

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



RESOLUTION NO. 48, Series of 2006

**RESOLUTION SUMMARIZING THE APPLICABLE LEGAL PRINCIPLES
AND POLICIES OF THE ENERGY REGULATORY COMMISSION
ON END-USER CONNECTIONS**

WHEREAS, Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), mandates the Energy Regulatory Commission (ERC) to regulate the transmission and distribution sectors of the electric power industry;

WHEREAS, Section 43(t) of the EPIRA authorizes the ERC to perform such "regulatory functions as are appropriate and necessary in order to ensure the successful restructuring and modernization of the electric power industry, x x x;"

WHEREAS, in the course of its regulation of the transmission and distribution sectors of the electric power industry, the ERC has adopted certain regulatory policies, consistent with the provisions of the EPIRA and prevailing jurisprudence, on End-user connections to the grid;

WHEREAS, in the light of the issues raised by stakeholders during public consultations on the adoption of regulatory documents for the regulation of the rates of the National Transmission Corporation (TRANSCO) relating to End-user connections and applications filed with the ERC for approval of direct connections to the grid, the ERC has deemed it necessary to clarify and summarize its position and policies on various issues pertaining to End-user connections;

NOW, THEREFORE, the ERC hereby **RESOLVES** to **APPROVE** and **ADOPT**, as it is hereby **APPROVED** and **ADOPTED**, the following Resolution Summarizing the Applicable Legal Principles and Policies of the ERC on End-user Connections:

1.0 Purpose

The Energy Regulatory Commission (ERC) regulates the transmission and distribution sectors. As such regulator, the ERC is fully cognizant of the different functions and responsibilities of the National Transmission

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Corporation (TRANSCO) and the distribution utilities (DUs) under Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA), among them the mandate for TRANSCO and the DUs to provide open and non-discriminatory access to their transmission system, in the case of TRANSCO, and distribution system, in the case of the DUs, to all electricity users. In the performance of this function of TRANSCO and the DUs, disputes arise relating to whether or not an End-user, as the term is defined in the EPIRA, can directly connect to TRANSCO's transmission system, thereby bypassing the distribution system of the DU whose franchise include that area where the End-user is situated. To clarify the issues on grid connections and its position thereon, the ERC has deemed it necessary to issue this resolution on End-user connections.

2.0 Definition

"*Customer*", unless the context of its use indicates otherwise, refers to a person whose User System or equipment is directly connected to the Grid and who purchases or receives, or who is seeking to purchase or receive, Regulated Transmission Services. For the avoidance of doubt, this may include a person who operates a Generation Facility, a DU or an End-user subject to the ERC's decisions. In addition, and notwithstanding the foregoing, a customer includes an Embedded Generator (as that term is defined in the Grid Code) in so far as that Embedded Generator purchases or receives, or is seeking to purchase or receive, the Regulated Transmission Services referred to in paragraphs (e) or (g) of the definition of "Regulated Transmission Services". (Resolution No. 25s and 41, s. 2006)

"*Distribution of Electricity*" refers to the conveyance of electric power by a distribution utility through its distribution system pursuant to the provisions of the EPIRA.

"*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.

"*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.

"*Distribution Utility*" refers to 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 the EPIRA.



"End-user" refers to any Person or entity requiring the supply and delivery of electricity for its own use.

"Franchise Area" refers to a geographical area exclusively assigned or granted to a distribution utility for distribution of electricity.

"Grid" refers to the high voltage backbone system of interconnected transmission lines, substations and related facilities.

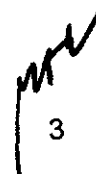
"National Transmission Corporation" or "TRANSCO" refers to the corporation organized pursuant to EPIRA to acquire all the transmission assets of the National Power Corporation (NPC).

"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.

