

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

**IN THE MATTER OF THE
ADOPTION OF THE RULES
ON THE MANDATORY
MIGRATION TO THE
COMPETITIVE RETAIL
ELECTRICITY MARKET
(CREM).**


ERC CASE NO. 2015-___RM

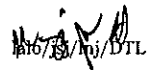
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NOTICE

Notice is hereby given that the first draft of the ***“Rules on the Mandatory Migration to the Competitive Retail Electricity Market (CREM)”*** is posted on the Energy Regulatory Commission (ERC) websites www.erc.gov.ph and www.buyyourelectricity.com.ph for comments from the industry stakeholders. All interested parties may submit their comments to contestable@erc.gov.ph on or before 04 December 2015. The said Rules may be downloaded from the foregoing ERC Websites or photocopied, at cost, during regular office hours at the ERC Main Office.

Pasig City, 13 November 2015.


ATTY. NATHAN J. MARASIGAN
Chief of Staff
Office of the Chairman and CEO


Atty/SA/NO/DTL

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

**RULES ON MANDATORY MIGRATION TO THE
COMPETITIVE RETAIL ELECTRICITY MARKET (CREM)**

Pursuant to Sections 29, 31, and 45 of Republic Act No. 9136, hereinafter referred to as the Act, its Implementing Rules and Regulations (IRR), the Energy Regulatory Commission (ERC) hereby adopts the following Rules on Mandatory Migration to the Competitive Retail Electricity Market (CREM), hereinafter referred to as “the Transitory Rules”:

**ARTICLE I
GENERAL PROVISIONS**

Section 1. Objectives

- a. To ensure the efficient transition towards full contestability;
- b. To ensure the efficient operation of the competitive retail electricity market and foster competition; and,
- c. To ensure consumer protection and enhance the competitive operation of the retail electricity market.

Section 2. Scope

These Rules shall apply to:

- a. Contestable Customers;
- b. Retail Electricity Suppliers;
- c. Distribution Utilities (DUs);
- d. DUs within Economic Zones;
- e. Suppliers of Last Resort;
- f. Central Registration Body; and
- g. All other relevant industry participants.

Section 3. Definition of Terms

Act	Republic Act No. 9136, otherwise known as "Electric Power Industry Reform Act of 2001".
Affiliate	Any Person which, alone or together with any other Person, directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with another Person. Affiliates shall include a subsidiary company and parent company and subsidiaries, directly or indirectly, of a common parent.
Central Registration Body (CRB)	An independent entity assigned to undertake the development and management of the required processes, information technology, and other systems capable of handling customer switching and information exchange among retail electricity market participants.
Code of Conduct for Competitive Retail Market Participants	The set of rules promulgated by the ERC to govern the conduct of competitive retail market participants, their stockholders, directors, officers and employees, within the boundaries of fair competition.
Competitive Retail Electricity Market (CREM)	An electricity market wherein contestable customers exercise their ability to choose suppliers of electricity by virtue of open access in the distribution system.
Contestable Customer	An electricity End-user that belongs to the Contestable Market.

Contestable Market	The electricity End-users who have a choice of a supplier of electricity, as may be determined by the ERC in accordance with the Act.
Control	The power to direct or cause the direction of the management policies of a Person by contract, agency, or otherwise.
Directly-Connected Customers (DCC)	Industrial or bulk electricity end-users, which are directly supplied with electricity by a Generation Company or Power Sector Assets and Management Corporation (PSALM) or National Power Corporation (NPC) pursuant to Republic Act No. 6395, as amended by Presidential Decree No. 395. (Resolution 16, Series of 2012, Transitory Rules for the Implementation of RCOA)
Displaced Contract Capacity Energy (DCC/E)	The excess contracted capacity and energy of a DU from a Generation Company resulting from the Potential un-utilized volume of capacity and energy allocated to migrating Contestable Customers.
Distribution Utility	Any electric cooperative, private corporation, government-owned utility or existing local government unit which has an exclusive franchise to operate a distribution system in accordance with its franchise and the Act, including those operating in the Economic Zones.
End-user	Any Person or entity requiring the supply and delivery of electricity for



	its own use.
Energy Regulatory Commission (ERC)	The independent and quasi-judicial regulatory agency created under Section 38 of the Act.
Franchise Area	A geographical area exclusively assigned or granted to a Distribution Utility for distribution of electricity.
Generation Company (GenCo)	Any Person or entity authorized by the ERC to operate facilities used in the generation of electricity.
Installed Generating Capacity in a Grid	The sum of the maximum capacity of the generation facilities which are connected to a transmission system or distribution system that forms part of a particular Grid
National Power Corporation (NPC)	The government corporation created under Republic Act No. 6395, as amended.
National Grid Corporation of the Philippines (NGCP)	The corporation awarded the concession to operate the transmission facilities of the National Transmission Corporation pursuant to the Act and Republic Act No. 9511.
National Transmission Corporation (TransCo)	The corporation organized pursuant to Section 8 of the Act to acquire all the transmission assets of the NPC.
Person	A natural or juridical person, as the case may be.
Prospective Generation Company (Prospective GenCo)	Any person or entity whose power generation project is still being planned or is undergoing construction and has been included in the Department of Energy's (DOE) Power

Development Plan (PDP), subject to the requirements of Section 5 (e), Article II of these Rules.

