

1.1.2 Objectives

1.1.2.1 Financial Capability standards are required by the Philippine Grid Code to be complied with by Generation Companies (GENCOs) in order to:

- ~~a. Promote the overall financial viability of the generation sector;~~
- a. Specify the financial capability standards for the GENCOs;**
- b. Safeguard against the risk of financial non-performance;**
- c. Ensure the affordability of electric power supply while maintaining the required quality and reliability; and
- d. Protect the public interest.

1.1.2.2 This set of Guidelines is promulgated to:

- a. Identify the minimum financial capability standards for GENCOs;
- b. Prescribe the frequency and form of GENCO submissions; and
- c. Prescribe the actions for non-compliance with the minimum financial standards for GENCOs.

1.1.3 General Principles

1.1.3.1 These Guidelines will set out the minimum financial capability standards for GENCOs, as required by ~~Chapter 4~~ **Appendix 1, FS.A. 1.3**, of the Philippine Grid Code. However, ERC may require other/additional standards for compliance in connection with other applications filed/to be filed before it by the GENCO.

1.1.3.2 To promote continuous improvement in efficiency and financial performance in the sector, ERC may revise/update the financial capability standards as deemed necessary.

1.2 Definition of Terms

- a. Debt – any indebtedness of the borrower maturing by its terms more than one year after the date on which it is originally incurred (including that portion of any such debt payable within one year from the date of any debt-service ratio calculation), provided that debt shall be counted only to the extent that it is drawn down and outstanding.
- b. Debt Service – aggregate annual amount of debt **service** repayments (~~including lease obligations under power purchase agreements and sinking fund payments, if any~~) and interest and other charges on debt, including capitalized interest during construction on loans for capital expenditures, **but excluding IPPA financial lease obligations to PSALM.**
- ~~c. Debt Service Capability Ratio (DSCR) or Interest Cover Ratio – the measure of the GENCOs ability to fulfill its debt obligations: computed in 2 ways: (1) ratio of Cash Flow from Operations after Taxes to Debt Service, and (2) ratio of Earnings before Interest and Taxes (EBIT) plus depreciation to debt service. For purpose of computing this ratio, Cash Flow from Operations After Taxes shall be derived from the audited financial statements and shall exclude interest received and interest paid. Amortization expenses shall also be treated similarly to depreciation.~~
- d. Earnings Before Interest ~~and~~, Taxes, **Depreciation and Amortization** – equal to revenues less expenses from the GENCO's principal business activities, **plus taxes, depreciation and amortization expense**; ~~is identical to income from operations as determined under the Philippine Generally Accepted Accounting Principles.~~
- e. Generation Company or GENCO – refers to any person or entity authorized by ERC to operate facilities used in the generation of electricity.
- f. Generation Facility – refers to a facility for the production of electricity.
- g. **Independent Power Producer or IPP – refers to an existing power generating entity which is not owned by NPC.**

- h. Independent Power Producer Administrator or IPPA – refers to qualified independent entities appointed by PSALM who shall administer, conserve and manage the contracted energy output of NPC-IPP contract.
- ~~i. Lease – an agreement whereby the lessor conveys to the lessee in return for a payment or series of payments the right to use an asset for an agreed period of time.¹~~
 - ~~g.1 Capital or Financial Lease – a lease that transfers substantially all the risks and rewards incidental to ownership of an asset. Title may or may not be transferred.~~
 - ~~g.2 Operating Lease – a lease other than a capital lease.~~
- j. National Power Corporation or NPC – refers to the government corporation created under Republic Act No. 6395, as amended.
- k. Power Sector Assets Liabilities Management Corporation or PSALM - refers to the government corporation created under Republic Act No. 9136 to take over the ownership of all existing generation assets of the NPC, IPP contracts, real estate and all other disposable assets including the transmission business of the National Transmission Corporation. It is mandated to manage the orderly sale and privatization of such assets with the objective of liquidating all of NPC's financial obligations in an optimal manner.

1.3 Scope of Application

- 1.3.1 These Guidelines shall apply to all ~~G~~generation ~~C~~ompanies, including but not limited to:
 - a. Entities which own and operate a ~~G~~generation ~~F~~facility; and
 - b. Entities which own a ~~G~~generation ~~F~~facility that is operated by another entity under any management contract;
 - ~~c. Entities which hold a Capital Lease on generation assets; and~~
 - ~~d. Entities which hold an Operating Lease on generation assets.~~
- 1.3.2 In cases where the owner and operator of the ~~G~~generation ~~F~~facility are not the same entity, both owner and operator shall be covered by the financial standards, unless it can be established to the satisfaction of the ERC that only one of the two has control over the prices and/or quantities of the output of the ~~G~~generation ~~F~~facility and as such should be the only one covered by the financial standards prescribed herein.
- 1.3.3 An entity which owns only generation facilities used exclusively for its own consumption shall be exempted from compliance with the standards required under these Guidelines.