"Subtransmission Assets" refer to facilities classified as Subtransmission Assets based on functional standards established in Article III of the ERC's Guidelines to the Sale and Transfer of the TRANSCO's Subtransmission Assets and the Franchising of Qualified Consortiums, including but not limited to step-down transformers, associated switchyard/substations, 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 and/or TRANSCO assets linking the transmission system and the distribution system, which are neither classified as generation nor transmission. (Guidelines to the Sale and Transfer of the TRANSCO's Subtransmission Assets and the Franchising of Qualified Consortiums)

"Transmission Assets" refer to the grid-wide electrical infrastructure through which electricity flows in large quantities between generators or generating plants consisting of several units or blocks of generators and the many more dispersed load centers. Transmission assets are typically characterized as long distance lines, high capacity switching and transformation stations, high degree of meshing of lines, stations that provide path diversity, and sophisticated protection schemes that ensure security against grid-wide disturbances. (Guidelines to the Sale and Transfer of the TRANSCO's Subtransmission Assets and the Franchising of Qualified Consortiums)

"Transmission of Electricity" refers to the conveyance of electricity through the high voltage backbone system.



3.0 Legal Principles

In formulating this resolution and with the end in view of clarifying the application of the same, the ERC is guided by the various legal provisions in the EPIRA and its Implementing Rules and Regulations (IRR), as well as related jurisprudence.

As stated at the outset, TRANSCO and the DUs are mandated to provide open and non-discriminatory access to their transmission system, in the case of TRANSCO, and distribution system, in the case of the DUs, to all electricity users. In the case of TRANSCO, Section 9 (b) of the EPIRA provides:

SEC. 9. Functions and Responsibilities. – Upon the effectivity of this Act, the TRANSCO shall have the following functions and responsibilities:

x x x x x x

(b) Provide open and non-discriminatory access to its transmission system to all electricity users;

x x x x x x

Similarly, the DUs are given the obligation to provide open and non-discriminatory access to their distribution system to all users, thus:

Sec. 23. Functions of Distribution Utilities. – A distribution utility shall have the obligation to provide distribution services and connections to its system for any end-user within its franchise area consistent with the distribution code. Any entity engaged therein shall provide open and non-discriminatory access to its distribution system to all users.

It is worthy to note that Section 9 (b) afore-cited limits the responsibility of TRANSCO to the giving of access to its transmission system. This is consistent with Section 8 of the EPIRA, which stated the purpose for the creation of TRANSCO, as follows:

Sec. 8. Creation of the National Transmission Company. - There is hereby created a National Transmission Corporation, hereinafter referred to as TRANSCO, which shall assume the electrical transmission function of the National Power Corporation, and have the powers and functions hereinafter granted. The TRANSCO shall assume the authority and responsibility of NPC for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services.

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Within six (6) months from the effectivity of this Act, the transmission and subtransmission facilities of NPC and all other assets related to transmission operations, including the nationwide franchise of NPC for the operation of the transmission system and the grid, shall be transferred to the TRANSCO. The TRANSCO shall be wholly owned by the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.).

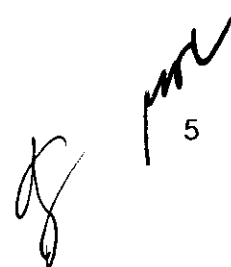
The subtransmission functions and assets shall be segregated from the transmission functions, assets and liabilities for transparency and disposal: *Provided*, That the subtransmission assets shall be operated and maintained by TRANSCO until their disposal to qualified distribution utilities which are 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 Corp.

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 this Act or the start of open access, whichever comes earlier: *Provided*, That in the case of electric cooperatives, 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 electric cooperatives 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.

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 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 asset by the ERC.

The subscription rights of each distribution utility involved shall be proportionate to their load requirements unless otherwise agreed by the parties.



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

The TRANSCO may exercise the power of eminent domain subject to the requirements of the Constitution and existing laws. Except as provided herein, no person, company or entity other than the TRANSCO shall own any transmission facilities.

Prior to the transfer of the transmission functions by NPC to TRANSCO, and before promulgation of the Grid Code, ERC shall ensure that NPC shall provide to all electric power industry participants open and non-discriminatory access to its transmission system. Any violation thereof shall be subject to the fines and penalties imposed herein.

The DUs' obligation to provide open and non-discriminatory access to its distribution system is further clarified in the EPIRA IRR, which provides under Section 4 (a) of Rule 7 that:

Section 4. Obligations of 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 the ERC.

While the nationwide franchise given to TRANSCO is specifically for the operation of the transmission system and the grid, the afore-cited provisions, however, also talk about subtransmission facilities transferred to TRANSCO from NPC by operation of the EPIRA. As stated therein, these subtransmission assets are "to be operated and maintained by TRANSCO 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" and thereupon such "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 the ERC."