Retail Competition

The provision of electricity to a Contestable Customer by the RES through Open Access.

Retail Electricity Supplier (RES)

Any Person or entity authorized by the ERC to sell, broker, market or aggregate electricity to the End-users.

Retail Electricity Supplier's (RES) License

The authority granted by the ERC to any person or entity to act as supplier of electricity to the Contestable Market.

Retail Rate

The total price paid by End-users consisting of the charges for generation, transmission and related ancillary services, distribution, supply and other related charges for electric service.

Retail Supply Contract (RSC)

The contract entered into by and between the RES and the Contestable Customer.

Supplier of Last Resort (SOLR)

A regulated entity designated by the ERC to serve Contestable Customers following a last resort supply event.

Supply of Electricity

The sale of electricity by a party other than a generator or a distributor within the franchise area of a Distribution Utility using the wires of the Distribution Utility concerned.

Value-added Service

Service(s) or product offered in addition to the provision of retail electricity to a contestable customer.

**Wholesale
Electricity Spot
Market (WESM)**

The wholesale electricity spot market established pursuant to Section 30 of the Act.

**ARTICLE II
GENERAL PROVISIONS**

Pursuant to the ERC's mandate under the Act to promote competition, encourage the development of a robust competitive retail electricity market (CREM) and ensure consumer protection, the following provisions shall apply as the market transitions towards mandatory contestability:

Section 1. When referred to, the transitory period shall be from promulgation of these Transitory Rules until 26 June 2018, or the lowering of the threshold for contestability to 500 kilowatts (500 kW), whichever comes earlier.

Section 2. A DU shall no longer be allowed to supply electricity to the contestable market, unless such supply is made in its capacity as a Supplier of Last Resort (SOLR). The DUs are hereby enjoined to wind down their respective supply businesses such that no Local RES shall be allowed to act as such by 26 June 2016.

Further, no DU affiliate shall be allowed to operate as an RES by 26 June 2016, in which case, a winding down of its supply business is likewise enjoined. An affiliate of a DU shall be granted a license to operate on such date determined by the ERC, taking into consideration the supply and demand in the retail market.

Section 3. Pursuant to Department of Energy Circular No. DC 2015-06-0010, the following measures shall be allowed for any Distribution Utility (DU) which may have incurred Displaced Contract Capacity Energy (DCC/E) arising from the migration of Contestable Customers to the CREM:

- a. Renegotiation for the existing power supply contracts between the DUs and the generation companies which do not contain provisions on the reduction of contracted energy volume upon migration of the Contestable Customers.

In cases where a DU has multiple contracts with various Generation Companies having no energy reduction provision, the renegotiation of the reduction of capacity and energy volumes shall be done in a pro-rated manner and high-priced rates should be the first to be renegotiated, and so on. The DU shall exert its best efforts to renegotiate such reduction which has a great impact with its remaining captive customers.

Any amendment to the said power supply contracts shall be filed with the ERC for its approval. The renegotiated power supply contracts of the DUs shall be effective only after the approval of the ERC. Any modalities of addressing the DCC/E shall be revenue neutral to the affected DU.

- b. The DU may also sell any DCC/E to an RES.
- c. The DU may sell any DCC/E to the WESM provided that it shall assume the price risk in cases where the spot prices shall be lower than its approved power supply contract rates.
- d. Declaration of the DCC/E in the Wholesale Electricity Market (WESM) as quantity for sale. This shall only be allowed after determination of the ERC and until the expiration of the DU's bilateral contracts declared as having DCC/E.

DCC/E shall refer to the excess in the contracted capacity and energy of a DU from a Generation Company, resulting from the potential un-utilized volume of capacity and energy allocated to migrating Contestable Customers. As such, the capacity or energy that is to remain with the DU shall be adequate to supply the power requirements of its remaining Captive Market including the DU's projected demand growth.

Section 4. Upon the promulgation of these Transitory Rules, an automatic reduction clause shall be deemed stipulated in all power supply agreements between Distribution Utilities and Generation Companies. This directive shall apply and remain valid for power supply agreements entered into beyond the transitory period defined herein.

