



**PHILIPPINE INDEPENDENT POWER PRODUCERS ASSOCIATION, INC.**

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29 August 2013

**HON. ZENAIDA G. CRUZ-DUCUT**

Chairperson

Energy Regulatory Commission (ERC)

Pacific Center Building, San Miguel Avenue,

Ortigas Center, Pasig City

Dear Chairperson Ducut:

We write in relation to the Honorable Commission's request for submission of comments on draft "*Resolution Adopting Policies During the Transitory Period of Open Access and Retail Competition and Amending the Pertinent Provisions of Resolution No. 01, Series of 2011 (A Resolution Adopting the Revised Rules for the Issuance of Licenses to Retail Electricity Suppliers) as a Result Thereof*".

For this purpose, we provide herewith the attached matrix stating our comments and suggestions for the consideration by the Honorable Commission.

Please allow us to summarize our key comments and positions on the proposed amendments:

We believe that the current rules issued by the Honorable Commission for the Retail Competition and Open Access (RCOA) have structurally prepared the participants in the successful implementation of the RCOA. Moreover, given that the implementation of RCOA was launched only very recently, it is too early to make an adequate assessment of the success of its implementation. Sufficient time should be given to allow the market participants, particularly the Generation Companies, retail electricity suppliers ("**RES**") and Contestable Customers, to adjust to the new competitive environment and the existing rules and protocols set for its implementation.

In this light, we find that there is no need at this point to introduce further changes in the existing regulatory framework for RCOA, particularly in the grant of licenses to RES.

We note, however, that the proposed amendments in the Revised Rules for the Issuance of Licenses to Retail Electricity Supplier ("**RES Rules**") drastically change the existing regulatory landscape for RCOA that we believe counter the very spirit of competition. We likewise find that the proposed amendments are not supportive of the goals of EPIRA to promote competition and to empower customers with choice. Limiting the RES to the existing pool of licensed RES will limit the choice of suppliers by the Contestable Customers. Imposing certain limitations on the ability of Generation Companies with existing RES to supply electricity may also result in violation of the contractual obligations already entered into between a RES and its Contestable Customers, as well as between a Generation Company affiliated RES and such Generation Company.

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We thank you for the opportunity of allowing us to provide our inputs to the proposed amendment and likewise express our appreciation to the Honorable Commission's initiatives to continuously revisit and refine its existing rules and regulations to adapt to the developments in the energy industry.

Very truly yours,



**CHRYSOGONUS F. HERRERA**  
Trustee and Vice President-Merchant

**PROPOSED AMENDMENTS TO THE  
REVISED RULES FOR THE ISSUANCE OF LICENSES TO RETAIL ELECTRICITY SUPPLIERS**

**PIPPA MATRIX OF COMMENTS**

Reference/ Provision	Concerned Party/ies	Discussion of Comment(s) and/or Questions for Clarification	Comment/s and Suggestion/s
<p><b>General</b></p>		<p>The enactment of Republic Act No. 9136, or the Electric Power Industry Reform Act of 2001 (“EPIRA”), envisioned a regime of fair and free competition in the country’s power sector with the end in view of achieving a quality, reliable, secure and affordable supply of electricity for the consumers. The law has defined open access as “allowing any qualified person the use of transmission, and/or distribution system, and associated facilities.”<sup>1</sup> This is the key element necessary to introduce competition in the market where electricity end-users, classified as contestable customers, have the power to choose where to source their power requirements.</p> <p>In order to ensure that implementation of retail competition and open access (“RCOA”) will foster competition that will naturally bring about increased efficiencies in the Philippine electric power industry, several rules were promulgated by the Honorable Commission specifically: <i>Revised Rules for the Issuance of Licenses to Retail Electricity Suppliers, as amended; Code of Conduct for Competitive Retail Market Participants; Rules for the Supplier of Last Resort (“SOLR”); Competition Rules and Complaint Procedures; Business Separation Guidelines, as amended; Distribution Services and Open Access Rules (“DSOAR”); Rules on Customer Switching (“RCS”); Rules on Rate Filing by the SOLR; and Rules for Contestability.</i></p>	<p>We believe that the current rules have structurally prepared the participants in the successful implementation of the RCOA. Moreover, given that the implementation of RCOA was launched only very recently, it is too early to make an adequate assessment of the success of its implementation. Sufficient time should be given to allow the market participants, particularly the Generation Companies, retail electricity suppliers (“RES”) and Contestable Customers, to adjust to the new competitive environment and the existing rules and protocols set for its implementation.</p> <p>In this light, we find that there is no need at this point to introduce further changes in the existing regulatory framework for RCOA, particularly in the grant of licenses to RES.</p>

<sup>1</sup>Section 4(II), EPIRA.