As to what are subtransmission assets, the EPIRA and its IRR, particularly Section 4 of Rule 6, grant the ERC the authority to set the standards and other factors to distinguish transmission assets from subtransmission assets taking into account "the objective of allowing non-discriminatory open access to the transmission and subtransmission systems." Section 5(d), Rule 6 of the EPIRA IRR also declares that "... any line at the specific level for each Grid that serves an End-user or customer shall be considered a subtransmission line..."

4.0 End-user Connections

As defined, an End-user is "any Person or entity requiring the supply and delivery of electricity for its own use." Considering the said End-user to be physically located in an area that is covered by both the nationwide franchise of TRANSCO for the operation of the transmission system and the grid and a particular DU's franchise for distribution of electricity and the EPIRA's objective of providing open access to the transmission, subtransmission, and distribution systems to electricity users, it becomes imperative for the ERC to set certain guidelines on End-user connections to these systems and on the proper charging therefor, having in mind the legal principles above.

4.1 Connection to the DUs' Distribution System

It is the DUs' obligation under Section 23 of the EPIRA to provide "distribution service and connections to its system for any end-user within its franchise area." Hence, any End-user intending to connect with and become a customer of the franchised DU may do so, subject to the payment of the ERC-approved charges that such DU may impose on its customers for the provision of the services availed of. These connections are governed primarily by the Distribution Services and Open Access Rules (DSOAR) issued by the ERC under Resolution No. 1, s. 2006.

4.2 Connection to TRANSCO's Subtransmission System

4.2.1 Existing End-users Connected to TRANSCO's Subtransmission System

The ERC is aware that certain large-load End-users have bulk purchase agreements with NPC and are connected to TRANSCO's system, thereby bypassing the franchised DU's distribution system. These arrangements were allowed prior to the passage of the EPIRA when NPC performed both generation and transmission functions upon the concurrence of several



conditions. Tracing the history of these arrangements, the Supreme Court in *NPC v. Caffares*, G.R. No. L-61637, December 3, 1985, stated:

During the pendency of BOE Case No. 80-59 in order to facilitate the approval of applications of BOI-registered enterprises for "direct connection to NPC" even without the prior written agreement of the Boards of electric power cooperatives and private electric utilities holding the franchise in the locational area of the enterprise," the Board of Investments (BOI) and the NPC entered into a Memorandum of Agreement on January 12, 1981. It was provided therein, *inter alia*, "that all BOI-registered enterprises with electrical loads of 2,000 kilowatts and more, at transmission voltage of 69 kilowatts and above, shall, *without restriction* except on the economic and financial viability on the part of NPC, *be directly connected with NPC.*"

x x x x x x

In response to the "evident need to issue policy guidelines regarding direct power connection with NPC, due to the increasing demands of the industrial sector" and to the "apprehension expressed by authorized franchise holders and cooperatives" with respect thereto, the defunct Power Development Council sought to "give operational meaning to the concepts of a franchise and service area coverage ... and to protect the economic growth of the franchise utility and the electric cooperatives, by issuing Resolution No. 77-01-02. It provides, amongst others: "At any given service area, *priority* should be given to the *authorized cooperative or franchise holder* in the right to *supply the power requirement of existing or prospective industrial enterprises (whether BOI-registered or not)* that are located or plan to locate within the franchise area or coop service area as shall be determined by the Board of Power or National Electrification Administration whichever the case may be," etc.

x x x x x x

... Furthermore, we find nothing in the provisions of P.D. No. 395 (amending P.D. No. 380) which expressly or impliedly allowed or sanctioned the sale in bulk by the NPC of energy direct to BOI-registered enterprises even if it would be violative of the rights of existing franchise holders. In *National Power Corp. vs. Jacinto*, this Court had occasion to stress the following:

Presidential Decree No. 380, as amended, PDC
Resolution No. 77-01-02 and NPC's own operational


