

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



IN THE MATTER OF THE
PETITION FOR THE ADOPTION
OF THE PROPOSED RULES
GOVERNING THE COLLECTION
FROM CONSUMERS OF THE
COST OF PAYMENT
GUARANTEES FOR POWER
SUPPLY CONTRACTS AND
TRANSMISSION SERVICE
AGREEMENTS ENTERED INTO
BY ELECTRIC COOPERATIVES

ERC CASE NO. 2013-007 RM

PHILIPPINE RURAL ELECTRIC
COOPERATIVES ASSOCIATION,
INC. (PHILRECA),

Petitioner.

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DOCKETED
Date: MAR 12 2014
By: *M*

ORDER

On March 6, 2013, the Philippine Rural Electric Cooperatives Association, Inc. (PHILRECA) filed a petition for the adoption of the proposed "Rules Governing the Collection from the Consumers of the Cost of Payment Guarantees for the Power Supply Contracts and Transmission Service Agreements Entered into by the Electric Cooperatives".

In the said petition, PHILRECA alleged, among others, that:

1. It is the national association of the Electric Cooperatives (ECs) duly organized and existing under Presidential Decree No. 269 (P.D. 269), as amended, with principal office address at 4/F Casman Bldg., 1198 Quezon Avenue, Quezon City.

2. Republic Act No. 9136 (R.A. 9136), otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), liberalized the operation of the generation sector and created a competitive electricity spot market. It mandated the privatization of the generating assets of the National Power Corporation (NPC) and prohibited NPC from entering into new bilateral contracts with the distribution utilities (DUs). As such, the ECs are required to enter into Power Supply Contracts (PSCs) with private generation companies (GenCos) and trade in the Wholesale Electricity Spot Market (WESM) for their electric power requirements.
3. Under the Commission's Resolution No. 21, Series of 2005, the DUs are directed to enter into bilateral power contracts with power suppliers to obtain generation and/or ancillary services. The DUs are, likewise, required to enter into Transmission Service Contracts (TSCs) with the transmission service provider and to provide securities either in the form of cash or bank guarantee which is usually or approximately equivalent to twice their monthly power supply or transmission service bills with the highest total billing within the twelve (12) month period.
4. As of June 2012, there were 103 ECs that have executed PSCs with the GenCos. Under the PSCs, the ECs are required to provide payment guarantees in the form of security deposits ranging from one (1) month to two (2) months of their power purchases.
5. On the other hand, Section 21 of the EPIRA mandates the creation of the WESM while Section 45 (c) thereof requires all DUs to source at least 10% of their total demand from the WESM.
6. To secure the payment of the bills and other financial obligations due and payable to the Market Operator, Section 3.15 of the WESM Rules on Prudential Requirements requires Trading Participants to provide and maintain a security deposit.
7. The purpose of the prudential requirements is to ensure the effective operation of the spot market by providing a level of

comfort that the WESM Members will be able to meet their respective obligations for the payments as required under the WESM Rules.

8. WESM Luzon started its commercial operation in 2006 and WESM Visayas in 2010. Twenty-six (26) and twenty-two (22) on-grid ECs in Luzon and Visayas, respectively, being supervised by NEA are now direct trading members of WESM as required by law. Thirty-five (35) ECs have posted cash bond while thirteen (13) ECs have posted irrevocable Standby Letters of Credit (SLC) as prudential guarantees.
9. The existing tariff of the ECs does not provide for surplus funds by way of or in the form of a return on rate base and depreciation, unlike those of the private DUs. Thus, while the private DUs can exercise certain degree of flexibility by charging the prudential and security deposit requirements against their surplus funds, the ECs are constrained to fund the same from their meager internally generated funds and in certain instances, from loans obtained from the National Electrification Administration (NEA) and other financial institutions.
10. Considering that the prudential requirements imposed under Section 3.15 of the WESM Rules and Section 45(c) of the EPIRA and the security deposit requirements under the PSCs and TSAs and the costs and expenses related therewith are not incorporated in the existing tariff, there is an urgent need to adopt and implement a tariff mechanism to sustain the ECs' operational efficiency and financial viability.
11. Under the Department of Energy (DOE) Circular No. DC 2012-06-0007 dated June 28, 2012, NEA was directed to immediately develop a roll out plan that will assist the ECs in meeting their respective prudential requirements in the WESM. A copy of the said circular is attached and made an integral part of the instant petition as Annex "A".
12. To address the cash flow problems of the ECs arising from the imposition of the security deposit and prudential requirements, the instant petition was filed pursuant to the

