

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



**IN THE MATTER OF THE ADOPTION
OF THE RULES FOR CONTESTABILITY**

ERC CASE NO. 2007-004 RM

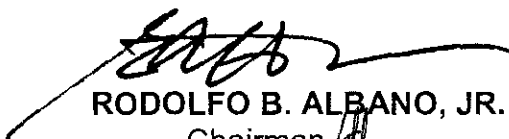
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NOTICE

Notice is hereby given that the revised draft of the “**Rules for Contestability**” is posted on this website for another round of comments. All interested parties may submit their comments (both hard and soft copies) on the proposed Rules on or before November 21, 2007. Hard copies may be delivered at the ERC Main Office c/o Debora Anastacia T. Layugan of the Market Operations Service (MOS) or through fax number (02) 633-3253, and soft copies may be sent to **contestable@erc.gov.ph** or **aamendoza@erc.gov.ph**. Said Rules may be downloaded from the ERC Website at **www.erc.gov.ph**. or may be photocopied, at cost, during regular office hours at the ERC Main Office.

Pasig City, November 5, 2007.


RODOLFO B. ALBANO, JR.
Chairman

5 Nov. 2007

Republic of the Philippines
ENERGY REGULATORY COMMISSION
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RULES FOR CONTESTABILITY

ERC CASE NO. 2007-004 RM

Pursuant to Section 43 of Republic Act No. 9136, its Implementing Rules and Regulations (IRR), the Energy Regulatory Commission (ERC) hereby promulgates the following Rules for Contestability.

**ARTICLE I
GENERAL PROVISIONS**

Section 1. Objective

These rules shall clarify and establish the conditions and eligibility requirements for End-users to be part of the Contestable Market.

Section 2. Scope

These Rules shall apply to:

1. End-users in the Contestable Market;
2. Retail Electricity Suppliers (RES');
3. Local Retail Electricity Suppliers (Local RES');
4. Distribution Utilities (DUs); for purposes of these Rules, DUs include entities authorized to supply electricity within their respective economic zones;
5. Supplier of Last Resort (SOLR); and
6. All other relevant industry participants.

Section 3. Definition of Terms

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

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

Captive Market The 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.

Central Registration Body (CRB)	<p>The entity designated by the ERC to develop and manage the B2B system which facilitates Customer Switching and keeps track of the movement of End-users in the Contestable Market.</p> <p>The ERC, through Resolution No. 15, Series of 2006, designated the Philippine Electricity Market Corporation (PEMC) as the Central Registration Body.</p>
Contestable Market	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.
Contiguous Area	Refers to areas which are located within certain 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.
Contestable Customer	An electricity End-user that belongs to the Contestable Market. An aggregate of Contestable Customers organized under the second phase of retail competition and open access shall be considered as a single Contestable Customer, unless otherwise provided by the ERC.
Distribution Utility (DU)	Any electric cooperative, 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.
Electric Power Industry Participant	Any person or entity engaged in the generation, transmission, distribution or supply of electricity.
End-user	Refers to any person or entity requiring the supply and delivery of electricity for its own use.
Energy Regulatory Commission (ERC)	The independent and quasi-judicial regulatory agency created under Section 38 of the Act.
Last Resort Supply Event	An event where a Contestable Customer ceases to receive service from its RES or Local RES, or an event where a Contestable Customer fails to choose a RES or Local RES as stated in Article II, Sections 1 and 2 of the Rules for the Supplier of Last Resort.