<i>Reference/ Provision</i>	<i>Concerned Party/ies</i>	<i>Discussion of Comment(s) and/ or Questions for Clarification</i>	<i>Comment/s and Suggestion/s</i>
			<p>We note, however, that the proposed amendments in the Revised Rules for the Issuance of Licenses to Retail Electricity Supplier (“RES Rules”) drastically change the existing regulatory landscape for RCOA that we believe counter the very spirit of competition as envisioned by the EPIRA. We likewise find that the proposed amendments are not supported or sanctioned by the EPIRA.</p> <p>Limiting the RES to the existing pool of licensed RES will limit the choice of suppliers by the Contestable Customers. Imposing certain limitations on the ability of Generation Companies with existing RES to supply electricity may also result in violation of the contractual obligations already entered into between a RES and its Contestable Customers, as well as between a Generation Company affiliated RES and such Generation Company.</p> <p>The comments and suggested revisions</p>

*N*

<i>Reference/ Provision</i>	<i>Concerned Party/ies</i>	<i>Discussion of Comment(s) and/ or Questions for Clarification</i>	<i>Comment/s and Suggestion/s</i>
			<p>discussed below are aimed at ensuring that the implementation of RCOA is in keeping with the EPIRA, and the rules promulgated pursuant thereto. Our objective is to help achieve an electricity market that is governed by market forces, with the end in view of attaining the level of true competition in the power sector as envisioned by the EPIRA.</p> <p>The foregoing issues will be discussed extensively in the succeeding sections.</p>

Reference/ Provision	Concerned Party/ies	Discussion of Comment(s) and/ or Questions for Clarification	Comment/s and Suggestion/s
<p><b>Article I. General Provisions</b></p> <p><b>Section 4. Scope</b></p> <p>xxx</p> <p>Any of the following:</p> <ul style="list-style-type: none"> <li>a. A Generation Company or Affiliate thereof;</li> <li>b. An Affiliate of a DU with respect to the Contestable Customers within or outside its franchise area;</li> <li>c. An Independent Power Producer (IPPA) Administrator;</li> </ul>		<ul style="list-style-type: none"> <li>• The original language of the second paragraph of Section 4, Article I reads as follows:</li> </ul> <p>“Article I. GENERAL PROVISIONS Section 4. Scope</p> <p>xxx</p> <p>Any of the following <b><u>may obtain a license to become a RES:</u></b></p> <p>Xxx”</p> <p>The ERC shall issue a separate set of Rules for Retail Aggregation prior to the implementation of the second phase of open access and retail competition.</p> <p>Xxx”</p>	<ul style="list-style-type: none"> <li>• For clarity, we propose reinserting the phrase “may obtain a license to become a RES,” unless the intent is otherwise.</li> <li>• We also suggest the retention of the provision regarding Retail Aggregation.</li> </ul>

Reference/ Provision	Concerned Party/ies	Discussion of Comment(s) and/ or Questions for Clarification	Comment/s and Suggestion/s
<p>d. Any other Person, intending to engage in the selling, brokering or marketing of electricity to the Contestable Market, consistent with the Act and its implementing Rules and Regulation (sic).</p>			
<p><b>Article I. GENERAL PROVISIONS</b></p> <p>“However, during the transition period or until such time as the ERC shall deem appropriate considering market conditions:</p> <p>xxx</p>		<ul style="list-style-type: none"> <li>With respect to the this paragraph, please confirm if the term “transition period” refers to the “period covering the first six-months from Open Access Date of December 26, 2012 up to June 25, 2013” as defined in the “Transitory Rules for the Initial Implementation of Open Access and Retail Competition” (“<b>Transitory Rules</b>”)</li> </ul> <p>If the term “transition period” is as defined in the Transitory Rules, the period referred to has already lapsed. The rule provided for in respect of such period has thus become moot and academic.</p>	<ul style="list-style-type: none"> <li>We suggest deletion of the paragraph.</li> </ul>

