

**RULES AND REGULATIONS TO IMPLEMENT
REPUBLIC ACT NO. 9136, ENTITLED
"ELECTRIC POWER INDUSTRY REFORM ACT OF 2001"**

Pursuant to Sections 37 and 77 of Republic Act No. 9136, an Act Ordaining Reforms in the Philippine Electric Power Industry, otherwise known as the "Electric Power Industry Reform Act of 2001" (Act), the Department of Energy (DOE), in consultation with the appropriate government agencies such as the Energy Regulatory Commission (ERC), Department of Finance (DOF), National Electrification Administration (NEA), National Power Corporation (NPC), Department of Trade and Industry (DTI), Department of Justice (DOJ), Department of Budget and Management (DBM), Power Sector Assets and Liabilities Management Corporation (PSALM), the Electric Power Industry Participants, and with the approval of the Joint Congressional Power Commission (Power Commission), hereby issues, adopts and promulgates the following rules and regulations to implement the provisions of the Act.

PART I - GENERAL PROVISIONS

The succeeding rules and regulations shall include the general provisions to be followed in implementing the major structural reforms for the electric power industry and the Privatization of the state-owned NPC.

RULE 1. TITLE AND SCOPE

Section 1. Title.

These rules and regulations shall be referred to as the "Implementing Rules and Regulations of Republic Act No. 9136" (Rules) otherwise known as the "Electric Power Industry Reform Act of 2001" (Act). "

Section 2. Scope.

These Rules are promulgated under the authority of the DOE to formulate, in consultation with relevant government agencies, Electric Power Industry Participants, non-government organizations, End-users and consumers, such rules and regulations as may be necessary to implement the objectives of the Act and pursuant to the exercise of such other powers as may be necessary or incidental to attain the objectives of the Act. These Rules shall govern the relation and responsibilities of Electric Power Industry Participants and governmental authorities, including but not limited to: the DOE, NPC, NEA, ERC, and PSALM.

RULE 2. DECLARATION OF POLICY

It is hereby declared the policy of the State:

- (a) To ensure and accelerate the total electrification of the country;

- (b) To ensure the quality, reliability, security and affordability of the supply of electric power;
- (c) To ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve greater operational and economic efficiency, promote consumer choice and enhance the competitiveness of Philippine products in the global market;
- (d) To enhance the inflow of private capital, participation in the attendant risks, and broaden the ownership base of the power generation, transmission and distribution sectors;
- (e) To ensure fair and non-discriminatory treatment of public and private sector entities in the process of Restructuring the electric power industry;
- (f) To protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power;
- (g) To assure socially and environmentally compatible energy sources and infrastructure;
- (h) To promote the utilization of indigenous and new and renewable energy resources in power generation in order to reduce dependence on imported energy;
- (i) To provide for an orderly and transparent Privatization of the assets and liabilities of the NPC;
- (j) To establish a strong and purely independent regulatory body and system to ensure consumer protection and enhance the competitive operation of the electricity market; and
- (k) To encourage the efficient use of energy and other modalities of Demand Side Management (DSM).

RULE 3. RESPONSIBILITIES OF THE DOE, ERC, NPC, NEA AND PSALM

Section 1. Responsibilities of the DOE.

In addition to its existing powers and functions, the DOE shall supervise the Restructuring of the electricity industry and perform the following functions:

- (a) Formulate policies for the planning and implementation of a comprehensive program for the efficient supply and economical use of energy consistent with the approved national economic plan and with the policies on environmental protection and conservation and maintenance of ecological balance, and provide a mechanism for the integration, rationalization, and coordination of the various energy programs of the Government;
- (b) Develop and update annually the existing Philippine Energy Plan, hereinafter referred to as PEP, which shall provide for an integrated and comprehensive exploration, development, utilization, distribution, and conservation of energy resources, with preferential bias for environment-friendly, indigenous, and low-cost sources of energy.

The PEP shall include a policy direction towards the Privatization of government agencies related to energy, deregulation of the power and energy industry, and reduction of dependency on oil-fired plants. Said PEP shall be submitted to Congress not later than the fifteenth (15th) day of September and every year thereafter;

- (c) Prepare and update annually a Power Development Program (PDP) and integrate the same into the PEP. The PDP shall consider and integrate the individual or joint development plans of the transmission, generation, and distribution sectors of the electric power industry which are submitted to the DOE: *Provided, however,* That the ERC shall have exclusive authority covering the Grid Code and the Distribution Code; and the pertinent rules and regulations it may issue. The DOE, following its approval of the Transmission Development Plan (TDP) prepared by the National Transmission Corporation (TRANSCO) or its Buyer or Concessionaire, shall integrate the TDP with the annual development plans of Distribution Utilities and NPC, and other relevant data as are available to DOE, which shall be incorporated in the PEP;
- (d) Ensure the reliability, quality and security of supply of electric power;
- (e) Following the Restructuring of the electricity sector, the DOE shall, among others:
 - (i) Encourage private sector investments in the electricity sector and promote development of indigenous and Renewable Energy Sources including small-scale renewable energy generating sources;
 - (ii) Facilitate and encourage reforms in the structure and operations of Distribution Utilities for greater efficiency and lower costs;
 - (iii) In consultation with other government agencies, promote a system of incentives to encourage Electric Power Industry Participants, including new Generation Companies and End-users, to provide adequate and reliable electric supply; and
 - (iv) Undertake, in coordination with the ERC, NPC, NEA and the Philippine Information Agency (PIA), information campaigns to educate the public on the Restructuring of the electricity sector and Privatization of NPC assets;
- (f) Jointly with the Electric Power Industry Participants, establish the Wholesale Electricity Spot Market (WESM) and formulate the detailed rules governing the operations thereof;
- (g) Establish and administer programs for the exploration, transportation, marketing, distribution, utilization, conservation, stockpiling, and storage of energy resources of all forms, whether conventional or non-conventional;

- (h) Exercise supervision and control over all government activities relative to energy projects in order to attain the goals embodied in Section 2 of Republic Act No. 7638;
- (i) Develop policies and procedures and, as appropriate, promote a system of energy development incentives to enable and encourage Electric Power Industry Participants to provide adequate capacity to meet demand including, among others, reserve requirements;
- (j) Monitor private sector activities relative to energy projects in order to attain the goals of the Restructuring, Privatization, and modernization of the electric power sector as provided for under existing laws: *Provided*, That the DOE shall endeavor to provide for an environment conducive to free and active private sector participation and investment in all energy activities;
- (k) Assess the requirements of, determine priorities for, provide direction to, and disseminate information resulting from energy research and development programs for the optimal development of various forms of energy production and utilization technologies;
- (l) Formulate and implement programs, including a system of providing incentives and penalties, for the judicious and efficient use of energy in all energy-consuming sectors of the economy;
- (m) Formulate and implement a program for the accelerated development of non-conventional energy systems and the promotion and commercialization of its applications;
- (n) Devise ways and means of giving direct benefit to the province, city, or municipality, especially the community and people affected, and equitable preferential benefit to the region that hosts the energy resource and/or the energy-generating facility: *Provided, however*, That the other provinces, cities, municipalities, or regions shall not be deprived of their energy requirements;
- (o) Encourage private enterprises engaged in energy projects, including corporations, cooperatives, and similar collective organizations, to broaden the base of their ownership and thereby encourage the widest public ownership of energy-oriented corporations;
- (p) Formulate such rules and regulations as may be necessary to implement the objectives of the Act;
- (q) As part of the reportorial requirements of the Act, the DOE shall prepare and submit to the Power Commission a semi-annual report on the status of the implementation of the Act on or before the last week of April and October of each year. Towards this end, the DOE may require reports or documents from the Electric Power Industry Participants as necessary to facilitate compliance with this mandate and subject to appropriate measures to preserve the confidentiality of proprietary or commercially sensitive information; and

- (r) Exercise such other powers as may be necessary or incidental to attain the objectives of the Act.

Section 2. Responsibilities of the NPC.

- (a) Pursuant to Section 70 of the Act, notwithstanding the divestment and/or Privatization of NPC assets, IPP contracts and spun-off corporations, NPC shall remain as a National Government-owned and –controlled corporation to perform the missionary electrification function through the Small Power Utilities Group (SPUG) and shall be responsible for providing power generation and its associated power delivery systems in areas that are not connected to the transmission system. The missionary electrification function shall be funded from the revenues from sales in missionary areas and from the Universal Charge to be collected from all electricity End-users as determined by the ERC.
- (b) Consistent with Section 34(d) of the Act, the NPC shall manage under existing arrangements, an environmental charge equivalent to P0.0025 per kilowatt-hour (kWh) sales, intended solely for the rehabilitation and management of watersheds nationwide.
- (c) Pursuant to Section 47(f) of the Act, NPC shall continue to operate Agus and Pulangui complexes, which shall be owned by PSALM.
- (d) Pursuant to Section 47(j) of the Act, NPC/PSALM may continue to generate and sell electricity only from the undisposed generating assets and IPP contracts of PSALM. NPC/PSALM shall not incur any new obligations to purchase power through bilateral contracts with Generation Companies or other Suppliers.

Section 3. Responsibilities of the NEA.

- (a) NEA shall continue to be under the supervision of the DOE and shall exercise its functions under Presidential Decree No. 269, as amended by Presidential Decree No. 1645 insofar as they are consistent with the Act. To this end, NEA shall develop and implement programs:
 - (i) To prepare Electric Cooperatives (ECs) in operating and competing under the deregulated electricity market within five (5) years from the effectivity of the Act, specifically in an environment of Open Access and retail wheeling and Retail Competition;
 - (ii) To strengthen the technical capability and financial viability of ECs, through the following activities:
 - (1) NEA may offer services to the ECs other than those related to its lending functions, for a fee duly approved by the NEA Board of Administrators; and
 - (2) NEA may consider hiring qualified external industry management experts and shall provide their services to

the ECs: *Provided*, That such services will not increase Retail Rates.

- (iii) To review and upgrade regulatory policies with a view to enhancing the viability of the ECs as electric utilities.
- (b) NEA may, in exchange for adequate security and a guarantee fee, act as a guarantor for purchases of electricity in the WESM by any EC or small Distribution Utility to support their credit standing consistent with the provisions of the Act. For this purpose, the authorized capital stock of NEA is hereby increased to Fifteen Billion Pesos (P15,000,000,000.00).
- (c) NEA shall submit the report of ECs on their outstanding uncollected billings due from any local government unit (LGU) to the Department of Budget and Management (DBM) pursuant to Executive Order (E.O.) No. 190 issued on 21 December 1999. The DBM shall effect withholding from the Internal Revenue Allotment (IRA) of the concerned LGU: *Provided*, That there is a Memorandum of Agreement (MOA) executed between the LGU and NEA: *Provided, further*, That the uncollected billings are supported by a certification issued by the Municipality/City or Provincial Treasurer.

Section 4. Responsibilities of the ERC.

- (a) Pursuant to Section 43 of the Act, the ERC shall have the responsibility of promoting competition, encouraging market development, ensuring customer choice, and penalizing abuse of market power in the electric power industry.
- (b) Pursuant to Sections 43 and 45 of the Act, the ERC shall promulgate such rules and regulations as authorized thereby, including but not limited to Competition Rules and limitations on recovery of system losses, and shall impose fines or penalties for any non-compliance with or breach of the Act, these Rules and the rules and regulations which it promulgates or administers.
- (c) The ERC shall review and approve any plan for the expansion or improvement of transmission facilities submitted by TRANSCO or its Buyer or Concessionaire with due regard to the TDP.
- (d) To promote efficiency and non-discrimination, the ERC, after the conduct of public hearings, shall determine, fix and approve Transmission and Distribution Wheeling Charges, and Retail Rates through an ERC established and enforced methodologies setting the same. It shall fix and regulate the rates and charges to be imposed by Distribution Utilities on their Captive Market as well as the Universal Charge to be imposed on all electricity End-users including self-generating entities.
- (e) Any application or petition for rate adjustment or for any relief affecting the consumers must be verified, and accompanied with an acknowledgement of receipt of a copy thereof by the LGU Legislative Body of the locality where the applicant or petitioner principally

operates together with the certification of the notice of publication thereof in a newspaper of general circulation in the same locality.

The ERC may grant provisionally or deny the relief prayed for not later than seventy five (75) calendar days from the filing of the application or petition, based on the same and the supporting documents attached thereto and such comments or pleadings the consumers or the LGU concerned may have filed within thirty (30) calendar days from receipt of a copy of the application or petition or from the publication thereof as the case may be.

Thereafter, the ERC shall conduct a formal hearing on the application or petition, giving proper notices to all parties concerned, with at least one public hearing in the affected locality, and shall decide the matter on the merits not later than twelve (12) months from the issuance of the aforementioned provisional order.

This Section 4(e) shall not apply to those applications or petitions already filed as of 26 December 2001 in compliance with Section 36 of the Act.

- (f) Amend or revoke, after due notice and hearing, the authority to operate of any Person or entity which fails to comply with the provisions of the Act, these Rules or any order or resolution of the ERC. In the event a divestment is required, the ERC shall allow the affected party sufficient time to remedy the infraction or for an orderly disposal, but shall in no case exceed twelve (12) months from the issuance of the order.
- (g) In order to facilitate the provision of an efficient, reliable and quality service to End-users, the ERC shall promulgate a Grid Code and a Distribution Code that shall include performance standards and the minimum financial capability standards and other terms and conditions for access to and use of the transmission and distribution facilities within six (6) months from the effectivity of the Act.
- (h) Act on applications for cost recovery and return on DSM.
- (i) The ERC shall set the criteria for eligibility and authorize eligible Generation Companies, Distribution Utilities, Suppliers, IPP Administrators, End-users and other entities authorized by ERC in accordance with the Act for membership in the WESM. For the purpose of ensuring a greater supply and rational pricing of electricity, the ERC shall enforce the rules and regulations governing the operations of WESM and the activities of the WESM Operator and other WESM Participants. In cases of national and international security emergencies or natural calamities, it can suspend spot market operations within the WESM.
- (j) The ERC shall ensure that Electric Power Industry Participants and NPC functionally and structurally unbundle their respective business activities and rates and determine the levels of cross subsidies in the existing Retail Rates until the same is removed in accordance with the sectors as identified in and as required by Sections 5, 36 and 74 of

the Act. ERC shall set a Lifeline Rate for the Marginalized End-users. In particular, the distribution rates should unbundle at least the following business activities or assets: supply, distribution, and such other services as the ERC may determine.

- (k) The ERC shall promulgate rules and regulations prescribing the qualifications of Suppliers, which shall include among others their technical and financial capability and credit worthiness.
- (l) The ERC shall determine the electricity End-users comprising the Contestable and Captive Markets. The ERC shall also seek to foster competition in credit, collection and metering services in Contestable Markets. It shall likewise license Suppliers to Contestable Markets.
- (m) The ERC shall perform such other regulatory functions as are appropriate and necessary in order to ensure the successful Restructuring and modernization of the electric power industry, such as, but not limited to, the rules and guidelines under which Generation Companies, Distribution Utilities, which are not publicly listed, shall offer and sell to the public a portion not less than fifteen percent (15%) of their common shares of stocks: *Provided, however,* That Generation Companies, Distribution Utilities or their respective holding companies that are already listed in the Philippine Stock Exchange (PSE) are deemed in compliance. For existing companies, such public offering shall be implemented not later than five (5) years from the effectivity of the Act. New companies shall implement their respective public offerings not later than five (5) years from the issuance of their Certificate of Compliance (COC);
- (n) The ERC shall have the original and exclusive jurisdiction over all cases contesting rates, fees, fines and penalties imposed in the exercise of its powers, functions and responsibilities and over all cases involving disputes between and among participants or players in the energy sector relating to the foregoing powers, functions and responsibilities.
- (o) It shall also be empowered to issue such other rules that are essential in the discharge of its functions as an independent quasi-judicial body.
- (p) All actions taken by the ERC pursuant to the Act are subject to judicial review and the requirements of due process and the cardinal rights and principles applicable to quasi-judicial bodies.
- (q) The ERC may require reports or documents from the Electric Power Industry Participants as necessary to facilitate compliance with the Act, subject to appropriate measures to preserve the confidentiality of proprietary or commercially sensitive information.
- (r) All notices of hearings to be conducted by the ERC for the purpose of fixing rates or fees shall be published at least twice for two (2) successive weeks in two (2) newspapers of nationwide circulation.

- (s) The ERC shall conduct rate application hearings in the locality where the applicant is conducting its operations: *Provided*, That this requirement shall not apply to applications filed pursuant to Section 36 of the Act.

Section 5. Responsibilities of the PSALM.

- (a) Consistent with Section 49 of the Act, PSALM shall take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets. All outstanding obligations of NPC arising from loans, issuances of bonds, securities and other instruments of indebtedness shall be transferred to and assumed by PSALM.
- (b) The PSALM shall formulate and implement a program for the sale and Privatization of the NPC assets and IPP contracts and the liquidation of NPC Debts and Stranded Contract Costs in accordance with the Act.

It shall calculate the amount of the Stranded Debts and Stranded Contract Costs of NPC, which amount shall form part of the Universal Charge to be determined, fixed, and approved by the ERC.

- (c) Pursuant to Section 60 of the Act, the PSALM shall assume all outstanding financial obligations of ECs to NEA and other government agencies arising from their respective Rural Electrification Program. This shall be done in accordance with the program duly approved by the President of the Philippines.

RULE 4. DEFINITION OF TERMS

As used in these Rules, the following terms shall have the following respective meanings:

- (a) **“Act”** unless otherwise stated, refers to, Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001”;
- (b) **“Accredited Facility”** refers to a facility granted the certificate of accreditation by NPC or DOE pursuant to Executive Order No. 215 and its implementing rules and regulations;
- (c) **“Affiliate”** means 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;
- (d) **“Aggregator”** refers to a Person or entity duly licensed by the ERC to engage in consolidating electric power demand of End-users in a Contestable Market for the purpose of purchasing and reselling electricity on a group basis;

- (e) **“Ancillary Services”** refer to those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the transmission system in accordance with good utility practice and the Grid Code to be adopted in accordance with the Act;
- (f) **“Bureau of Internal Revenue” or “BIR”** refers to an attached agency of the Department of Finance (DOF);
- (g) **“Board of Investments” or “BOI”** refers to an attached agency of the Department of Trade and Industry (DTI) created under Republic Act No. 5186, as amended;
- (h) **“Bonafide Member”** refers to a Person that has met all the requirements set forth under the applicable EC by-laws and has been enlisted as such, with voting rights under the “one-man-one-vote” cooperative principle;
- (i) **“Build-Operate-Transfer” or “BOT”** shall have the meaning specified by Republic Act No. 6957, as amended, otherwise known as “BOT Law” and its implementing rules and regulations;
- (j) **“Buyer or Concessionaire”** refers to a qualified party awarded the sale agreement or Concession Contract for transmission assets;
- (k) **“Captive Market”** refers to electricity End-users who do not have the choice of a Supplier of electricity, as may be determined by the ERC in accordance with the Act;
- (l) **“Central Dispatch”** refers to the process of issuing direct instructions to Electric Power Industry Participants by the grid operator to achieve the economic operation and maintenance of quality, stability, reliability and security of the transmission system;
- (m) **“Competition Rules”** refer to the rules promulgated by ERC to promote and ensure competition in the electric power industry pursuant to the Act and these Rules;
- (n) **“Concession Contract”** refers to the award by the government to a qualified private entity of the responsibility for financing, operating, expanding, maintaining and managing specific Government-owned transmission assets;
- (o) **“Condonation”** refers to the setting aside or suspension from the ECs’ books of accounts of all their financial obligations to NEA and other government agencies as a result of PSALM’s assumption of the same, subject to their compliance with the Program approved by the President of the Philippines;
- (p) **“Contestable Market”** refers to 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;

- (q) **“Contiguous Area”** refers to areas which are within the same boundaries such as subdivisions, villages, Economic Zones, business districts and other similarly situated End-users in which Supply of Electricity can be measured through metering devices;
- (r) **“Control”** shall mean the power to direct or cause the direction of the management policies of a Person by contract, agency or otherwise;
- (s) **“Cooperative Development Authority”** or **“CDA”** refers to an entity created under Republic Act No. 6939;
- (t) **“Corporation Code”** refers to Batas Pambansa Bilang 68, otherwise known as “The Corporation Code of the Philippines;”
- (u) **“Demand Side Management”** or **“DSM”** refers to measures undertaken by Distribution Utilities to encourage End-users in the proper management of their load to achieve efficiency in the utilization of fixed infrastructures in the system;
- (v) **“Department of Budget and Management”** or **“DBM”** refers to the government agency created pursuant to Executive Order No. 25, as amended;
- (w) **“Department of Energy”** or **“DOE”** refers to the government agency created pursuant to Republic Act No. 7638 whose expanded functions are provided in the Act;
- (x) **“Department of Finance”** or **“DOF”** refers to the government agency created pursuant to Executive Order No. 127, as amended;
- (y) **“Distribution Code”** refers to a compilation of rules and regulations governing electric utilities in the operation and maintenance of their Distribution Systems, which includes, among others, the standards for service and performance, and defines and establishes the relationship of Distribution Systems with facilities or installations of parties connected thereto;
- (z) **“Distribution of Electricity”** refers to the conveyance of electric power from transmission facilities or Embedded Generators to End-users by a Distribution Utility through its Distribution System pursuant to the provisions of the Act and these Rules;
- (aa) **“Distribution System”** refers to the system of wires and associated facilities belonging to a franchised Distribution Utility extending between the delivery points on the transmission or Subtransmission System or generator connection and the point of connection to the premises of the End-user;
- (bb) **“Distribution Wheeling Charge”** refers to the cost or charge regulated by the ERC for the use of a Distribution System and/or the availment of related services;
- (cc) **“Distribution Utility”** refers to any EC, 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;

- (dd) **“Economic Zones”** or **“EZs”** refer to selected areas which are being developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers. An EZ may refer to any of the following: Industrial Estates (IEs), Export Processing Zones (EPZs), Free Trade Zones (FTZs), Information Technology Parks and Tourist/Recreational Centers, such as those managed, administered, or operated by the Bases Conversion Development Authority (BCDA), Cagayan Economic Zone Authority (CEZA), Clark Development Corporation (CDC), Philippine Economic Zone Authority (PEZA), Phividec Industrial Authority (PIA), and Zamboanga City Economic Zone Authority (ZCEZA);
- (ee) **“Electric Cooperative”** or **“EC”** refers to a Distribution Utility organized pursuant to Presidential Decree No. 269, as amended or as otherwise provided in the Act;
- (ff) **“Electric Power Industry Participant”** refers to any Person or entity engaged in the generation, transmission, distribution or Supply of Electricity;
- (gg) **“Embedded Generators”** refer to generating units that are indirectly connected to the Grid through the Distribution Utilities’ lines or industrial generation facilities that are synchronized with the Grid;
- (hh) **“End-user”** refers to any Person or entity requiring the supply and delivery of electricity for its own use;
- (ii) **“Energized Area”** refers to a geographical area enjoying dependable and adequate electric service;
- (jj) **“Energy Regulatory Board”** or **“ERB”** refers to the independent, quasi-judicial regulatory body created under Executive Order No. 172, as amended;
- (kk) **“Energy Regulatory Commission”** or **“ERC”** refers to the regulatory agency created by Section 38 of the Act;
- (ll) **“Financing for Rural Electrification”** refers to those loans and grants extended to ECs, for the construction or acquisition, operation and maintenance of distribution, generation, and subtransmission facilities for the purpose of supplying electric service, and those loans for the restoration, upgrading and expansion of such facilities, in areas which are considered rural at the time of the grant of such loans;
- (mm) **“Franchise Area”** refers to a geographical area exclusively assigned or granted to a Distribution Utility for Distribution of Electricity;
- (nn) **“Generation Company”** refers to any Person or entity authorized by the ERC to operate facilities used in the Generation of Electricity;

