

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

RESOLUTION NO. ____, Series of 2021

A RESOLUTION REVOKING RESOLUTION NO. 17, SERIES OF 2014 ENTITLED “A RESOLUTION SUSPENDING THE ISSUANCE OF RETAIL ELECTRICITY SUPPLIERS (RES) LICENSES”

WHEREAS, pursuant to Section 29 of Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act” (EPIRA) and Section 1, Rule 8 of EPIRA’s Implementing Rules and Regulations (IRR), the Commission is mandated to promulgate rules and regulations, and perform regulatory functions appropriate and necessary in order to ensure the successful restructuring and modernization of the electric power industry;

WHEREAS, on 17 January 2011, the Commission issued Resolution No. 1, Series of 2011¹ which prescribes the requirements and guidelines for entities intending to act as RES;

WHEREAS, the Commission, on 25 November 2013 issued Resolution No. 22, Series of 2013² which amended relevant provisions in Resolution No. 1, Series of 2011 by restricting entities such as Generation Companies or Independent Power Producer Administrators (IPPA) and Distribution Utilities’ (DUs) affiliates to act as RES, among others;

WHEREAS, on 22 October 2014, the Commission issued Resolution No. 17, Series of 2014 (RES License Moratorium)³ wherein it suspended the issuance of RES licenses until such time that the Commission issues an amendment on the RES license rules;

WHEREAS, on 08 March 2016, the Commission issued Resolution No. 05, Series of 2016⁴, which lifted the suspension of issuance of RES licenses issued under the 2014 RES License Moratorium;

WHEREAS, on 12 May 2016, the Commission issued Resolution No. 10, Series of 2016⁵ wherein it adopted the rules governing the issuance of

¹ Entitled, “A Resolution Adopting the Revised Rules for the Issuance of Licenses to Retail Electricity Suppliers (RES)”.

² Entitled, “A Resolution Adopting Amendments to Articles I, II and III of the Revised Rules for the Issuance of Licenses to Retail Electricity Suppliers (RES)”.

³ Entitled, “A Resolution Suspending the Issuance of Retail Electricity Suppliers (RES) Licenses”.

⁴ Entitled, “A Resolution Adopting the 2016 Rules Governing the Issuance of Licenses to Retail Electricity Suppliers (RES) and Prescribing the Requirements and Conditions Therefor”.

RES licenses and its requirements. On the same date, the Commission issued Resolution No. 11, Series of 2016,⁶ which imposed restrictions on DUs and RES in the Competitive Retail Electricity Market (CREM);

WHEREAS, on 15 November 2016, the Commission issued Resolution No. 28, Series of 2016⁷ which amended the mandatory contestability date for end-users with an average monthly peak of at least one (1) MW;

WHEREAS, on different dates, several cases⁸ for Petitions for Certiorari, Prohibition and Injunction were filed against DOE and ERC before the Supreme Court, alleging that ERC Resolution Nos. 5, 10, 11, and 28 and Department of Energy (DOE) Department Circular No. DC2015-06-0010⁹ were unconstitutional;

WHEREAS, on 21 February 2017, a Temporary Restraining Order (TRO) was issued by the Supreme Court on ERC Resolutions Nos. 5, 10, 11, and 28 and DOE Department Circular No. DC2015-06-0010;

WHEREAS, the Commission, in a meeting held on 03 October 2019, approved the resumption of the issuance of RES licenses using the 2011 RES licensing Rules as basis thereof, in the light of the TRO issued by the Supreme Court;

WHEREAS, on 02 March 2021, the Supreme Court issued its Decision declaring that ERC Resolution Nos. 5, 10, 11, and 28, all series of 2016 and DOE Department Circular No. DC2015-06-0010 void for being bereft of legal basis. The DOE and ERC were directed to promulgate the supporting guidelines to DOE's Department Circular Nos. DC2017-12-0013 and DC2017-120014;

WHEREAS, in light of the said Supreme Court ruling, there is a need to revoke Resolution No. 17, Series of 2014 (RES License Moratorium);

WHEREAS, eight (8) RES, with a total of 265 contestable customers, are expected to file for the renewal of their respective licenses within the year and that these customers shall be left without a supplier and may be exposed to the higher prices of the Supplier of Last Resort (SOLR) should the ERC fail to issue RES licenses;

⁵ Entitled, "A Resolution Adopting the Revised Rules for Contestability".

⁶ Entitled, "A Resolution Imposing Restrictions on the Operations of DUs and RES in the Competitive Retail Electricity Market (CREM)".

⁷ Entitled, "Revised Timeframe for Mandatory Contestability, Amending Resolution No. 10, Series of 2016 entitled Revised Rules for Contestability".

⁸ 1st case: PCCI et.al vs. DOE, et.al., GR No. 228588; 2nd case: Siliman Univ. vs. DOE GR No. 229143; 3rd case: BATELEC II et.al vs. DOE, GR No. 229453.

⁹ Entitled, "Providing Policies to Facilitate the Full Implementation of Retail Competition and Open Access (RCOA) in the Philippine Electric Power Industry".

WHEREAS, on 10 November 2021, the Commission approved for posting in its official website (www.erc.gov.ph) the draft Resolution revoking Resolution No. 17, Series of 2014;

NOW THEREFORE, BE IT RESOLVED, as it is hereby resolved that, that the Commission adopts to **REVOKE** Resolution No. 17, Series of 2014 (RES License Moratorium), and issue appropriate guidelines for the implementation of DOE's Department Circular Nos. DC2017-12-0013 and DC2017-120014;

This Resolution shall take effect immediately following its publication in newspaper of general circulation in the country or in the Official Gazette.

Let copies of this Resolution be furnished the University of the Philippines Law Center – Office of the National Administrative Register (UPLC-ONAR) and all affected industry stakeholders, as well as published in the ERC Website and such other online platform available to the Commission.

Pasig City, _____.


LS: BJVG/MCCG


MOS: LAAL/SOM