

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



RESOLUTION NO. 49, Series of 2006

A RESOLUTION AMENDING THE BUSINESS SEPARATION GUIDELINES (BSG)

WHEREAS, pursuant to Section 43(t) of Republic Act 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA) and of its Implementing Rules and Regulations (IRR), the ERC 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, Section 36 of the EPIRA and Rule 10 of its IRR require electric power industry participants to functionally and structurally unbundle their business activities and rates according to generation, transmission, distribution and supply, and also contemplate a further unbundling of those business activities between regulated and non-regulated activities;

WHEREAS, the ERC amended the Business Separation Guideline (BSG) to incorporate additional business segments and activities, and to make it consistent with the Code of Conduct for Competitive Retail Market Participants which prescribes the operational separation between a distribution utility's regulated and non-regulated business activities;

WHEREAS, the amendments made were appropriately reflected in the Accounting Separation Statements as provided in the BSG;

WHEREAS, on May 25, 2006, the ERC conducted a public consultation for the adoption of the proposed amendments;

WHEREAS, in accordance with the above and after a careful consideration of the various views and comments submitted by interested parties, the Commission deems it appropriate to amend the BSG;

WHEREAS, the aforesaid key amendments and insertions are reflected in certain provisions of the BSG, to read as follows:

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I. **Article IV- Business Segments**

4.2 Generation Business Segments

Supply Services Business Segment

4.2.6 This segment comprises the sale of electricity by a generating company, licensed as RES, to end-users in the contestable market. It includes the:

- (a) billing, collection and the provision of customer services to such end-users in their capacity as electricity consumers or to such other customers in their capacity as purchasers of electricity;
- (b) energy trading (including the purchase of electricity and hedging activities) undertaken in connection with the sale of electricity to end-users who are included in the contestable market or to other customers who are not end-users; and
- (c) the sale of electricity to end-users who are included in the contestable market or to other customers who are not end-users.

Supply services may also comprise the provision, installation, commissioning, testing, repair, maintenance and reading of meters that are used to measure the delivery of electricity to end-users who are included in the contestable market or to other customers who are not end-users (whether such services are provided to those end-users or other customers or to any other person).




4.2.7 The assets included in this Business Segment are all the assets used directly, or a relevant share of the shared assets which are used, to provide the services referred to in Section 4.2.6. The liabilities included in this Business Segment are all the liabilities incurred directly, or a relevant share of the shared liabilities which are incurred, to provide the services or undertake the activities referred to in Section 4.2.6.

4.2.8 Revenues include all revenues associated with providing the services or undertaking the activities referred to in Section 4.2.6.

4.2.9 Costs include all costs associated with the provision of the supply services referred to in Section 4.2.6, including the relevant share of the operating and maintenance costs and the depreciation costs of the assets used to provide the services or undertake the activities referred to in Section 4.2.7

II. **4.4. Distribution and Related Activities Business Segment**

4.4.1 While Wholesale Aggregation is an independent business activity which can be undertaken by any Electric Power Industry Participant, said business activity can be considered as additional business segment under Distribution and Related Activities Business Segments.



4.4.2 The seven distribution and related activities business segments are described below. These are further classified into regulated and non-regulated Business Segments. The distribution utility must ensure that there is no sharing of facilities, office, assets, employees (except for top management), equipment and computer hardware/software between its regulated and non-regulated business segments.

Last Resort Supply Business Segment

4.4.15 This segment comprises the provision of SOLR services provided by a Distribution Utility, namely services pertaining to the sale of electricity to SOLR Customers, including billing, collection and the provision of basic customer service.

4.4.16 The assets included in this Business Segment are all the assets used directly, or a relevant share of the shared assets which are used, to provide the SOLR services referred to in Section 4.4.15. The liabilities included in this Business Segment are all the liabilities incurred directly, or a relevant share of the shared liabilities which are incurred, to provide the services or undertake the activities referred to in Section 4.4.15.

4.4.17 Revenues include all revenues associated with providing the SOLR services referred to in Section 4.4.15.

4.4.18 Costs include all costs associated with the provision of the SOLR services referred to in Section 4.4.15 including the relevant share of the operating and maintenance costs and the depreciation costs of the assets used to provide the services or undertake the activities referred to in Section 4.4.16.




Wholesale Aggregation

4.4.19 This segment comprises the Distribution Utility's service of purchasing electricity in bulk and selling this to other Distribution Utilities. It also comprises the provision of Wholesale Aggregation services provided by a Distribution Utility, namely services pertaining to the sale of electricity to other Distribution Utilities including billing, collection and the provision of basic customer service.

4.4.20 The assets included in this Business Segment are all the assets used directly, or a relevant share of the shared assets which are used, to provide the Wholesale Aggregation services referred to in Section 4.4.19. The liabilities included in this Business Segment are all the liabilities incurred directly, or a relevant share of the shared liabilities which are incurred, to provide the services or undertake the activities referred to in Section 4.4.19.

4.4.21 Revenues include all revenues associated with providing the Wholesale Aggregation services referred to in Section 4.4.19.