Section 5. During the transitory period, the ERC shall allow a Contestable Customer to contract with a Prospective GenCo for its Supply of Electricity, and shall be deemed compliant with the mandatory contestability requirement, subject to the following:

- a. Any Contestable Customer shall be allowed to enter into a retail supply contract with any Prospective GenCo despite the commercial operation of its power plant at a subsequent period of time, Provided That, the pre-determined effectivity date of the retail supply contract should be on or after the date on which the commercial operations of the power plant are to commence.
- b. No Prospective GenCo shall enter into a retail supply contract with a Contestable Customer without a provisional RES license issued by the ERC.
- c. The option granted to a Contestable Customer to contract with a licensed Prospective GenCo shall be exercised only once, and shall be limited only from the time of the promulgation of these Transitory Rules until the date of mandatory contestability, which is 26 June 2016.
- d. Any Contestable Customer which has entered into a retail supply contract with a licensed Prospective GenCo shall inform the DU of the same within fifteen (15) days from the signing of the said contract.
- e. Any Prospective GenCo applicant which has been included in the DOE's Power Development Plant (PDP) and has completed the pre-development stage requirements for a power plant project, shall be issued a provisional RES license, provided the following have been submitted to the ERC:
 1. Letter of intent;
 2. Duly accomplished RES Information Sheet;
 3. Certification from the DOE that the applicant is included in the DOE's PDP as a committed power plant;
 4. Sworn statement that it shall secure regular RES license at least 90 days prior to commercial operations of its generating facilities;
 5. Business permit / mayor's permit; and
 6. Other information or documents that the ERC may require.
- f. Henceforth, the Prospective GenCo with a provisional RES license shall comply with the following timelines, failure of which, shall result in the revocation of its provisional RES license granted, without need of notice and hearing:

1. Within one (1) year from the grant of a provisional RES license, the Prospective GenCo shall submit a certified copy of the Environmental Compliance Certificate (ECC) to the ERC, as proof of completion to the pre-development requirements;
 2. Within two (2) years and six (6) months, the Prospective GenCo must have entered into an Engineering Procurement and Construction (EPC) contract with its counterparty, and shall submit the same to the ERC;
 3. It shall have started its testing and commissioning/commercial operation within 4 years from the grant of the provisional RES license.
- g. Failure on the part of the Prospective GenCo to comply with the prescribe timeline under Section 5(f), Article II, shall result in the cancellation of the license and the retail supply contract. Subsequently, the affected Contestable Customer shall be given a period of six (6) months from cancellation of the Retail Supply Contract (RSC), within which to contract with a licensed RES.
- h. The cancellation of the provisional license is without prejudice to the imposition of fines and penalties against such Prospective GenCo.

Section 6. The DU shall continue to supply the electricity requirement of the Contestable Customer during the period when the power plant of the Prospective GenCo is still under construction. The rates to be charged by the DU to the affected Contestable Customer shall be equivalent to the rates charged to their Captive Customers.

ARTICLE III GENERAL PROCEDURES ON MIGRATION

Section 1. A Contestable Customer with no RSC thirty (30) days prior to 26 June 2016 should immediately inform the DU and the ERC that it has not yet entered into a contract with an RES.

Section 2. The DU designated by the ERC as a SOLR shall provide the last resort supply service for the Contestable Customer upon occurrence of a last resort supply event, pursuant to the Rules for the SOLR.

Section 3. For Directly-Connected Contestable Customers (DCC) which are indirect WESM members, their last resort provider shall be the franchised DU designated as SOLR where the DCC is located. DCCs which are direct WESM members may opt to transfer to the SOLR or secure their power requirement from the WESM in accordance with the WESM Rules upon occurrence of a last resort supply event.

Section 4. A Contestable Customer, including one whose facilities are directly connected to the sub-transmission/transmission assets, which opts to source its requirements from a mix of suppliers, should be made to procure all its requirements through an RES, notwithstanding that it sources all its energy requirements directly from WESM. Such RES, considered as a single source shall have the responsibility of securing the total energy requirement of the Contestable Customer and shall be responsible for all energy consumed by the latter.

Section 5. Government entities certified as Contestable Customers shall continue to be supplied by the DUs or their current suppliers until such time that the Government Policy Procurement Board (GPPB) shall have issued the necessary guidelines for their procurement of supply of electricity.

Section 6. A single billing scheme shall be initially adopted during the transitory period. The RES will thus be contracting with other service providers (i.e. DU for DWS, transmission service, Market Operator for WESM transactions) on behalf of its Contestable Customers, except for the connection agreement which shall subsequently be entered into by a Contestable Customer and the DU.

Section 7. The dual/multiple billing scheme shall be adopted upon resolution of the operational issues relative to such system. In the meantime, such scheme shall be applied to directly connected customers and on a case-to-case basis, subject to approval by the ERC.

ARTICLE V SANCTIONS

The ERC shall impose the appropriate fines and penalties for any violation or non-compliance with these Rules pursuant to the Guidelines to Govern the Imposition of Administrative Sanctions in the Form of Fines and Penalties Pursuant to Section 46 of R.A. 9136, As Amended.

**ARTICLE VI
SEPARABILITY**

If for any reason, any section of these Rules is declared unconstitutional or invalid by final judgment of a competent court, the other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

**ARTICLE VII
EFFECTIVITY**

These Rules shall take effect immediately following its publication in a newspaper of general circulation in the country.

Pasig City, _____ October 2015.

JOSE VICENTE B. SALAZAR
Chairman

GLORIA VICTORIA C. YAP-TARUC
Commissioner

ALFREDO J. NON
Commissioner

**JOSEFINA PATRICIA A. MAGPALE-
ASIRIT**
Commissioner

GERONIMO D. STA. ANA
Commissioner