- (oo) **“Generation Facility”** refers to a facility for the production of electricity;
- (pp) **“Generation of Electricity”** refers to the production of electricity by a Generation Company or a co-generation facility pursuant to the provisions of the Act;
- (qq) **“Grid”** refers to the high voltage backbone system of interconnected transmission lines, substations and related facilities, located in each of Luzon, Visayas and Mindanao, or as may otherwise be determined by the ERC in accordance with Section 45 of the Act;
- (rr) **“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;
- (ss) **“Independent Market Operator”** or **“IMO”** refers to a person who is financially and technically capable, with proven experience and expertise of not less than two (2) years as a leading independent market operator of similar or larger size electricity markets endorsed jointly by the DOE and Electric Power Industry Participants to assume the functions, assets and liabilities from the Autonomous Group Market Operator (AGMO), pursuant to Section 30 of the Act;
- (tt) **“Independent Power Producer”** or **“IPP”** refers to an existing power generating entity which is not owned by NPC as of the effectivity of the Act;
- (uu) **“Inter-Class Cross Subsidy”** refers to an amount charged by Distribution Utilities to industrial and commercial End-users as well as to other subsidizing customer sectors in order to reduce electricity rates of other customer sectors such as the residential End-users, hospitals, and streetlights;
- (vv) **“Inter-Regional Grid Cross Subsidy”** refers to an amount embedded in the electricity rates of NPC charged to its customers located in a viable regional grid in order to reduce the electricity rates in a less viable regional grid;
- (ww) **“Intra-Regional Grid Cross Subsidy”** refers to an amount embedded in the electricity rates of NPC charged to Distribution Utilities and non-utilities with higher load factor and/or delivery voltage in order to reduce the electricity rates charged to Distribution Utilities with lower load factor and/or delivery voltage located in the same regional grid;
- (xx) **“IPP Administrator”** refers to qualified independent entities appointed by PSALM who shall administer, conserve and manage the contracted energy output of NPC IPP contracts, including selling the contracted energy output of these contracts and offering Ancillary Services, where applicable;
- (yy) **“Lifeline Rate”** refers to the subsidized rate given to Marginalized/low-income Captive Market End-users who cannot afford to pay at full cost;

- (zz) “**Marginalized End-users**” refer to low-income, captive, household electricity consumers who cannot afford to pay at full cost and have levels of electricity consumption below a threshold level to be determined by the ERC;
- (aaa) “**Market Fees**” refer to the charges imposed on all market members by the Market Operator to cover the cost of administering and operating the WESM, as approved by the ERC;
- (bbb) “**Market Operator**” refers to either the “Autonomous Group Market Operator” or “AGMO” constituted by the DOE under Section 30 of the Act, with equitable representation from Electric Power Industry Participants, initially under the administrative supervision of the TRANSCO, which shall assume the functions, assets and liabilities of the AGMO or the IMO, the entity jointly endorsed by the DOE and Electric Power Industry Participants to assume the functions, assets and liabilities from AGMO pursuant to Section 30 of the Act;
- (ccc) “**Merit Order Dispatch Instructions**” refer to the dispatch schedule that will be submitted by the Market Operator to the Grid/system operator for the purpose of providing Central Dispatch;
- (ddd) “**Missionary Electrification**” refers to the provision of basic electricity service in Unviable Areas with the ultimate aim of bringing the operations in these areas to viability levels;
- (eee) “**National Electrification Administration**” or “**NEA**” refers to the government agency created under Presidential Decree No. 269, as amended, with additional mandate set forth in the Act;
- (fff) “**National Power Corporation**” or “**NPC**” refers to the government corporation created under Republic Act No. 6395, as amended;
- (ggg) “**National Transmission Corporation**” or “**TRANSCO**” refers to the corporation organized pursuant to the Act to acquire all the transmission assets of the NPC;
- (hhh) “**Open Access**” refers to the system of allowing any qualified Person the use of transmission, and/or Distribution System and associated facilities subject to the payment of transmission and/or distribution retail wheeling rates duly approved by the ERC. For this purpose, qualified Persons shall include all WESM Participants;
- (iii) “**Person**” refers to a natural or juridical person, as the case may be;
- (jjj) “**Philippine Energy Plan**” or “**PEP**” refers to the overall energy program formulated and updated yearly by the DOE and submitted to Congress pursuant to Republic Act No. 7638;
- (kkk) “**Philippine Stock Exchange**” or “**PSE**” refers to the corporate body duly organized and existing under Philippine law, licensed to operate as a securities exchange by the Securities and Exchange Commission (SEC);

- (lll) "**Power Commission**" refers to the Joint Congressional Power Commission created pursuant to Section 62 of the Act;
- (mmm) "**Power Development Program**" or "**PDP**" refers to the indicative plan for managing electricity demand through energy-efficient programs and for the upgrading, expansion, rehabilitation, repair and maintenance of power generation and transmission facilities, formulated and updated yearly by the DOE in coordination with the generation, transmission and Distribution Utility companies;
- (nnn) "**Power Sector Assets and Liabilities Management Corporation**" or "**PSALM Corp.**" or "**PSALM**" refers to the corporation created pursuant to Section 49 of the Act;
- (ooo) "**Privatization**" refers to the sale, disposition, change and transfer of entire ownership and control of all assets and IPP contracts from the Government or a government corporation to a private Person or entity;
- (ppp) "**Qualified Distribution Utilities**" refer to Distribution Utilities that are technically and financially capable of owning, operating, maintaining, upgrading and expanding subtransmission facilities in accordance with the requirement of the Act;
- (qqq) "**Referendum**" refers to an electoral process which Bonafide Members of ECs register their respective vote on the issue of conversion, through secret balloting, in designated voting centers, the conduct of which shall be under the supervision of NEA;
- (rrr) "**Related Group**" refers to a Person and any business entity Controlled by that Person, along with the Affiliates of such business entity, and the directors and officers of the business entity or its Affiliates, and relatives by consanguinity or affinity, legitimate or common law, within the fourth civil degree, of the Person or any of the foregoing directors or officers;
- (sss) "**Renewable Energy Resources**" refer to energy resources that do not have an upper limit on the total quantity to be used. Such resources are renewable on a regular basis and the renewable rate is rapid enough to consider availability over an indefinite time. These include, among others, biomass, solar, wind, hydro and ocean energy;
- (ttt) "**Restructuring**" refers to the process of reorganizing the electric power industry in order to introduce higher efficiency, greater innovation and End-user choice. It shall be understood as covering a range of alternatives enhancing exposure of the industry to competitive market forces;
- (uuu) "**Retail Rate**" refers to 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;

- (vvv) **“Retail Competition”** refers to the provision of electricity to a Contestable Market by Suppliers through Open Access;
- (www) **“Return-On-Rate-Base”** or **“RORB”** refers to the rate setting methodology as determined by the ERC whereby TRANSCO or its Buyer or Concessionaire and Distribution Utilities are allowed to recover just and reasonable costs and earn a reasonable return so as to enable such entities to operate viably;
- (xxx) **“Rural Electrification”** refers to the delivery of basic electric services, consisting of power generation, subtransmission and/or extension of associated power delivery system that would bring about important social and economic benefits to the countryside;
- (yyy) **“Rural Electrification Loan”** refers to financial obligations strictly incurred for Rural Electrification;
- (zzz) **“Rural Electrification Program”** refers to the National Government plan to achieve total electrification of the countryside for the purpose of fostering economic development and uplifting the living standards of the Filipino people;
- (aaaa) **“Self-Generation Facility”** refers to a power Generation Facility owned and constructed by an End-user for such End-user’s own consumption or internal use excluding Generation Facilities for use by households, clinics, hospitals and other medical facilities;
- (bbbb) **“Small Power Utilities Group”** or **“SPUG”** refers to the functional unit of NPC created to pursue Missionary Electrification function;
- (cccc) **“Small Distribution Company”** refers to a Distribution Utility whose peak demand is equal to or less than ten (10) megawatts;
- (dddd) **“Stock Cooperative”** refers to a duly-registered association of Persons with a common bond of interest, who have voluntarily joined together to achieve a lawful common social or economic end, making equitable contributions to the capital required and accepting a fair share of the risks and benefits of the undertaking in accordance with the universally-accepted cooperative principles as defined under Article 4, Chapter 1 of Republic Act No. 6938, otherwise known as the “Cooperative Code of the Philippines;”
- (eeee) **“Stock Corporation”** refers to an artificial being created by operation of law with capital stock divided into shares and authorized to distribute to its shareholders dividends out of its surplus profits, having the right of succession and the powers, attributes and properties expressly authorized by law or incident to its existence;
- (ffff) **“Stranded Contract Costs of Eligible Contracts of Distribution Utilities”** refer to the excess of the contracted cost of electricity under eligible contracts of Distribution Utilities over the actual selling price of the contracted energy output of such contracts that would be incurred upon Retail Competition and Open Access. For this purpose,

“eligible contracts” are contracts which have been approved by the ERB as of 31 December 2000;

- (gggg) “**Stranded Contract Costs of NPC**” refer to the excess of the contracted cost of electricity under eligible contracts of NPC over the actual selling price of the contracted energy output of such contracts in the market. Such contracts shall have been approved by the ERB as of 31 December 2000;
- (hhhh) “**Stranded Debts of NPC**” or “**Stranded Debts**” refer to any unpaid financial obligations of NPC which have not been liquidated by the proceeds from the sales and Privatization of NPC assets: *Provided, however,* That such obligations include any of such obligations refinanced by PSALM: *Provided, further,* That such refinancing of such unpaid obligations shall not result in increasing the Universal Charge burden;
- (iiii) “**Subtransmission Assets**” refer to the facilities related to the power delivery service below the transmission voltages and based on the functional assignment of assets including, but not limited to step-down transformers used solely by load customers, associated switchyard/substation, control and protective equipment, reactive compensation equipment to improve customer power factor, overhead lines, and the land where such facilities/equipment are located. These include NPC assets linking the transmission system and the Distribution System which are neither classified as generation nor transmission;
- (jjjj) “**Subtransmission System**” refers to systems comprised of Subtransmission Assets;
- (kkkk) “**Supplier**” refers to any Person licensed by the ERC to sell, broker, market or aggregate electricity to End-users;
- (llll) “**Supplier’s Charge**” refers to the charge imposed by Suppliers for the sale of electricity to End-users, excluding the charges for generation, transmission and distribution wheeling;
- (mmmm) “**Supply of Electricity**” refers to the sale of electricity by a party other than a Generation Company or a Distribution Utility in the Franchise Area of a Distribution Utility using the wires of such Distribution Utility;
- (nnnn) “**Technical Constraints**” refer to line, equipment, and other limitations as defined in the WESM Rules, Grid Code and Distribution Code;
- (oooo) “**Transmission Charge**” refers to the regulated cost or charges for the use of a transmission system which may include the availment of Ancillary Services;
- (pppp) “**Transmission Development Plan**” or “**TDP**” refers to the program for managing the transmission system through efficient planning for its expansion, upgrading, rehabilitation, repair and

maintenance, to be formulated by DOE and implemented by the TRANSCO or its Buyer or Concessionaire pursuant to the Act;

(qqqq) “**Transmission of Electricity**” refers to the conveyance of electricity through the high voltage backbone system;

(rrrr) “**Universal Charge**” refers to the charge, if any, imposed for the recovery of the Stranded Debts, Stranded Contract Costs of NPC, and Stranded Contract Costs of Eligible Contracts of Distribution Utilities and other purposes pursuant to Section 34 of the Act;

(ssss) “**Unviable Area**” refers to a geographical area within the Franchise Area of a Distribution Utility where immediate extension of distribution line is not feasible;

(tttt) “**Wholesale Electricity Spot Market**” or “**WESM**” refers to the Wholesale Electricity Spot Market to be created in accordance with the Act;

(uuuu) “**WESM Participants**” refer to all Generation Companies, Distribution Utilities, Suppliers, Aggregators, End-users, the TRANSCO or its Buyer or Concessionaire, IPP Administrators, and other entities authorized by the ERC to participate in the WESM in accordance with the Act; and

(vvvv) “**WESM Rules**” refer to the detailed rules that govern the administration and operation of the WESM.

PART II - STRUCTURE AND OPERATION OF THE ELECTRIC POWER INDUSTRY

RULE 5. GENERATION SECTOR

Section 1. Guiding Principle.

Pursuant to Section 6 of the Act, generation of electric power, a business affected with public interest, shall be competitive and open to all qualified Generation Companies. Generation shall not be considered a public utility operation. For this purpose, any Person engaged or intending to engage in Generation of Electricity shall not be required to secure a national franchise.

No Person may engage in the Generation of Electricity as a new Generation Company unless such Person has received a COC from the ERC to operate facilities used in the Generation of Electricity. A Person that demonstrates compliance with the standards and requirements of this Rule 5, and such other terms and conditions as determined by the ERC to be appropriate to ensure that Persons comply with all applicable legal and regulatory requirements, shall be issued a COC.

Section 2. Scope of Application.

This Rule shall apply to all facilities used or to be used for the Generation of Electricity, including but not limited to the following:

(a) Existing Generation Facilities.

Existing Generation Facilities shall include:

- (i) Spin-off Facilities of NPC or their transferees, including Generation Facilities owned by NPC transferred to PSALM and subsequently privatized pursuant to the Act;
- (ii) Agus and Pulangui Complexes;
- (iii) Facilities owned and operated by SPUG;
- (iv) Accredited facilities under BOT arrangement and other variants with NPC, SPUG, National Irrigation Administration (NIA), Philippine National Oil Company-Energy Development Corporation (PNOC-EDC) and other government agencies;
- (v) Accredited facilities under BOT arrangement and other variant with Distribution Utilities;
- (vi) Facilities Owned or Operated by a Distribution Utility;
- (vii) Facilities under Contract with a Distribution Utility;
- (viii) Self-Generation Facilities;
- (ix) Facility operating in EZs; and
- (x) Facility operating in isolated areas.

(b) Generation Facilities Under Construction.

Generation Facilities under construction shall include:

- (i) DOE-Accredited Facility under BOT arrangement and other variants with NPC, SPUG, PNOC-EDC, NIA and other government agencies;
- (ii) DOE-Accredited Facility under BOT arrangement and other variants with Distribution Utilities;
- (iii) Non DOE-Accredited Facility under contract with Distribution Utilities;
- (iv) Self-Generation Facility;
- (v) Facility locating in EZs; and
- (vi) Facility operating in isolated areas.

(c) New Generation Facilities

New Generation Facilities shall include:

- (i) Any newly-constructed facility with appropriate health, safety and environmental clearances connected to the Grid;
- (ii) Any facility currently under BOT arrangement and other variants with NPC, SPUG, PNOC-EDC, other government agencies, and government- owned and- controlled corporations; and
- (iii) Any facility that shall operate in an isolated area.

- (d) This Rule shall also apply to the PSALM-appointed IPP Administrators.

Section 3. Ownership Limitation.

No Generation Company, Distribution Utility, or its respective subsidiary or Affiliate or stockholder or official of a Generation Company or Distribution Utility, or other entity engaged in generating and supplying electricity specified by ERC within the fourth civil degree of consanguinity or affinity, legitimate or common law, shall be allowed to hold any interest, directly or indirectly, in TRANSCO or its Buyer or Concessionaire. Likewise, the TRANSCO or its Buyer or Concessionaire or any of its stockholders or officials or any of their relatives within the fourth civil degree of consanguinity or affinity, legitimate or common law, shall not hold any interest, whether directly or indirectly, in any Generation Company or Distribution Utility. Except for *ex officio* government-appointed representatives, no Person who is an officer or director of the TRANSCO or its Buyer or Concessionaire shall be an officer or director of any Generation Company, Distribution Utility or Supplier. This section shall not apply to PSALM during the period that its generation assets are being privatized pursuant to Section 47 of the Act.

Section 4. Obligations of a Generation Company.

- (a) A COC shall be secured from the ERC before commercial operation of a new Generation Facility. The COC shall stipulate all obligations of a Generation Company consistent with this Section and such other operating guidelines as ERC may establish. The ERC shall establish and publish the standards and requirements for issuance of a COC. A COC shall be issued upon compliance with such standards and requirements.
- (i) A Person owning an existing Generation Facility or a Generation Facility under construction, shall submit within ninety (90) days from effectivity of these Rules to ERC, when applicable, a certificate of DOE/NPC accreditation, a three (3) year operational history, a general company profile and other information that ERC may require. Upon making a complete submission to the ERC, such Person shall be issued a COC by the ERC to operate such existing Generation Facility.
- (ii) A Generation Facility which has been previously issued a COC shall not be required to secure a COC even if acquired by a new owner: *Provided*, That such new owner shall register with ERC as specified above. Upon registration, such Person shall be deemed authorized to operate such Generation Facility.
- (b) A Generation Company shall comply with the following operating standards:
- (i) Technical Standards.

A Generation Company shall ensure that all its facilities connected to the Grid meet the technical design and operational

criteria of the Grid Code and Distribution Code promulgated by ERC, Philippine Electrical Code, and the TRANSCO or its Buyer or Concessionaire including, among others, standards for voltage fluctuation, frequency, harmonics, security, reliability, unplanned outages and provision of Ancillary Services and shall operate in accordance with such operational criteria.

(ii) Financial Standards.

A Generation Company with facilities connected to the Grid shall conform to the financial standards provided in the Grid Code. These standards shall take into consideration the nature and function of a Generation Facility. Furthermore, such standards are set to ensure that the Generation Company meets the minimum financial standards to protect the public interest and any customer procuring services from the said Generation Company.

(iii) Environmental Standards.

A Generation Company shall ensure that its facilities comply with applicable environmental laws, rules and regulations.

- (c) A Generation Company operating a Generation Facility in isolated areas shall meet the technical and financial standards to be issued by the ERC using applicable and practicable criteria within two (2) years, or such other period as may be specified by the ERC, from the issuance of such technical and financial standards.
- (d) A Generation Company shall structurally and functionally unbundle its generation business activities and rates from its distribution and supply businesses as provided in Rule 10 on Structural and Functional Unbundling of Electric Power Industry Participants and Rule 15 on Unbundling of Rates.
- (e) Prior to the implementation of Open Access and Retail Competition, the prices charged by a Generation Company for the Supply of Electricity shall be subject to ERC regulation on the Retail Rates charged by Distribution Utilities and transition supply contracts (TSCs) as specified in Section 67 of the Act.

Upon introduction of Open Access and Retail Competition or establishment of WESM, whichever comes first, the rates of a Generation Company shall not be subject to regulation by the ERC except as otherwise provided by the Act.

However, for a Generation Company operating a facility in SPUG areas and isolated areas, the generation rates for such facility shall be fixed and determined by ERC as set forth in Rule 13 on Missionary Electrification.

- (f) A self-generation company not connected to a Distribution Utility, unless otherwise provided under these Rules, shall remit directly to TRANSCO the corresponding Universal Charge set by ERC. In

relation to this, TRANSCO or its Buyer or Concessionaire or the appropriate Distribution Utility, when connected to the self-generation company, shall have access to the customer side of the meter in order to determine the utilization of such Generation Facility for the purpose of assessing the corresponding Universal Charge as provided in Rule 18 on Universal Charge.

- (g) A Generation Company shall comply with Rule 29 on Benefits to Host Communities.
- (h) Upon the establishment of the WESM by the DOE, jointly with Electric Power Industry Participants, a Generation Company shall comply with the membership criteria as prescribed under the WESM Rules as set forth in Rule 9 on WESM.
- (i) Pursuant to Section 9(e) of the Act, a Generation Company with facilities connected to a Grid shall make information available to the Market Operator to enable the Market Operator to implement the appropriate dispatch scheduling and shall comply with the said scheduling in accordance with the WESM Rules. A Generation Company shall likewise make information available to the grid operator to facilitate Central Dispatch by the grid operator. Subject to Technical Constraints, the grid operator of the TRANSCO or its Buyer or Concessionaire shall provide Central Dispatch to a Generation Facility connected, directly or indirectly, to the transmission system in accordance with the dispatch schedule submitted by the Market Operator, which schedule shall take into account outstanding bilateral contracts.
- (j) A Generation Company shall comply with Rule 11 on Cross Ownership, Market Abuse and Anti-Competitive Behavior.
- (k) A Generation Company that owns a dedicated point-to-point limited transmission facility shall transfer ownership of such facility to the TRANSCO at a fair market price in the event that such facility is required for competitive purposes as prescribed in Section 5 (b) of this Rule.
- (l) A Generation Company shall submit to DOE any information as may be required by the DOE for the preparation of the PDP, subject to appropriate measures to preserve the confidentiality of proprietary or commercially sensitive information.
- (m) A Generation Company that fails to comply with any of these obligations, including compliance with technical standards, shall be subject to fines and penalties as may be imposed by the ERC.

Section 5. Dedicated Point-to-Point Limited Transmission Facility of a Generation Company.

- (a) Subject to prior authorization from ERC, TRANSCO or its Buyer or Concessionaire may allow a Generation Company to develop, own and/or operate dedicated point-to-point limited transmission facilities: *Provided*, That:

- (i) Such dedicated point-to-point limited transmission facilities are required only for the purpose of connecting to the Grid which will be used solely by the Generation Facility, and are not used to serve End-users or Suppliers directly;
 - (ii) The facilities are included and consistent with the TDP as certified by TRANSCO or its Buyer or Concessionaire; and
 - (iii) Any other documents that may be required by the ERC.
- (b) In the event that such assets are required for competitive purposes, ownership of the same shall be transferred to the TRANSCO at a fair market price. In case of disagreement on the fair market price, the ERC shall determine the fair market value of such asset, either directly or through such dispute resolution mechanisms as ERC may specify.

Section 6. Generation Charges and VAT.

- (a) Within ninety (90) days from the effectivity of these Rules, the ERC shall issue guidelines for the regulation of power sales by Generation Companies applicable prior to the implementation of Retail Competition and Open Access or establishment of WESM, whichever comes first.
- (b) Pursuant to the policy of reducing electricity rates to End-users, sales of generated power by a Generation Company shall, from the effectivity of the Act, be zero-rated for the purpose of imposition of value-added tax. Towards this end, the imposition of zero percent (0%) VAT shall apply to the sale of generated power by a Generation Company through all stages of sale until it reaches the End-user. The DOF, through the BIR, shall issue the necessary revenue regulation within sixty (60) calendar days from effectivity of these Rules.

RULE 6. TRANSMISSION SECTOR

Section 1. Guiding Principle.

The transmission of electric power is affected with public interest and shall be a regulated common electricity carrier business, subject to the ratemaking powers of the ERC.

Section 2. Scope of Application.

This Rule shall apply to TRANSCO or its Buyer or Concessionaire and any other successor-in-interest thereto.

Section 3. Ownership Limitation.

The TRANSCO or its Buyer or Concessionaire or any of its stockholders, directors, officers or any of their relatives within the fourth civil degree of consanguinity or affinity, legitimate or common law, shall not hold any

interest, whether directly or indirectly, in any Generation Company, Distribution Utility, IPP Administrator and Supplier.

Section 4. Separation Between Transmission and Subtransmission.

The ERC shall set the standards of the transmission voltages and other factors that shall distinguish transmission assets from Subtransmission Assets. Towards this end, ERC shall issue appropriate guidelines to distinguish between these categories of assets according to voltage level and function. The ERC shall take into account the objective of allowing non-discriminatory Open Access to the transmission and Subtransmission Systems.

The technical and functional criteria to be considered in distinguishing transmission assets from Subtransmission Assets shall include, but not limited to:

- (a) Subtransmission Assets are normally in close proximity to retail customers;
- (b) Subtransmission Assets are primarily radial in character;
- (c) Power flows into Subtransmission Assets; it rarely, if ever, flows out;
- (d) When power enters Subtransmission Assets, it is not reconsigned or transported on to some other market;
- (e) Power entering Subtransmission Assets is consumed in a comparatively restricted geographic area;
- (f) Meters are based at the interface of transmission and Subtransmission Assets to measure flows into the Subtransmission Assets; and
- (g) Subtransmission Assets will be of reduced voltage.

Section 5. Initial Classification of Transmission Assets.

Pending the issuance of the new standards for classification of transmission assets by ERC, transmission assets shall be defined as follows:

- (a) For the Luzon Grid, transmission facilities rated 230 kV and above shall generally be considered transmission assets;
- (b) For the Visayas Grid, transmission facilities rated 69 kV and above shall generally be considered transmission assets;
- (c) For the Mindanao Grid, transmission facilities rated 138 kV and above shall generally be considered transmission assets; and
- (d) Notwithstanding the foregoing provisions, any line at the specified level for each Grid that serves an End-user or customer shall be considered a subtransmission line, and any line below the specified

level for each Grid that serves a transmission function shall be considered a transmission line.

