

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pacific Center Bldg., San Miguel Avenue
Pasig City

**REVISED GUIDELINES FOR THE FINANCIAL STANDARDS
OF GENERATION COMPANIES**

Pursuant to Section 6 and 43 of Republic Act No. 9136 (R.A. 9136), its Implementing Rules and Regulations (IRR) and the Philippine Grid Code (PGC), the Energy Regulatory Commission (ERC) hereby adopts and promulgates this Revised Guidelines for the Financial Standards of Generation Companies (“Revised Financial Guidelines”) which prescribes and implements the financial standards required by law for the generation sector of the electricity industry.

**ARTICLE I
GENERAL PROVISIONS**

1.1 Background-Section 1. Objectives. This Revised Financial Guidelines has the following objectives:

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;
- b. Safeguard against the risk of financial non- performance;**
- ~~b-c.~~ Ensure the affordability of electric power supply while maintaining the required quality and reliability; and
- ~~e-d.~~ Protect the public interest.

~~1.1.2.2~~ This set of Guidelines is promulgated to:

- ~~a~~ e. Identify Specify the financial capability standards and set the minimum financial capability standards for Generation Companies (GenCos) GENCOs;
- ~~b-f~~ f. Prescribe the frequency and form of (GenCos) GENCO submissions; and
- e g. Prescribe the actions for non-compliance with the minimum financial standards for (GenCos) GENCOs.

~~1.1.3~~ General **Section 2. Guiding Principles**

~~1.1.3.1~~ (a) These Revised Financial Guidelines will set out the minimum financial capability standards to ensure that GenCos GENCOs meet these standards to protect the public interest as required under Section 43, b(ii) of RA 9136 and provided by Appendix 1, FS.A 1.3 Chapter 4 of the PGC Philippine Grid Code.

(b) However, The ERC may require other/additional standards for compliance in connection with other applications filed/to be filed before it by (GenCos) the GENCO.

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

~~1.3~~ **Section 3. Scope of Application**

~~1.3.1~~ (a) These Revised Financial Guidelines shall apply to all GenCos generation companies, including but not limited to:

- a. (i) Entities which own and operate a gGeneration fFacility;
- b. (ii) Entities which own a gGeneration fFacility that is operated by another entity under any management contract;
- e. (iii) Entities which hold a Capital Lease on generation assets; and
- ~~d.~~ (iv) Entities which hold an Operating Lease on generation assets.

~~1.3.2~~ (b) In cases where the owner and operator of the gGeneration fFacility 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.

(c) For Generation Facilities covered by NPC IPP Contract under an IPPA Agreements, the IPPAs shall also comply with the provisions of these Revised Financial Guidelines for the duration of the COC considering that the COC issued to these Generation Facilities are deemed issued also in in favor of their respective IPPAs.

(d) Transferees/new owners of NPC/PSALM generation assets shall be required to comply with these Revised Financial Guidelines.

~~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.~~

~~1.2~~ **Section 4. Definition of Terms**

(a) “Audited Financial Statement” or “AFS” refers to a financial document that bears the report of independent auditors or Certified Public Accountants.

(b)“Certificate of Compliance” or “COC” refers to a license issued by the ERC in favor of a person or entity to operate a power plant or other facilities used in generation of electricity pursuant to Section 6 of RA 9136 and Section 4 of the IRR of RA 9136.

a. (c) “Debt” refers to any indebtedness of the borrower maturing by it 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. (d) “Debt Service” refers to an aggregate annual amount of debt 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.

e. (e) “Debt Service Capability Ratio” or “DSCR” or “Interest Cover Ratio” refers to the measure of the GenCo’s 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.

(f) “Depreciation” refers to the process of allocating the cost of asset over its useful life to account for a reasonable amount of exhaustion, wear, and tear of the property used in the business.

(g) “Amortization” refers to the allocation of depreciable amount of an intangible asset over its useful life.

(h) “Income Before Income Tax” or “Earnings Before Tax” refers to the calculation of a firm’s earnings before taxes are considered.

d. (i) “Earnings Before Interest and Taxes” or “EBIT” is equal to revenues less expenses from the GenCo’s GENCO’s principal business activities; is identical to income from operations as determined under the Philippine Generally Accepted Accounting Principles.

(j) “Energy Regulatory Commission” or “ERC” refers to the regulatory agency created under RA 9136.

e. (k) “Generation Company” or :GenCo” GENCO refers to any person or entity authorized by ERC to operate facilities used in the generation of electricity.

f. (l) “Generation Facility” refers to a facility for the production of electricity.

(m) “Generation of Electricity” refers to the production of electricity by a GenCo or a co-generation facility pursuant to the provisions of RA 9136.

