

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



IN THE MATTER OF THE
PROMULGATION OF THE
"REVISED GUIDELINES FOR
THE DETERMINATION OF
INSTALLED GENERATING
CAPACITY AND
ENFORCEMENT OF THE
LIMITS ON CONCENTRATION
OF OWNERSHIP, OPERATION
OR CONTROL OF INSTALLED
GENERATING CAPACITY
UNDER SECTION 45 OF
REPUBLIC ACT NO. 9136"

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ERC CASE NO. 2015 - 005 RM

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NOTICE

Notice is hereby given that the "Issues Paper" on the Proposed Amendments to the "Guidelines for the Determination of Installed Generating Capacity and Enforcement of the Limits on Concentration of Ownership, Operation or Control of Installed Generating Capacity under Section 45 of Republic Act No. 9136" is hereby posted for comments from the industry stakeholders on the Energy Regulatory Commission (ERC) website www.erc.gov.ph. All interested parties may submit their comments on the "Issues Paper" through licensing@erc.gov.ph using the prescribed format (hereto attached as Annex "A") on or before 28 August 2015. Said "Issues Paper" may likewise be downloaded from the mentioned ERC website or may be photocopied, at cost, during regular office hours at the ERC Main Office.

Pasig City, 17 August 2015.

FOR AND BY AUTHORITY
OF THE COMMISSION:


FRANCIS SATURNINO C. JUAN
Executive Director III

**Proposed Amendments to the “Guidelines
for the Determination of
Installed Generating Capacity in a Grid
and the National Installed
Generating Capacity and
Enforcement of the Limits on Concentration
of Ownership, Operation or Control
of Installed Generating Capacity
under Section 45 of Republic Act No. 91356”**

ISSUES PAPER

Pursuant to Section 45 of Republic Act No. 9136 and Part II, Rule 11, Section 4 of the Implementing Rules and Regulations (IRR) of the Act, the Energy Regulatory Commission (ERC) promulgated the “Guidelines for the Determination of Installed Generating Capacity and Enforcement of the Limits on Concentration of Ownership, Operation or Control of Installed Generating Capacity”, referred to as the “Guidelines”.

1. INTRODUCTION

1.1 Purpose

On 14 December 2005, after public consultations, the ERC adopted the Guidelines. The Guidelines govern the enforcement of statutory limitations on concentration of ownership, operation or control of installed generating capacity; determination of installed generation capacity of a grid for the purpose of applying the said limitations; fixing of the installed generating capacity per grid, national grid and the market share limitation per grid and national grid and the national installed and crediting thereof in favor of one or more persons or entities, which own, operate, or control such generation facility generating capacity and the enforcement of the limits. The Guidelines likewise provide for the rules on exemption from the market share limitations and the steps to be undertaken in the event that a person or entities covered by the Market Share Limitations breach such market share limitations.

2. ISSUES

Certain issues in the implementation of the aforesaid Guidelines need to be addressed. For this reason, the ERC seeks to solicit inputs, comments, and suggestions from all interested stakeholders as part of the review of the Guidelines.

a. **Harmonization of data on power plant capacities including the definition of terms.**

Section 4, Article I of the Guidelines provides for the following definition of terms:

Installed Generating Capacity in a Grid refers to 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; Self-generation facilities (SGFs) shall be excluded in the capacity computation until such time that the ERC shall have approved an appropriate program for their participation in the market.

Maximum Capacity refers to the gross capacity that a unit can sustain over a specified period of time as established during formal demonstration through testing based on manufacturers' approved procedures or any internationally-accepted testing such as, but not limited to, the American Society of Mechanical Engineers (ASME) and American National Standards Institute (ANSI): Provided, That for generation facilities that have not conducted such testing during the 12 months immediately prior to its initial submission of its maximum capacity, the initial submission thereof shall be the highest nominated capacity over the period of twelve (12) months as provided in the capacity nomination submission for dispatch scheduling:

The Department of Energy (DOE) in its various communications, informed the Energy Regulatory Commission (ERC) on the need to harmonize data on power plant capacities, including definition of terms as recommended by the inter-agency Technical Working Group (TWG) composed of the ERC, DOE, Philippine Electricity Market Corporation (PEMC), National Power Corporation (NPC), Private Sector Assets and Liabilities Management Corporation (PSALM) and the National Grid Corporation of the Philippines (NGCP). This is to come up with a common data for installed, dependable and available capacity and standard definition of generation capacity terminologies that will serve as reference for the entire Philippine power industry; and to come up with official reference in the formulation of the determination of generation companies' market share, other power reform initiatives requiring these data such as determination of compliance with cross-ownership provision of the EPIRA.

The following terms were defined and adopted in the harmonization process:

Maximum Capacity. The maximum capacity is the capacity that a unit can sustain over a specified period of time. The maximum capacity can be expressed as gross maximum capacity (GMC) or net maximum capacity (NMC). To establish this capacity, formal demonstration/test is required. The test should be repeated periodically. This demonstrated capacity level shall be corrected to generating conditions for which there should be minimum ambient restriction. When a demonstration test has not been conducted, the estimated maximum capacity of the unit shall be used.

Installed Capacity. The full-load continuous gross capacity of a unit under the specified conditions, as calculated from the electric generator nameplate based on the rated power factor.

This capacity shall be determined during commissioning or re-commissioning of a power plant.

Rated Capacity. The full-load continuous gross capacity of a unit under the specified conditions as calculated from the electric generator nameplate based on the rated power factor.

Nameplate Rating. The installed nameplate capacity is the full-load continuous gross capacity of a unit under specified conditions, as calculated from the electric generator nameplate based on the rated power factor. Nameplate capacity can be calculated by multiplying the megavolt ampere rating by the power factor.