Local Retail Electricity Supplier (Local RES)	The non-regulated business segment of the DU catering to the Contestable Market only within its franchise area. As such, a license is not required.
Market Operator (MO)	The entity responsible for the operation of the Wholesale Electricity Spot Market.
Open Access	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.
Open Access Date	The commencement date of Open Access and Retail Competition in a grid, as determined by ERC.
Retail Competition	The provision of electricity to End-users in the Contestable Market by Retail Electricity Suppliers through Open Access.
Retail Electricity Supplier (RES)	Any person or entity authorized by the ERC to sell, broker, market or aggregate electricity to End-users in the Contestable Market.
Retail Supply Contract (RSC)	The contract entered into by and between the Contestable Customer and the Retail Electricity Supplier or Local Retail Electricity Supplier.
Rules for Contestability	The set of rules promulgated by ERC that prescribes the conditions and criteria for an End-user to qualify as a Contestable Customer.
Rules for the Supplier of Last Resort	The set of rules promulgated by ERC that provides the policies and procedures for the provision of supply to Contestable Customers in case of a Last Resort Supply Event.
Rules on Customer Switching (RCS)	The set of rules promulgated by ERC which prescribes the standardized business rules for interactions between and among the DU, CRB, RES or Local RES, Market Operator and SOLR relating to the commercial transfer of a Contestable Customer from one competitive electricity supplier to another.
Single Premise	Any of the following shall comprise a Single Premise if owned or occupied by an End-user,

under one business name registered with the utility and used by such End-user for the same business enterprise (not intended for re-selling):

- a) the whole of any single building or structure;
- b) a part of any single building or structure;
- c) two or more adjoining parts of any single building or structure;
- d) the whole of two or more buildings or structures that are on the same lot of land.

Supplier of Last Resort (SOLR)

A regulated entity designated by the ERC to serve End-users in the Contestable Market following a Last Resort Supply Event.

**ARTICLE II
DETERMINATION OF CONTESTABILITY**

Section 1. Full Retail Competition Timeline

With reference to Resolution No. 3 Series of 2007, the Timeline for Full Retail Competition, Retail Competition and Open Access shall be implemented in the following phases:

- 1.1 Retail Competition and Open Access shall initially be implemented in the franchise areas of both the private utilities and electric cooperatives, and the economic zones in the Luzon Grid. The Contestable Market shall consist initially of electricity End-users with a monthly average peak demand of at least one megawatt (1MW) for the twelve-month period immediately preceding the Open Access Date.

The monthly average peak demand for a certain period is computed as the sum of the monthly registered peak demand divided by the number of months for the relevant period. Sources of registered peak include the measurements registered at the utility meters of the relevant DU or TransCo (for End-users directly connected to transmission and sub-transmission facilities) or reports provided by those with self-generating facilities.

- 1.2 The second phase of Retail Competition and Open Access shall occur two (2) years after the first phase. Thus, 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 demand within a Contiguous Area is at least 750 kW.
- 1.3 The ERC shall gradually reduce the threshold level until it reaches the household demand level within a period of seven (7) years. Thus, seven (7) years after the second phase, the Contestable Market shall already cover End-users at the household level.

Section 2. Eligibility Requirements of End-users to be part of the Contestable Market

- 2.1 Upon declaration of the Open Access Date, an End-user that is certified by ERC to be part of the Contestable Market shall choose a RES or Local RES, and is deemed to have switched to its chosen RES or Local RES upon commencement of Retail Competition and Open Access, subject to the Rules issued by the ERC.
- 2.2 An End-user whose demand requirements vary monthly and achieves the threshold level only a number of months within a year, but whose monthly average peak demand for twelve (12) months attains the required threshold level shall be qualified to be part of the Contestable Market.
- 2.3 Once Retail Competition and Open Access has commenced, the eligibility for End-users for the Contestable Market will be as follows:
 - a. An existing End-user in the Captive Market that has increased its demand and registered a historical monthly average peak demand of 1 MW for the past twelve (12) months shall be eligible to be part of the Contestable Market;
 - b. Newly connected End-user whose forecasted monthly peak demand is 3 MW and above shall immediately form part of the Contestable Market; and
 - c. Newly connected End-user whose forecasted monthly average peak demand is 1 MW but below 3 MW need to have a registered historical monthly peak demand of at least 1 MW for three (3) consecutive months before it becomes eligible to be part of the Contestable Market.
- 2.4 The eligibility of an End-user shall be based on the monthly average peak demand of a single utility meter. An End-user maintaining multiple utility meters in a Single Premise has the option to consolidate its demand by requesting the DU to install one main utility meter, which may result in modifications in its connection agreement and Distribution Wheeling Service Agreement with the DU. In this case, the basis for contestability is the consolidated forecasted demand, which shall be based on the historical coincident peak demand of all meters, except that an End-user whose coincident peak demand totaling at least 1 MW is not measurable by all its meters will be treated as newly connected End-user.
- 2.5 An End-user whose actual demand attains the threshold level but partially sources its requirements from the DU where its demand as registered in the utility meter does not reach the threshold level, shall inform the ERC and show proof of its eligibility, subject to ERC approval and certification.
- 2.6 Once an End-user is qualified to be part of the Contestable Market, it shall no longer be allowed to revert to being part of the Captive Market. However, in instances where the Contestable Customer's average peak demand has