Reference/ Provision	Concerned Party/ies	Discussion of Comment(s) and/ or Questions for Clarification	Comment/s and Suggestion/s
		<ul style="list-style-type: none"> <li>On the other hand, the phrase “or until such time as the ERC shall deem appropriate considering market conditions” offers no sufficient guidance in determining the period of application of the rules provided for in the third paragraph of Section 4, Article I.</li> <li>Given the high cost of investment and the amount of time involved to develop a power plant, it is crucial for Generation Companies to be fully apprised of the parameters governing the effectivity and applicability of any regulation.</li> </ul>	
<p><b>Article I. General Provisions</b>  <b>Section 4. Scope</b></p> <p>a. No Generator Company may be issued a RES license</p>		<p>We note that the non-issuance of RES licenses to Generation Companies (or Affiliates, as the case may be) during the transition period effectively limits the choice of supplier of Contestable Customers to the existing pool of licensed RES. Such policy stifles competition, contrary to the intention of the EPIRA.</p> <p>More importantly, the EPIRA does not limit the entities that may engage in the retail supply of electricity to end-users during any transition period prior to open access, or any other period for that matter. Notably, the RES Rules were specifically promulgated pursuant to Sections 29 and 31 of the EPIRA.</p> <p>Section 29, however only provides that “the ERC shall promulgate rules and regulations prescribing the <i>qualifications of electricity suppliers which shall include, among other requirements, a demonstration of their technical capability, financial capability, and creditworthiness, Provided,</i></p>	<p>We respectfully suggest that this provision of Section 4, Article I of the proposed amendments be deleted.</p>



Reference/ Provision	Concerned Party/ies	Discussion of Comment(s) and/ or Questions for Clarification	Comment/s and Suggestion/s
		<p>That the ERC shall have authority to require electricity suppliers to furnish a bond or other evidence of the ability of a supplier to withstand market disturbances or other events that may increase the cost of providing service.”<sup>2</sup></p> <p>It does not qualify which entities may apply for a RES license during any given period. Similarly, Section 31 focuses primarily on which end-users may form part of the contestable market. With respect to the suppliers of electricity, Section 31 only provides that aggregators shall be allowed to supply electricity to end-users whose aggregate demand within a contiguous area is at least 750kW, and that in the case of electric cooperatives, RCOA shall be implemented not earlier than five (5) years upon the effectivity of the EPIRA.</p> <p>Based on the foregoing, there appears to be no basis to limit the entities who may apply for and may be granted a RES license during the period provided in the proposed rule, and to particularly single out Generation Companies and Distribution Utilities and their affiliates as the entities which may not be issued a RES license during such period.</p> <p>On the contrary, the proposed rules have the effect of constricting or limiting the persons who may apply for and be granted an RES license and may be counterproductive from the point of view of promoting competition.</p>	

<sup>2</sup>Section 29, EPIRA.

<i>Reference/ Provision</i>	<i>Concerned Party/ies</i>	<i>Discussion of Comment(s) and/ or Questions for Clarification</i>	<i>Comment/s and Suggestion/s</i>
		<p>The proposed amendment likewise does not allow a new generator which is more efficient to offer a more competitive rate to Contestable Customers, as it is barred from doing so because it cannot secure a RES license.</p> <p>In addition, given the ultimate objective of the EPIRA to achieve full contestability down to the residential end-users, Generation Companies should be able to sell directly to the Contestable Customers, which is only possible if they are allowed to be issued a RES license. Excluding Generation Companies from the entities, which may be granted a RES license, will limit their market to the wholesale market which is largely composed of the DUs (and which, in turn will also eventually lose their captive market).</p> <p>Moreover, by virtue of the proposed rule, any transaction between a Generation Company and a Contestable Customer will necessarily have to be coursed through RES as middleman. This will increase the cost to the end-users in light of the additional taxes, overhead expenses and margins. This will also provide the RES with market power advantage over the Generation Companies since the latter will have limited options in selling their capacity.</p>	
<b>Article I. General Provisions</b> <b>Section 4. Scope</b>		<p>Generation Companies and their Affiliates with RES Licenses have existing contracts entered into with Contestable Customers. Limiting the allowable capacity which the RES are allowed to purchase from Generation Company affiliates will constrain the parties to reduce the</p>	<p>We respectfully suggest that this section be deleted to maintain the status quo.</p>