Commission's Rules of Practice and Procedure¹, whereby it proposes the adoption of a tariff mechanism to cover the following:

- a. Security deposit requirements/prudential requirements;
- b. Costs and expenses related to the security deposit requirements and prudential requirements such as charges and fees for the issuance of the bank guarantee, irrevocable stand-by letter of credit or surety bond; and
- c. Interest and other charges on loans, the proceeds of which are used as cash bond and/or security deposit or constituted as a security for the issuance of a bank guarantee.

13. The salient features of the proposed Rules are as follows:

- a. **Eligible ECs.** To be eligible to charge for payment guarantees, an EC must be a contracting party to and is required to provide payment guarantee under at least one of the following contracts/agreements:
 1. A Market Participation Agreement with the Philippine Electricity Market Corporation (PEMC) as a direct WESM member;
 2. Commission-approved PSC either as the buyer or as a Participating EC (PEC) in a PSC for the aggregated demand of a group of ECs;
 3. An approved Transmission Service Agreement (TSA) with the transmission company that requires the EC to provide payment guarantee; or

¹ Rule 21, Sections 1 and 2 of the ERC Rules of Practice and Procedure provides:

"Section 1. *Initiation of Rule-making.* – The process of adopting a new rule or amending or repealing an existing rule may be initiated by the Commission or by interested persons upon a petition for the issuance, amendment or repeal of any rule.

Section 2. *Petition to Initiate Rule-making.* – Interested persons may petition the Commission to adopt, amend, or repeal a rule by filing a petition to initiate rule-making.
xxx"

4. All other PSCs which will be entered into by the EC which requiring payment guarantees.

- b. **Base Amount of Prudential Guarantee Charge.** The base amounts that an EC can charge its member-consumers shall be the prudential guarantees computed;

- c. **Funding.** The EC may secure bridge financing from a bank or other financial institutions, or make use of any of its available funds such as Bill Deposits;

- d. **Rate Impact and Billing.** The total amount that may be charged to the EC's consumer in every billing period for the cumulative cost of payment guarantees under the PSC, TSA, and Market Participation Agreement should not exceed twenty centavos per kWh(PhP0.20/kWh).The charge for payment guarantees shall appear as a separate line item in the EC's monthly bill to its member-consumers;

- e. **Cost Chargeable to Consumers.** The prudential guarantee costs that an EC can charge to its consumers shall comprise of the base amountand the interests charged by the lending institution if the base amount is funded by a loan. If the EC avails of its own funds such as Bill Deposits, the interest due as provided in the rules governing such Bill Deposits shall form part of the cost chargeable to the consumers;

- f. **Rate Determination.** The Prudential Guarantee Charge shall be computed as follows:

$$\text{Prudential Guarantee Charge} = \frac{\text{Total Base Amount (TBA)} + \text{Applicable Interests(I)}}{\text{Total Forecasted kWh Sales (TFS)}}$$

Where:

TBA = represents the Total Prudential Guarantee payments required by power suppliers, transmission providers and the WESM as provided under Article III

I = represents the interest charged by the lending institution or the interest due as provided in the rules governing EC available fund such as Bill Deposits

TFS = represents the total forecasted kWh sales during the term of the loan from the lending institution or from the available funds of the EC