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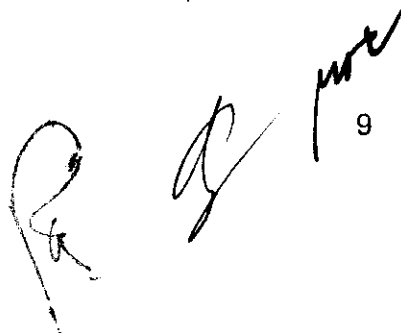
guidelines for the implementation of the BOI-NPC Memorandum of Understanding on direct connection *establish the state policy* that NPC is statutorily empowered to directly service all the requirements of a BOI-registered enterprise *provided that, first any affected private franchise holder is afforded an opportunity to be heard on the application* therefor, and *second, from such a hearing, it is established that said private franchise holder is incapable or unwilling to match the reliability and rates of NPC* for directly serving the latter. But even without the aforementioned statutory or administrative bases, *still said franchise operators' right to due process or priority to be heard on such direct contracts cannot be denied.* Like certificates of public conveyance, legislative or municipal franchises for the operation of a public utility are properties (Raymundo vs. Luneta Motor Co., 58 Phil, 889) and therefore *guaranteed* the due process protection of the Constitution.

Another decision was rendered by this Court recently in *Alger Electric, Inc. vs. Court of Appeals* where we observed that the exclusive nature of a franchise is not favored and exclusivity is given by law with the understanding that the grantee is self-sufficient and capable of supplying the needed service at moderate or reasonable prices.

More recently, in *BATELEC II v. Energy Industry Administration Bureau (EIAB), et al.*, G.R. NO. 135925, 22 December 2004, the Supreme Court reiterated its ruling in *Cañares, supra*, and once again gave its imprimatur to the arrangement:

In *Cañares*, we held that there is nothing in the provisions of Presidential Decree (P.D.) No. 395, amending P.D. No. 380 and further amending Rep. Act No. 6395, entitled "*An Act Revising the Charter of the National Power Corporation*," which expressly or impliedly allowed or sanctioned the sale in bulk by the NPC of energy direct to BOI-registered enterprises, such as respondent PSC, even if it would be violative of the rights of existing franchise holders. We stressed:

Presidential Decree No. 380, as amended, PDC Resolution No. 77-01-02 and NPC's own operational guidelines for the implementation of the BOI-NPC Memorandum of Understanding on direct connection *establish the state policy* that NPC is statutorily empowered to directly service all the requirement of a BOI-registered enterprise *provided that, first, any affected private franchise holder is afforded an opportunity to be heard on the application* therefore,



and second, from such hearing, it is established that said private franchise holder is incapable or unwilling to match the reliability and rates of NPC for directly serving the latter... (Emphasis in the original).

In other words, the Court, in *Cañares*, disposed that the policy of preference to the franchise holder is premised on the condition that such franchise holder must in the first place be capable of supplying adequately the power requirements of the BOI-registered customer and that such capability must first be ascertained through a hearing in due course. In the same vein, this Court, in *National Power Corporation v. Hon. Court of Appeals and Cagayan Electric Power and Light Co., Inc.* resonated that if after a hearing (or an opportunity for such hearing) it is established that the affected franchise holder is incapable or unwilling to match the reliability and rates of NPC, then a direct connection with NPC may be granted.

Addressing these arrangements where End-users source their bulk power requirements direct from the NPC through TRANSCO, the EPIRA IRR declares that the lines to which such End-users are connected shall be considered as subtransmission lines (Section 5(d), Rule 6 of the EPIRA IRR). Consistent with this, the ERC in its Guidelines to the Sale and Transfer of the TRANSCO's Subtransmission Assets and the Franchising of Qualified Consortiums provides in Article III thereof for the following technical and functional criteria to distinguish transmission assets from subtransmission assets:

Section 2. *Technical and Functional Criteria.* – The assets shall be classified based on the technical and functional criteria enumerated in Sections 4 and 6, Rule 6, Part II of the IRR of the Act, including, but not necessarily limited to, the following:

x x x x x x

b) Directly Connected End-users

Radial lines, power transformers, related protection equipment, control systems and other assets held by TRANSCO or its Buyer or concessionaire which directly connect an End-user or group of End-users to a Grid and are exclusively dedicated to the service of that End-user or group of End-users shall be classified as Subtransmission Assets.