(n) “Grid Code” refers to the set of rules and regulations governing the safe and reliable operation, maintenance and development of the high voltage backbone transmission system and its related facilities.

(o) “Independent Power Producer” or “IPP” refers to an existing power generating entity which is not owned by NPC.

(p) “IPP Administrator” or “IPPA” refers to qualified independent entities appointed by PSALM Corporation who shall administer, conserve and manage the contracted energy output of NPC IPP contracts.

g. (q) “Lease” refers to 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 time¹

g.1 (q.i) “Capital” or “Financial Lease” refers to 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 (q.ii) “Operating Lease” refers to a lease other than a capital lease.

h. (r) National Power Corporation or NPC refers to the government corporation created under Republic Act No. 6395, as amended.

(s) “Power Sector Assets and Liabilities Management Corporation” or “PSALM Corp”. refers to the corporation created pursuant to Section 49 of RA 9136.

ARTICLE II FINANCIAL STANDARDS

2.1 Section 1. Financial Benchmark

2.1.1 (a) A GenCo generation company is required to meet a minimum annual Interest Cover Ratio or DSCR of 1.25x throughout the period covered by its COC.

2.1.2 (b) The use of the other financial standards prescribed in ~~Chapter 4.2 Appendix 1, FS.A 1.3~~ of the ~~2016 PGC Philippine Grid Code~~ to evaluate the financial capacity of a GenCo GENCO shall be optional on the part of the ERC, to wit:

- (i) Leverage Ratios;
- (ii) Liquidity Ratios;
- (iii) Financial Efficiency Ratios; and
- (iv) Profitability Ratios.

ARTICLE III

¹ From International Accounting Standards No. 12 (Leases)

REQUIREMENTS AND PROCEDURES

3-1 Section 1. For New COC ~~a~~Applications and renewals

The following documents shall be submitted by all applicants for new Generation Facilities at the time of application:

- 3-1.1 (a) Comparative Certified True Copy of complete set of aAudited ~~f~~Financial ~~s~~Statements (AFS) covering the two (2) ~~f~~or most recent 12-month period (i.e. balance sheet, income statement, statement of cash flows, notes, audit opinion and the statement of management's responsibility on the financial statement), if available. For a GenCo which has been on operation for less than two (2) years, the AFS of the parent company shall be required in lieu of the above, covering the two (2) most recent twelve (12) month period;
- 3-1.2 (b) Duly attested schedule of liabilities, to include the following information: name of creditor(s), type of credit, credit terms and applicable interest rate(s);
- 3-1.3 (c) Five (5) year financial plan (i.e. forecast financial statements, including assumptions/bases used for revenue and cost projections, DSCR calculation); and
- 3-1.4 (d) Documentation on financial track record of the GenCo GENCO and of its principal stockholder, if available; and
- (e) Such other information or documents that the ERC may require.

Section 2. For COC Renewal Applications

The following documents shall be submitted by GenCos at the time of COC renewal application:

- (a) Actual DSCR calculation for the period covered by its existing COC;
- (b) Duly attested updated schedule of liabilities, to include the following information: name of creditors, type of credit, credit terms and applicable interest rates;
- (c) Five (5) year financial plan (i.e. forecast financial statements, including assumptions/bases used for revenue and cost projections, DSCR calculation); and
- (d) Such other information or documents that the ERC may require.

3-2 Section 3. Annual ~~s~~Submission for the ~~d~~Duration of the COC

~~3.2.1~~ (a) On or before May 15 of the current year, ~~Within 150 days from the end of its fiscal year~~, the ~~GenCo~~ GENCO shall submit a Certified True Copy of a complete set of its AFS ~~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.

For GenCos which owns or operates more than one (1) Generation Facilities, a separate breakdown for the result of operations for each Generation Facilities must be submitted.

For GenCos which has other business segments, submission of financial statements must be in accordance with the Business Separation Guidelines (BSG).

For GenCos which has other businesses aside from the business segments stated in the BSG, a separate accounting statement for its generation business must be submitted.

~~3.2.2~~ (b) Together with its AFS audited financial statements, a ~~GenCo~~ GENCO shall also submit forecast financial statements for the subsequent two (2) fiscal years. The submission shall clearly identify the major forecast assumptions used by the ~~GenCo~~ GENCO including, but not limited to, the assumptions and bases for its volume, price, fuel and other operating cost projections.

Section 4. Material Change

~~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~~ 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~~ GENCO not meeting or potentially not meeting the financial standards prescribed by the ERC, the ~~GenCo~~ GENCO is required to submit a Program to Comply within sixty (60) days of the happening of said event.