4.4.22 Costs include all costs associated with the provision of the Wholesale Aggregation services referred to in Section 4.4.19, including the relevant share of the operating and maintenance costs and the depreciation costs of the assets used to provide the services or undertake the activities referred to in Section 4.4.20



III. 4.6 Wholesale Aggregation Business Segment

4.6.1 The single Wholesale Aggregation Business Segment is described below.

Wholesale Aggregation services Business Segment

4.6.2 This segment comprises supply services provided by a Wholesale Aggregator, namely services pertaining to the sale of electricity to Distribution Utilities, and includes:

- (a) billing, collection and the provision of customer services to Distribution Utilities;
- (b) energy trading (including the purchase of electricity and hedging activities) undertaken in connection with the sale of electricity to Distribution Utilities; and
- (c) the sale of electricity to Distribution Utilities.

4.6.3 The assets included in this Business Segment are all the assets used directly, or a relevant share of the shared assets which are used, to provide services referred to in Section 4.6.2. The liabilities included in this Business Segment are all the liabilities incurred directly, or a relevant share of the shared liabilities which are incurred, to provide the services or undertake the activities referred to in Section 4.6.2.

4.6.4 Revenues include all revenues associated with providing the services or undertaking the activities referred to in Section 4.6.2.

4.6.5 Costs include all costs associated with the provision of the Wholesale Aggregation services referred to in Section 4.6.2, including the relevant share of the operating and maintenance costs and the depreciation costs of the assets used to provide the services or undertake the activities referred to in Section 4.6.3.

All of the above-mentioned business activity and business segments are accordingly presented in the Appendix A.

IV. Other Amendments:

1. Inclusion of the following under Article I, Section 1.3 Definitions:

Act - Republic Act No. 9136, otherwise known as "Electric Power Industry Reform Act of 2001"

Competition Rules - The rules promulgated by ERC to promote and ensure competition in the electric power industry pursuant to the Act and its Implementing Rules and Regulations.

Last Resort Supply - The supply of electricity that a customer will receive from a Supplier of Last Resort. This involves the sale of electricity, billing, collection and provision of basic customer service.

Last Resort Supply Event - Any of the following situations where a contestable customer is served by the Supplier of Last Resort:

- a. the customer's Retail Electricity Supplier (RES) has ceased to operate;
- b. the license of the customer's RES has been revoked or not renewed by ERC;
- c. the arrangements for distribution wheeling service between the customer's RES and the distribution utility have been terminated;
- d. the customer's RES is no longer permitted to trade electric energy through the wholesale electricity spot market (WESM), if WESM member; or
- e. the customer fails to exercise its option to choose its supplier of electricity upon the implementation of retail competition and open access.

Retail Electricity Supplier (RES) - Any person or entity licensed by ERC to sell, broker, market or aggregate electricity to end-users.

Supplier of Last Resort (SOLR) - A regulated entity designated by the ERC to serve end-users in the contestable market following a Last Resort Supply Event.

SOLR Customer - An end-user in the contestable market who is served by the SOLR following a Last Resort Supply Event.

Wholesale Aggregation - The sale of electricity to distribution utilities, by an ERC-registered wholesale aggregator.

Wholesale Electricity Spot Market – The electricity market established by the Department of Energy (DOE) in accordance with the Act.

2. Title of the Guideline changed from Business Separation Guideline to Business Separation Guidelines, As Amended.
3. Addition of Appendix G Accounting Separation Statements specific to Wholesale Aggregation, under Article III Sec. 3.2
4. Revision in the formats and contents of Accounting Separation Statements to reflect the new business segments and activities introduced, under Appendices B, C, E and G.
5. Article VI Penalties. "If the ERC determines that an Electric Power Industry Participant: (a) has violated... a provision of these Guidelines..., the ERC may, in accordance with the Rules of Procedure Governing Complaints Filed Before the Consumer Affairs Service, promulgated by it (or such other rules of procedure that it promulgates hereafter) make such order or orders against the Electric Power Industry Participant as it considers appropriate, including all or any of the following orders:...."

6. Some amendments to the Business Separation and Unbundling Plan (BSUP) Filing Package, to wit: a) Section 2.2 (b) a description of any assets or facilities that are utilized solely in a particular business segment or business activity; b) second paragraph of Section 5: Milestones and Highlights, ".....Electric cooperatives (ECs) must implement the requisite separation no later than the start of retail competition and open access in the franchise areas of ECs, as determined by ERC."

NOW THEREFORE, the ERC, after thorough and due deliberation, hereby **RESOLVES**, as it is hereby **RESOLVED**, to **APPROVE** and **ADOPT**, the **"Business Separation Guidelines, As Amended"**.

This Resolution shall take effect fifteen (15) days following its publication in a newspaper of general circulation in the country.

Pasig City, June 21, 2006.

(On Leave)
RODOLFO B. ALBANO, JR.
Chairman


OLIVER B. BUTALID
Commissioner


RAUF A. TAN
Commissioner

(On Leave)
JESUS N. ALCORDO
Commissioner


ALEJANDRO Z. BARIN
Commissioner