By mandate of the EPIRA, an End-user that was allowed connection to these assets [classified to be subtransmission assets under the EPIRA IRR] which were transferred to TRANSCO from NPC, shall continue to be served by TRANSCO, until such time that the subtransmission assets to which such



End-user is connected are sold to the qualified DU or consortium of DUs. After such sale and transfer of ownership of these subtransmission assets from TRANSCO to the qualified DU, the End-user shall be served by the said DU with no "diminution of service and quality" (Sec. 8, EPIRA), subject to the payment by the End-user to the said DU of the "corresponding subtransmission rates or wheeling charge imposed by NPC in accordance with its contract to the End-user as approved by the ERC" (Sec. 4[a], Rule 7, EPIRA IRR).

Hence, in view of the required approval by the ERC of the subtransmission rates or wheeling charge to be imposed on the connected End-user upon the take over by the DU of the subtransmission assets, the DU shall apply with the ERC for approval of such rates or charge to be imposed on the End-user. The ERC shall fix the charge related to the subtransmission assets on the basis of the End-user's contract with NPC/TRANSCO and on such other considerations in order to reflect in the said charges the true cost of the DU for providing such service. In addition to the payment of charges related to subtransmission assets, the End-user shall be liable to pay the other applicable DU charges for services availed from the DU and other non-by-passable charges authorized by law.

4.2.2 New End-user Connections to TRANSCO's Subtransmission System

As afore-stated, pending the sale of its subtransmission assets to the qualified DU or consortium of DUs as mandated in the EPIRA, TRANSCO shall continue to operate and maintain these assets. On the issue of whether or not TRANSCO can connect End-users to the subtransmission system in the meantime, the EPIRA or its IRR is silent. It is argued by some that this should no longer be allowed since TRANSCO then will be performing a distribution function, which it is not allowed under its franchise. It is also argued that this will be in conflict with the EPIRA provisions that limit the distribution of electricity to DUs. In the light of the diverging views on the issue, there is a need to state the ERC's position thereon for the guidance of all.

The ERC maintains the position that the jurisprudence on the matter is still binding and applicable under the EPIRA. While it is recognized that the franchised DU has priority in terms of providing connection and other services to an End-user within its franchise area, there are cases when the franchised DU's distribution system cannot provide the service required by the End-user without entailing huge investments either on the part of the DU or the End-user. At the same time, the same service required by the End-user can be provided by TRANSCO by allowing the connection to its existing subtransmission system.

Recognizing that such cases do arise and consistent with existing jurisprudence, the ERC has resolved a case in favor of allowing End-user



connection on the basis of the conditions recognized in jurisprudence as sufficient to justify such connection. Thus, in *Beverage Packaging Specialists, Inc. (BPSI) v. National Transmission Corporation, et al.*, ERC Case No. 2004-296, the ERC allowed BPSI to "directly source its power supply requirement from the NPC to be delivered through TRANSCO's 69 kV line" (Order dated 5 October 2004, p. 4) with a directive for it to apply as a customer of the franchised DU upon the consummation and approval of the sale of the subtransmission assets of TRANSCO to the said DU.

From the way the ERC treated the issue, it is clear that before an End-user is allowed to connect to TRANSCO's subtransmission system, an application for its approval shall be filed with the ERC. This proceeding ensures that the franchised DU is afforded due process and given the opportunity to prove that it is willing and capable to match the rates and the terms of service being offered by TRANSCO to the End-user. The ERC approval is also with the understanding that the End-user will become the customer of the franchised DU when the latter takes over the subtransmission assets to which it is connected and be liable to said DU for the payment of the appropriate charge related to the subtransmission assets as approved by the ERC, other applicable DU charges for services availed from the DU, and other non-by-passable charges authorized by law.

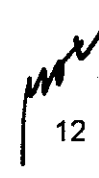
4.3 Connection to TRANSCO's Transmission System

The ERC recognizes that there may be cases where an End-user's requirement cannot be served by the existing distribution system of the franchised DU or TRANSCO's subtransmission system. Consequently, such End-user seeks to receive regulated transmission services by having its User System or equipment directly connected to the grid.

