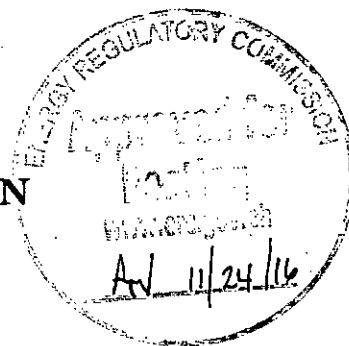


Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Ave., Pasig City



28

RESOLUTION NO. _____, Series of 2016

**REVISED TIMEFRAME
FOR MANDATORY CONTESTABILITY, AMENDING
RESOLUTION NO. 10, SERIES OF 2016 ENTITLED
REVISED RULES FOR CONTESTABILITY**

WHEREAS, Sections 1.1 and 1.2 of the Revised Rules for Contestability provide for mandatory contestability dates, as follows:

"1.1 xxx xxx xxx

*Thereafter, an End-user with an average monthly peak demand of at least 1MW is hereby mandated to enter into a Retail Supply Contract (RSC) with a RES by its mandatory contestability date of **26 December 2016**.*

*Subsequently, an End-user with an average monthly peak demand of at least 750kW is hereby mandated to enter into an RSC with a RES by its mandatory contestability date of **26 June 2017**.*

*The lowering of the threshold to cover an End-user with an average monthly peak demand of at least 500kW is set on **26 June 2018**, subject to the review of the performance of the retail market by the ERC. Corollarily, in its review of the performance of the retail market, the ERC shall establish a set of criteria as basis for the lowering of the contestability threshold.*

1.2 *Retail Aggregation shall subsequently be allowed on **26 June 2018**. During this phase, suppliers of electricity shall be allowed to contract with End-users whose aggregate demand within a Contiguous Area is at least 750kW.” (underscoring supplied)*

WHEREAS, on 27 May 2016, the Manila Electric Company filed with the Branch No. 157 of Regional Trial Court (RTC) of Pasig City, Special Civil Action No. 4149-PSG, a Petition for Declaratory Relief with Application for Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction against the issuances of the **Department of Energy (DOE) and the Energy Regulatory Commission (ERC)**, particularly assailing Sections 2 and 3, Article I of the 2016 Revised Rules Governing the Issuances of Licenses to Retail Electricity Supplier and Prescribing the Requirements and Conditions Therefor; the Revised Rules for Contestability; and, the Resolution Imposing Restrictions on the Operations of Distribution Utilities and Retail Electricity Suppliers in the Competitive Retail Electricity Market;

WHEREAS, on 13 July 2016, a Writ of Preliminary Injunction enjoining the implementation of the issuances of the ERC was granted by Branch 157, RTC of Pasig City;

WHEREAS, the ERC, assailing the jurisdiction of Branch 157, RTC of Pasig City, filed a Petition for Certiorari and Prohibition before the Supreme Court on 5 July 2016 (G.R. No. 225141);

WHEREAS, the DOE, assailing the jurisdiction of Branch 157, RTC of Pasig City, likewise, filed a Petition for Certiorari and Prohibition before the Supreme Court on 27 September 2016 (G.R. No. 226800);

WHEREAS, on 10 October 2016, the Supreme Court acting on the Petition for Certiorari and Prohibition filed by DOE, issued a Temporary Restraining Order (TRO) preventing the Branch 157 of RTC of Pasig City **from continuing with the proceedings in the Special Civil Action No. 4149-PSG and from enforcing all orders, resolutions and decisions rendered in the said case, effective immediately until the petition is finally resolved;**

WHEREAS, the ERC has received communications and inquiries from contestable customers and distribution utilities seeking confirmation of the actual implementation date of mandatory contestability;

WHEREAS, the forthcoming December 2016 deadline may no longer be a feasible timeframe for contestable customers to prudently negotiate and eventually migrate to the competitive retail electricity market;

NOW THEREFORE, pursuant to its mandate to promote competition and protect customer interests under Republic Act No. 9136 (RA 9136) otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), the ERC hereby **RESOLVES** to **AMEND** the timeline set forth in the second paragraph of Section 1.1, Article II of the Revised Rules for Contestability and other Rules affected thereby; *viz*:

1. Section 1.1 of the Revised Rules for Contestability is hereby amended to provide contestable customers time to negotiate their respective retail supply contracts:

1.1 xxx xxx xxx

An End-user with an average monthly peak demand of at least 1MW is hereby mandated to enter into a retail supply contract with a RES by its mandatory contestability date of **26 FEBRUARY 2017**.

xxx xxx xxx

2. All concerned stakeholders shall strictly comply with the reportorial requirements provided under the 2016 Rules Governing the Issuance of Licenses to Retail Electricity Supplier and Prescribing the Requirements and Conditions Therefor and the Revised Rules for Contestability specifically, the monthly and quarterly reports which are due for submission on 15 October 2016, shall instead be due for submission to this Commission within ten (10) days from effectivity of this Resolution;
3. During the period from effectivity of the instant Resolution until mandatory contestability, all concerned stakeholders are enjoined to act in accordance with the ERC-issued Code of Conduct for the Competitive Retail Market Participants and to refrain from


committing behavior or conduct which is anti-competitive in character. Any party found in violation thereof shall be subject to fines and penalties as the ERC may impose.

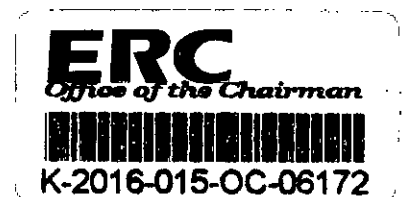
All other provisions in the Revised Rules for Contestability non inconsistent herewith shall remain valid.

Let copies of this Resolution be furnished all parties concerned and the University of the Philippines Law Center – Office of the National Administrative Register (UPLC-ONAR), all the licensed Retail Electricity Suppliers and Distribution Utilities in Luzon and Visayas.

This Resolution shall take effect immediately following its publication in a newspaper of general circulation.

Pasig City, 15 November 2016.


JOSE VICENTE B. SALAZAR
Chairman and CEO




ALFREDO J. NON
Commissioner


GLORIA VICTORIA C. YAP-TARUC
Commissioner


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner

Office of the Chairman
(On Official Travel)

GERONIMO D. STA. ANA
Commissioner