Reference/ Provision	Concerned Party/ies	Discussion of Comment(s) and/ or Questions for Clarification	Comment/s and Suggestion/s
<p>b. Generator Companies with existing RES Licenses shall be subject to limitations under Section 5, Article II hereof</p> <p>in relation to Section (f) of Article II</p> <p>“f. Any or all of business conglomerate’s RES entities may only purchase up to 50% of its generation company affiliates’ total capacity.”</p>		<p>contract energy with their Contestable Customers, which was outside of their contemplation prior to the proposed amendments to the RES Rules.</p> <p>Such provision may therefore have the effect of impairing an existing contract between an RES and its Contestable Customer, as well as between a Generation Company and its affiliate RES. It is well to note that the Constitution prohibits the passage of any law that impairs the obligation of contracts.<sup>3</sup> There is impairment if a subsequent law changes the terms of a contract between the parties, imposes new conditions, or dispenses with those agreed upon.<sup>4</sup> It is well established that the exercise of police power is not always sufficient to justify the impairment of the obligation of contracts.<sup>5</sup></p> <p>Moreover, it is the declared policy of the EPIRA to “ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve greater</p>	

<sup>3</sup>Section 10, Article III, 1987 Constitution.

<sup>4</sup> See *Goldenway Merchandising Corporation v. Equitable PCI Bank*, G.R. No. 195540, 13 March 2013.

<sup>5</sup>*Alalayan, et al v. National Power Corporation and Administrator of Economic Coordination*, G.R. No. L-24396, 29 July 1968. As held by the Supreme Court:

“This is not to say that in each and every case the invocation of the protection of the non-impairment clause would be unavailing once the legislation complained of is shown to be an exercise of the police power. Otherwise, that would render nugatory the constitutional guarantee of non-impairment, and for that matter both the equal protection and due process clauses which equally serve to protect property rights. Here, as in other cases where governmental authority may trench upon property rights, the process of balancing, adjustment or harmonization is called for.

Reference/ Provision	Concerned Party/ies	Discussion of Comment(s) and/ or Questions for Clarification	Comment/s and Suggestion/s
		<p>operational and economic efficiency and enhance the competitiveness of Philippine products in the global market;”<sup>6</sup></p> <p>The proposed language limits (i) customer choice, on the part of a Contestable Customer affiliated with a RES; (ii) the market of an RES; and (iii) sources of RES’ power supply which is counter to free and fair competition.</p>	
<p><b>Article II. Qualifications, Criteria and Limitations of a Retail Electricity Supplier</b></p> <p><b>Section 5. Ownership Limitation and Restrictions</b></p> <p>d. The capacity controlled by any or all of a business conglomerate’s RES entities shall be included in the limitation on the total capacity controlled</p>		<p>It appears that the proposed rule is based on Section 45(a) of the EPIRA which reads as follows:</p> <p>“(a) No company or related group can own, operate or control more than thirty percent (30%) of the <b><u>installed generating capacity</u></b> of a grid and/or twenty-five percent (25%) of the national <b><u>installed generating capacity</u></b>. "Related group" includes a person's business interests, including its subsidiaries, affiliates, directors or officers or any of their relatives by consanguinity or affinity, legitimate or common law, within the fourth civil degree” (Emphasis supplied.)</p> <p>Section 45(a) sets the <b>Market Share</b> Limitation on the installed capacity of a grid. Thus, it prevents a person, company, related group or Independent Power Producer Administrator (IPPA), singly or in</p>	<p>We suggest deletion of paragraph (d) as the same is already provided for in Section 45(a) of the EPIRA. In the alternative, we suggest that paragraph (d) be revised to read as follows:</p> <p><u>“d. The market share limitation provided for in Section 45(a) of the Act shall be observed.”</u></p>

<sup>6</sup>Section 2(c), EPIRA

Reference/ Provision	Concerned Party/ies	Discussion of Comment(s) and/ or Questions for Clarification	Comment/s and Suggestion/s
<p>by its Generator Companies. Such capacity shall be limited to 30% of the total grid capacity and 25% on the national capacity level.</p>		<p>combination, to own, operate or control more than 30% of the installed capacity of a grid, or 25% of the national installed generating capacity.<sup>7</sup> The limitation is imposed to prevent abuse of market power and promote free and fair competition in the generation and supply sectors in the power industry.</p> <p>With all due respect, we believe that the proposed rule, as drafted, fails to take into consideration the fact that a RES <u>does not generate its own capacity</u>. Thus, including the capacity controlled by a RES in the calculation of the market share limitation of an affiliate Generation Company goes beyond the intent of Section 45(a) of the EPIRA. This is all the more true when a RES sources its supply from a third party.</p> <p>The proposed rule leads to two (2) inexplicable situations, to wit: (1) where the same capacity generated by a Generation Company and purchased by an affiliate RES for supply to the contestable market is counted twice in calculating the capacity controlled by a business conglomerate; and (2) where the capacity generated by a third party/non-affiliate and purchased by the affiliate RES of another business group will be included in the calculation of the total capacity controlled by the latter.</p> <p>If applied, the proposed rule may cause Generation Companies with RES affiliates to be in breach of the Market Share Limitation when no new</p>	