Section 6. Initial Classification of Subtransmission Assets.

Step-down transformers used solely by load customers are considered Subtransmission Assets. .

In the case of step-down transformer banks serving a single Distribution Utility, the Distribution Utility or Distribution Utilities shall have the option to purchase said facility, provided, it will guarantee the reliable Supply of Electricity to grid control equipment.

Section 7. Functions and Responsibilities of TRANSCO or its Buyer or Concessionaire.

The TRANSCO or its Buyer or Concessionaire shall have, among others, the following functions and responsibilities:

- (a) Act as the system operator of the nationwide electrical transmission and Subtransmission System, transferred to it by NPC;
- (b) Provide open and non-discriminatory access to its system to all electricity users;
- (c) Ensure and maintain the reliability, adequacy, security, stability and integrity of the Grid in accordance with the performance standards for the operation and maintenance of the Grid, as set forth in the Grid Code and the Distribution Code.

The performance indicators for reliability, security, adequacy, integrity and stability shall include but are not limited to the following:

- (i) Number of Interruption Events;
 - (ii) Sustained Average Interruption Frequency Index;
 - (iii) Momentary Average Interruption Frequency Index;
 - (iv) Sustained Average Interruption Duration Index;
 - (v) System Interruption Severity Index;
 - (vi) Frequency of tripping per 100 c-km;
 - (vii) Average Forced Outage Duration;
 - (viii) Accumulated Time Error;
 - (ix) Frequency Limit Violation; and
 - (x) Voltage limit Violations.
- (d) Improve and expand its transmission facilities, consistent with the TDP and the Grid Code, to adequately serve Generation Companies, Distribution Utilities and Suppliers requiring transmission service and/or Ancillary Services through the transmission system. TRANSCO or its Buyer or Concessionaire shall submit any plan for expansion or improvement of its facilities for approval by the ERC; and
 - (e) Provide Central Dispatch, through its grid operator, to all Generation Facilities and loads connected, directly or indirectly, to the

transmission system in accordance with the dispatch schedule submitted by the Market Operator, taking into account outstanding bilateral contracts and subject to Technical Constraints.

Section 8. Obligations of TRANSCO.

The TRANSCO shall have, among others, the following obligations:

- (a) Prepare the TDP in consultation with Electric Power Industry Participants.
- (b) Submit an updated TDP for approval to the DOE on a timely basis each year for integration with the PDP and PEP.
- (c) Remit its net profit, if any, to the PSALM not later than ninety (90) days after the immediately preceding quarter subject to annual reconciliation when the audited and certified annual financial statements are finally made available. Net profit is defined as:

$$\text{Net Profit} = \text{Total Utility Revenue} - (\text{Total Operating Expenses} - \text{Other Income} + \text{Interest \& Other Charges})$$

Net proceeds from the Privatization of TRANSCO shall be immediately remitted to PSALM.

- (d) TRANSCO shall secure approval of its Transmission Charges from the ERC pursuant to Section 43(f) of the Act.
- (e) TRANSCO shall sell its Subtransmission Assets to qualified Distribution Utilities pursuant to the Act and, Part IV, Section 13 of Rule 22 on National Transmission Corporation. In the event that a Distribution Utility is not qualified or a qualified Distribution Utility refuses to acquire such assets, then TRANSCO shall be deemed in compliance with this obligation.

The Buyer or Concessionaire shall be responsible for the obligations under Subsections (a), (b), and (d) hereof.

Section 9. Compliance with Grid Code.

TRANSCO or its Buyer or Concessionaire shall comply with the provisions of the Grid Code in the process of improving and expanding its transmission facilities in order to ensure and maintain the reliability, adequacy, security, stability and integrity of the Grid and adequately serve Electric Power Industry Participants requiring transmission service or Ancillary Services through the Grid.

Section 10. Transmission Development Plan.

- (a) The TDP refers to a plan for managing the transmission system through efficient planning for expansion, upgrading, rehabilitation, repair and maintenance, to be prepared and implemented by TRANSCO or its Buyer or Concessionaire.

- (b) TRANSCO or its Buyer or Concessionaire shall be responsible for the preparation of the TDP, in consultation with the Electric Power Industry Participants. TRANSCO or its Buyer or Concessionaire shall submit the TDP for approval by DOE for integration into the PDP and PEP.
- (c) Any plan for expansion or improvement of transmission facilities shall be approved by the ERC: *Provided*, That such approval shall not be unreasonably withheld.

Section 11. TRANSCO Related Businesses.

The TRANSCO or its Buyer or Concessionaire shall be primarily responsible for maintaining and operating the Grid pursuant to this Rule.

- (a) TRANSCO or its Buyer or Concessionaire may engage in any related business which maximizes utilization of its assets;
- (b) A portion of the annual net income of not more than fifty percent (50%) derived from such undertaking utilizing assets which form part of the rate base shall be used to reduce the transmission wheeling charges as determined by ERC; and
- (c) Separate audited accounts shall be maintained for each business undertaking to ensure that the transmission business shall neither subsidize in any way such business undertaking nor encumber its transmission assets in any way to support such business.

Section 12. Transmission Charges.

- (a) Transmission Charges shall be paid to TRANSCO or its Buyer or Concessionaire for the use of the transmission system. Transmission users shall also pay charges for the use of Ancillary Services. The WESM Rules shall provide for the methodology for the price and cost recovery of Ancillary Services that are to be provided by the Generation Company.
- (b) Transmission Charges and fees for Ancillary Services shall be fixed by the ERC.

RULE 7. DISTRIBUTION SECTOR

Section 1. Guiding Principles.

- (a) Pursuant to Section 22 of the Act, the Distribution of Electricity to End-users shall be a regulated common carrier business, requiring a national franchise. For purposes of these Rules, distribution franchise shall mean the privilege of a Distribution Utility to convey electric power through its Distribution System in a given geographical area granted by the Congress of the Republic of the Philippines. The Distribution of Electricity is a business affected with public interest.
- (b) The following rules shall apply to the Distribution of Electricity.

Section 2. Scope of Application.

This Rule shall apply to an entity that owns, operates, or Controls one or more Distribution Systems such as but not limited to:

- (a) ECs;
- (b) Privately-Owned Distribution Utilities;
- (c) Local Government Unit Owned-and-Operated Distribution Systems;
- (d) Entities duly authorized to operate within the EZs; and
- (e) Other duly authorized entities engaged in the Distribution of Electricity.

Section 3. Ownership Limitation.

- (a) A Distribution Utility and any of its subsidiaries, Affiliates, stockholders, directors, officers or their relatives within the fourth civil degree of consanguinity or affinity, legitimate or common law, shall not hold any interest, directly or indirectly, in the TRANSCO or its Buyer or Concessionaire, or the IMO.
- (b) The holdings of any Person, natural or juridical, including its directors, officers, stockholders, and their related interests in a Distribution Utility and their respective holding companies shall not exceed twenty-five percent (25%) of the total voting shares of stock. This shall not apply to a Distribution Utility or the company holding the shares or its controlling stockholders whose shares are listed in the PSE. Implementation of this provision shall be in accordance with the rules and regulations issued by ERC. This section shall not apply to ECs in accordance with Section 28 of the Act.
- (c) A Distribution Utility shall be required to sell to the public a portion of not less than fifteen percent (15%) of its common shares of stock not later than five (5) years from the effectivity of the Act, except those Distribution Utilities or its respective holding companies listed in the PSE, subject to the rules and regulations of the ERC to be issued for this purpose.

Section 4. Obligations of a Distribution Utility.

- (a) A Distribution Utility shall provide distribution services and connections to its systems for any End-user within its Franchise Area consistent with the Distribution Code. Any existing End-user within the Franchise Area of a Distribution Utility that is connected to TRANSCO facilities shall be served by the franchised Distribution Utility upon acquisition of the subtransmission facilities: *Provided, however,* That the Distribution Utility which acquired the subtransmission facilities shall be paid by the End-user the corresponding subtransmission rates or wheeling charge imposed by

NPC in accordance with its contract to the End-user as approved by ERC.

- (b) A Distribution Utility shall structurally and functionally unbundle its distribution business activities and rates from its wires, generation and supply businesses. A Distribution Utility shall comply with Rule 10 on Structural and Functional Unbundling of Electric Power Industry Participants.
- (c) A Distribution Utility shall provide open and non-discriminatory access to its Distribution System to all End-users, including Suppliers and Aggregators.
- (d) A Distribution Utility shall comply with the technical specifications and financial standards prescribed in the Distribution Code and the performance standards prescribed in these Rules. To this end, ERC shall issue submission requirements for Distribution Utilities to comply with the technical specifications, financial and the performance standards after the effectivity of these Rules and the Distribution Code.
 - (i) A Distribution Utility shall submit to ERC a statement of compliance.
 - (ii) A Distribution Utility that does not comply with the technical specifications, performance standards and financial capability standards as prescribed in the Distribution Code shall submit to ERC a plan to comply within three (3) years therewith. The ERC shall, within sixty (60) days from receipt of such plan, evaluate the same and notify the Distribution Utility concerned of its action.
 - (iii) A Distribution Utility is required to implement the ERC-approved plan to comply with the said technical specifications prescribed in the Distribution Code and the performance standards of these Rules within three (3) years from the approval of said plan.
 - (iv) Failure by the Distribution Utility to submit a feasible and credible plan or failure to implement the same shall serve as ground for the imposition of appropriate sanctions, fines or penalties as may be prescribed by ERC.
- (e) A Distribution Utility shall comply with the requirements in the Grid Code, WESM Rules and all applicable laws.
- (f) A Distribution Utility shall provide universal service within its Franchise Area, over a reasonable time, including Unviable Areas, as part of its social obligations. This obligation shall be performed in a manner that shall allow such Distribution Utilities to collect different rates in Unviable Areas to sustain its economic viability, subject to approval by the ERC.

- (g) A Distribution Utility shall file with the ERC its petition to allow another Distribution Utility to provide electricity to areas that it does not find viable, pursuant to Section 6 of this Rule.
- (h) A Distribution Utility shall supply electricity in the least cost manner to the Captive Market within its Franchise Area, subject to the collection of Retail Rates duly approved by ERC.
- (i) A Distribution Utility shall file for review and approval by the ERC its unbundled rates reflecting the true costs of service pursuant to Rule 15 on Unbundling of Rates, and the proposal for the removal of cross subsidies among the customers it serves pursuant to Rule 16 on Removal of Cross Subsidies.
- (j) A Distribution Utility shall file with the ERC its petition on the Lifeline Rate to be applied to its Marginalized End-users, pursuant to Rule 20 on Lifeline Rate.
- (k) A Distribution Utility shall recover Stranded Contract Costs under eligible contracts approved by ERB as of 31 December 2000, subject to review by ERC pursuant to Rule 17 on Stranded Debts and Contract Costs Recovery.
- (l) A Distribution Utility shall collect on a monthly basis from all End-users a Universal Charge set by ERC, to be remitted to PSALM on or before the fifteenth (15th) of the succeeding month, net of any amount due to the Distribution Utility.
- (m) A Distribution Utility shall identify and segregate in its customer billing statements the components of the Retail Rate.
- (n) A Distribution Utility shall comply with Rule 11 on Cross Ownership, Market Abuse and Anti-Competitive Behavior.
- (o) A Distribution Utility shall file for review and approval by the ERC any changes in the terms and conditions of services to its Franchise Areas.
- (p) A Distribution Utility shall prepare and submit to the DOE an annual 5-year distribution development plan not later than the fifteenth (15th) of March of every year, for integration with the PDP and PEP.

In the case of the ECs, such plans shall be submitted through NEA for review and consolidation. To this end, NEA shall submit to the DOE the National Electric Cooperatives Distribution Development Plan not later than the 15th of March of every year.
- (q) A Distribution Utility shall pay a franchise tax only on its distribution wheeling and Captive Market supply revenues. To this end, the DOF shall issue the necessary guidelines.
- (r) A Distribution Utility shall comply with the reportorial requirements as may be prescribed by the ERC and the DOE.

- (s) A Distribution Utility that fails to comply with any of these obligations shall be subject to fines and penalties as imposed by the ERC.

Section 5. Privileges of a Distribution Utility.

- (a) A Distribution Utility shall be entitled to impose and collect Distribution Wheeling Charges and connection fees, Retail Rates and other charges as approved by the ERC from the End-user and other qualified customers.
- (b) A Distribution Utility may exercise the power of eminent domain subject to the requirements of the Constitution and existing laws.
- (c) A Distribution Utility may, directly or indirectly, engage in any related business undertaking that maximizes the utilization of its assets: *Provided*, That quality of service shall not deteriorate pursuant to the standards provided in the Grid Code and Distribution Code and Rule 10 on Structural and Functional Unbundling of Electric Power Industry Participants. To this end, the Distribution Utility shall submit to the ERC the appropriate documents to effect the following:
 - (i) A portion of the net annual income derived from such undertaking utilizing assets which form part of the rate base shall be used to reduce its Distribution Wheeling Charges: *Provided*, That, such portion shall not exceed fifty percent (50%) of the net income derived from such undertaking.
 - (ii) Separate accounts shall be maintained for each business undertaking to ensure that the distribution business shall neither subsidize in any way such business undertaking nor encumber its distribution assets in any way to support such business.

Section 6. Provision of Service in Unviable Areas.

- (a) Unenergized areas that a Distribution Utility does not find viable may be transferred to another Distribution Utility, if any is available, which will provide the service, subject to approval by ERC. In cases where a Distribution Utility failed or refused to service any area within its Franchise Area and allows another utility to service the same, the arrangements between the Distribution Utilities shall not affect their respective Franchise Areas. The ERC shall issue the appropriate guidelines to implement this provision.
- (b) In remote and Unviable Areas where the Distribution Utility is unable to serve for any reason as authorized by ERC in accordance with the Act, the areas shall be opened to other qualified third parties that may provide the service pursuant to Rule 14 on Provision of Electricity by Qualified Third Parties.

Section 7. Structural and Operational Reforms Between and Among Distribution Utilities.

- (a) Pursuant to Section 23 of the Act, the ERC shall issue the appropriate guidelines for the structural and operational reforms of a Distribution Utility. Such reforms shall include, but not limited, to merger, consolidation, integration, bulk procurement and joint ventures.
- (b) With respect to ECs, the DOE through NEA shall facilitate and encourage reforms in the structure and operations of a Distribution Utility for greater efficiency and lower costs.
- (c) Pursuant to Section 57 of the Act, ECs are given the option to convert into Stock Cooperatives under the CDA or Stock Corporations under the Corporation Code. Nothing contained in the Act shall deprive ECs of any privilege or right granted to them under Section 39 of Presidential Decree No. 269, as amended, and other existing laws. The conversion and registration of ECs shall be implemented in the following manner:
 - (i) ECs shall, upon approval of a simple majority of the required number of turnout of voters as provided in the Guidelines in the Conduct of Referendum (Guidelines), in a referendum conducted for such purpose, be converted into a Stock Cooperative or Stock Corporation and thereafter shall be governed by the Cooperative Code of the Philippines or the Corporation Code, as the case may be. The NEA, within six (6) months from the effectivity of these Rules, shall promulgate the guidelines in accordance with Section 5 of Presidential Decree No. 1645.
 - (ii) ECs converted into Stock Corporations shall be registered with the SEC in accordance with the Corporation Code, while those converted into Stock Cooperatives, shall be registered with the CDA: *Provided, however,* That the ECs which opt to remain as non-Stock Cooperatives shall continue to be registered with the NEA and shall be governed by the provisions of Presidential Decree No. 269, as amended.
 - (iii) An EC heretofore converted, regardless of the corporate form, or its successor entity, shall retain its franchise rights: *Provided, further,* That its operations shall be regulated by the ERC and other Government instrumentalities insofar as practicable and consistent with the Act.

Section 8. Franchise for a Distribution Utility.

- (a) Pursuant to Section 27 of the Act, a franchise to a Person intending to engage in Distribution of Electricity shall be granted exclusively by the Congress of the Philippines.
- (b) All existing franchises shall be allowed to their full term.

- (c) In the case of ECs, renewals and cancellations of franchise shall remain with the National Electrification Commission (NEC) under the NEA for five (5) more years after the effectivity of the Act.

RULE 8. SUPPLY SECTOR

Section 1. Guiding Principles.

- (a) Pursuant to Section 29 of the Act, the Supply of Electricity to End-users is a business affected with public interest.
- (b) The Supply of Electricity to End-users in Contestable Market requires a license from the ERC except for the Supply of Electricity by Distribution Utilities within their Franchise Areas and Persons authorized to supply electricity within their respective EZs.

Section 2. Scope of Application.

- (a) This Rule shall apply to all Suppliers.
- (b) Subject to the qualifications set by the ERC, any of the following may obtain a license to become a Supplier:
 - (i) A Generation Company or Affiliate thereof;
 - (ii) An Affiliate of a Distribution Utility with respect to the latter's Contestable Market within or outside its Franchise Area;
 - (iii) Aggregators;
 - (iv) An IPP Administrator; and
 - (v) Any other Person authorized by the ERC to engage in the selling, brokering or marketing of electricity to the Contestable Market, consistent with the Act and these Rules.

Section 3. Ownership Limitation and Restrictions.

- (a) A Supplier or Affiliate thereof or any stockholder, director or officer or any of their relatives within the fourth civil degree of consanguinity or affinity, legitimate or common law, shall not own any interest, directly or indirectly, in TRANSCO or its Buyer or Concessionaire, or IMO.
- (b) Except for ex-officio government-appointed representatives, no Person who is an officer or director of the TRANSCO or its Buyer or Concessionaire shall be an officer or director of any Supplier.

Section 4. Obligations of a Supplier.

- (a) A Supplier shall secure a license from the ERC prior to engaging in the Supply of Electricity to End-users in any Contestable Market.
- (b) A Supplier, where applicable, shall functionally and structurally unbundle its supply business activities and rates from its generation and distribution businesses, if any, as presented in Rule 10 on Structural and Functional Unbundling of Electric Power Industry Participants.

- (c) A Supplier shall identify and segregate the components of its Supplier's Charge, as required by the Act and further provided in Rule 15 on Unbundling of Rates.
- (d) A Supplier shall comply with the WESM Rules.
- (e) A Supplier shall comply with any reportorial requirements prescribed by the ERC for monitoring purposes.
- (f) A Supplier shall comply with the Competition Rules to be prescribed by the ERC concerning abuse of market power, cartelization, and any other anti-competitive or discriminatory behavior.
- (g) A Supplier that fails to comply with any of these obligations shall be subject to fines and penalties imposed by the ERC and, as so required to protect the public interest, may have its license suspended, revised or revoked.

Section 5. Licensing of Suppliers.

The ERC shall issue the appropriate licensing rules, guidelines and procedures for the issuance of licenses to Suppliers, which shall include but not limited to the following:

- (a) General Procedures for License Applications and Monitoring.
 - (i) The applicant shall submit all pertinent information and documents required by ERC for purposes of evaluating the application for a license to supply electricity to End-users in a Contestable Market.
 - (ii) Upon receipt of all the information required to evaluate compliance with the requirements applicable to obtaining a license to supply electricity to End-users in a Contestable Market, and upon demonstration of compliance with such requirements, the ERC shall issue the necessary resolution, order, and/or the appropriate license as a Supplier.
 - (iii) The ERC shall monitor the compliance of Suppliers with the requirements of their respective licenses and the rules and regulations applicable to Suppliers.
- (b) Qualification Criteria
 - (i) Compliance with Section 3 of this Rule 8.
 - (ii) Technical and Financial Standards, Creditworthiness Criteria and such financial security to secure proper performance as a Supplier as may be determined by the ERC to protect the interests of End-users in Contestable Markets.
 - (iii) Such other qualification or criteria as may be determined by the ERC to protect the public interest.

RULE 9. WHOLESALE ELECTRICITY SPOT MARKET (WESM)

Section 1. Guiding Principle.

Pursuant to Section 30 of the Act, all WESM Participants shall comply with the WESM Rules.

Section 2. Scope of Application.

This Rule shall apply to the Market Operator and all WESM Participants.

Section 3. Organization.

Within one (1) year from the effectivity of the Act, the DOE shall establish a WESM composed of the WESM Participants. For this purpose, the DOE shall, jointly with Electric Power Industry Participants, promulgate the WESM Rules, and undertake actions including but not limited to the following:

- (a) Organize and establish the appropriate market design and governance structure of the WESM;
- (b) Pursuant to Section 30 of the Act, constitute the AGMO, which shall undertake the preparatory work and initial operation of the WESM;
- (c) Oversee the development of the WESM organization and necessary supporting infrastructure, including the funding requirements.

Section 4. Membership.

Subject to compliance with the membership criteria specified in the WESM Rules, the following Persons shall be eligible to become members of the WESM:

- (a) Generation Companies;
- (b) Distribution Utilities;
- (c) Suppliers;
- (d) IPP Administrators;
- (e) End-users; and
- (f) Other similar Persons authorized by the ERC eligible to become members of the WESM.

Section 5. The WESM Rules.

- (a) The WESM Rules shall provide the mechanism for identifying and setting the price of actual variations from the quantities transacted under contracts between sellers and purchasers of electricity. The

WESM Rules shall include rules governing the central scheduling and dispatch, and settlement of quantities sold and purchased under bilateral contracts in order to identify variations therefrom. The WESM Rules shall also reflect accepted economic principles and provide an open, competitive market for all WESM Participants.

- (b) Jointly with the Electric Power Industry Participants, the DOE shall formulate the detailed rules for the WESM, in accordance with the following principles:
 - (i) Provide an efficient, competitive, transparent and reliable spot market;
 - (ii) Ensure efficient operation of the WESM by the Market Operator in coordination with the system operator in a way which:
 - (1) Minimizes adverse impacts on system security;
 - (2) Encourages market participation; and
 - (3) Enables access to the market.
 - (iii) Subject to the provisions of Section 43(u) of the Act, provide a cost-effective framework for resolution of disputes among WESM Participants, and between WESM Participants and the Market Operator;
 - (iv) Provide for adequate sanctions in cases of breaches of the WESM Rules; and
 - (v) Provide efficient, transparent and fair processes for amending the WESM Rules.
- (c) The WESM Rules shall provide, among others, procedures for:
 - (i) Establishing the Merit Order Dispatch Instructions for each time period for Central Dispatch;
 - (ii) Determining the market-clearing price for each time period;
 - (iii) Administering the market, including criteria for admission to and termination from the market which includes security or performance bond requirements, voting rights of the participants, surveillance and assurance of compliance of the participants with the rules and the formation of the WESM governing body;
 - (iv) Prescribing guidelines for the market operation in system emergencies;
 - (v) Amending the WESM Rules; and
 - (vi) Establishing the transition to full implementation of the WESM.

- (d) Methodology for Price Determination.

The WESM Rules shall provide the mechanism for determining the price of electricity not covered by bilateral contracts between sellers and purchasers of electricity. The price determination methodology contained in the WESM Rules shall be subject to the approval of the ERC.

Section 6. The Market Operator.

- (a) A Market Operator in accordance with the WESM Rules shall implement the WESM. Not later than one (1) year after the implementation of the WESM, an independent entity, the IMO, shall be formed and the functions, assets and liabilities of the AGMO shall be transferred to such entity with the joint endorsement of the DOE and the Electric Power Industry Participants: *Provided*, That the IMO shall be financially and technically capable, with proven experience and expertise of not less than two (2) years as a leading independent market operator of similar or larger size electricity market.
- (b) Subject to Technical Constraints, the grid operator of the TRANSCO or its Buyer or Concessionaire shall provide Central Dispatch of all Generation Facilities connected, directly or indirectly, to the transmission system in accordance with the dispatch schedule submitted by the Market Operator, which schedule shall take into account outstanding bilateral contracts.
- (c) The Market Operator shall have the following functions and responsibilities:
- (i) Operate and administer the WESM and allocate resources to enable it to operate and administer the market, in accordance with the WESM Rules;
 - (ii) Determine the dispatch schedule of all facilities in accordance with the WESM Rules. Such schedule shall be submitted to the grid operator of the TRANSCO or its Buyer or Concessionaire;
 - (iii) Monitor daily trading activities in the market;
 - (iv) Oversee transaction billing and settlement procedures; and
 - (v) Maintain and publish a register of all WESM Participants and must update and publish the register whenever a Person becomes or ceases to be a WESM Participant.