¹ From International Accounting Standards No. 12 (Leases)

ARTICLE II

FINANCIAL STANDARDS

2.1 Financial Benchmark

2.1.1 ~~A generation company Genco, NPC and/or PSALM shall be is required to meet a minimum annual Interest Cover Ratio or DSCR of 1.5x throughout the period covered by its COC~~ any of the following financial requirements:

- a. Ratio of Cash Flow from Operations after Taxes plus Cash Beginning to Debt Service of 1.0x throughout the period covered by its COC; or
- b. Ratio of Earnings before Interest, Taxes, Depreciation and Amortization (EBITDA) plus Cash Beginning to Debt Service of 1.0x throughout the period covered by its COC. For purposes of computing this ratio, Cash Flow from Operations After Taxes shall be derived from the audited financial statements and shall exclude interest received and interest paid.

For new projects, including rehabilitated power plants, the first calculation shall be done after one full year of commercial operations.

~~2.1.2 The use of the other financial standards prescribed in Chapter 4.2 of the Philippine Grid Code to evaluate the financial capacity of a Genco shall be optional on the part of the ERC.~~

ARTICLE III

REQUIREMENTS AND PROCEDURES

3.1 For COC applications and renewals:

- 3.1.1 Comparative audited financial statements for most recent 12-month period, if available;
- 3.1.2 Schedule of liabilities, to include the following information: name of creditor, type of credit, credit terms;
- 3.1.3 Five (5) year financial plan (i.e. forecast financial statements, including assumptions/bases used for revenue and cost projections); and
- 3.1.4 Documentation on financial track record of the Genco and of its principal stockholder, if available

3.2 Annual submission for the duration of the COC

- 3.2.1 Within 150 days from the end of its fiscal year, the Genco shall submit a complete set of its audited financial statements (i.e. balance sheet, income statement, statement of cash flows, statement of changes in owner's equity, 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. The submitted financial statements should clearly show the financial positions, results of operations, and cash flows pertaining to the generation business.

- 3.2.2 ~~Together with its audited financial statements, a~~ A GENCO shall ~~also~~ submit forecast financial statements for the subsequent ~~two~~ five (25) fiscal years **in case of Certificate of Compliance Application and Renewal**. The submission shall clearly identify the major forecast assumptions used by the GENCO including, but not limited to, the assumptions and bases for its volume, price, fuel and other operating cost projections.
- 3.2.3 Within three (3) days from the happening of an event which results in a material change concerning or potentially affecting the company's ownership, management, operations, financial condition and performance, the GENCO shall submit a written disclosure to the ERC of such fact or event and its impact on the company. If the event results in a GENCO not meeting or potentially not meeting the financial standards prescribed by the ERC, the GENCO is required to submit **a revised forecast financial statements for the subsequent two (2) years and a Program to Comply** within sixty (60) days of the happening of said event.

3.3 Program to Comply

- 3.3.1 A GENCO performing below the benchmark is required to submit its Program to Comply within sixty (60) days of receipt of an ERC directive. The Program to Comply shall identify the specific activities to be undertaken by the GENCO in order to meet the benchmark.
- 3.3.2 Information on the Program to Comply shall include the following:
- 3.3.2.1 Concrete activities/measures to be undertaken to upgrade performance and their estimated financial effects:
 - 3.3.2.2 Expected semi-annual targets/milestone achievements; and
 - 3.3.2.3 Clear and definite timetable for the activities and the targets.
- 3.3.3 The ERC shall inform the GENCO of its action on the GENCO's Program to Comply within sixty (60) days of receipt thereof.
- 3.3.4 The GENCO shall be given one (1) year, or the remaining life of the COC in the case of a new owner of a GENCO previously issues a COC, whichever is shorter, within which to comply with the ERC-prescribed benchmark.

3.4 Notice of Events Affecting Program to Comply

- 3.4.1 At any time after its submission of a Program to Comply, the GENCO shall inform the ERC in writing of any event or condition which shall prevent it from meeting the ERC-prescribed financial standard. The notice shall be given to the ERC within seven (7) days of the happening of such event or condition. The ERC may require

the GENCO to submit a revised Program to Comply to consider the new information brought to its attention by the GENCO.