<sup>7</sup>Section 1(b)(2), Article II, Guidelines for the Issuance of Certificate of Compliance for Generation Companies/Facilities.

<i>Reference/ Provision</i>	<i>Concerned Party/ies</i>	<i>Discussion of Comment(s) and/ or Questions for Clarification</i>	<i>Comment/s and Suggestion/s</i>
		<p>capacity was in fact injected into the grid by the Generation Company or its RES affiliates. This will unnecessarily restrict the total capacity which a RES may contract with not only with its affiliate generators but also from non-affiliate generators, as all capacity contracted will then be included in the limitation on the total capacity controlled by its affiliate generation company. Such generator affiliated RES will likewise encounter issues including the availability of supply, price differential from the new supplier, among others.</p> <p>Section 4 of Resolution No. 26, series of 2005 clearly establishes the criteria for the determination of installed generating capacities and the crediting thereof and there is no imperative need to amend or further clarify the same.</p>	

Reference/ Provision	Concerned Party/ies	Discussion of Comment(s) and/ or Questions for Clarification	Comment/s and Suggestion/s
<p><b>Article II. Qualifications, Criteria and Limitations of a Retail Electricity Supplier</b></p> <p><b>Section 5. Ownership Limitation and Restrictions</b></p> <p>e. A RES may only sell up to 50% of its total capacity to all of its end-user affiliates.</p> <p>f. Any or all Business conglomerate's RES entities may only purchase up to 50% of its generation company affiliates' total capacity</p>		<ul style="list-style-type: none"> <li>• We believe that the proposed rule constrains the right and ability of the end-users to select their supplier, as well as the suppliers' right and ability to select their customers, contrary to the intent of the EPIRA.</li> </ul> <p>As earlier stated, it is the declared policy of the EPIRA 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;"<sup>8</sup></p> <p>The proposed language limits (i) customer choice, on the part of a Contestable Customer affiliated with a RES; (ii) the market of a RES; and (iii) sources of RES' power supply which is counter to free and fair competition.</p> <ul style="list-style-type: none"> <li>• By virtue of the imposed limitation, a Generation Company will effectively be able to sell only 25% of its total capacity to an end-user affiliate. Thus, there is a resulting disincentive to Generation Companies seeking to expand or build new power plants, which may not have been contemplated by the proposed rules. This conclusion is apparent from the following: <ul style="list-style-type: none"> <li>○ Pursuant to sub-paragraph (f), a RES may only purchase up</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• We suggest the deletion of sub-paragraphs (e) and (f) of the proposed amendments.</li> <li>• In the event the proposed amendments are retained, the limitations imposed therein should be applied prospectively and should not affect contracts that were already signed, or should not apply to Generation Companies which have already been granted with RES licenses.</li> </ul>

<sup>8</sup>Section 2(c), EPIRA

Reference/ Provision	Concerned Party/ies	Discussion of Comment(s) and/ or Questions for Clarification	Comment/s and Suggestion/s
		<p>to 50% of its Generation Company affiliate's total capacity. Sub-paragraph (e), on the other hand, provides that such RES may only sell up to 50% of its total capacity to end-user affiliates. It follows that only 25% of the affiliate Generation Company's total capacity (i.e. 50% of 50%) may be sold to the end-user affiliate.</p> <ul style="list-style-type: none"> <li>○ To illustrate, if a Generation Company has a capacity of 100MW, then its affiliate RES may only purchase 50MW of such capacity pursuant to sub-paragraph (f). By virtue of paragraph (e), it can only sell 25MW out of the 50MW to its end-user affiliate. Out of the 100MW capacity then of the Generation Company's total capacity, only 25MW may be sold to the end-user affiliate.</li> <li>● Sub- paragraph (f) also has the following implications: <ul style="list-style-type: none"> <li>(a) The ability of Generation Companies to sell their capacity directly to the competitive market is effectively limited, resulting in increased cost to the Contestable Customer (as they necessarily have to go through a RES, which is another layer in the transaction);</li> <li>(b) Non-affiliate RES are given market power since the Generation Companies are forced to sell a major portion of their capacity to such RES; corollarily, there is an increased risk for Generation Companies which may not be able to ascertain the creditworthiness of non-affiliate RES;</li> <li>(c) End-users who intend to put up generation facilities for their</li> </ul> </li> </ul>	