Section 7. Constitution of the AGMO.

The DOE shall, within one (1) year from the effectivity of the Act, constitute the AGMO which shall undertake the preparatory work and initial operation of the WESM.

(a) AGMO Governing Board.

The AGMO shall be governed, and its powers and functions exercised, by a governing body with equitable representation from Electric Power Industry Participants. The representatives of the AGMO governing body shall be selected, in accordance with the WESM Rules. The DOE Secretary shall chair the AGMO.

(b) Composition.

Any sectoral representation on the AGMO governing body should as far as possible meet the following criteria:

- (i) Representatives of each sector of the Philippine electric power industry on the governing body should be reflective of that sector's size in relation to the electric industry as a whole;
- (ii) The number of representatives of each sector of the Philippine electric power industry should be such that no one sector of the industry can dominate proceedings or decision-making by the governing body; and be selected in such a way that deadlocks in decision making will be avoided; and
- (iii) There should be independent members on the governing body.

(d) Powers and Duties.

The following are the powers and duties of the AGMO governing body:

- (i) Govern the operation of the WESM until the formation or the selection of an IMO;
 - (ii) Develop and adopt guidelines for the efficient, competitive, transparent and reliable management and operation of the market in accordance with WESM Rules;
 - (iii) Adopt and set internal procedures for the conduct of meetings and determination of a quorum; and
 - (iv) Perform the preparatory work (information technology system development, testing, and trial operation) and initial operation of the WESM with support from the DOE.
- (e) Not later than one (1) year after the implementation of the WESM, the AGMO shall transfer its functions, assets and liabilities to the IMO.

Section 8. Functions and Responsibilities of TRANSCO with respect to the WESM.

The TRANSCO shall provide administrative supervision to AGMO.

Section 9. Market Fees.

- (a) The cost of administering and operating the WESM shall be recovered by the IMO through a charge imposed on all WESM Participants or WESM transactions, provided such charge shall be filed with and approved by the ERC, consistent with the WESM Rules.
- (b) The structure of Market Fees should be transparent and should not discriminate against a category or categories of WESM Participants.
- (c) Upon the approval of ERC, the Market Operator shall publish the structure of Market Fees, the methods used in determining the structure and an assessment of the extent to which the structure complies with the principles specified above, at least three (3) months prior to the implementation of WESM.

Section 10. Market Suspension.

In cases of national or international security emergencies or natural calamities, the ERC is empowered to suspend the operation of the WESM or declare a temporary WESM failure in accordance with the procedures set out in the WESM Rules.

RULE 10. STRUCTURAL AND FUNCTIONAL UNBUNDLING OF ELECTRIC POWER INDUSTRY PARTICIPANTS

Section 1. Guiding Principle.

Consistent with the last paragraph of Section 36 of the Act, any Electric Power Industry Participant shall structurally and functionally unbundle its business activities in accordance with Section 5 of the Act, namely: generation, transmission, distribution and supply. Structural unbundling shall mean the separation of different activities through the creation of separate divisions or departments within a single company or, at the option of any Electric Power Industry Participant, a separation into different juridical entities, with a clear separation of accounts between regulated and non-regulated business activities. Functional unbundling shall mean the separation of functions into different components. For this purpose, business activities resulting from the initial unbundling process may be further unbundled to widen the scope for competitive activities. The ERC shall formulate the appropriate guidelines and shall ensure full compliance with this provision.

Section 2. Scope of Application.

This Rule shall apply to all Electric Power Industry Participants that are currently engaged or will be engaged in any of the following business activities:

- (a) Power generation;
- (b) Transmission;

- (c) Distribution;
- (d) Supply of Electricity including collection and metering;
- (e) Related businesses which utilize the generation, transmission, distribution or supply assets for non-electricity related services; and
- (f) Other electricity related services that may be identified and authorized by the ERC.

The ERC may relax or eliminate the unbundling requirements for specified business activities if such activity operates in a competitive market.

Section 3. Procedures for the Structural and Functional Unbundling of Business Activities.

The following shall govern all Electric Power Industry Participants in undertaking the structural and functional unbundling of its business activities:

- (a) An Electric Power Industry Participant shall identify its business activities according to each major business function as defined in Section 2 of this Rule.
- (b) An Electric Power Industry Participant shall prepare and submit for approval by the ERC its Business Separation and Unbundling Plan (BSUP) on or before 31 December 2002.
- (c) The BSUP shall contain among others, the following information:
 - (i) A complete description of the separation of books and records, including but not limited to, sources of revenues, costs as allocated, asset transferred, and information systems separation;
 - (ii) A comprehensive description of the functional, structural or juridical separation of generation, distribution and supply as provided for in the BSUP;
 - (iii) Milestones and highlights of the planned structural and functional unbundling of the business activities in which the Electric Power Industry Participant is currently engaged: *Provided*, That in any case, no Electric Power Industry Participant that has not completed structural and functional unbundling of the business shall be eligible to participate in Retail Competition and Open Access;
 - (iv) A plan for complying with all Code of Conduct provisions specified by ERC, including training or developmental programs for its employees to help ensure compliance; and
 - (v) Other documents or information as may be required by the ERC.

- (d) The ERC may adopt the Electric Power Industry Participant's BSUP, recommend modifications to the BSUP, or reject the BSUP for revision and direct the concerned Electric Power Industry Participant to file a new BSUP based on its comments. In any case, ERC shall render its decision within six (6) months from filing of the BSUP.
- (e) Upon receipt of the ERC decision, the Electric Power Industry Participant shall implement said decision fully and promptly.
- (f) The ERC shall provide for appropriate fines and penalties for any Electric Power Industry Participant that fails to comply with its decision in full.

Section 4. Guiding Principles for Business Separation of Distribution Utilities.

- (a) Once a Distribution Utility has separated and unbundled its business activities, the Distribution System portion of its business shall no longer provide competitive energy services, i.e. generation and supply. A Distribution Utility, which has not structurally and functionally unbundled its business activities shall be prohibited from operating in a Contestable Market.
- (b) ECs shall follow the structural and functional unbundling procedures set forth in these Rules except that such unbundling shall be implemented no later than 26 June 2006, the start of Retail Competition and Open Access in the Franchise Areas of ECs.

RULE 11. CROSS OWNERSHIP, MARKET ABUSE AND ANTI-COMPETITIVE BEHAVIOR

Section 1. General Principle.

No Electric Power Industry Participant or any other Person may engage in any anti-competitive behavior including, but not limited to, cross-subsidization, price or market manipulation, false or deceptive marketing, or other unfair trade practices detrimental to the encouragement and protection of Contestable Markets or the WESM.

Section 2. Scope of Application.

This Rule shall apply to all Persons, including all Electric Power Industry Participants, such as but not limited to Generation Companies, subsidiaries and Affiliates of Generation Companies, stockholders and officials of Generation Companies, IPP Administrators, Distribution Utilities, Suppliers, NPC, and the TRANSCO or its Buyer or Concessionaire.

Section 3. Prohibition of Cross Ownership.

- (a) Pursuant to Section 45 of the Act, no Generation Company, IPP Administrators, Distribution Utility or Supplier, their respective subsidiaries, Affiliates, stockholders, directors or officers or other

entity engaged in generating and supplying electricity specified by ERC, shall hold any interest, directly or indirectly, in the TRANSCO or its Buyer or Concessionaire, or the Market Operator.

- (b) TRANSCO or its Buyer or Concessionaire and any of its stockholders, directors or officers or any of their relatives within the fourth civil degree of consanguinity or affinity, legitimate or common law, shall not hold any interest, whether directly or indirectly, in any Generation Company, IPP Administrators, Distribution Utility or Supplier.
- (c) Except for *ex officio* government-appointed representatives, no Person who is an officer or director of the TRANSCO or its Buyer or Concessionaire shall be an officer or director of any Generation Company, IPP Administrators, Distribution Utility or Supplier.
- (d) This Section shall not apply to PSALM in the course of its Privatization of NPC assets pursuant to Sec. 47 of the Act.

Section 4. Limits on Concentration of Ownership, Operation or Control of Installed Generating Capacity.

- (a) No 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: *Provided*, That such restrictions shall not apply to PSALM or NPC during the time that its assets are being privatized pursuant to Section 47 of the Act and isolated grids that are not connected to the high voltage transmission system. The ERC shall determine the installed generating capacity in a Grid and the national installed generating capacity.
- (b) The capacity of such facility shall be credited to the entity controlling the terms and conditions of the prices or quantities of the output of such capacity sold in the market in cases where different entities own the same Generation Facility.

In cases where different Persons own, operate or Control the same Generation Facility, the capacity of such facility shall be credited to the Person controlling the capacity of the Generation Facility.

Section 5. Limits on Bilateral Supply Contracts by a Distribution Utility.

- (a) A Distribution Utility may enter into bilateral power supply contracts subject to the provisions of Section 5 of Rule 30 on NPC Offer of Transition Supply Contracts and a review by the ERC: *Provided*, That such review shall only be required for a Distribution Utility whose level of Open Access has not reached household demand level.
- (b) No Distribution Utility shall be allowed to source from bilateral power supply contracts more than fifty percent (50%) of its total demand from an Affiliate engaged in generation, but such limitation shall not prejudice contracts entered into prior to the effective date of the Act.

This limitation shall apply regardless of whether demand is expressed in terms of capacity or energy.

Section 6. Encouragement of Participation in the WESM.

For the first five (5) years from the establishment of the WESM, no Distribution Utility shall source more than ninety percent (90%) of its total demand from bilateral power supply contracts.

Section 7. ERC Responsibilities.

- (a) ERC shall enforce the competitive safeguards specified in this Rule in order to promote true market competition and prevent harmful monopoly and market power abuse. However, ERC shall not apply the limitations specified in this Rule to isolated grids that are not connected to the Grid.
- (b) ERC shall have the authority to determine the appropriate Grid or Grids to use in the application of this Rule when two or more of the three separate Grids become sufficiently interconnected to constitute a single Grid or as conditions may otherwise permit.
- (c) ERC shall, within one (1) year from the effectivity of the Act, promulgate Competition Rules to ensure and promote competition, encourage market development and customer choice and discourage or penalize abuse of market power, cartelization and any anti-competitive or discriminatory behavior, or unfair trade practice that distorts competition or harms consumers. Such Rules shall define relevant markets for the purpose of establishing abuse or misuse of market power, areas of isolated grids that are not connected to the high voltage transmission system, and the reportorial requirements of Electric Power Industry Participants as may be necessary to enforce the provisions of Section 45 of the Act.
- (d) ERC shall, *motu proprio*, monitor and penalize any market power abuse or anti-competitive or unduly discriminatory act or behavior, or any unfair trade practice that distorts competition or harms consumers, by any Electric Power Industry Participant. Upon a finding of a prima facie case that an Electric Power Industry Participant has engaged in such act or behavior, the ERC shall after due notice and hearing, stop and redress the same. Such remedies shall, without limitation, include the separation of the business activities of an Electric Power Industry Participant into different juridical entities, the imposition of bid or price controls, issuance of injunctions in accordance with the Rules of Court, divestment or disgorgement of excess profits, and imposition of fines and penalties pursuant to Section 46 of the Act.
- (e) ERC shall, within one (1) year from the effectivity of the Act, promulgate rules and regulations providing for a complaint procedure that, without limitation, provides the accused party with its rights to due process.

Section 8. Anti-Competitive Behavior and Other Unfair Trade Practices.

The ERC shall promulgate Competition Rules prohibiting, and specifying appropriate penalties and other remedies for, any contract, combination or conspiracy that unreasonably restricts competition in any market for electricity, or any conduct that constitutes an abuse of market power or an attempted monopolization of any market for electricity, including but not limited to the following:

- (a) Fixing prices of products or services: Electric Power Industry Participants that are competitors shall not enter into any agreement or understanding, tacit or explicit, to fix, peg or stabilize the price of any product or service. Price fixing shall be deemed to include agreements on bids, price floors, price ceilings, pricing formulas and resale prices, and agreements on credit or any other terms of a transaction between a buyer and a seller.
- (b) Fixing output of products or services: Electric Power Industry Participants that are competitors shall not enter into any agreement or understanding, tacit or explicit, to fix, limit or otherwise determine their output of any product or service.
- (c) Customer, Product, Service or Territorial Divisions: Electric Power Industry Participants that are competitors shall not enter into any agreement or understanding, tacit or explicit, as to the customers or the geographic territories they will serve, or the products or services they will sell.
- (d) Tying: Electric Power Industry Participants shall not use a position of market power to condition the sale of one product or service on the purchase of another product or service. No Distribution Utility shall make access to its Distribution System contingent upon the purchase of generation, metering, billing or other services.
- (e) Physical or Economic Withholding: Electric Power Industry Participants shall not use physical operating practices or bidding strategies that limit the market participation of a generation unit under conditions that will result in significant increases in market prices.
- (f) Discriminatory provision of regulated distribution or transmission services: Regulated distribution and transmission services shall be provided on a basis that is not unduly discriminatory. Examples of unduly discriminatory behavior include, but not limited to the following:
 - (i) A Distribution Utility or TRANSCO or its Buyer or Concessionaire refuses to interconnect Generation Company, IPP Administrator, or Supplier other than for reasons of system security or reliability or reasonable financial or credit considerations pursuant to the Grid or Distribution Codes or commission of acts constituting grounds for suspension of the service under any applicable rule and regulation.

- (ii) A Distribution Utility or TRANSCO or its Buyer or Concessionaire gives a Generation Company, IPP Administrator, or Supplier, including without limitation any of the Distribution Utility's Affiliates, any preference or advantage over any other Generation Company, IPP Administrator, or Supplier in processing a request for Transmission or Distribution of Electricity.
- (iii) A Distribution Utility or TRANSCO or its Buyer or Concessionaire gives a Generation Company, IPP Administrator, or Supplier, including without limitation any of the Distribution Utility's Affiliates, any preference or advantage in the dissemination or disclosure of customer or transmission or Distribution System information, and any such information that has not been made available to all Electric Power Industry Participants at the same time and in a non-discriminatory manner.
- (iv) A Distribution Utility or TRANSCO or its Buyer or Concessionaire provides any preference or advantage to any Supplier in the disclosure of information about operational status and availability of the Distribution System and transmission system.
- (v) A Distribution Utility does not provide all regulated services, and does not apply Distribution Wheeling Charges to any Supplier that is not an Affiliate, in the same manner as it does for itself or its Affiliates. TRANSCO or its Buyer or Concessionaire shall provide all regulated services and shall apply Transmission Charges to any Electric Power Industry Participant in the same manner as it does for PSALM or NPC.
- (g) Misrepresentation or false advertising of a Distribution Utility: A Distribution Utility or its Affiliate shall not state or imply that any distribution service provided to an Affiliate is inherently superior, solely on the basis of Affiliate's relationship with the Distribution Utility, to that provided to any other Supplier.
- (h) Cross-Subsidization: Consistent with Section 26 of the Act, a Distribution Utility shall not use its revenues or resources from regulated distribution services to reduce the cost or price of its competitive services (generation or supply).

RULE 12. RETAIL COMPETITION AND OPEN ACCESS

Section 1. Guiding Principle.

Pursuant to Section 31 of the Act, Retail Competition and Open Access shall be implemented no later than three (3) years from the effectivity of the Act.

Section 2. Scope of Application.

The provision of open and non-discriminatory access to the transmission system and Distribution Systems shall apply to the following:

- (a) WESM Participants;
- (b) TRANSCO or its Buyer or Concessionaire;
- (c) Distribution Utilities;
- (d) EZs;
- (e) Suppliers;
- (f) IPP Administrators;
- (g) Market Operator; and
- (h) End-users in Contestable Markets.

Section 3. Conditions for Declaring Initial Implementation of Open Access.

The ERC shall, after due notice and public hearing, declare initial implementation of Open Access not later than three (3) years from the effectivity of the Act, subject to the following conditions:

- (a) Establishment of the WESM.

For this purpose, the “establishment” of the WESM shall be deemed to have occurred upon the effectivity of the Market Rules by the DOE and initial operation of the AGMO pursuant to Rule 9 on the Wholesale Electricity Spot Market (WESM).

- (b) Approval of unbundled Transmission and Distribution Wheeling Charges.

The ERC shall approve the unbundled rates of NPC and Distribution Utilities, which shall include the transmission and wheeling charges, within one (1) year from the effectivity of the Act.

- (c) Initial implementation of the Cross Subsidy Removal scheme.

For this purpose, initial implementation of the cross subsidy removal scheme shall occur on the next billing period after the issuance of ERC approval. The scheme for cross subsidy removal shall include guidelines or a schedule for the removal of each type of cross subsidy and may be altered, modified and/or amended by the ERC pursuant to Rule 16 on Removal of Cross Subsidies.

- (d) Privatization of at least seventy (70%) percent of the total capacity of generating assets of NPC in Luzon and Visayas.

- (e) Transfer of the management and control of at least seventy percent (70%) of the total energy output of power plants under contract with NPC to the IPP Administrators.

Section 4. Specification of the Contestable Market for Open Access.

Upon the initial implementation of Open Access, the ERC shall allow all electricity End-users with a monthly average peak demand of at least one megawatt (1 MW) for the preceding twelve (12) months to be the Contestable Market. Two (2) years thereafter, the threshold level for the Contestable Market shall be reduced to seven hundred fifty kilowatts (750 kW). At this level, Aggregators shall be allowed to supply electricity to End-users whose aggregate monthly average peak demand within a Contiguous Area is at least seven hundred fifty kilowatts (750 kW). Subsequently and every year thereafter, the ERC shall evaluate the performance of the market. On the basis of such evaluation, it shall gradually reduce the threshold level until it reaches the household demand level. In the case of ECs, Retail Competition and Open Access shall be implemented not earlier than five (5) years from the effectivity of the Act.

RULE 13. MISSIONARY ELECTRIFICATION

Section 1. Guiding Principle.

- (a) Pursuant to Section 70 of the Act, the SPUG shall be responsible for providing power generation and its associated power delivery systems in areas that are not connected to the transmission system.
- (b) The Missionary Electrification function of SPUG shall be funded from the revenues from sales in the missionary areas and from the Universal Charge to be collected from all electricity End-users as determined by the ERC.
- (c) The DOE's Missionary Electrification Development Plan (MEDP) shall include capital investment and operations regarding capacity additions in existing missionary areas and the facilities to be provided in other areas not connected to the transmission system.
- (d) The DOE shall, no later than ninety (90) days from the promulgation of these Rules, issue specific guidelines on how to encourage the inflow of private capital and the manner whereby other parties, including Distribution Utilities and qualified third parties, as provided for in Section 23 and Section 59 of the Act, can participate in the Missionary Electrification projects set forth in the MEDP.
- (e) The SPUG shall continue to endeavor to privatize its power generation facilities and the necessary associated power delivery systems.

Section 2. Scope of Application.

This Rule shall apply to all entities and areas identified in the MEDP.

Section 3. Obligations of SPUG.

- (a) SPUG shall be responsible for providing power generation and its associated power delivery systems in areas that are not connected to the Grid and cannot be serviced by Distribution Utilities and other qualified third parties.

- (b) SPUG shall periodically assess the requirements and prospects for bringing its functions to commercial viability on an area-by-area basis at the earliest possible time, including a program to encourage private sector participation.
- (c) Whenever feasible, SPUG shall utilize Renewable Energy Resources.
- (d) SPUG shall file for review and approval its unbundled rates following Rule 15 on Unbundling of Rates.
- (e) SPUG shall file a petition to the ERC with respect to the Missionary Electrification portion of the Universal Charge as prescribed in Rule 18 on Universal Charge.
- (f) PSALM shall ensure that SPUG conducts proper monitoring, accounting and control of expenditures, and efficient utilization of the Missionary Electrification funds from the Universal Charge.

Section 4. Source of Funds.

- (a) The Missionary Electrification shall be funded from the revenues from sales in missionary areas and from its appropriate share in the Universal Charge.
- (b) SPUG may also draw on other funding sources including appropriations from Congress, the utilization of private capital, multilateral aids or grants, Official Development Assistance (ODA) Funds and others.
- (c) SPUG shall source all the cost differentials between the sales revenues and operating expense and capital expense for expansion, rehabilitation and facilities for new areas of development based on the approved MEDP from its share from the Universal Charge and/or other sources as it may obtain.
- (d) In accordance with DOE's MEDP, the proposed five- (5) year annual budget for operating and capital expenditures of SPUG shall be submitted to ERC.

Section 5. Reliability Improvement.

- (a) To improve systems reliability, the SPUG shall install transmission systems in all qualified areas under the coverage of SPUG. Priority will be given to areas showing big growth in its electricity demand.
- (b) SPUG shall also collect revenues in providing power delivery and Ancillary Service to Generation Companies or Distribution Utilities at a rate to be filed with and approved by ERC. In the absence of such rate, SPUG shall use the applicable major Grids' rate.
- (c) SPUG shall cease providing Missionary Electrification to areas interconnected to the transmission system.

RULE 14. PROVISION OF ELECTRICITY BY QUALIFIED THIRD PARTIES

Section 1. Guiding Principle.

Pursuant to Section 59 of the Act, the provision of electric service in remote and Unviable Areas that the Distribution Utility is unable to service for any reason shall be opened to other qualified third parties. The provision of electricity in Unviable Areas by qualified third parties shall be a regulated business.

Section 2. Scope of Application.

This Rule shall apply to third parties qualified and authorized by ERC in accordance with the Act to undertake the provision of electric service in remote and Unviable Areas that a Distribution Utility is unable to serve.

Section 3. Determination of Remote and Unviable Areas.

Every September, the DOE shall issue a declaration of all the remote and Unviable Areas that cannot be served by a Distribution Utility within the following three (3) years. The declaration shall be consistent with the PDP and made in consultation with the NEA and Distribution Utilities. The remote and Unviable Areas specified in the declaration shall be open for participation by qualified third parties.

Section 4. Determination of Qualified Third Parties.

The DOE shall set criteria for determining qualified third parties that may participate in providing electricity to remote and Unviable Areas. These criteria may include financial, technical, environmental, and other indices of performance.

The criteria shall give preference to parties that would utilize least-cost new Renewable Energy Resources in providing electricity.

Section 5. Rights and Obligations of Qualified Third Parties.

- (a) Any Distribution Utility that fails to provide electricity to an Unviable Area shall be required by the ERC to enter into a contract with a qualified third party to provide electric service in such an Unviable Area.
- (b) A qualified third party shall comply with all applicable provisions of the Distribution Code, including the requirement to obtain a COC for its Generation Facilities and other permits the ERC may require.
- (c) A qualified third party shall charge rates in Unviable Areas according to ERC rules for cost recovery of Generation Facilities and associated power delivery systems.
- (d) A qualified third party shall submit annual financial statements to ERC for determining the effectiveness of the approved rate.

- (e) A qualified third party shall report annually to DOE the rate of electrification of its coverage areas.

Section 6. Obligations of the ERC.

- (a) The ERC shall set guidelines for the issuance of permits to qualified third parties that serve a remote or unserved and Unviable Area within the Distribution Utility's Franchise Area.
- (b) The ERC shall set the rules in computing rates that allow full cost recovery of the Generation Facilities and delivery systems built to serve remote or unserved and Unviable Areas.

PART III - ELECTRICITY RATE AND CHARGES

RULE 15. UNBUNDLING OF RATES

Section 1. Guiding Principle.

Consistent with Section 36 of the Act and Rule 10 on Structural and Functional Unbundling of Electric Power Industry Participants, this Rule on the Unbundling of Rates shall result in the identification and separation of the individual charge for providing a specific electric service to any End-user for generation, transmission, distribution, and supply. [Consistent with Sec. 36]

Section 2. Scope of Application.

This Rule shall apply to all Electric Power Industry Participants that are currently engaged or will be engaged in any of the business activities as stated in Section 5 of the Act.

Section 3. Parameters for Unbundling Rates and Costs of Service.