- g. **Service Charges and other Related Costs.** The service charges and other related costs to the issuance and maintenance of stand-by letter of credit, other bank guarantees, security bond imposed by the issuing bank and/or financial institution shall be treated as other operating expenses and shall be deducted from whatever interest earned by the prudential guarantee fund;
 - h. **Documentation, Confirmation and Implementation.** Prior to the initial billing of the Prudential Guarantee Charge to the consumers, the EC shall submit supporting documents to the Commission for verification and confirmation and shall start billing its consumers only upon confirmation of the Commission and until it has fully accumulated the required payment guarantees;
 - i. **Accounting Treatment.** All amounts collected from the consumers shall be treated as a liability of the EC to every consumer that contributed to the fund; and
 - j. **Refund to Consumers.** The contributing consumers shall be refunded of their contribution to the prudential guarantee fund upon termination of the consumer's connection service or termination of the generation/supply contracts, as the case may be.
14. The provisions of the proposed draft Rules are valid, just and reasonable.

On June 17, 2013, the Commission issued an Order and a Notice of Public Hearing setting the case for public consultations on various dates.

However, the public consultations set on August 20, 2013 and September 12, 2013 for Regions IV-A, IV-B, V (South Luzon) and Regions IX, XI, XII, ARMM and SURSECO I and II were cancelled due to Typhoon "Maring" and the current peace and order situation in Zamboanga City, respectively.

In view thereof, the public consultations for the said regions are hereby rescheduled on the following dates and venues:

PUBLIC CONSULTATION		
Date & Time	ECs	Venue
April 15, 2014 (Tuesday) at nine-thirty in the morning (9:30 A.M.) to five o'clock in the afternoon (5:00 P.M.)	Regions IV-A, IV-B and V (South Luzon)	ERC Hearing Room, 15 th Floor Pacific Center Bldg., San Miguel Ave. Pasig City
April 22, 2014 (Tuesday) at nine-thirty in the morning (9:30 A.M.) to five o'clock in the afternoon (5:00 P.M.)	Regions IX, XI, XII, and ARMM, SURSECO I and II	ERC Mindanao Field Office, Mintrade Building, Monteverde Avenue corner Sales St., Davao City
April 29, 2014 (Tuesday) at nine-thirty in the morning (9:30 A.M.) to five o'clock in the afternoon (5:00 P.M.)	ALL REGIONS	ERC Hearing Room, 15 th Floor Pacific Center Bldg., San Miguel Ave. Pasig City

The Commission shall cause the posting of the attached Notice of Proposed Rule-Making as well as copies of the instant petition and all its annexes at its official website at www.erc.gov.ph.

All interested parties are hereby directed to submit their comments on the proposed Rules on or before April 7, 2014.

PHILRECA is hereby directed to cause the publication of the attached Notice of Public Consultation, at its own expense, once (1x) in a newspaper of general circulation in the Philippines, with the date of the last publication to be made not later than ten (10) days before the date of the scheduled public consultation. It is also directed to inform all the member-consumers of the ECs by any other means available and appropriate of the filing of the instant petition, its reasons therefore, and of the scheduled hearings thereon.

PHILRECA is directed to furnish all those making requests therefor with copies of the petition and its attachments, subject to reimbursement of reasonable photocopying costs.

On the date of the public consultation, PHILRECA must submit to the Commission its written compliance with the jurisdictional requirements attaching therewith, methodically arranged and duly marked, the evidence on the actual publication of the Notice of the Proposed Rule-Making together with the complete issue of the said newspaper, and such other proofs of compliance with the requirements of the Commission.

SO ORDERED.

Pasig City, March 3, 2014.

FOR AND BY AUTHORITY
OF THE COMMISSION:


ZENAIDA G. CRUZ-DUCUT
Chairperson 4


REM/GLO/MS

Copy furnished:

1. ATTY. DITAS LERIOS-AMBOY
Counsel of Philippine Rural Electric Cooperatives Association, Inc.
(PHILRECA)
4th Floor Casman Bldg., 1198 Quezon Avenue, Quezon City
2. The National Electrification Administration (NEA)
NIA Road, Quezon City
3. All Electric Cooperatives