In *Philippine Foremost Milling Corporation v. Panay Electric Company Inc.*, ERC Case No. 2004-327, the ERC reiterated the ruling that:

It is an established principle that the exclusive nature of any public franchise is not favored and that in all grants by the government to private corporations, the interpretation of rights, privileges or franchises is taken against the grantee. (CEPALCO vs. NPC, G.R. No. 72085, December 28, 1989)

It is likewise well settled in several Decisions of the Supreme Court that sale in bulk by NPC of energy direct to industrial enterprises is valid subject to requirements of a hearing (or an opportunity for such a hearing) where it is established that the affected franchise holder is incapable or unwilling to match the reliability and rates of NPC. Put in simple terms, the Supreme Court recognizes the validity of direct connections to the NPC provided that the legitimate



franchise holder(s) (utilities) were not deprived of due process to show that it is willing and able to provide the service requirements of their customers with reasonable rates to accompany the same. (Decision in ERC Case No. 2004-327, p. 11)

In said case, the ERC allowed the construction of the User System to enable Philippine Foremost Milling Corporation to receive transmission service from TRANSCO and connect to TRANSCO's 69 KV lines. The ERC, however, ordered Philippine Foremost Milling Corporation "to maintain the exclusivity of the use of its sub-transmission lines after construction and upon commencement of its use." (Decision in ERC Case No. 2004-327, p. 16)

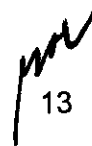
With the foregoing as precedent, the ERC hereby clarifies that an End-user whose requirement may only be served by having it directly connect to the grid can only do so upon prior approval by the ERC. Again, this ensures that the franchised DU is afforded due process and given the opportunity to prove that it is willing and capable to provide the service required by the End-user at comparable rates and terms of service.

As to who provides for the User System or equipment necessary to enable the End-user to directly connect to the grid can be the subject of an agreement between the End-user and TRANSCO, the End-user and the franchised DU, or among the three (3) of them. As in the case of Philippine Foremost Milling Corporation, the End-user was allowed to put up its own User System to enable it to connect to TRANSCO's 69 KV line on condition that such system would be for its exclusive use. Considering the huge investment cost for putting up such User System, subject to whatever arrangement agreed upon between the End-user and TRANSCO, the latter may provide the financial and technical resources for the project, subject to the payment of the consideration therefor by the End-user on such terms as may be agreed upon. The franchised DU may also agree to undertake the construction of assets to connect the End-user to the grid, subject to payment of the appropriate subtransmission and connection charges as approved by the ERC. In addition to the payment of these charges, the End-user shall be liable to pay the other applicable DU charges for services availed from the DU and other non-by-passable charges authorized by law.

5.0 Summary of ERC Policies on End-user Connections

Prescinding from the foregoing, the ERC hereby restates its policies on End-user connections, as follows:

- 5.1 *The End-user that can be served by the franchised DU's distribution system must connect to the said system.*


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- 5.2 The End-user must secure the ERC's approval before it can connect directly to TRANSCO's existing subtransmission assets and bypass the franchised DU's system. In such cases, the End-user must still pay the applicable charges, for services availed from the DU, and other non-by-passable charges authorized by law.
- 5.3 Subject to the ERC's approval also, the End-user may be allowed to connect to the grid through the construction of new subtransmission assets, which can be undertaken by the End-user or the franchised DU, or funded by TRANSCO. Such assets shall ultimately become the property of the franchised DU, if qualified, or, in its absence, of TRANSCO and treated as Contribution in Aid of Construction, until such time that these assets can be transferred to the franchised DU.
- 5.4 If the End-user puts up the assets and lets TRANSCO or the franchised DU operate the same, it shall pay the applicable charges for operating and maintenance expenses. In any case, the End-user shall be liable to pay the applicable charges for services availed from the DU and other non-by-passable charges authorized by law.
- 5.5 If the franchised DU constructs the assets, the End-user shall pay the charge related to such assets and the other applicable charges for services availed from the DU and other non-by-passable charges authorized by law.

This Resolution shall take effect immediately.

Pasig City, 20 September 2006


RODOLFO B. ALBANO, JR.
Chairman


RAUF A. TAN
Commissioner


MARIA TERESA A. R. CASTAÑEDA
Commissioner


ALEJANDRO Z. BARIN
Commissioner


JOSE C. REYES
Commissioner