- (a) An Electric Power Industry Participant shall identify, separate and unbundle its rates, charges, and costs in accordance with Rule 10 on Structural and Functional Unbundling of Electric Power Industry Participants.
- (b) In the determination of eligible costs of service to be charged to the End-users, the ERC shall establish the minimum efficiency standards covering the technical, financial, and customer service performance criteria including systems losses, and interruption frequency rates parameters among others.
- (c) The rate base of the TRANSCO or its Buyer or Concessionaire or any Distribution Utility shall exclude management inefficiencies, such as but not limited to cost of project delays not due to any force majeure, and penalties and related interest during construction and other disallowances to be determined by ERC.
- (d) Interest expenses shall not be allowed as deductions from permissible Return on Rate Base (RORB).

- (e) TRANSCO or its Buyer or Concessionaire and Distribution Utilities may directly or indirectly engage in any related business which maximizes the utilization of their assets.

Section 4. Method of Rate Unbundling.

The ERC shall prescribe the methodology for rate unbundling.

Section 5. Ratemaking Design and Methodology.

- (a) The ERC shall, in the public interest, establish and enforce a methodology for setting transmission and distribution wheeling rates and Retail Rates for the Captive Market of a Distribution Utility, taking into account all relevant considerations, including the efficiency or inefficiency of the regulated entities, as well as the expansion or improvement of the Transmission facilities pursuant to a plan approved by the ERC under Section 10 of Rule 6 on Transmission Sector, and the Distribution Utilities under Rule 7 on Distribution Sector. The rates must be such as to allow the recovery of just and reasonable costs and a reasonable RORB to enable the entity to operate viably. The ERC may adopt alternative forms of internationally-accepted rate-setting methodology as it may deem appropriate. The rate-setting methodology so adopted and applied must ensure a reasonable price of electricity. The rates prescribed shall be non-discriminatory and shall take into consideration, among others, the franchise tax. To achieve this objective and to ensure the complete removal of cross subsidies, the cap on the recoverable rate of system losses prescribed in Section 10 of Republic Act No. 7832, is hereby amended and shall be replaced by caps which shall be determined by the ERC based on load density, sales mix, cost of service, delivery voltage and other technical considerations it may promulgate. The ERC shall determine such form of rate-setting methodology, which shall promote efficiency. In case the rate setting methodology used is RORB, it shall be subject to the following guidelines:
 - (i) For purposes of determining the rate base, the TRANSCO or its Buyer or Concessionaire or any Distribution Utility may be allowed to revalue its eligible assets not more than once every three (3) years by an independent appraisal company: *Provided, however,* That ERC may give an exemption in case of unusual devaluation: *Provided, further,* That the ERC shall exert efforts to minimize price shocks in order to protect the consumers;
 - (ii) Interest expenses are not allowable deductions from permissible RORB;
 - (iii) In determining eligible cost of services that will be passed on to the End-users, the ERC shall establish minimum efficiency performance standards for the TRANSCO or its Buyer or Concessionaire and Distribution Utilities including systems losses, interruption frequency rates, and collection efficiency;
 - (iv) Further, in determining rate base, the TRANSCO or its Buyer or Concessionaire or any Distribution Utility shall not be allowed

to include management inefficiencies like cost of project delays not excused by *force majeure*, penalties and related interest during construction applicable to these unexcused delays;

- (v) Any significant operating costs or project investments of the TRANSCO or its Buyer or Concessionaire and Distribution Utilities which shall become part of the rate base shall be subject to verification by the ERC to ensure that the contracting and procurement of the equipment, assets and services have been subjected to transparent and accepted industry procurement and purchasing practices to protect the public interest; and
 - (vi) The interest incurred during construction may be capitalized and included in the rate base upon commissioning of the asset.
- (b) The Retail Rates charged by Distribution Utilities for the Supply of Electricity in their Captive Market shall be subject to regulation by the ERC based on the principle of full recovery of prudent and reasonable economic costs incurred, or such other principles that will promote efficiency as may be determined by the ERC.

Every Distribution Utility or Supplier to the Contestable Market, whichever is applicable, shall identify and segregate in its bills to End-users the components of the Retail Rate as follows: generation, transmission, distribution, supply and other related charges for electric service.

- (c) In the case of isolated, remote and Unviable Areas serviced by a qualified third party as defined in Rule 14 on Provision of Electricity by Qualified Third Parties, the ERC shall set the rules for rates computation and determination.
- (d) The ERC shall recognize the different cost structures in serving isolated areas.

Section 6. Unbundled Rate Filing Requirements.

- (a) As required by the Act, NPC and Distribution Utilities shall file within six (6) months from the effectivity of the Act for revised rates with costs and other relevant accounts unbundled by business activity.
- (b) The ERC shall within six (6) months from the date of submission of revised rates by the Distribution Utility, notify the Distribution Utility of the action taken on the application.
- (c) The rate filing petition shall commence with the unbundling the cost components of the historical test year costs, from which the new Retail Rates and unbundled rates or charges are to be developed. The historical test year, for this purpose, shall be the twelve (12) months ending 31 December 2000.

- (d) Each rate filing petition for unbundled cost of service shall contain detailed schedules, data, and other relevant information deemed necessary by the ERC.

RULE 16. REMOVAL OF CROSS SUBSIDIES

Section 1. Guiding Principle.

Pursuant to Section 74 of the Act, cross subsidies within a Grid, between Grids, and/or classes of customers shall be phased out in a period not exceeding three (3) years from the establishment by the ERC of a Universal Charge which shall be collected from all electricity End-users. Such level of cross subsidies shall be made transparent and identified separately in the billing statements provided to End-users by the Suppliers.

Section 2. Scope of Application.

This Rule shall apply to NPC, TRANSCO or its Buyer or Concessionaire, Distribution Utilities and PSALM.

Section 3. Calculation of Cross Subsidies.

- (a) The ERC may extend the period for the removal of cross subsidies for a maximum period of one (1) year upon finding that cessation of such mechanism would have a material adverse effect upon the public interest, particularly the residential End-user; or would have an immediate, irreparable, and adverse financial effect on Distribution Utility.
- (b) The cross subsidy between Grids in the rates of NPC shall be calculated on a net basis for each Grid as the difference between:
 - (i) The total revenues that would have been collected on the Grid under the rates in effect during a historical test year that is adjusted for differences between actual and forecast consumption and other factors as ERC may specify; and
 - (ii) The total unbundled true cost of service on the Grid as submitted in accordance with Rule 15 on Unbundling of Rates and the rate filing requirements that the ERC may issue pursuant to Rule 15, using the same historical test year.
- (c) The cross subsidy within each Grid in the rates of NPC shall be calculated on a net basis for each customer class within the Grid as the difference between:
 - (i) The total revenues that would have been collected from a customer class under the rates in effect during a historical test year that is adjusted for differences between actual and forecast consumption and other factors as ERC may specify; and
 - (ii) The total unbundled true cost of service for the same customer class as submitted in accordance with Rule 15 on Unbundling

of Rates and the rate filing requirements that ERC may issue pursuant to Rule 15, using the same historical test year.

- (d) The cross subsidy between customer classes within each Distribution Utility shall be calculated on a net basis for each customer class as the difference between:
 - (i) The total revenues that would have been collected from a customer class under the rates in effect during a historical test year that is adjusted for differences between actual and forecast consumption and other factors as ERC may specify; and
 - (ii) The total unbundled true cost of service for the customer class as submitted in accordance with Rule 15 on Unbundling of Rates and the rate filing requirements that ERC may issue using the same test year.

Section 4. Procedures for Handling Cross Subsidies.

- (a) Pending the complete removal of cross subsidies, each subsidy rate level shall be shown as a separate item in customer billing statements.
- (b) The ERC shall establish a cross subsidy charge to account for all forms of cross subsidies that remain during the phase out period as described in Section 5 of this Rule, to be recovered from all electricity End-users through the Universal Charge pursuant to Rule 18 on the Universal Charge.

Section 5. Scheme for Phasing Out Cross Subsidies.

- (a) The ERC shall issue a scheme for phasing out all cross subsidies, including subsidies within Grids, between Grids, and between classes of customers. The phasing out period shall not exceed three (3) years from the establishment of the Universal Charge pursuant to Rule 18 on Universal Charge. The initial implementation of the phase out scheme shall occur on the next billing period after issuance of ERC approval.
- (b) The phase out scheme shall be designed to mitigate the effects of the removal of the cross subsidies. The ERC shall determine which End-users shall continue to receive subsidies and the level of subsidies such End-users shall receive during the phase out period.
- (c) Together with their filings of unbundled rates reflecting the true costs of service, pursuant to Rule 15 on Unbundling of Rates, NPC and the Distribution Utilities shall file with ERC their proposals for the removal of cross subsidies among the End-users they serve to be considered by ERC in the formulation of the phase out scheme.
- (d) The ERC may extend the period for the removal of cross subsidies for a maximum period of one (1) year upon finding that cessation of such mechanism would have a material adverse effect upon the public interest, particularly the residential End-user; or would have an

immediate, irreparable, and adverse financial effect on a Distribution Utility. Distribution Utilities shall submit to ERC such information as ERC may specify to help it determine if the cross subsidy removal mechanism should be extended under this provision.

- (e) If ERC does not extend the period for removal of cross subsidies, the cross subsidies between regions, within regions, and between customer classes shall cease to exist at the end of the three (3) year period from the establishment of the Universal Charge.

Section 6. Exemption from Cross Subsidy Removal for Distribution Utilities.

The threshold consumption levels and the Lifeline Rates determined by the ERC shall be exempted from the prohibition on cross subsidies between classes of customers of a Distribution Utility for a period of ten (10) years, unless extended by law.

RULE 17. STRANDED DEBTS AND CONTRACT COSTS RECOVERY

Section 1. Guiding Principle.

Pursuant to Sections 32 and 33 of the Act, there are three (3) types of stranded costs recoverable through the Universal Charge:

- (a) Stranded Debts;
- (b) Stranded Contract Costs of NPC; and
- (c) Stranded Contract Costs of Eligible Contracts of Distribution Utilities.

Section 2. Scope of the Application.

This Rule shall apply to NPC, PSALM and Distribution Utilities with IPP contracts approved by the ERB as of 31 December 2000.

Section 3. Procedures and Methodology for Stranded Cost Determination.

- (a) PSALM and any Distribution Utility that has an eligible contract shall file with ERC their respective petitions for cost recovery under the Universal Charge and include therewith the methodology in determining stranded costs. The ERC shall review the methodology submitted by PSALM and such Distribution Utility to determine, fix, and approve the level of stranded costs.
- (b) At the end of the first year of the implementation of stranded cost recovery and every year thereafter, the ERC shall conduct a review to determine whether there is an under- or over recovery and adjust (true-up) the level of stranded cost recovery charge accordingly. In determining whether there is an under- or over recovery and in determining the stranded cost recovery portion of the Universal Charge for the subsequent period, the ERC shall base the calculation

on the following information submitted by the PSALM and the Distribution Utility which has an eligible contract:

- (i) a report of the amounts recovered for stranded costs during the past year; and
- (ii) revised stranded cost amounts based on current market information.

Section 4. NPC Stranded Debt and Stranded Contract Cost Recovery.

- (a) Consistent with Section 32 of the Act, the National Government shall directly assume a portion of the financial obligations of NPC transferred to PSALM in an amount not to exceed Two Hundred Billion Pesos (P200,000,000,000.00).
- (b) The following guidelines shall govern the recovery by the PSALM of the Stranded Debts and Stranded Contract Costs of NPC:
 - (i) PSALM shall calculate the amount of the Stranded Debts and Stranded Contract Costs of NPC that shall form part of the Universal Charge to be determined, fixed, and approved by the ERC and reviewed by the same body annually. In determining the amount of Stranded Contract Costs of NPC, PSALM may include in such calculation the principal amount and interest expenses of any such debt raised by PSALM to finance the buy-out or buy-down of any eligible IPP contract, i.e. contracts approved by the ERB as of 31 December 2000 as well as any other costs and expenses incurred in connection with such buy-out or buy-down: *Provided*, That the amount recoverable by PSALM from the Universal Charge fund shall not exceed the estimated Stranded Contract Costs of such eligible IPP Contract, assuming that such buy-out or buy-down never occurred: *Provided, further*, That PSALM demonstrates to the ERC's satisfaction that such buy-out or buy-down will benefit electricity consumers by reducing that component of the Universal Charge attributable to such IPP contract.
 - (ii) The ERC shall verify the reasonable amounts of claims petitioned by PSALM and determine the manner and duration by which full recovery of Stranded Debt and Stranded Contract Costs of NPC is attained: *Provided*, That the duration for such recovery shall not be shorter than fifteen (15) years nor longer than twenty-five (25) years.
 - (iii) Any amount to be included for stranded cost recovery shall be reflected as a separate item in the consumer billing statement. The ERC shall monitor and ensure that there is a separate item in the consumer billing statement for stranded cost recovery.

Section 5. Recovery of Stranded Contract Costs of Eligible Contracts of Distribution Utilities.

- (a) Within one (1) year from the start of Retail Competition and Open Access, a Distribution Utility that seeks to recover stranded contract costs arising from its eligible contracts shall file with the ERC a notice of such intent together with an estimated amount of such obligations. The Distribution Utility shall provide all pertinent information as may be required by the ERC. Failure of the Distribution Utility to file within the date specified shall mean non-eligibility for such recovery.
- (b) A Distribution Utility shall recover stranded contract costs: *Provided, however,* That such costs of the IPPs of Distribution Utilities are subject to review by ERC in order to determine fairness and reasonableness in relation to the average price of land-based IPP projects entered into by NPC at the time they were contracted. The ERC shall take into consideration all factors that affect the total cost of NPC IPP generation projects, including direct or indirect subsidies or incentives provided by the Government.
- (c) Any Distribution Utility which seeks to recover stranded costs shall have the duty to mitigate its potential stranded costs by exerting reasonable best efforts to:
 - (i) Reduce the costs of its existing eligible contracts with IPPs to a level not exceeding the average buying price of other land-based electric power generators; and
 - (ii) Submit to an annual earnings review by the ERC and use its earnings above its authorized rate of return to reduce the book value of contracts until the end of the stranded cost recovery period.
- (d) The Distribution Utility shall submit to the ERC, during its filing for stranded contract cost recovery, its detailed plan and strategy to mitigate stranded contract costs.

Other mitigating measures that are reasonably known and generally accepted within the electric power industry shall be utilized. The ERC shall not require the Distribution Utility to take a loss to reduce stranded contract costs or divest assets, unless the divestiture is imposed as a penalty as provided herein.

- (e) Within three (3) months from the submission of the application for stranded cost recovery by the relevant Distribution Utilities, the ERC shall verify the reasonable amounts and determine the manner and duration for the full recovery of the Stranded Contract Costs of Eligible Contracts of Distribution Utilities: *Provided,* That the duration for such recovery shall not be shorter than fifteen (15) years nor longer than twenty-five (25) years. For this purpose, “full recovery of Stranded Contract Costs of Eligible Contracts of Distribution Utilities” shall mean recovery of Stranded Contract Costs of Eligible Contracts of Distribution Utilities authorized by the ERC after its pertinent

review. Any amount to be included for the recovery of Stranded Contract Costs of Eligible Contracts of Distribution Utilities shall be reflected as a separate item in the consumer billing statement.

- (f) In the case of an over-recovery, the ERC shall ensure that any excess amount shall be remitted to the Special Trust Fund (STF) created pursuant to Section 34 of the Act. A separate account shall be created for this purpose that shall be held in trust for any future claims of Distribution Utilities for the recovery of their respective Stranded Contract Costs of Eligible Contracts of Distribution Utilities. At the end of the stranded cost recovery period, any remaining amount or balance in this account shall be used to reduce the electricity rates to the End-users.
- (g) A Distribution Utility, which has an eligible contract, duly authorized by the ERC, shall submit to ERC quarterly reports showing the amount of stranded contract costs recovered and the balance remaining to be recovered from the Universal Charge.

Quarterly shall mean the calendar quarters of January 1 to March 31 (first quarter), April 1 to June 30 (second quarter), July 1 to September 30 (third quarter), and October 1 to December 31 (fourth quarter). The relevant Distribution Utility shall submit to the ERC the quarterly reports within thirty (30) days from the end of each calendar quarter.

- (h) Upon a finding by the ERC that a Distribution Utility which seeks to recover stranded contract costs has failed to comply with its mitigation obligation under Section 33 of the Act, the ERC may not allow the recovery of stranded contract costs: *Provided*, That if there is any fraud or misrepresentation by the Distribution Utility, the ERC may impose appropriate penalties in accordance with Section 46 of the Act.

RULE 18. THE UNIVERSAL CHARGE

Section 1. Guiding Principle.

Within one (1) year from the effectivity of the Act, there shall be a Universal Charge to be determined, fixed and approved by the ERC that shall be imposed on all electricity End-users, including self-generation entities.

Section 2. Scope of Application.

This Rule shall apply to the following:

- (a) Petitioners for availments from the Universal Charge.
 - (i) PSALM for the Stranded Debts and Stranded Contract Costs of NPC;
 - (ii) Distribution Utilities with respect to their Stranded Contract Costs of Eligible Contracts;

- (iii) Missionary Electrification;
 - (iv) Qualified Generation Companies with respect to the equalization of taxes and royalties between indigenous or Renewable Energy Resources and imported fuels;
 - (v) NPC, with respect to the environmental charge of ₱0.0025 per kilowatt-hour sales to be used for the rehabilitation and management of watershed areas; and
 - (vi) NPC/PSALM and Distribution Utilities with respect to the mitigation of the removal of cross subsidies.
- (b) Electricity End-users such as but not limited to:
- (i) All End-users of Distribution Utilities such as residential, commercial, and industrial including government and/or public buildings, irrigation systems, and special lightings;
 - (ii) Directly-connected End-users of NPC such as but not limited to government agencies and institutions, and industrial enterprises;
 - (iii) Persons using Self-Generation Facilities;
 - (iv) Locators, developers, operators and facilities operating in EZs; and
 - (v) Other entities identified by the ERC pursuant to the intent of the Act.

Section 3. Mitigation on the Removal of Cross Subsidies.

- (a) Unbundled rates of the NPC and the Distribution Utilities as approved by the ERC in accordance with Section 36 of the Act, shall reflect the respective costs of providing service to End-users without any type of cross subsidy. The removal of cross subsidies to the End-users of Distribution Utilities will however be mitigated and done gradually in accordance with Section 74 of the Act. ERC shall issue a phase out scheme to gradually remove the cross subsidies. Any amount of subsidy provided to End-users during the phase out period shall be recovered through the Universal Charge.
- (b) With respect to SPUG, rates for Missionary Electrification shall be in accordance with Rule 15 on Unbundling of Rates.

Section 4. Procedures for Petitions Against the Universal Charge.

- (a) For the first year after the effectivity of the Act, the following rules shall apply:
 - (i) The petitioners identified in Section 2 of this Rule shall file their availments from the Universal Charge with the ERC on or before

15 March 2002 and submit all pertinent documents in support of such availments made and the basis for their computation.

- (ii) The ERC shall evaluate the petitions and thereafter issue the corresponding order no later than 26 June 2002 which shall prescribe the following:
 - (1) The Universal Charge on a per kWh basis to be included in the billing statements to the End-users;
 - (2) Breakdown of the applicable Universal Charge for each of the intended purposes:
 - (a) Stranded Debts and Stranded Contract Costs of NPC;
 - (b) Missionary Electrification;
 - (c) Equalization of taxes and royalties between indigenous or renewable sources of energy vis-à-vis imported energy fuels;
 - (d) Environmental Charge of P0.0025 per kilowatt-hour sales for the rehabilitation and maintenance of watershed areas; and
 - (e) Mitigation Fund for the removal of cross-subsidies of NPC and Distribution Utilities.
 - (3) Period of disbursement by each of the beneficiaries as well as submission of reportorial requirements prescribed by the ERC.
- (b) Petitions for availment under the Universal Charge for the succeeding years shall be submitted to the ERC on or before March 15 of every year.
- (c) A Distribution Utility that seeks to recover Stranded Contract Costs of its Eligible Contracts shall submit a petition for availment under the Universal Charge to the ERC within one (1) year from the start of Open Access. Within three (3) months from the submission of the petition by such Distribution Utility, the ERC shall verify the reasonable amounts and determine the manner and duration for the full recovery thereof, as approved by the ERC.
- (d) With respect to the equalization of taxes and royalties applied to indigenous or renewable sources of energy, qualified Generation Companies shall be entitled to make claims against STF created for this purpose. The STF shall be constituted out of the proceeds from the Universal Charge specified under Section 34 of the Act: *Provided*, That said claims shall only be to the extent of the additional cost or reduction in the cost of generating electricity.

For this purpose, qualified Generation Companies making said claims shall submit a detailed statement of their sales and costs of operation, including a breakdown of how their claims are estimated and the impact thereof on generation rates, the corresponding assumptions

and justification therefor and such other information as may be required by the PSALM.

Only those claims that meet the foregoing documentation requirements shall be evaluated and acted upon by PSALM.

- (e) Failure by any petitioner to submit its petition within the periods specified above shall result in a forfeiture of such petition for the period in question.
- (f) In case of over- or under-recovery by beneficiaries, true-up adjustments shall follow the rules and regulations to be prescribed by the ERC, except as otherwise provided in these Rules.

Section 5. Collection of the Universal Charge.

- (a) The Universal Charge shall be a non-by passable charge that shall be collected from all End-users on a monthly basis by the Distribution Utilities or Suppliers in case of Contestable Markets. Any End-user or self-generation entity not connected to a Distribution Utility shall remit its corresponding Universal Charge directly to the TRANSCO. Collections by the Distribution Utilities shall be remitted to the PSALM on or before the fifteenth (15th) day of the succeeding month, net of any amount due to the Distribution Utility.
- (b) Separate books of accounts shall be maintained by the Distribution Utility and made available to the ERC for purposes of monitoring, verifying and accounting of amounts collected from the Universal Charge and remitted to the PSALM.

Section 6. Administration of the Universal Charge.

- (a) Pursuant to the last paragraph of Section 34 of the Act, PSALM shall act as the administrator of the funds generated from the Universal Charge. For this purpose, the PSALM shall create a STF to be established in the Bureau of Treasury (BTr) or in a Government Financing Institution (GFI) that is acceptable to the DOF. Separate STFs shall be established for each of the intended purposes of the Universal Charge. Funds shall be disbursed in an open and transparent manner and shall only be used for the intended purposes specified in Section 3 of this Rule.
- (b) All qualified availments shall be approved and certified by the ERC. In this regard, PSALM, in consultation with the DOF, shall promulgate, within one (1) year from the effectivity of the Act and subject to the approval of the ERC, procedures and guidelines that shall govern all remittances to and disbursements from the STF.
- (c) The PSALM shall transfer funds from the STF and shall distribute to the beneficiaries on or before the twentieth (20th) day of each month.
- (d) The PSALM shall submit to the DOF and ERC a report on the remittances and disbursements against the fund on a quarterly basis.

- (e) Separate Books of accounts shall be maintained by the PSALM for over-recovery of the Distribution Utility stranded cost component and made available to the ERC for purposes of monitoring and accounting for sums collected from the Universal Charge.
- (f) In the event that the total amount collected for the Universal Charge is greater than the actual availments against the Universal Charge, the PSALM shall retain the balance within the STF to pay for periods where a shortfall occurs.
- (g) In determining the amount which a Distribution Utility can net off from its remittance of the Universal Charge to PSALM, the Distribution Utility shall not discriminate in its own favor at the expense of other beneficiaries in the event that actual collections differ from expected collections based on the level of kilowatt-hour sales used by ERC in setting the Universal Charge per kilowatt-hour (kwh). In such cases, the Distribution Utility shall only retain its proportionate share in the actual collection.

Section 7. Deferment.

All Self-Generation Facilities whether new, existing or under construction shall not be covered by the imposition of Universal Charge for a period of four (4) years from its imposition: *Provided*, That, such Self-Generation Facilities shall register with the ERC and PSALM.

Section 8. Fines and Penalties.

- (a) In cases where the TRANSCO or its Buyer or Concessionaire or a Distribution Utility collects funds earmarked for the Universal Charge but fails to remit the same to PSALM on or before the fifteenth (15th) day of the succeeding month, the ERC may impose the appropriate fines and penalties prescribed in Section 46 of the Act including, but not limited to, assessed interest charges.
- (b) In cases where a Self-Generation Facility refuses to pay the Universal Charge, the ERC may impose the appropriate fines and penalties prescribed in Section 46 of the Act, including but not limited to, assessed interest charges.