3.3 Section 5. Program to Comply

~~3.3.1~~ (a) A ~~GenCo~~ 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~~ GENCO in order to meet the benchmark.

3.3.2 **(b)** Information on the Program to Comply shall include the following:

3.3.2.1 **(b.i)** Concrete activities/measures to be undertaken to upgrade performance and their estimated financial effects:

3.3.2.2 **(b.ii)** Expected semi-annual targets/milestone achievements;
and

3.3.2.3 **(b.iii)** Clear and definite timetable for the activities and the targets.

3.3.3 **(c)** The ERC shall inform the **GenCo** GENCO of its action on the **GenCo's** GENCO's Program to Comply within sixty (60) days of receipt thereof.

3.3.4 **(d)** The **GenCo** GENCO shall be given one (1) year, or the remaining life of the COC in the case of a new owner of a **GenCo** GENCO previously issues a COC, whichever is shorter, within which to comply with the ERC-prescribed benchmark.

3.4 Section 6. Notice of Events Affecting Program to Comply

3.4.1 **(a)** At any time after its submission of a Program to Comply, the **GenCo** 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** GENCO to submit a revised Program to Comply to consider the new information brought to its attention by the **GenCo** GENCO.

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

ARTICLE IV SANCTIONS AND DISCLOSURES

4.1 Section 1. Procedure

The ERC may, after due notice and hearing, impose the appropriate fines and penalties, for failure by the GenCos to comply with any of the provisions of these Revised Financial Guidelines.

Section 2. Penalties ~~Administrative Sanctions~~

A GenCo which fails to submit to ERC the requirements as prescribed in these Revised Financial Guidelines shall be subject to the impositions may

be grounds for the payment of fines and penalties as may be imposed by ERC under Article III of the **ERC's** "Guidelines to Govern the Imposition of Administrative Sanctions in the Form of Fines and Penalties Pursuant to Section 46 of R.A. No. 9136, as Amended".

4.2 Section 3. Disclosure of Non-Compliance with Financial Standards

4.1.2 (a) Non-compliance with the financial standards by a **GenCo** 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** GENCO's Program to Comply and other disclosures made by the **GenCo** GENCO to the ERC regarding its financial condition and performance.

4.2.2 (b) In the determination of whether or not a public bulletin is necessary to be made, the **GenCo's** GENCO's operating performance and other factors that may mitigate its poor debt service ability as measured by the DSCR or Interest Cover Ratio or any of the identified financial benchmark under Section 1 (b) Article II hereof shall be considered.

ARTICLE V CONFIDENTIALITY PROVISIONS

5.1 **Section 1.** Information filed with the ERC in compliance with the requirements of these **Revised Financial** 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 **Section 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** GENCO's financial statements by Philippine Generally Accepted Accounting Principles, or information labelled as "CONFIDENTIAL" as set forth in **Section 3**, Articles **V5.3**, 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 **Section 3.** A **GenCo** GENCO submitting information in compliance with **Section 4** Article **III3.2.3** (Disclosure of Material Events), **Section 5**, Article **III3.3** (Program to Comply) or **Section 6**, Article **III3.4** (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 exercised 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~~ EXEMPTIONS**

~~6.1~~ **Section 1.** The NPC and PSALM shall be exempted from compliance with the financial standards prescribed herein 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 and IPP Contracts. ~~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.

~~6.3~~ **Section 2.** Transferees/new owners of NPC generation assets in missionary electrification areas and other entities authorized to operate ~~g~~Generation ~~f~~Facilities 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 **EXCEPTION CLAUSE**

Where good cause appears, the ERC may allow an exception from any provision of these Revised Financial Guidelines, if such is found to be in public interest and is not contrary to laws or any other related rules and regulations.

ARTICLE VIII

SEPARABILITY CLAUSE

If for any reason, any part or section of these Revised Financial 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.

ARTICLE IX **APPLICABILITY AND REPEALING CLAUSE**

The existing rules otherwise inconsistent herewith are hereby repealed or modified accordingly.

ARTICLE X **EFFECTIVITY**

This Revised Financial Guidelines shall take effect on the fifteenth (15th) day following its publication in a two (2) newspapers of general circulation in the Philippines.

Let copies of these Revised Financial Guidelines be furnished to the University of the Philippines Law Center – Office of the National Administrative Register (UPLC-ONAR).

Pasig City, _____ 200520

AGNES VST DEVANADERA
Chairperson and CEO

ALEXIS M. LUMBATAN
Commissioner

JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner

CATHERINE P. MACEDA
Commissioner

PAUL CHRISTIAN M. CERVANTES
Commissioner