Reference/ Provision	Concerned Party/ies	Discussion of Comment(s) and/ or Questions for Clarification	Comment/s and Suggestion/s
		<p>own use are discouraged from doing so as they are prohibited from acquiring the entire capacity generated by such facilities.</p> <ul style="list-style-type: none"> <li data-bbox="829 532 1771 678">• We also wish to be clarified as to the administrative enforcement of the limitations in Section 5, as revised. We wish to know how energy contracts will be accounted for and how Contestable Customers affiliated to multiple RES will be treated.</li> <li data-bbox="829 727 1771 1382">• The application of sub-paragraph (f) in relation to sub-paragraph (d) likewise leads to inexplicable scenarios. In the same example, if a Generation Company has a capacity of 100MW, then its affiliate RES may only purchase 50% of such capacity, or 50MW, pursuant to sub-paragraph (f). If such RES requires a total capacity of say, 110 MW, then it will have to source the remaining capacity of 60 MW from a third party supplier. Sub-paragraph (d) however, provides that the capacity controlled by the RES affiliate shall be counted or included in calculating the total capacity controlled by its affiliate Generator Company. Applying such rule, the total capacity controlled by the Generation Company affiliate is 210MW (i.e. 100MW of its generation plant + 50MW capacity controlled by its RES affiliate but supplied by such Generation Company + 60MW capacity controlled by its RES affiliate and sourced from a third party). It thus becomes difficult to ascertain the capacity equivalent to “50% of its generation company affiliates’ total capacity” as provided in sub-paragraph (f) (i.e. whether it is 50% of 100 MW or 50% of 210MW).</li> </ul>	

Reference/ Provision	Concerned Party/ies	Discussion of Comment(s) and/ or Questions for Clarification	Comment/s and Suggestion/s
		<ul style="list-style-type: none"> <li>Please also refer to our comments in Section 5(d), Article II.</li> </ul>	
<p><b>Article III. Requirements and Procedures</b></p> <p><b>Section 2. Basic Requirements for RES License Application</b></p> <p>xxx</p> <p>g. Projected Five-year Financial Statements and a Five-Year Business Plan detailing the applicant's target customers, capacity and energy allocations, and value-added services (outline to be provided by ERC).</p>		<ul style="list-style-type: none"> <li>We note that it may be too early to develop a five-year business plan given that the RCOA has only been in effect for a month. Considering also that the retail supply of electricity is a competitive market, it is unwise for the market players to release to the public their business plan detailing their target customers and value added services.</li> <li>In any event, we would like to be clarified as to what constitutes "value added services" to ensure proper compliance with the requirement.</li> </ul>	<p>We suggest deletion of the phrase "and a Five-Year Business Plan detailing the applicant's target customers, capacity and energy allocations, and value-added services (outline to be provided by ERC)."</p> <p>In the event, however, that the requirement is retained, we suggest that the Honorable Commission include in the outline the classifications or categories of services, or examples of services that may be considered as value added services.</p>
<p><b>Article VI. Reportorial Requirements</b></p>		<p>The EPIRA declared in unequivocal terms that generation of electric power "shall be competitive and open."<sup>9</sup> Thus, it introduced the</p>	<p>We suggest revising Section 3(a) to read as follows:</p>