RULE 19. MANDATED RESIDENTIAL REBATE

- (a) The ERC shall monitor and ensure the implementation of its Resolution No. 2001-04 issued on 26 July 2001 and any amendments thereto. The ERC shall impose fines and penalties on parties who fail to comply with said Resolution.
- (b) The reduction shall be reflected as a separate item in the consumer billing statement.

RULE 20. LIFELINE RATE

Section 1. Guiding Principle.

Pursuant to Section 73 of the Act, a socialized pricing mechanism called a Lifeline Rate for the Marginalized End-users shall be set by the ERC.

Section 2. Scope of Application.

The provision of Lifeline Rate shall be applied to all Marginalized End-users of all Distribution Utilities pursuant to the Act. It is the responsibility of the ERC to monitor compliance to specific guidelines it shall issue pursuant to the implementation of Lifeline Rate.

Section 3. Application.

- (a) The Lifeline Rate shall be exempted from the cross subsidy removal under the Act for a period of ten (10) years, unless extended by law.
- (b) Each Distribution Utility shall file a petition with the ERC recommending the level of consumption (kWh per month) to be qualified for the Lifeline Rate.
- (c) The ERC shall determine and approve different levels of consumption and cross-subsidy support for each Distribution Utility or classification of Distribution Utilities.

PART IV – PRIVATIZATION OF NATIONAL POWER CORPORATION

RULE 21. POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION (PSALM)

Section 1. Creation of PSALM.

Pursuant to Section 49 of the Act, a government-owned and -controlled corporation known as the “Power Sector Assets and Liabilities Management Corporation”, hereinafter referred to as the “PSALM Corp.” or “PSALM,” was created to take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets. All outstanding obligations of the NPC arising from loans, issuances of bonds, securities and other instruments of indebtedness shall be assumed by the PSALM, within one hundred eighty (180) days from the approval of the Act.

NPC and PSALM shall take such measures and execute such documents to effect the transfer of the ownership and possession of all the assets, rights, privileges, and liabilities required by the Act to be transferred by NPC to PSALM.

Section 2. Purpose and Objective.

The principal purpose of the PSALM is to manage the orderly sale, disposition, and Privatization of NPC generation assets, real estate and other

disposable assets, and IPP contracts with the objective of managing and liquidating all NPC financial obligations and stranded contract costs in an optimal manner.

Section 3. Domicile.

The PSALM shall have its principal office and place of business within Metro Manila.

Section 4. Term of Existence.

Unless otherwise provided by law, PSALM shall exist for a period of twenty-five (25) years from the effectivity of the Act, and all assets held by it, all moneys and properties belonging to it, and all its liabilities outstanding upon the expiration of its term of existence shall revert to and be assumed by the National Government. Upon expiration of the term of PSALM, the administration of the STF shall be transferred to the DOF or any of the DOF attached agencies as designated by the DOF Secretary.

Section 5. Powers.

PSALM shall, in the performance of its functions and for the attainment of its objectives, have the following powers:

- (a) To formulate and implement a program for the sale and Privatization of the NPC assets and IPP contracts and the management and liquidation of Stranded Debts and Stranded Contract Costs of NPC, such liquidation to be completed within the term of existence of the PSALM;
- (b) To take title to and possession of, administer and conserve the assets transferred to it, including the execution of bilateral contracts to sell power from undisposed assets and contracts transferred by NPC;
- (c) To sell or dispose the transferred assets at such price and under such terms and conditions as it may deem necessary or proper, subject to applicable laws, rules and regulations;
- (d) To take title to and possession of, and assume all rights and obligations of NPC under IPP contracts, and to appoint, after public bidding in a transparent and open manner, qualified independent entities who shall act as IPP Administrators in accordance with the Act;
- (e) To calculate the amount of the Stranded Debts and Stranded Contract Costs of NPC which shall form part of the basis of the ERC in the determination of the Universal Charge;
- (f) To liquidate Stranded Contract Costs of NPC utilizing proceeds from appropriations, sales and other property contributed to it, including the proceeds from the Universal Charge;
- (g) To adopt rules and regulations as may be necessary or proper for the orderly conduct of its business or operations;

- (h) To sue and be sued in its name;
- (i) To appoint or hire, transfer, remove and fix the compensation of its personnel and such advisors or other Persons as may be necessary in the sale, Privatization and disposition of NPC assets and IPP contracts: *Provided, however,* That PSALM shall hire its own personnel only if absolutely necessary, and as far as practicable, shall avail itself of the services of personnel detailed from other government agencies;
- (j) To own, hold, acquire, or lease real and personal properties as may be necessary or required in the discharge of its functions;
- (k) To borrow money and incur such liabilities, as may be required to service all obligations transferred from NPC and loans from ECs assumed from NEA in accordance with the relevant sections of these Rules, including the issuance of bonds, securities or other evidence of indebtedness utilizing its assets as collateral and/or through the guarantees of the National Government: *Provided,* That all such debts or borrowings shall have been paid off or settled before the end of its corporate life;
- (l) To restructure existing loans of the NPC;
- (m) To collect, administer, and apply NPC's portion of the Universal Charge;
- (n) To issue other forms of financial instruments such as warrants, options, convertibles and to create Special Purpose Vehicles (SPVs) to maximize proceeds and value, as well as efficiently manage its liabilities;
- (o) To structure the sale, Privatization or disposition of NPC assets and IPP Contracts and/or their energy output based on terms and conditions which shall optimize the value and sale prices of said assets;
- (p) To create and administer STFs under Section 34 of the Act and these Rules;
- (q) To operate the generation assets, directly or through NPC, prior to Privatization of such assets. Towards this end, while PSALM operates the generation assets, it shall be considered a Generation Company;
- (r) To mitigate its potential stranded costs by making reasonable best efforts to reduce the cost of existing contracts with IPPs;
- (s) To ensure that SPUG conduct proper monitoring, accounting and control of expenditures, and efficient utilization of the missionary electrification funds from the Universal Charge; and
- (t) To do any act necessary or proper to carry out the purpose for which it was created, including the formation of one or more subsidiaries to

maximize Privatization proceeds, enter into compromise agreements, or take such other acts as may be determined by the PSALM Board to be necessary, useful, incidental or auxiliary to accomplish its purposes and objectives as specified in the Act.

Section 6. PSALM Board of Directors.

PSALM shall be administered, and its powers and functions exercised, by a Board of Directors which shall be composed of the Secretary of the DOF as the Chairman, and the Secretary of the DOE, the Secretary of the DBM, the Director-General of the NEDA, the Secretary of the DOJ, the Secretary of the DTI and the President of the PSALM as ex-officio members thereof.

Section 7. Powers of PSALM Board.

All the powers and functions of PSALM shall be vested in and exercised by its Board of Directors.

Section 8. PSALM Board Meetings and Quorum.

The Board of Directors shall meet regularly and as frequently as may be necessary to enable it to discharge its functions and responsibilities. The presence at a meeting of four (4) members shall constitute a quorum, and the decision of the majority of three (3) members present at a meeting where there is quorum shall be the decision of the Board of Directors.

Section 9. Powers of the PSALM President.

- (a) The President of PSALM shall be appointed by the President of the Philippines. In the absence of the Chairman and the Vice-Chairman, the PSALM President shall preside over Board meetings.
- (b) The PSALM President shall be the Chief Executive Officer of PSALM and shall have the following powers and duties:
 - (i) To execute and administer the policies and measures approved by the Board, and take responsibility for the efficient discharge of management functions;
 - (ii) To oversee the preparation of the budget of PSALM;
 - (iii) To direct and supervise the operation and internal administration of PSALM and, for this purpose, may delegate some or any of his administrative responsibilities and duties to other officers of the PSALM;
 - (iv) Subject to the guidelines and policies set up by the Board, to appoint and fix the number and compensation of subordinate officials and employees of the PSALM; and for cause, to remove, suspend, or otherwise discipline any subordinate employee of PSALM;
 - (v) To submit an annual report to the Board on the activities and achievements of PSALM at the close of each fiscal year and

upon approval thereof, submit a copy to the President of the Philippines and to such other agencies as may be required by law and under these Rules;

- (vi) To represent PSALM in all dealings and transactions with other offices, agencies and instrumentalities of the National Government and with all Persons and other entities, private or public, domestic or foreign; and
- (vii) To exercise such other powers and duties as may be vested in him by the Board from time to time.

Section 10. Exemption from the Salary Standardization Law.

The salaries and benefits of employees in the PSALM shall be exempt from Republic Act No. 6758 and shall be fixed by the PSALM Board.

Section 11. Property of PSALM.

The following funds, assets, contributions and other properties shall constitute the property of the PSALM:

- (a) The generation assets, real estate, IPP Contracts, other disposable assets of NPC, proceeds from the operation or disposition of such assets and the residual assets from BOT, ROT, and other variations thereof. The proceeds from the operation and disposition of NPC assets shall include:
 - (i) Net profit of NPC;
 - (ii) Earning before interest, taxes, depreciation and amortization of the Pulangui and Agus Complexes;
 - (iii) Net profit of TRANSCO;
 - (iv) Proceeds from the disposition and Privatization of PSALM's generation, other disposable assets, and TRANSCO, net of all transaction costs and fees associated with such disposition and Privatization; and
 - (v) Net profit arising from the administration of IPPs.
- (b) Transfers from the National Government;
- (c) Proceeds from loans incurred to restructure or refinance NPC's transferred liabilities: *Provided*, That all borrowings shall be fully paid for or settled by the end of the life of the PSALM;
- (d) Proceeds from the Universal Charge allocated for Stranded Debts and Stranded Contract Costs of NPC;
- (e) Official assistance, grants and donations from external sources;

- (f) Repayment by ECs of such ECs loans assumed by PSALM. Such repayments must be made within five (5) years from such assumption of loans by PSALM by ECs who have transferred ownership or Control of its assets, franchise or operations pursuant to Section 60 of the Act;
- (g) Proceeds from insurance claims corresponding to assets transferred to PSALM by NPC; and
- (h) Other sources of funds as may be determined by PSALM necessary for the above-mentioned purposes.

Section 12. Claims Against PSALM.

The following shall constitute the claims against PSALM:

- (a) NPC liabilities transferred to PSALM;
- (b) Transfers from the National Government;
- (c) New loans, such as, but not limited to those in the form of bonds, convertible instruments, warrants, leases and similar structures;
- (d) Obligations under IPP contracts transferred by NPC to PSALM;
- (e) Loans of ECs that are to be assumed by PSALM under Section 60 of the Act; and
- (f) Expenses for rehabilitation and maintenance of Agus and Pulangi Complexes.

RULE 22. NATIONAL TRANSMISSION CORPORATION (TRANSCO)

Section 1. Creation of TRANSCO.

Pursuant to Section 8 of the Act, TRANSCO, which shall be wholly owned by PSALM, has been created to assume the transmission facilities of NPC, all other assets related to transmission operations, including nationwide franchise of NPC for the operation of the transmission system and the Grid, and to assume the electrical transmission functions of the NPC, including among others, the planning, construction and centralized Grid operation and maintenance of high voltage transmission facilities, Grid interconnections, ancillary and other allied facilities.

Pursuant to and in accordance with the requirements of the Act, NPC, PSALM and TRANSCO shall take such measures and execute such documents to effect the transfer of the ownership and possession of the transmission and subtransmission facilities of NPC and all other assets related to transmission operations. Upon such transfer, the nationwide franchise of NPC for the operation of the transmission system and the Grid shall transfer from NPC to TRANSCO.

Section 2. Transmission Ownership and Management.

- (a) For the purpose of Section 1 of this Rule, “all other assets” related to transmission and subtransmission facilities shall include, but not be limited, to the following:

- (i) System operations facilities such as telecommunications and Supervisory Control and Data Acquisition (SCADA) systems including offices and laboratory buildings housing these equipment; and
 - (ii) TRANSCO offices and real estate properties, vehicles, laboratory and test equipment, spare parts and other physical structures.
- (b) The assets of NPC related to the transmission/subtransmission function shall be transferred by NPC directly to TRANSCO on or before 26 December 2001.
 - (c) Subtransmission Assets transferred to TRANSCO shall be operated and maintained by TRANSCO or its Buyer or Concessionaire, until their disposal to Qualified Distribution Utilities.

Section 3. Corporate Powers of the TRANSCO.

As a corporate entity, TRANSCO shall have the following corporate powers:

- (a) To have continuous succession under its corporate name until otherwise provided by law;
- (b) To adopt and use a corporate seal and to change, alter or modify the same, if necessary;
- (c) To sue and be sued;
- (d) To enter into contracts, leases and execute any instrument necessary or convenient for the purpose for which it is created;
- (e) To borrow funds from any source, whether private or public, foreign or domestic, and issue bonds and other evidence of indebtedness: *Provided*, That in the case of the bond issues, it shall be subject to the approval of the President of the Philippines upon recommendation of the Secretary of Finance: *Provided, further*, That foreign loans shall be obtained in accordance with existing laws, rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
- (f) To pledge, grant a security interest in or otherwise encumber its assets;
- (g) To maintain a provident fund which consists of contributions made by both the TRANSCO and its officials and employees and their earnings for the payment of benefits to such officials and employees or their heirs under such terms and conditions as it may prescribe;
- (h) To create subsidiaries for purposes such as the disposition of Subtransmission Assets to Qualified Distribution Utilities and the operation thereof prior to disposal;
- (i) To do any act necessary or proper to carry out the purpose for which it is created, or any act which, from time to time, may be declared by

the TRANSCO Board as necessary, useful, incidental or auxiliary to accomplish its purposes and objectives;

- (j) Generally, to exercise all the powers of a corporation under the Corporation Code insofar as they are not inconsistent with the Act; and
- (k) The TRANSCO may exercise the power of eminent domain on behalf of itself, the Buyer or Concessionaire or any successor-in-interest thereto, subject to the requirements of the Constitution and other laws. Except as provided in the Act, no Person, company or entity other than TRANSCO shall own any transmission facilities.

Section 4. TRANSCO Board of Directors.

All the powers of the TRANSCO shall be vested in and exercised by a Board of Directors. The Board shall be composed of a Chairman and six (6) members. The Secretary of the DOF shall be the ex-officio Chairman of the Board. The other members of the TRANSCO Board shall include the Secretary of the DOE, the Secretary of the DENR, the President of TRANSCO, and three (3) members to be appointed by the President of the Philippines, each representing Luzon, Visayas and Mindanao, one of whom shall be the President of PSALM.

The members of the Board so appointed by the President of the Philippines shall serve for a term of six (6) years, except that any Person appointed to fill-in a vacancy shall serve only the unexpired term of his/her predecessor in office. All members of the Board shall be professionals of recognized competence and expertise in the fields of engineering, finance, economics, law or business management. No member of the Board or any of his relatives within the fourth civil degree of consanguinity or affinity, legitimate or common law, shall have any interest, either as investor, officer or director, in any Generation Company or Distribution Utility or other entity engaged in transmitting, generating and supplying electricity specified by ERC.

Section 5. Powers and Duties of the Board.

The following are the powers of the Board:

- (a) To provide strategic direction for TRANSCO, and formulate medium and long-term strategies pursuant to the vision, mission and objectives of TRANSCO;
- (b) To develop and adopt policies and measures for the efficient and effective management and operation of TRANSCO, including the formation of one or more subsidiaries;
- (c) To organize, re-organize, and determine the organizational structure and staffing pattern of TRANSCO; abolish and create offices and positions; fix the number of its officers and employees; transfer and re-align such officers and personnel; and fix their compensation, allowance, and benefits;

- (d) To fix the compensation of the President of TRANSCO and to appoint and fix the compensation of other corporate officers;
- (e) For cause, to suspend or remove any corporate officer appointed by the Board;
- (f) To adopt and set guidelines for the employment of personnel on the basis of merit, technical competence and moral character;
- (g) Any provision of the law to the contrary notwithstanding, to write-off bad debts; and
- (h) Other powers not inconsistent with the Act.

Section 6. Board Meetings.

The Board shall meet as often as may be necessary upon the call of the Chairman of the Board, or in his absence, the Vice-Chairman, or in the latter's absence, by a majority of the Board members.

Section 7. Board Per Diems and Allowances.

The members of the Board shall receive a per diem for each regular or special meeting of the Board actually attended by them and, upon approval of the Secretary of the DOF, such other allowances as the Board may prescribe.

Section 8. Quorum.

The presence of at least four (4) members of the Board shall constitute a quorum, which shall be necessary for the transaction of any business. The affirmative vote of a majority of the members present in a quorum shall be adequate for the approval of any resolution, decision or order, except when the Board shall otherwise agree that a greater vote is required.

Section 9. Powers of the President of TRANSCO.

- (a) So long as TRANSCO remains wholly owned by PSALM, the President of TRANSCO shall be appointed by the President of the Philippines. In the absence of the Chairman and Vice-Chairman, the President of TRANSCO shall preside over Board meetings.
- (b) The President of TRANSCO shall be the Chief Executive Officer of TRANSCO and shall have the following powers and duties:
 - (i) To execute and administer the policies and measures approved by the Board, and take responsibility for the efficient discharge of management functions;
 - (ii) To oversee the preparation of the budget of TRANSCO;
 - (iii) To direct and supervise the operation and internal administration of TRANSCO and, for this purpose, may delegate some or any of his administrative responsibilities and duties to other officers of TRANSCO;

- (iv) Subject to the guidelines and policies set up by the Board, to appoint and fix the number and compensation of subordinate officials and employees of TRANSCO; and for cause, to remove, suspend or otherwise discipline any subordinate employee of TRANSCO;
- (v) To submit an annual report to the Board on the activities and achievements of TRANSCO at the close of each fiscal year and upon approval thereof, submit a copy to the President of the Philippines and to such other agencies as may be required by law;
- (vi) To represent TRANSCO in all dealings and transactions with other offices, agencies, and instrumentalities of the National Government and with all Persons and other entities, private or public, domestic or foreign; and
- (vii) To exercise such other powers and duties as may be vested in him by the Board from time to time.

Section 10. Exemption from the Salary Standardization Law.

The salaries and benefits of employees in the TRANSCO shall be exempt from Republic Act No. 6758 and shall be fixed by the TRANSCO Board.

Section 11. TRANSCO Privatization.

- (a) Within six (6) months from the effectivity of the Act, the PSALM shall submit a Privatization plan for endorsement by the Power Commission and the approval of the President of the Philippines. The President of the Philippines thereafter shall direct PSALM to award, in open competitive bidding, the transmission facilities, including grid interconnections and Ancillary Services to a qualified party either through an outright sale, a Concession Contract or any other means not inconsistent with the objectives of the Act. The Buyer or Concessionaire or any other successor-in-interest to TRANSCO shall be responsible for the improvement, expansion, operation or maintenance of the transmission assets and the operation of any related businesses. PSALM and TRANSCO shall secure a nationwide franchise for and in behalf of the Buyer or Concessionaire. The award shall result in maximum present value of proceeds to the National Government. In case a Concession Contract is awarded, the Concessionaire shall have a contract period of twenty-five (25) years, subject to review and renewal for a maximum period of another twenty-five (25) years. Upon the expiration or termination of the Concession Contract, the transmission facilities and assets, including the nationwide franchise for the operation of the transmission system and Grid shall revert to TRANSCO.
- (b) In any case, the Buyer or Concessionaire or any other successor-in-interest to TRANSCO shall comply with the Grid Code and the TDP as approved. The sale agreement/Concession Contract shall include, but not be limited to, the provision for performance and financial

guarantees or any other covenants that the National Government may require. Failure to comply with such obligations shall result in the imposition of appropriate sanctions or penalties by the ERC.

- (c) In case of joint venture/consortium with foreign members/participants of the Buyer or Concessionaire or any other successor-in-interest to TRANSCO, a foreign participant shall be financially and technically capable, with proven domestic and/or international experience and expertise as a leading transmission system operator. Such experience must be in a transmission system of comparable capacity and coverage as the Philippines.

Section 12. Responsibilities of Buyer or Concessionaire.

- (a) This Rule shall apply to TRANSCO or its Buyer or Concessionaire or any successor-in-interest thereto.
- (b) The Buyer or Concessionaire or any successor-in-interest thereto, shall:
 - (i) Be responsible for the improvement, expansion, operation and/or maintenance of the Grid;
 - (ii) Comply with the Grid Code and the TDP as approved; and
 - (iii) Comply with the key performance targets and standards set by ERC, in terms of physical transmission system and the management of the transmission activity.
- (c) The performance indicators for reliability, security, adequacy, integrity and stability shall include, but not limited to, the following:
 - (i) Number of Interruption Events;
 - (ii) Sustained Average Interruption Frequency Index;
 - (iii) Momentary Average Interruption Frequency Index;
 - (iv) Sustained Average Interruption Duration Index;
 - (v) System Interruption Severity Index;
 - (vi) Frequency of tripping per 100 ckt-km;
 - (vii) Average Forced Outage Duration;
 - (viii) Accumulated Time Error;
 - (ix) Frequency Limit Violation; and
 - (x) Voltage Limit Violations.

Section 13. Privatization of Subtransmission.

- (a) The subtransmission functions and assets of TRANSCO shall be segregated from the transmission functions, assets and liabilities for transparency and disposal: *Provided*, That the Subtransmission Assets shall be operated and maintained by TRANSCO or its Buyer or Concessionaire until their disposal to Qualified Distribution Utilities which are in a position to take over the responsibility for operating, maintaining, upgrading, and expanding said assets. All transmission and subtransmission related liabilities of NPC shall be transferred to and assumed by the PSALM.

- (b) TRANSCO shall negotiate with and thereafter transfer such functions, assets, and associated liabilities to the Qualified Distribution Utility or utilities connected to such subtransmission facilities not later than two (2) years from the effectivity of the Act or the start of Open Access, whichever comes earlier: *Provided*, That in the case of ECs, the TRANSCO shall grant concessional financing over a period of twenty (20) years: *Provided, however*, That the installment payments to TRANSCO for the acquisition of subtransmission facilities shall be given first priority by the ECs out of the net income derived from such facilities. The TRANSCO shall determine the disposal value of the Subtransmission Assets based on the revenue potential of such assets. In case of disagreement in valuation, procedures, ownership participation and other issues, the ERC shall resolve such issues.
- (c) The take over by a Distribution Utility of any Subtransmission Asset shall not cause a diminution of service and quality to the End-users. Where there are two (2) or more connected Distribution Utilities, the consortium or juridical entity shall be formed by and composed of all of them and thereafter shall be granted a franchise to operate the Subtransmission Assets by the ERC.

The subscription rights of each Distribution Utility involved shall be proportionate to its load requirements unless otherwise agreed by such Distribution Utilities.

Aside from the PSALM, TRANSCO and connected Distribution Utilities, no third party shall be allowed ownership or management participation, in whole or in part, in such subtransmission entity.

RULE 23. PRIVATIZATION OF THE ASSETS OF NPC

Section 1. Guiding Principle.

Consistent with Section 47 of the Act, the PSALM shall privatize the assets transferred to it from NPC in accordance with these Rules. Within one hundred eighty (180) days from the effectivity of the Act, PSALM shall submit a Privatization plan for the endorsement by the Power Commission and the approval of the President of the Philippines. This plan shall cover the total Privatization of the transmission and generation assets, real estate, and other disposable assets as well as the existing IPP contracts of NPC, except for assets of SPUG. Upon approval of the Privatization plan, PSALM shall implement the same.

The participation by Filipino citizens and corporations in the purchase of NPC assets shall be encouraged.

Section 2. Scope of Privatization.

- (a) NPC Generation, Generation-Related, and Other Assets.

Except for the assets of SPUG, NPC assets to be privatized shall include:

- (i) all generation assets and all generation-related machineries and equipment;
- (ii) all real estate and the improvements made thereto; and
- (iii) disposable assets such as facilities, properties, equipment and other assets not essential to the operation of NPC.

To provide for an orderly disposition of these assets, NPC shall provide PSALM an inventory of all these assets within one hundred and twenty (120) days from the effectivity of the Act.

- (b) NPC Transmission, Subtransmission, Interconnection and Ancillary Assets.