decreased to less than 25% of the threshold for the preceding six (6) month period and the same is not attributable to seasonal demand, it may send a written request to the ERC, with a confirmation from the RES or Local RES that the demand level of such Contestable Customer has decreased by such amount. Such Contestable Customer may be reverted to the Captive Market, subject to ERC approval. Upon such approval, the Contestable Customer shall settle its obligations with its RES or Local RES as stated in the Retail Supply Contract (RSC) before it is reverted to the Captive Market.

- 2.7 In the event that the sub-transmission facility in which the End-user is connected has not yet been transferred to the relevant DU and the End-user's demand requirement is below the threshold level, the Commission will decide on a case-by-case basis as to how the End-user will be served.
- 2.8 In the second phase of the Retail Competition, End-users within a Contiguous Area may aggregate their demand to reach the threshold level and become part of the Contestable Market. Procedures for aggregation shall be dealt with in detail by the Rules for Aggregation.

Section 3. Basic conditions for a DU prior to the declaration of Retail Competition and Open Access in its franchise area

- 3.1 An End-user who is qualified on the basis of the threshold level shall nevertheless be prohibited from participating in the Contestable Market where the DU which operates within its franchise area has failed to comply with any of the following conditions:
 - a) The relevant DU must have approved unbundled rates;
 - b) The relevant DU must have implemented its approved Business Separation and Unbundling Plan (BSUP);
 - c) The DU must have initially implemented its inter-class cross subsidy removal scheme; and
 - d) The DU must have complied with the Business-to-Business (B2B) system requirements.

Section 4. Procedures in Informing Eligibility of End-user in the Contestable Market

- 4.1 A DU shall regularly submit to the ERC and CRB on a monthly basis accurate information on Contestable Customers that have accounts with the DU which have satisfied the threshold levels, as provided in Section 1, Article II of these Rules.
- 4.2 The ERC shall regularly monitor the DU's regular submission of the list of qualified Contestable Customers that have accounts with the DU. The DU shall be held responsible for the information submitted to the ERC. Failure to provide such information by the DU shall be considered a violation of these Rules, and shall be subject to appropriate fines and penalties.

- 4.3 The ERC shall issue certifications for the Contestable Customers in the first and second phase of retail competition, based on the data submitted by the DUs, prior to declaration of Retail Competition and Open Access. The certificate shall serve as authority that such End-users are eligible. The certification to be issued by the ERC may be universal, referring to the End-users included in the list with certain exceptions or specific to an individual End-user.
- 4.4 After the issuance by ERC of a certification in Article II Section 4.3, End-users that become eligible according to Article II Section 2 shall request a certification directly from ERC.
- 4.5 Upon issuance of said certification, the concerned DU shall inform in writing, all DU End-users authorized by the ERC of their eligibility to be part of the Contestable Market.
- 4.6 The DUs shall notify the DU End-user of its eligibility or non-eligibility, within ten (10) days after receipt of acknowledgment from ERC with a certification of the relevant End-users to be part of the Contestable Market,
- 4.7 To ensure that the notice is duly received or presumed to be received by the Contestable Customer, the concerned DU shall send written notice to the qualified Contestable Customer via registered mail. The return card provided after the registered mail has been received by the Contestable Customer shall serve as proof that the latter has been properly notified.