- 3.4.2 Unless the GENCO formally advises the ERC of any condition affecting the meeting of targets in its Program to Comply, the ERC shall expect the GENCO to comply with the financial standards within the prescribed period.

ARTICLE IV

SANCTIONS AND DISCLOSURES

4.1 Administrative Sanctions

Failure to submit to ERC the requirements as prescribed in these Guidelines may be grounds for the payment of fines and penalties as may be imposed by ERC under Article III of the “Guidelines to Govern the Imposition of Administrative Sanctions in the Form of Fined and Penalties Pursuant to Section 46 of R.A. No. 9136”.

4.2 Disclosure of Non-Compliance with Financial Standards

- 4.1.2 Non-compliance with the financial standards by a GENCO may result in a disclosure by the ERC of such fact, together with any mitigating or aggravating circumstances related thereto, via periodic public bulletins. The public bulletin may also include the GENCO’s Program to Comply and other disclosures made by the GENCO to the ERC regarding its financial condition and performance.
- 4.2.2 In the determination of whether or not a public bulletin is necessary to be made, the GENCO’s operating performance and other factors that may mitigate its poor debt service ability as measured by ~~the DSCR~~ **any of the identified financial benchmark under Section 2.1.1** shall be taken into consideration.

ARTICLE V

CONFIDENTIALITY PROVISIONS

- 5.1 Information filed with the ERC in compliance with the requirements of these Guidelines, except as set forth below, shall be made available to any member of the general public, upon request, in the premises and during regular office hours of the ERC.
- 5.2 Information that is not historical in nature (e.g. forecast financial statements and 5-year financial plans), information not otherwise required to be disclosed in the GENCO’s financial statements by Philippine Generally Accepted Accounting Principles, or information labelled as “CONFIDENTIAL” as set forth in Articles 5.3, shall not be disclosed or used for personal benefit by any member, officer, or employee of the ERC, under pain of administrative sanctions.
- 5.3 A GENCO submitting information in compliance with Article 3.2.3 (Disclosure of Material Events), Article 3.3 (Program to Comply) or Article 3.4 (Notice of Events Affecting Program to Comply) may submit written objection to the public

disclosure information contained therein and prominently label such document as “CONFIDENTIAL”; otherwise such information is deemed to be available for public disclosure. The ERC shall maintain the confidentiality of the information contained in such document, pending a determination by the ERC to the validity of the request for confidential treatment. If it is determined that confidential treatment is not warranted with respect to all or part of the information in question or that disclosure of such information is required in the public interest, the person requesting confidential treatment of the information shall be notified of this decision by written notification sent by registered mail. Such notice will also advise such person that he had the right, which shall be exercise no later than within 10 calendar days of the receipt of such notification, to request and justify in writing that the ERC reconsider such determination.

The ERC may reconsider such determination only once.

If the ERC makes a determination that any or all of the information in the document is not entitled to confidential treatment, the person who submitted the request shall promptly make an amended filing, removing the label “CONFIDENTIAL” in the revised submission.

ARTICLE VI

~~TRANSITORY PROVISIONS~~ EXEMPTION

- ~~6.1 The NPC shall be required to meet a minimum annual DSCR of 1.0x or the minimum DSCR required by its major lenders until such time as it has completed the privatization of its generation assets. Non compliance with this benchmark requires NPC to comply with the provisions of Articles 3.3 and 3.4 of these Guidelines.~~
- ~~6.2 Transferees/new owners of NPC generation assets shall be required to meet a DSCR of 1.5x, as set forth in Article II of these Guidelines.~~
63. Transferees/new owners of NPC generation assets in missionary electrification areas and other entities authorized to operate **G**eneration **F**acilities in missionary electrification areas shall be exempt from compliance with the financial standards prescribed herein insofar as generation activity in the missionary electrification area is concerned. The exemption is enjoyed only for the duration of the period in which they are provided a subsidy for undertaking the missionary electrification function. Beyond this period, the financial standard prescribed in Article II applies.

ARTICLE VII

~~EFFECTIVITY~~ FINAL PROVISIONS

- 7.1 **Separability Clause.** If for any reason, any part or section of these Guidelines is declared unconstitutional or invalid, the other parts or sections hereof which are not affected thereby shall continue to be in full force and effect.

7.2 These Guidelines shall take effect on the fifteenth (15th) day following its publication in ~~two~~ **one (1)** newspapers of general circulation.

Pasig City, _____, 2019.

Chairman

Commissioner

Commissioner

Commissioner

Commissioner