The transmission, subtransmission, interconnection and ancillary assets of NPC, as defined in Section 8 of the Act and further detailed in Rule 6 on Transmission Sector and Rule 22 on TRANSCO, shall be transferred by NPC directly to TRANSCO. For this purpose, NPC shall submit a list of these assets to PSALM and TRANSCO within one hundred and twenty (120) days from the effectivity of the Act.

- (c) IPP Contracts of NPC.

Consistent with Section 8 of this Rule, IPP Contracts of NPC shall refer to generation capacities developed pursuant to Republic Act No. 6957 (BOT Law), as amended by Republic Act No. 7718, and any such generation asset whose construction was not financed by NPC but whose output is bought by NPC under Purchase Power Agreements (PPAs), Energy Conversion Agreements (ECAs) or any other similar contractual relationship.

Section 3. Privatization Objectives.

The Privatization of the NPC assets intends to achieve the following objectives:

- (a) To ensure and accelerate the total electrification of the country;
- (b) To ensure the quality, reliability, security and affordability of the supply of electric power;
- (c) To ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market;
- (d) To enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and distribution sectors;
- (e) To ensure fair and non-discriminatory treatment of public and private sector entities in the process of Restructuring the electric power industry;
- (f) To protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power;

- (g) To assure socially and environmentally compatible energy sources and infrastructure;
- (h) To promote the utilization of indigenous and new and Renewable Energy Resources in power generation in order to reduce dependence on imported energy; and
- (i) To ensure consumer protection and enhance the competitive operation of the electricity market.

Section 4. Privatization Guidelines.

- (a) The Privatization value to the National Government of the NPC generation assets, real estate, other disposable assets as well as IPP contracts shall be optimized.
- (b) The participation by Filipino citizens and corporations in the purchase of NPC assets shall be encouraged. Equity or similar instruments of participation by End-users or consumers must be explored exhaustively.

In the case of foreign investors, at least seventy-five percent (75%) of the funds used to acquire NPC-generation assets and IPP contracts shall be inwardly remitted and registered with the (BSP).

- (c) The NPC plants and/or its IPP contracts assigned to IPP Administrators, its related assets and assigned liabilities, if any, shall be grouped in a manner which shall promote the viability of the resulting Generation Companies, ensure economic efficiency, encourage competition, foster reasonable electricity rates and create market appeal to optimize returns to the government from the sale and disposition of such assets in a manner consistent with the objectives of the Act. In the grouping of the generation assets and IPP contracts of NPC, the following criteria shall be considered:
 - (i) A sufficient scale of operation and balance sheet strength to promote the financial viability of the restructured units;
 - (ii) Broad geographical groupings to ensure efficiency of operations but without the formation of regional companies or consolidation of market power;
 - (iii) Portfolio of plants and IPP contracts to achieve management and operational synergy without dominating any part of the market or of the load curve; and
 - (iv) Such other factors as may be deemed beneficial to the best interest of the National Government while ensuring attractiveness to potential investors.
- (d) All assets of NPC shall be sold in an open and transparent manner through public bidding, and the same shall apply to the disposition of IPP contracts;

- (e) In cases of transfer of possession, Control, operation or Privatization of multi-purpose hydro facilities, safeguards shall be prescribed to ensure that the National Government may direct water usage in cases of shortage to protect potable water, irrigation, and all other requirements imbued with public interest. The rights of NPC over such multi-purpose hydro facilities shall be transferred to PSALM;
- (f) The Agus and the Pulangui complexes in Mindanao shall be excluded from among the Generation Companies that will be initially privatized. Their ownership shall be transferred to the PSALM and both shall continue to be operated by the NPC. Said complexes may be privatized not earlier than ten (10) years from the effectivity of the Act, and, except for Agus III, shall not be subject to BOT, Build-Rehabilitate-Operate-Transfer (BROT) and other variations thereof pursuant to Republic Act. No. 6957 (BOT Law), as amended by Republic Act No. 7718. The Privatization of Agus and Pulangui complexes shall be left to the discretion of PSALM in consultation with Congress. PSALM, out of the earnings in the operation of Agus and Pulangui complexes, shall ensure the availability of adequate funds intended for the upkeep of facilities to include funds for repairs, maintenance and expansion of existing facilities;
- (g) The steamfield assets and generation plants of each geothermal complex shall not be sold separately. They shall be combined and each geothermal complex shall be sold as one package through public bidding. The geothermal complexes covered by this requirement include, but not limited to, Tiwi-Makban, Leyte A and B, Tongonan, Palinpinon, and Mt. Apo.
- (h) The ownership of the Caliraya-Botokan-Kalayaan (CBK) pump storage complex shall be transferred to PSALM and operated by NPC on behalf of PSALM for a period of ten (10) years.
- (i) Not later than three (3) years from the effectivity of the Act, and in no case later than the initial implementation of Open Access, at least seventy percent (70%) of the total capacity of generation assets of NPC and of the total capacity of the power plants under contract with NPC located in Luzon and Visayas shall have been privatized: *Provided*, That any unsold capacity shall be privatized not later than eight (8) years from the effectivity of the Act;
- (j) Except as otherwise provided in these Rules, all appropriate existing authorizations, licenses and permits issued by the National Government, including its departments, bureaus and agencies, and LGUs to NPC shall automatically transfer to PSALM;
- (k) NPC may generate and sell electricity only from the undisposed generation assets and IPP contracts of PSALM and shall not incur any new obligations to purchase power through bilateral contracts with Generation Companies or other Suppliers; and
- (l) The sale, transfer or disposition of NPC assets shall not affect existing NPC contractual obligations.

Section 5. Elements of the Privatization Plan.

The Privatization plan for NPC assets shall contain, among others, the following principal elements:

- (a) Structure, sequence, timing and terms of asset disposition;
- (b) Employee issues;
- (c) Management of debt obligations;
- (d) Management of IPP obligations, including appointment of IPP Administrators in accordance with Section 51(c) of the Act;
- (e) Options for the sale of other assets; and
- (f) Overall timetable and progress milestones.

Section 6. Privatization of Hydroelectric Generation Plants.

- (a) Consistent with Section 47(e) of the Act and Section 4(f) of this Rule, the Privatization of hydro facilities of NPC shall cover the power component including assignable long-term water rights agreements for the use of water, which shall be passed onto and respected by the buyers of the hydroelectric power plants.
- (b) The National Water Resources Board (NWRB) shall ensure that the allocation for irrigation, as indicated by the NIA and requirements for domestic water supply as provided for by the appropriate Local Water District(s) are recognized and provided for in the water rights agreements. NPC or PSALM may also impose additional conditions in the shareholding agreement with the winning bidders to ensure national security, including, but not limited to, the use of water during drought or calamity.
- (c) Consistent with Section 34(d) of the Act, the NPC shall continue to be responsible for watershed rehabilitation and management and shall be entitled to the environmental charge equivalent to one-fourth of one centavo per kilowatt-hour sales (P0.0025/kWh), which shall form part of the Universal Charge. This environmental fund shall be used solely for watershed rehabilitation and management and shall be managed by NPC under existing arrangements. NPC shall submit an annual report to the DOE detailing the progress of the watershed rehabilitation program.
- (d) The NPC and PSALM or NIA, as the case may be, shall continue to be responsible for the dam structure and all other appurtenant structures necessary for the safe and reliable operation of the hydropower plants. The NPC and PSALM or NIA, as the case may be, shall enter into an operations and maintenance agreement with the private operator of the power plant to cover the dam structure and all other appurtenant facilities.

Section 7. Undisposed Generation Assets and IPP Contracts of NPC.

- (a) NPC may generate and sell electricity only from the undisposed generation assets and IPP contracts of PSALM; and

- (b) NPC shall not incur any new obligations to purchase power through bilateral contracts with Generation Companies or other Suppliers.

Section 8. Privatization of IPP Contracts Assumed by PSALM.

- (a) The IPP contracts assumed by PSALM shall be privatized taking into consideration buy out provisions, Government performance undertakings and possible bilateral renegotiations to minimize the liabilities of NPC and the National Government.
- (b) Consistent with Section 75 of the Act, with respect to IPP-related contracts, nothing in these Rules shall be construed as:
 - (i) an implied waiver of any right, action or claim, against any Person or entity, of NPC or the National Government arising from or relating to any such contracts; or
 - (ii) a conferment of new or better rights to creditors and IPP contractors in addition to subsisting rights granted by the NPC or the National Government under existing contracts.
- (c) PSALM shall ensure that the Privatization of IPP contracts assumed by it shall not cause an increase in the stranded costs to be absorbed by the National Government and End-users.

Section 9. Management and Operation of Agus and Pulangui Complexes.

The Agus and Pulangui complexes shall be managed and operated by NPC for PSALM as a separate business unit, and shall have its own organization and book of accounts.

PART V - OTHER PROVISIONS

RULE 24. ELECTRIC POWER CRISIS PROVISION

Upon the determination by the President of the Philippines of an imminent shortage of the Supply of Electricity, Congress may authorize, through a joint resolution, the establishment of additional generation capacity under such terms and conditions as it may approve.

RULE 25. REVIEW OF IPP CONTRACTS

An inter-agency committee chaired by the Secretary of DOF, with the Secretary of the DOJ and the Director General of the NEDA as members thereof is hereby created upon the effectivity of the Act. The Committee shall immediately undertake a thorough review of all IPP Contracts. In cases where such contracts are found to have provisions which are grossly disadvantageous, or onerous to the Government, the Committee shall, cause the appropriate government agency to file an action under the arbitration clauses provided in said contracts or initiate any appropriate action under Philippine laws. The PSALM shall diligently seek to reduce stranded costs, if any.

RULE 26. RENEGOTIATION OF POWER PURCHASE AND ENERGY CONVERSION AGREEMENTS BETWEEN NPC AND PNOC-EDC

- (a) Pursuant to Section 69 of the Act, all power purchase and energy conversion agreements between the PNOC-EDC and NPC, including, but not limited to, the Palinpinon, Tongonan and Mt. Apo Geothermal complexes, shall be reviewed by the ERC within three (3) months from the effectivity of the Act.
- (b) The ERC shall amend the terms of the agreements to remove any hidden costs or extraordinary mark-ups in the cost of power or steam above their true costs.
- (c) The ERC shall ensure that all savings realized from the reduction of said mark-ups shall be passed on to all End-users.
- (d) All amended contracts shall be submitted to the Power Commission for approval.

RULE 27. ROYALTIES, RETURNS [RENTALS] AND TAX RATES FOR INDIGENOUS ENERGY RESOURCES

The provisions of Section 79 of Commonwealth Act No. 137 (C.A. No. 137) and any law to the contrary notwithstanding, the President of the Philippines shall reduce the royalties, returns [rentals] and taxes collected for the exploitation of all indigenous sources of energy, including but not limited to, natural gas and geothermal steam, so as to effect parity of tax treatment with the existing rates for imported coal, crude oil, bunker fuel and other imported fuels.

To this end, the DOF shall recommend to the President of the Philippines the issuance of an Executive Order within thirty (30) calendar days from the effectivity of these Rules.

To ensure lower rates for End-users, the ERC shall forthwith reduce the rates of power from all indigenous sources of energy.

RULE 28. ENVIRONMENTAL PROTECTION

Pursuant to Section 65 of the Act, Electric Power Industry Participants in the generation, distribution and transmission sub-sectors of the industry shall comply with all environmental laws, rules, regulations and standards promulgated by the DENR including, in appropriate cases, the establishment of an environmental guarantee fund.

RULE 29. BENEFITS TO HOST COMMUNITIES

Pursuant to Section 66 of the Act, the obligations of Generation Companies and energy resource developers to communities hosting the Generation

Facilities and/or energy resource development projects as defined under Chapter II, Section 289 to 294 of the Republic Act No. 7160 (Local Government Code) and Section 5 (i) of Republic Act No.7638 (DOE Law) and their implementing rules and regulations shall continue: *Provided*, That the obligations mandated under Chapter II, Section 291 of Local Government Code, shall apply to privately-owned corporations or entities utilizing the national wealth of the locality.

A. RULES FOR THE BENEFITS TO HOST COMMUNITIES PURSUANT TO SECTION 5(i) OF REPUBLIC ACT 7638

Section 1. Scope of Application.

This Rule shall apply to Generation Facilities and/or energy resource development projects located in all barangays, municipalities, cities, provinces and regions.

Section 2. Obligation to Provide Financial Benefits.

The Generation Facilities and/or energy resource development facilities, such as but not limited to the following, are required to provide the financial benefits under Energy Regulations No. 1-94 (E.R. 1-94) of the DOE:

- (a) Spin-off Facilities of NPC or their transferees, including Generation Facilities owned by NPC transferred to PSALM and subsequently privatized pursuant to the Act;
- (b) Agus and Pulangui Complexes;
- (c) Facilities owned and operated by NPC-SPUG;
- (d) Facilities under BOT arrangement and other variants with NPC (NPC IPPs), NPC-SPUG, NIA, PNOG-EDC and other government agencies;
- (e) Facilities under BOT arrangement and other variant with Distribution Utilities (IPPs of Distribution Utilities);
- (f) Facilities owned or operated by a Distribution Utility;
- (g) Self-Generation Facilities;
- (h) Facilities operating in EZs; and
- (i) Integrated energy resource development and Generation Facilities such as hydro, geothermal and coal.

Section 3. Beneficiaries.

Direct benefits shall be provided to the host LGU, especially the community and people affected while equitable preferential benefits shall be provided to the host region. Host LGU or host region shall be understood as follows:

- (a) With respect to Generation Facilities, in the case of power barges, the host LGU or region is that where the power barge is moored; in all other cases, the host LGU or region is that where the Generation Facility is physically located. Generation Facilities shall not include transmission lines and substations.
- (b) With respect to energy resources:
 - (i) Coal. The host LGU or region is that where the producing positive coal reserve is located, as delineated by detailed geophysical, geological and exploration surveys.
 - (ii) Geothermal. The host LGU or region is that where the producing geothermal reservoir is located as delineated by geochemical, geophysical, and exploration surveys. "Producing geothermal reservoir" refers to the subsurface geological environment where the geothermal fluids accumulate and circulate, inclusive of the production and re-injection/recharge zone.
 - (iii) Hydro. The host LGU or region is that where the hydro reservoir is located as delineated by detailed topographic, geological and geo-technical investigations, reservoir and dam height optimization studies, and as delineated by detailed ground surveys. "Hydro reservoir" refers to either a natural lake or an artificial lake created by the impounding of stream flow, runoff and subsurface water including but not limited to intakes, diversion weirs and transbasin underground tunnel which supplies water to a dam. It also refers to where river or rivers supply/ies water to a dam reservoir through a transbasin underground tunnel to generate power.
 - (iv) Petroleum/Natural Gas. The host LGU or region is that where the producing petroleum/natural gas reservoir is located, as delineated by detailed geochemical, geophysical exploration surveys.

Section 4. Nature of Benefits Provided under E.R. 1-94.

- (a) The Generation Company and/or energy resource developer shall set aside one centavo per kilowatt-hour (₱ 0.01/kWh) of the total electricity sales as financial benefit of the host communities of such Generation Facility, where applicable.
 - (i) For a Generation Facility and/or energy resource located in a non-highly urbanized city, the ₱ 0.01/kWh financial benefit shall be allocated as follows:
 - (1) Fifty percent of one centavo per kilowatt-hour (₱ 0.005/kWh) of the total electricity sales shall be set aside as an electrification fund (EF) to be applied in the following radiating order:
 - (a) Designated resettlement area/s;

- (b) Host barangay/s;
- (c) Host municipality/ies or city/ies;
- (d) Host province/s;
- (e) Host region/s; and
- (f) Other areas as may be prioritized/determined by the DOE.

(2) Twenty five percent of one centavo per kilowatt-hour (₱ 0.0025/kWh) of the total electricity sales as a development and livelihood fund (DLF) to be applied in the following manner:

- | | | | |
|-----|-----------------------------------|---|-----|
| (a) | Designated resettlement area/s | - | 5% |
| (b) | Host barangay/s | - | 20% |
| (c) | Host municipality/ies or city/ies | - | 35% |
| (d) | Host province/s | - | 30% |
| (e) | Host region/s | - | 10% |

In the absence of a designated resettlement area/s, funds allocated for the resettlement shall form part of the host barangay/s.

(3) Twenty five percent of one centavo per kilowatt-hour (₱ 0.0025/kWh) of the total electricity sales as a reforestation, watershed management, health and/or environment enhancement fund (RWMHEEF) to be allocated in the following manner:

- | | | | |
|-----|-----------------------------------|---|-----|
| (a) | Designated resettlement area/s | - | 5% |
| (b) | Host barangay/s | - | 20% |
| (c) | Host municipality/ies or city/ies | - | 35% |
| (d) | Host province/s | - | 30% |
| (e) | Host region/s | - | 10% |

In the absence of a designated resettlement area/s, funds allocated for the resettlement shall form part of the host barangay/s.

(ii) For a Generation Facility and/or energy resource located within a highly urbanized city, the ₱ 0.01/kWh financial benefit shall be allocated as follows:

(1) Seventy five percent of one centavo per kilowatt-hour (₱ 0.0075/kWh) of the total electricity sales of all Generation Facilities located in a highly urbanized city shall be set aside into one account as an EF to be applied in the following priority:

- (a) Designated resettlement area/s;
- (b) Host barangay/s;
- (c) Host city/ies;
- (d) Province/s nearest to the host city/ies;
- (e) Region/s of the host city/ies;

- (f) Host communities of other facilities with insufficient electrification fund;
- (g) Areas traversed by transmission lines and sub-stations or similar facilities; and
- (h) Other areas as may be prioritized/determined by the DOE.

(2) Twelve and one-half percent of one centavo per kilowatt-hour (₱0.00125) as a DLF to be allocated in the following manner:

- | | | | |
|-----|--------------------------------|---|-----|
| (a) | Designated resettlement area/s | - | 10% |
| (b) | Host barangay/s | - | 30% |
| (c) | Host city/ies | - | 60% |

In the absence of designated resettlement area/s, funds allocated for the resettlement shall form part of the host barangay/s.

(3) Twelve and one-half percent of one centavo per kilowatt-hour (₱0.00125) as a RWMHEEF to be allocated in the following manner:

- | | | | |
|-----|--------------------------------|---|-----|
| (a) | Designated resettlement area/s | - | 10% |
| (b) | Host barangay/s | - | 30% |
| (c) | Host city/ies | - | 60% |

In the absence of designated resettlement area/s, funds allocated for the resettlement shall form part of the host barangay/s.

(iii) In case of integrated hydroelectric generation projects with cascading Generation Facilities, where the Generation Facilities and energy resource are located in different municipalities/cities or provinces, irrespective of its location, whether located in a highly urbanized city or non-highly urbanized city, allocation of financial benefits shall follow Section 4(a)(i), hereof. The host communities of the Generation Facilities and energy resource development projects shall equally divide said financial benefits. The host municipality/city of the Generation Facility adjacent to the energy resource shall in no case be a host to both said Generation Facility and energy resource.

(b) All interest earnings from EF, DLF, RWMHEEF shall be set aside into one trust account to be utilized for the electrification projects of the communities in the following order of priority:

- (i) Direct host barangay/s, and host municipality/ies or city/ies with insufficient accrued EF;
- (ii) Areas traversed by transmission lines, and sub-stations or similar facilities;

- (iii) Areas not directly connected to the Grid or national transmission system which include isolated or remote communities; and
 - (iv) Other areas as may be prioritized/determined by the DOE.
- (c) The financial assistance advanced by the Generation Company and energy resource developer during its pre-operation stage or before the start of the commercial operations for the purpose of securing favorable endorsement from the community and people affected, after Republic Act 7638 (DOE Law) has become effective or pursuant to this Rule, shall be credited by the Generation Company, energy resource developer or their successors-in-interest against the accrued financial benefits based on the following criteria:
- (i) The projects to be funded under the advance financial assistance should be approved by the DOE consistent with E.R. 1-94.
 - (ii) The total financial assistance to be amortized at a rate of twenty percent (20%) from the accrued financial benefits shall be based on the actual amount spent for the project/s validated by the DOE.
 - (iii) Amortization of financial assistance shall commence from the next quarter billing, after the DOE has issued a validated report on the actual amount spent for the project/s.

Section 5. Establishment of Trust Accounts.

The DOE shall establish trust accounts specific for EF, DLF, RWMHEEF in the name of the DOE and the Generation Facilities or Generation Company and/or energy resource developer. For purposes of said establishment, the Generation Company and/or energy resource developer shall submit a report that contains the following data:

- (a) Actual generation, station/own service use, system loss, and electricity sales in kilowatt-hour;
- (b) Accrued benefits due to the host LGU and host region derived from Section 5(a) hereof;
- (c) Details of benefits and/or financial assistance advanced to the host LGU and host region, if any; and
- (d) Such other information, which the DOE may deem necessary for review and audit purposes.

Section 6. Project Implementation and Approval.

The evaluation and approval of project proposals/work programs endorsed by the host LGU and host region through the Generation Company and/or energy resource developer shall strictly be guided by the following procedures:

- (a) The Generation Company and/or energy resource developer, through its designated Community Relations Officer (COMREL) shall assist the host LGU and host region in the preparation of annual work programs/project proposals qualified by the DOE to be implemented in any given year. The amount of financial benefits accruing to the pertinent funds in the immediate preceding year shall be used as basis in the preparation of annual work programs/project proposals. The said annual work programs/project proposals shall be submitted by the Generation Company and/or energy resource developer to the DOE not later than March 15 of every year.
- (b) All work programs/project proposals for DLF and RWMHEEF shall be implemented within one (1) year upon receipt of funds. Said work programs/project proposals shall be implemented, supervised and administered by the concerned LGU.
- (c) The Generation Company and/or energy resource developer shall review the work programs/project proposals on development, livelihood, reforestation, watershed management, health and/or environment enhancement duly endorsed by the host LGU and host region through a resolution passed by its Sanggunian or Regional Development Council. In the case of official resettlement area, work programs/project proposals may be endorsed by the resettlement organization, association or cooperative duly certified by the Generation Company and/or energy resource developer and registered under the concerned government agencies. The Generation Company and/or energy resource developer shall make the appropriate endorsement of annual work programs/project proposals to the DOE for further review and approval. The review and approval of annual work programs/project proposals shall be completed by DOE within twenty (20) working days upon receipt of complete documentation. Thereafter, project implementation shall proceed as prescribed under Sub-section (f)(i), hereof.
- (d) For reforestation and watershed management projects, work programs/project proposals should be coordinated and endorsed by the DENR Regional Office or the watershed management administrator in the area.
- (e) For electrification programs, the Generation Company and/or energy resource developer shall coordinate with the concerned Distribution Utility in the development of said program for the barangays energization and prioritization in any given year. The annual electrification programs shall be directly forwarded to DOE for review and evaluation. The NEA shall assist the ECs in the preparation of documents such as but not limited to the staking sheets or single line diagrams and cost estimates. Thereafter, project implementation shall proceed as prescribed under Sub-section (f)(ii), hereof. The electrification projects may be undertaken by the Distribution Utility or the Generation Company and/or energy resource developer or their accredited contractors, herein referred to as project implementor.

(f) Upon submission of complete documents of the work programs/project proposals, project implementation shall proceed in any of the following manner:

(i) For development, livelihood, reforestation, watershed management, health and/or environment enhancement projects, a Memorandum of Agreement (MOA) shall be entered into by and among the DOE, Generation Company and/or energy resource developer, and the concerned LGU to effect funds commitment and project implementation. The DOE shall then make the necessary fund allocation and shall forthwith release the project funds directly to the concerned host LGU or host region within fifteen (15) days upon submission of complete supporting documents pursuant to the provisions in the MOA.

(ii) For electrification projects, a MOA shall be entered into by and among the DOE, the concerned Distribution Utility/project implementor, Generation Company and/or energy resource developer to effect funds commitment and project implementation. The DOE shall then make the necessary fund allocation and shall forthwith release the funds to the franchised Distribution Utility/project implementor within fifteen (15) days upon submission of complete supporting documents pursuant to the provisions in the MOA.

For projects to be undertaken by contract, initial release of fund shall be equivalent to fifteen percent (15%) of the total approved project cost. Subsequent release of fund balance shall be based on the result of qualified lowest bid cost.

For projects to be undertaken by administration, total approved project cost shall be released upon signing of the MOA.

(g) All funds disbursements shall follow government accounting and auditing rules and regulations.

Section 7. Administration of Trust Accounts.