Other acceptable means of notification may be made, provided that a record of the appropriate proof of receipt and notification can be provided by the DU. This includes personal delivery, electronic mail or fax.

- 4.8 If a Contestable Customer has not entered into an RSC with a RES or Local RES thirty (30) days prior to the Open Access Date, such Contestable Customer shall be served by the SOLR, otherwise, it shall be physically disconnected by the DU from the system, as provided in the Rules for the SOLR.
- 4.9 Any End-user certified as a Contestable Customer after the Open Access Date shall enter into an RSC with a RES or Local RES within one billing period after being informed of its eligibility. After the billing period has lapsed and the Contestable Customer has not been switched to a RES or Local RES, it shall be served by the Supplier of Last Resort (SOLR), subject to the Rules for the SOLR.
- 4.10 End-users that are eligible to become part of the Contestable Market, but have not been included in the DU's regular submission of list of qualified Contestable Customers, or have not been informed by the DU within its franchise area in writing, shall not be subject to the SOLR Rate. Instead, it shall be charged the existing DU retail rate until such time that the Contestable Customer is properly informed and certified and is switched to a RES or Local RES. The non-complying DU shall submit a written explanation

to ERC on the failure to include the Contestable Customer in its list, or its failure to inform the concerned Contestable Customer.

- 4.11 Retail Supply Contracts shall commence on the first day of the DU's billing period following the certification of an End-user's contestable status.
- 4.12 TransCo shall be responsible for End-users directly connected to transmission and sub-transmission facilities relative to informing them of their eligibility and providing ERC with the relevant information on such End-users.

Section 5. Metering Requirements

- 5.1 End-users in the Contestable Market for the first phase shall have installed time-of-use metering facilities capable of measuring energy use and demand in a fashion consistent with WESM energy settlement intervals, and distribution and transmission demand charge intervals.
- 5.2 Metering facilities shall be completely installed by the concerned DU by the Open Access Date as declared by ERC.
- 5.3 End-users in the Contestable Market and/or its RES shall have the right to own advanced metering equipment and select their own contractor or equipment vendor provided that it meets all ERC requirements and standards.
- 5.4 The entity procuring the meter shall have the option to own the meter, and an agreement for meter ownership shall be entered into between the owner and the DU, as provided by the Distribution Services and Open Access Rules.
- 5.5 A set of guidelines to govern metering requirements and ownership shall be issued by the ERC.
- 5.6 The ERC shall issue a separate policy on metering requirements for the second and succeeding phases of retail competition.

ARTICLE III AMENDMENTS

The ERC shall amend and/or expand the coverage of these Rules from time to time where this may be necessary to meet the needs of the Electric Power Industry Participants and End-users. Before making any significant revisions of these Rules, the ERC will undertake public consultation as appropriate.

**ARTICLE IV
SANCTIONS**

The ERC shall impose the appropriate fines and penalties for any violation or non-compliance with these Rules, pursuant to the “Guidelines to Govern the Imposition of Administrative Sanctions in the Form of Fines and Penalties Pursuant to Section 46 of R.A. 9136”.

**ARTICLE V
SEPARABILITY**

If for any reason, any provision of these Rules is declared unconstitutional or invalid by final judgment of a competent court, the other parts or provisions hereof which were not affected thereby shall continue to be in full force and effect.

**ARTICLE VII
EFFECTIVITY**

These Rules shall take effect on the fifteenth (15th) day following its publication in a newspaper of general circulation in the country.

Pasig City, _____, 2007.

RODOLFO B. ALBANO, JR.
Chairman

RAUF A. TAN
Commissioner

ALEJANDRO Z. BARIN
Commissioner

MA. TERESA A.R. CASTAÑEDA
Commissioner

JOSE C. REYES
Commissioner