Dependable Capacity. The maximum capacity when modified for ambient limitation for a specified period of time, such as a month or a season.

Available Capacity. The dependable capacity, modified for equipment limitation at anytime.

Gross Maximum Capacity. The maximum capacity a unit can sustain over a specified period of time when not restricted by seasonal or other deratings.

Net Maximum Capacity. The gross maximum capacity less the unit capacity utilized for that unit's station service.

Constrained Available Capacity. The dependable capacity, modified due to limitations caused outside the equipment (generator) control.

The ERC seeks to solicit comments on the proposed inclusion of the foregoing in the Guidelines as adopted in the harmonization process conducted by the inter-agency TWG (DOE, ERC, PEMC, NPC, PSALM and NGCP).

b. Limitations on Concentration of Ownership, Operation or Control of Installed Generating Capacity; Determination of the Installed Generating Capacity; and Crediting of Generating Capacity

Section 1, Article II of the Guidelines provides that, "no person, company, related group or IPP Administrator, singly or in combination, can own, operate or control more than thirty percent (30%) of the installed generating capacity of a Grid and/or twenty-five percent (25%) of the national installed generating capacity."

In the determination of installed generating capacity per Grid and National Grid, Section 2, Article II of the Guidelines states as follows:

"To determine the installed generating capacity of a Grid, for the purpose of applying the Limits on Concentration of Ownership, Operation or Control of Installed Generating Capacity:

- a. the installed generating capacity of a generation facility is the sum of the maximum capacity of the generating units that comprise the generation facility;
- b. the generating capacity of a generating unit is the maximum capacity of that generating unit, except that:
 - i. the generating capacity of a generating unit will be deemed to be reduced to the extent of any permanent reduction in its maximum capacity;
 - ii. the generating capacity of a generating unit will be deemed to be zero when it was temporarily shut down and was not energized for connection to the Grid during the 12 months, or from January to December, preceding the determination of its generating capacity for the current year;
- c. a generating unit, even if it has not generated electricity at its maximum capacity, will be deemed to be installed only if it has been physically and electrically connected to the transmission system or distribution system that forms part of the Grid and has injected energy into that system; and
- c. when the maximum capacity of generating plant cannot be transmitted by reason of inadequate transmission capacity and it is established that such inadequate capacity will persist in the next 12 months from the determination of the national installed generating capacity and installed generating capacity per Grid; and that the inability to transmit the generating plant's maximum capacity will continue even if other generating plants similarly constrained will not operate at maximum capacity, the generating capacity of the said generating unit shall be decreased by a proportionate amount corresponding to the transmission constraint.

For purposes of crediting the calculated installed generating capacity of a generation facility, the following rules were applied as provided for under Section 4, Article II of the Guidelines:

"In crediting generating capacity of a generation facility in favor of one or more persons or entities, which own, operate, or control such generation facility, the following rules shall be observed:

- a. If different entities own the same generation facility, the capacity of such facility shall be credited to the entity controlling the terms and conditions of the prices or quantities of the output sold in the market.

- b. If an entity owns the generation facility and some other entity or entities operate or exercise control over such facility, pursuant to a maintenance or operating contract, lease, assignment, joint venture agreement, or any other similar arrangement, the capacity of such facility shall be credited to the entity or entities controlling such capacity, to the extent subject of its or their control, and not to the entity owning the generation facility.
- c. Consistent with the foregoing, in the case of NPC and its Independent Power Producers (IPPs), it is the control and not the ownership of the power plants which determines who should be credited with the total capacity under contract as it is NPC that actually controls the quantity (dispatch level) generated from the subject power plants and the price of electricity offered to the market. Thus, NPC will be credited the contracted capacity while the remaining capacity not under contract will be credited to the owner of the plant or the entity exercising control over such remaining capacity, in accordance with the preceding rules.

In the case of Distribution Utilities (DUs), however, they shall not be considered in control of the capacity, which they have contracted under bilateral supply contracts executed with generation companies for the purpose of serving their customers, provided that such contracted capacity is not, in the determination of the ERC taking into account all relevant considerations such as the DU's forecasted demand, unreasonably excessive. In such cases, the DU shall, after due proceedings, be credited with the capacity in excess of what the ERC deems to be reasonable for such DU.

- d. The preceding rules notwithstanding, if, in ERC's determination, the owners have resorted to a particular maintaining or operating contract, lease, assignment, joint venture agreement, or any other similar arrangement, that would have the effect of defeating the rule on the limits on concentration of ownership, operation or control of installed generating capacity or circumventing the provisions of the Competition Rules, the ERC, after due notice and hearing, may deem any or all the parties to such contracts or arrangement to be in control of the capacity of the generation facility and thus in their favor will be individually credited the capacity of such facility to the extent covered by their contracts.

The ERC sees the need to review, amend, or clarify the foregoing provisions of the Guidelines to address several issues and concerns owing, among others, to the passage of industry-related policies, laws, rules and regulations. Particularly, there is a need to review, revise, or supplement the methodology in crediting the installed generating capacities of generating plants based on ownership/affiliation, operation, and control.

Thus, the ERC invites suggestions and comments on the foregoing provisions on the determination and crediting of installed generating capacity of generation facilities.

“Issues Paper” on the Proposed Amendments to the Guidelines for the Determination of the Installed Generating Capacity and Enforcement of the Limits on Concentration of Ownership, Operation or Control of Installed Generating Capacity Under Section 45 of Republic Act No. 9136
Matrix of Comments

<i>Issue/Concern</i>	<i>Concerned Party</i>	<i>Discussion of Comment(s) and/ or Questions for Clarification</i>	<i>Comment/s and Suggestion/s</i>