(a) The administration of EF, DLF, RWMHEEF shall be undertaken by the DOE. All funds administered by NPC with regard to DLF and RWMHEEF shall be transferred to DOE for administration within one hundred twenty (120) days from the effectivity of these Rules. Thereafter, all MOA entered into by DOE and NPC on the establishment of trust accounts shall be amended to reflect transfer of responsibilities to NPC-successors, transferees and/or assignees or IPPs.

(b) The obligation of the Generation Companies to DOE with regard to the remittance of funds shall be settled in the following manner:

(i) For NPC-IPPs, if applicable, to settle all obligations before issuance of COC/registration certificate by ERC.

- (ii) For NPC, if applicable, to settle all obligations before Privatization/sale and transfer of IPP contracts to PSALM.
- (iii) For IPPs of Distribution Utilities with an outstanding financial obligation with the DOE pursuant to Department Circular No. 2000-03-03 shall settle its account within one (1) year upon effectivity of these Rules.
- (iv) After thorough investigation, non-remittance of the Generation Company and/or energy resource developer of the financial benefits due to the host communities shall be a ground for DOE's recommendation to ERC for appropriate action and reasonable measures in accordance with ERC rules and regulations.

Section 8. Audit of Financial Benefits and Project Monitoring.

- (a) The DOE shall review and audit the source of fund, particularly on the total electricity sales of the Generation Facility to determine the financial benefits due to the host LGUs and host regions.
- (b) The DOE shall conduct financial and technical audit to monitor compliance by the LGU and region with regard to the implementation of the projects. In the event of unjustified disbursement of fund and non-completion or delay in the implementation of projects by the LGU or region concerned and the Distribution Utility/project implementor, the DOE shall defer the releases of funds and take appropriate reasonable measures in accordance with any existing and future government rules and regulations until such time that the LGU or region and franchised Distribution Utility/project implementor would be able to justify disbursement of funds to the satisfaction of the DOE or deputized/resident auditor of the Commission on Audit (COA).

Section 9. Other Provisions.

- (a) The application of this Rule 27(A) shall take effect upon effectivity of these Rules.
- (b) Any provision in E.R. 1-94, its amendments and other related issuances and their amendments that are inconsistent with these Rules are hereby superseded, modified or amended accordingly.

B. RULES FOR THE BENEFITS TO HOST COMMUNITIES PURSUANT TO CHAPTER II, SECTIONS 289 TO 294 OF THE LOCAL GOVERNMENT CODE

Section 1. Scope of Application.

The LGUs hosting the national wealth shall have an equitable share in the proceeds derived from the utilization and development of national wealth, including sharing the same with the inhabitants by way of direct benefits.

Section 2. Amount of Share of Local Government Units.

Any government agency or government-owned or controlled corporation and private corporation or entities engaged in the utilization and development of the national wealth are required to provide share to the host LGUs, based on the preceding fiscal year of the proceeds, based on the following formula, whichever will produce a share higher for the LGU:

- (a) One percent (1%) of the gross sales or receipts of the preceding calendar year; or
- (b) Forty percent (40%) of the national wealth taxes, royalties, fees or charges derived by the government agency or government owned and controlled corporation and privately-owned corporation or entities.

Section 3. Nature of Benefits.

- (a) Eighty percent (80%) of the proceeds shall be applied solely to lower the cost of electricity either through subsidy or non-subsidy scheme or combination of both.
 - (i) Non-subsidy scheme may take the form but not limited to electrification, technical upgrading and rehabilitation of distribution lines to reduce electricity losses, use of energy saving devices, and support of the infrastructure facilities servicing the needs of the public which can all redound to the reduction of the electricity rate of the area.
 - (ii) Subsidy scheme will be directly utilized to subsidize cost of power used by the consumers. This may be applied with or without ceiling or at graduated rates (per kWh per level of consumption) in the following form which the host LGU may choose from.
 - (1) Subsidy per customer, an equal or predetermined level or rate of subsidy per qualified customer:
 - (a) All consumer types;
 - (b) Residential consumer only; and
 - (c) Other preferred types of consumer combinations, such as: commercial, industrial, public buildings, irrigation/communal water system, streetlights, etc.
 - (2) Subsidy of power consumption, which amount of subsidy depends on the magnitude of power consumption of qualified consumers:
 - (a) All consumer types;
 - (b) Residential consumer only; and
 - (c) Other preferred types of consumer combinations, such as, commercial, industrial, public buildings, irrigation/communal water system, streetlights, etc.

- (b) Twenty percent (20%) of the proceeds shall be utilized for the development and livelihood projects which shall be appropriated by their respective Sanggunian.

Section 4. Allocation of Shares.

The amount of share of the LGUs shall be distributed in the following manner:

- (a) For energy resource located in the province, share shall be appropriated as follows:
 - (i) Host barangay - 35%
 - (ii) Host component city/municipality - 45%
 - (iii) Host province - 20%
- (b) For energy resource located in a highly urbanized or independent component city, share shall be appropriated as follows:
 - (i) Host barangay - 35%
 - (ii) Host city - 65%
- (c) For energy resource located in two (2) or more provinces, or in two (2) or more municipalities/cities or two (2) or more barangays, their respective shares shall be appropriated on the basis of the following:
 - (i) population - seventy percent (70%); and
 - (ii) land area- thirty percent (30%)

Where the land area is the area of the host barangays found within the technically delineated energy resource area and where the population refers to the population of host barangays found wholly or partially within the technically delineated energy resource.

Section 5. Monitoring.

- (a) The Department of Interior and Local Government (DILG) shall monitor the compliance of host LGUs. To assist in the monitoring of compliance, all host LGUs of energy projects are required to submit the following:
 - (i) The scheme of electricity rate reduction adopted by the host LGU (with proper documentation) based on the prescription in the DILG-DOE Joint Circular 95-01 dated 31 October 1995 at the start of the use of fund or upon the amendment of scheme by the respective LGU councils; and
 - (ii) Summary of transactions thirty (30) days after end of each quarter.

The DILG shall furnish the DOE the above information within fifteen (15) days from the date of the reporting period.

- (b) The COA shall conduct yearly audit of the national wealth proceeds consistent with its responsibility to examine all accounts pertaining to uses of funds and property owned or held in trust by the government or any of its agencies as mandated under Section 2 of Presidential Decree No. 1445 of 1976.
- (c) In the event of violation or non-compliance with the provisions of the DILG-DOE Joint Circulars 95-01 and 98-01, and other relevant issuances, the DILG may, upon prior notice and hearing, order the project proponent the non-remittance of the royalty payment to the host LGU concerned pending completion of the investigation of the concerned LGU if the project proponent is a GOCC; or notify the DBM regarding such violation and order the non-release of the LGU shares if the project proponent is a private company. The unremitted funds shall be deposited in a government bank under escrow.

RULE 30. NPC OFFER OF TRANSITION SUPPLY CONTRACTS

Section 1. Guiding Principle.

Pursuant to Section 67 of the Act, NPC shall, within six (6) months from the effectivity of the Act, file with the ERC for its approval the transition supply contracts (TSCs) duly negotiated with the Distribution Utilities.

Section 2. Scope of Application.

This Rule shall apply to all Distribution Utilities.

Section 3. Terms and Conditions of the TSCs.

- (a) The TSCs shall contain the terms and conditions of supply and a corresponding schedule of rates, consistent with the provision of the Act, including adjustments and/or indexation formulas which shall apply during the term of such contracts.
- (b) The term of the TSCs shall not extend beyond one (1) year from the introduction of Open Access.
- (c) Such contracts shall be based on the projected demand of the Distribution Utilities less any of their currently committed quantities under eligible contracts, if any, as defined in Section 33 of the Act.
- (d) The total generation capacity of such signed TSCs shall not exceed the level of NPC owned, controlled, or committed capacity as of the effectivity of the Act.
- (e) The TSCs shall be assignable to the NPC successor Generation Companies.
- (f) Notwithstanding the provisions of Section 25 of the Act, the rates charged by a Distribution Utility for the generation component of the Supply of Electricity in the Retail Rate shall, for the term of the TSCs, not exceed the TSC rates, as updated monthly.

- (g) The recovery of costs incurred by a Distribution Utility for any generation component in excess of the TSC rates shall be disallowed by the ERC except for eligible contracts and mandated purchases from the WESM.
- (h) The limitation on the recovery of generation component costs by a Distribution Utility shall apply only to the equivalent quality and quantity of electricity still available to the Distribution Utility from NPC.

Section 4. TSCs Approval and Monitoring.

- (a) Within six (6) months from the date of submission of the TSC by the NPC, the ERC shall notify NPC of their approval of the rates contained therein.
- (b) The ERC shall maintain a record of the contract terms and rates offered by NPC.
- (c) The ERC shall update monthly the rates using the appropriate adjustment and/or indexation formula.

Section 5. Recovery of Generation Component by Distribution Utility.

Notwithstanding the provisions of Section 25 of the Act, the rates charged by a Distribution Utility for the generation component of the Supply of Electricity in its Retail Rates shall, for the term of the TSC, not exceed the generation component of the TSC rates, as updated monthly.

- (a) Recovery of cost incurred by a Distribution Utility for any generation component in excess of the TSC rates shall not be allowed, except for eligible contracts approved by the ERC for the recovery of Stranded Contract Costs of Eligible Contracts of Distribution Utilities as provided in Section 33 of the Act and mandated purchases from the WESM.
- (b) The limitation on the recovery of generation component costs by a Distribution Utility shall apply only to the equivalent quality and quantity of electricity still available to the Distribution Utility from NPC. For purposes of the determination of equivalent quality and quantity of electricity, the ERC shall consider, among others, firm and non-firm capacities, standards specified in the Grid and Distribution Codes, and other similar criteria as may be determined by the ERC.

RULE 31. DEBTS OF ELECTRIC COOPERATIVES (ECs)

Section 1. Guiding Principle.

Pursuant to Section 60 of the Act, all outstanding financial obligations of ECs to NEA and other government agencies incurred for the purpose of financing the Rural Electrification Program shall be assumed by the PSALM

in accordance with the program approved by the President of the Philippines.

Section 2. Scope.

This Rule shall cover all outstanding financial obligations by the ECs to NEA and other government agencies, incurred as of 26 June 2001 for the purpose of financing the Rural Electrification Program.

Financial obligation shall refer to the indebtedness, whether through regular or restructured loans, liabilities, or amounts payable by the ECs to NEA and other government agencies as of 26 June 2001, to finance their rural electrification projects, subject to the terms and conditions of duly-executed loan and mortgage contracts between NEA and/or other government agencies, as creditors and the ECs, as debtors/borrowers.

Section 3. Condonation of Debts of ECs.

From the effectivity of the Act, all outstanding financial obligations of ECs to NEA and other government agencies incurred for the purpose of financing the Rural Electrification Program shall be assumed by the PSALM in accordance with the program approved by the President of the Philippines within one (1) year from the effectivity of the Act which shall be implemented and completed within three (3) years from the effectivity of the Act.

These debts shall include all outstanding financial obligations incurred by the ECs for the purpose of financing the Rural Electrification Program, exclusively utilized for capital expenditures for the acquisition or construction, operation and maintenance, and/or expansion and rehabilitation of distribution, generation and Subtransmission Assets/facilities and pre-operating expenses for newly-established ECs: *Provided, however,* That such outstanding financial obligations shall include interest, surcharges and penalties on ECs' Rural Electrification Loans, released from NEA and other government agencies to ECs as of 26 June 2001; duly booked by NEA, validated by COA, and confirmed by the ECs.

Section 4. Assumption of EC Loans by PSALM.

PSALM shall assume all outstanding financial obligations of the ECs to NEA and other government agencies incurred for the purpose of financing the Rural Electrification Program; such outstanding financial obligations of the ECs involving "Rural Electrification Loans" shall be determined in accordance with the program approved by the President of the Philippines. Correspondingly, having assumed the ECs' obligations, the PSALM shall repay NEA and the other government agencies, in accordance with a prescribed amortization schedule agreed between the parties.

The outstanding financial obligations from other government agencies referred to in Section 60 of the Act shall include loans contracted from the following:

- (a) Development Bank of the Philippines (DBP);
- (b) Land Bank of the Philippines (LBP);
- (c) Asset Privatization Trust (APT) now Privatization and Management Office (PMO);

- (d) NPC, for loans on taken-over systems, excluding power bills;
- (e) DOE; and
- (f) LGUs.

Provided, however, That such loans were contracted in accordance with NEA policies and with prior NEA authorization, except for loans transferred to APT, now PMO.

Section 5. Transfer of Ownership or Control of Assets, Franchise or Operation.

Within five (5) years from the completed Condonation of debt, any EC which shall transfer ownership or Control of its assets, franchise or operations shall repay PSALM the total debts, including accrued interest thereon: *Provided, however,* That the ECs may enter into loan or financing agreements to allow flexibility in sourcing funds and improvement and management system for needed rehabilitation and modernization programs: *Provided, further,* That it does not involve permanent transfer or Control of the assets, franchise and operations: *Provided, finally,* That DOF and NEA shall jointly issue the necessary guidelines to protect the member-consumers of the ECs involved.

Section 6. Reduction in ECs' Rates.

The ERC shall ensure a reduction in the rates of ECs commensurate with the resulting savings due to the removal of the amortization payments of their loans and for this purpose, NEA shall assist the ECs in their rate formulation consistent with the program approved by the President of the Philippines.

Nothing in this Rule however, shall mean that ECs are not obliged to pay the NEA with respect to all outstanding financial obligations assumed by PSALM, if the amortization cost component of the EC's tariff is still collected from the consumers.

Section 7. Reporting, Accounting and Audit Procedures.

NEA shall have the responsibility for the accounting of all outstanding financial obligations of ECs from NEA that will be assumed by PSALM. Thereafter, NEA shall render reports and submit the same to PSALM.

PSALM shall have the right to conduct final audit of all the outstanding financial obligations of ECs in accordance with existing accounting and auditing rules and regulations, before the same can be considered for final assumption. Likewise, PSALM shall submit annual progress reports to the DOF on the status of ECs' loans that were assumed and subsequently condoned.

RULE 32. FISCAL PRUDENCE

- (a) Pursuant to Section 64 of the Act, the creation of new positions and the levels of or increases in salaries and all other emoluments and

benefits of TRANSCO and PSALM personnel shall be subject to the approval of the President of the Philippines.

- (b) Likewise, the compensation and all other emoluments and benefits of the officials and members of the Board of TRANSCO and PSALM shall be subject to the approval of the President of the Philippines.

RULE 33. SEPARATION BENEFITS

Section 1. General Statement on Coverage.

This Rule shall apply to all employees in the National Government service as of 26 June 2001 regardless of position, designation or status, who are displaced or separated from the service as a result of the Restructuring of the electricity industry and Privatization of NPC assets: *Provided, however,* That the coverage for casual or contractual employees shall be limited to those whose appointments were approved or attested by the Civil Service Commission (CSC).

Section 2. Scope of Application .

This Rule shall apply to affected personnel of DOE, ERB, NEA and NPC.

Section 3. Separation and Other Benefits.

- (a) The separation benefit shall consist of either a separation pay and other benefits granted in accordance with existing laws, rules and regulations or a separation plan equivalent to one and one half (1-½) months' salary for every year of service in the government, whichever is higher: *Provided,* That the separated or displaced employee has rendered at least one (1) year of service at the time of effectivity of the Act.
- (b) The following shall govern the application of Section 3(a) of this Rule:
 - (i) With respect to NPC officials and employees, they shall be considered legally terminated and shall be entitled to the benefits or separation pay provided in Section 3(a) herein when the restructuring plan as approved by the NPC Board shall have been implemented.
 - (ii) With respect to NEA officials and employees, they shall be considered legally terminated and shall be entitled to the benefits or separation pay provided in Section 3(a) herein when a restructuring of NEA is implemented pursuant to a law enacted by Congress or pursuant to Section 5(a)(5) of Presidential Decree No. 269.
 - (iii) With respect to the affected Bureaus of the DOE, their officials and employees shall be considered legally terminated and shall be entitled to the benefits or separation pay provided in Section 3(a) herein when the re-organizational plan shall have been

implemented as a result of the Restructuring of the electric power industry.

- (c) The governing board or authority of the entities enumerated in Section 3(b) hereof shall have the sole prerogative to hire the separated employees as new employees who start their service anew for such positions and for such compensation as may be determined by such board or authority pursuant to its restructuring program. Those who avail of the foregoing privileges shall start their government service anew if absorbed by any government agency or any government-owned successor company.
- (d) In no case shall there be any diminution of benefits under the separation plan until the full implementation of the Restructuring of the electric power industry and the Privatization of NPC assets in accordance with the approved Restructuring and Privatization schedule.
- (e) For this purpose, "Salary," as a rule, refers to the basic pay including the thirteenth (13th) month pay received by an employee pursuant to his appointment, excluding per diems, bonuses, overtime pay, honoraria, allowances and any other emoluments received in addition to the basic pay under existing laws.
- (f) Likewise, "Separation" or "Displacement" refers to the severance of employment of any official or employee, who is neither qualified under existing laws, rules and regulations nor has opted to retire under existing laws, as a result of the Restructuring of the electric power industry or Privatization of NPC assets pursuant to the Act.

Section 4. Funding.

Funds necessary to cover the separation pay under this Rule shall be provided either by the Government Service Insurance System (GSIS) or from the corporate funds of the NEA or the NPC, as the case may be; and in the case of the DOE and the ERB, by the GSIS or from the general fund, as the case may be.

The Buyer or Concessionaire or the successor company shall not be liable for the payment of the separation pay.

Section 5. Preferential Rights of Employees.

Displaced or separated personnel as a result of the Restructuring of the electric power industry and Privatization of NPC assets shall be given preference in the hiring of manpower requirements of the newly-created offices or the privatized companies: *Provided*, That the displaced or separated personnel meet the prescribed qualifications. With respect to employees who are not retained by NPC, the government, through the Department of Labor and Employment (DOLE), shall endeavor to implement re-training, job counseling, and job placement programs.

Section 6. Implementation.

The DOE, NEA, and NPC, shall issue guidelines applicable to their respective employees to implement this Rule within ninety (90) days from effectivity of these Rules: *Provided*, That in the case of ERC, the independent quasi-judicial body created under the Act, the manner of, and timetable for, implementation of its organization shall be governed by Section 38 and Section 39 of the Act.

RULE 34. EDUCATION AND PROTECTION OF END-USERS

Section 1. Guiding Principle.

Consistent with the declared policy that the State shall protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power, and pursuant to Section 76 of the Act, the public shall be educated on the Restructuring of the electric power industry and Privatization of NPC.

Section 2. Consumer Education.

The DOE shall undertake, in coordination with the ERC, NPC, NEA and the Department of Education (DepEd), DTI, Office of the Press Secretary (OPS) – Philippine Information Agency (PIA), the academe, and the non-government organizations and consumer groups or associations, continuing information, education and communication program for consumers. This shall include, but not be limited to, the following:

- (a) Industry Restructuring and NPC Privatization;
- (b) Implementation of Retail Competition and Open Access and their impact on End-users and on the proper use of electric power. It shall include the existence of competitive electricity suppliers, choice of competitive electricity services, regulated transmission and distribution services, systems reliability, aggregation, market, itemized billing, Stranded Cost, uniform disclosure requirements, low income bill payment, energy conservation and safety measures, among other topics; and
- (c) Implementation of these Rules.

Section 3. Consumer Protection.

The ERC shall ensure consumer choice and promote consumer interests. It shall issue the appropriate guidelines and mechanisms to handle the following:

- (a) Speedy resolution of consumer complaints;
- (b) Creation of a permanent consumer complaint desk at ERC and in all electric utilities and other providers of electric power to oversee the promotion of consumer interests; and

- (c) Dissemination of rate-related resolutions, including posting in the ERC website and the publication of all notices of hearings to be conducted by the ERC for the purpose of fixing rates or fees at least twice for two (2) successive weeks in two (2) newspapers of nationwide circulation.

RULE 35. FINES AND PENALTIES

Pursuant to Section 46 of the Act, the following are the fines and penalties:

- (a) The fines and penalties that shall be imposed by the ERC for any violation of or non-compliance with the Act or these Rules shall range from a minimum of Fifty Thousand Pesos (P50,000.00) to a maximum of Fifty Million Pesos (P50,000,000.00).
- (b) Any Person who is found guilty of any of the prohibited acts pursuant to Section 45 of the Act shall suffer the penalty of *prision mayor* and a fine ranging from Ten Thousand Pesos (P10,000.00) to Ten Million Pesos (P10,000,000.00), or both, at the discretion of the court.
- (c) The members of the Board of Directors of the juridical companies participating in or covered in the Generation Companies, the Distribution Utilities, the TRANSCO or its Buyer or Concessionaire or Supplier who violate the provisions of the Act may be fined by an amount not exceeding double the amount of damages caused by the offender or by imprisonment from one (1) year or two (2) years or both at the discretion of the court. This Rule shall apply to the members of the Board who knowingly or by neglect allows the commission or omission under the law.
- (d) If the offender is a government official or employee, he shall, in addition, be dismissed from the government service with prejudice to reinstatement and with perpetual or temporary disqualification from holding any elective or appointive office.
- (e) If the offender is an alien, he may, in addition to the penalties prescribed, be deported without further proceedings after service of sentence.
- (f) Any case which involves question of fact shall be appealable to the Court of Appeals and those which involve question of law shall be directly appealable to the Supreme Court.
- (g) The administrative sanction that may be imposed by the ERC shall be without prejudice to the filing of a criminal action, if warranted.
- (h) To ensure compliance with the Act, the penalty of *prision correccional* or a fine ranging from Five Thousand Pesos (P5,000.00) to Five Million Pesos (P5,000,000.00), or both, at the discretion of the court, shall be imposed on any Person, including, but not limited to, the president, member of the board, chief executive officer or chief operating officer of the corporation, partnership, or any other entity involved, found

guilty of violating or refusing to comply with any provision of the Act or these Rules, other than those provided herein. [Sec. 46 Par. 8]

- (i) Any party to an administrative proceeding may, at any time, make an offer to the ERC, conditionally or otherwise, for a consented decree, voluntary compliance or desistance and other settlement of the case. The offer and any or all of the ultimate facts upon which the offer is based shall be considered for settlement purposes only and shall not be used as evidence against any party for any other purpose and shall not constitute an admission by the party making the offer of any violation of the laws, rules, regulations, orders and resolutions of the ERC, nor as a waiver to file any warranted criminal actions.
- (j) In addition, Congress may, upon recommendation of the DOE and/or ERC, revoke such franchise or privilege granted to the party who violated the provisions of the Act.

PART VI - FINAL PROVISIONS

RULE 36. SEPARABILITY CLAUSE

Should any provision herein be subsequently declared unconstitutional, the same shall not affect the validity or the legality of the other provisions.

RULE 37. EFFECTIVITY

These Rules shall take effect on the fifteenth (15th) day from the date of its publication in the *Official Gazette* or in at least two (2) newspapers of general circulation.

February 27, 2002, Fort Bonifacio, Taguig, Metro Manila

VICENTE S. PÉREZ, JR.
Secretary

**APPROVED BY THE JOINT CONGRESSIONAL POWER COMMISSION
THIS 27th DAY OF FEBRUARY 2002**

(SGD)
SEN. RENATO "COMPAÑERO" L. CAYETANO
Co-Chairman, Senate Panel

(SGD)
REP. ALIPIO CIRILO V. BADELLES
Co-Chairman, House of Representatives

(SGD)
SEN. JOHN H. OSMEÑA
Vice-Chairman

(SGD)
REP. FLORENCIO B. ABAD
Vice-Chairman

SEN. JOKER P. ARROYO
Member

(SGD)
REP. JULIO A. LEDESMA IV
Member

(SGD)
SEN. FRANCIS N. PANGILINAN
Member

(SGD)
REP. RUY ELIAS C. LOPEZ
Member

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SEN. AQUILINO Q. PIMENTEL JR.
Member

(SGD)
REP. AUGUSTO H. BACULIO
Member

SEN. TERESA AQUINO ORETA
Member

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REP. FAYSAH MANIRI-RACMAN DUMARPA
Member

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SEN. SERGIO R. OSMEÑA III
Member

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REP. CONSTANTINO G. JARLAULA
Member