<sup>9</sup> Section 6, Republic Act No. 9136

Reference/ Provision	Concerned Party/ies	Discussion of Comment(s) and/ or Questions for Clarification	Comment/s and Suggestion/s
<p><b>Section 3. Monitoring.</b></p> <p><b>a. Retail Supply Contract.</b> All existing retail supply contracts and those that are currently being transacted shall be reviewed by the ERC to ascertain that they are on arms-length basis and do not violate market control or anti-competitive rules</p>		<p>concept of an electricity spot market governed by market forces, and directed the adoption of rules that “reflect accepted economic principles” and which “provide an open and competitive market for all participants”.<sup>10</sup> Explaining this policy, this Honorable Commission ruled –</p> <p>“xxx Hence, as far as the generation sector, there is to be a <b>transition from regulation to competition, where prices are set by market forces and not by the regulator.</b> This transition calls for the setting up and operation of the WESM and in this regard, the EPIRA, by granting it the power and responsibility to approve the price determination methodology (PDM) in the WESM rules, <b>empowers the Commission, instead of it regulating the rates, to authorize the generators to charge market-based rates</b> in accordance with such PDM. <b>As provided for in Section 6 of the EPIRA, this transition culminates upon implementation of retail competition and open access during which, except as otherwise provided in the EPIRA, the prices charged by a generation company for the supply of electricity shall not be subject to regulation’.</b></p>	<p>“a. <b>Retail Supply Contract.</b> All existing retail supply contracts and those that are currently being transacted shall be <b>submitted to reviewed by the ERC for monitoring purposes to ascertain that they are on arms-length basis and do not violate market control or anti-competitive rules.</b>”</p>

<sup>10</sup> Section 5(a), Implementing Rules of Regulations of Republic Act No. 9136

Reference/ Provision	Concerned Party/ies	Discussion of Comment(s) and/ or Questions for Clarification	Comment/s and Suggestion/s
		<p><b><u>“The economic theory is that where there is competition, where neither buyer nor seller has significant market power, the prices that will come out of the operation of the market is close to marginal cost, such that the seller makes only a normal or ‘fair’ return on its investment. It is thus rational to assume that the prices in a competitive market are reasonable, which makes it unnecessary to regulate the prices to protect the consumers against unjust and unreasonable rates and charges.”<sup>11</sup>(Emphasis supplied)</u></b></p> <p>Consistent with the foregoing, Section 6 of the EPIRA explicitly provides that “[u]pon implementation of retail competition and open access, the prices charged by a generation company for the supply of electricity <b>shall not be subject to regulation by the ERC</b> except as otherwise provided in [the EPIRA].”</p> <p>In the same manner, a RES should not be required to submit the generation rate it charges a Contestable Customer as this is merely passed on by the RES to the Contestable Customer.</p> <p>With all due respect, we believe that the submission of RSCs to the ERC</p>	

<sup>11</sup> Decision, In the Matter of the Application for the Approval of the Administered Price Determination Methodology for the Philippine Wholesale Electricity Spot Market (WESM), ERC Case No. 2005-056 RC dated 22 June 2006

Reference/ Provision	Concerned Party/ies	Discussion of Comment(s) and/ or Questions for Clarification	Comment/s and Suggestion/s
		<p>for review runs counter to the very essence of retail competition and open access where market prices are governed by the law of supply and demand, free from government regulation.</p> <p>We recognize the ERC's mandate to "[m]onitor and take measures in accordance with [the EPIRA] to penalize abuse of market power, cartelization, and anti-competitive or discriminatory behavior by any electric power industry participant."<sup>12</sup> We believe, however, that the current regulations are sufficient to ensure that there is no violation of market control or anti competitive rules.</p> <p>In particular, the Business Separation Guidelines requires electric power industry participants to structurally unbundle their business activities into generation, transmission, distribution and supply, and submit to the ERC for approval, their Business Separation and Unbundling Plan and Accounting and Cost Allocation Manual.</p> <p>Moreover, Section 12, Article VII of Resolution No.01 series of 2011 (A Resolution Adopting the Revised Rules for the Issuance of Licenses to Retail Electricity Suppliers (RES)<sup>13</sup> and Section 4 (f), Rule 8 of the EPIRA</p>	

<sup>12</sup>Section 43(k), EPIRA.

<sup>13</sup> The provision states: "An RES and/or Local RES shall comply with the provisions of the Act and its Implementing Rules and Regulations, the applicable provisions of the Philippine Distribution Code, the Distribution Services and Open Access Rules (DSOAR), As Amended, the Code of Conduct for Competitive Retail Market Participants, and all applicable rules and regulations prescribed by the ERC, including the reportorial requirements prescribed in these Rules.

<i>Reference/ Provision</i>	<i>Concerned Party/ies</i>	<i>Discussion of Comment(s) and/ or Questions for Clarification</i>	<i>Comment/s and Suggestion/s</i>
		IRR <sup>14</sup> provide sufficient regulatory mechanism to the ERC to ensure compliance by RES with anti competitive rules.	

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<sup>14</sup> 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.