

October 26, 2010

MR. ARIEL R. DELA CRUZ

President
Xen Energy Systems, Inc.
Suite 412, Cityland Pasong Tamo Tower
2210 Don Chino Roces Ave.
Pio Del Pilar, Makati City

Subject: CLARIFICATION ON ERC RESOLUTION NO. 15, SERIES OF 2009

Dear Mr. dela Cruz,

This has reference to your letter dated September 6, 2010, requesting clarification on particular provisions of the *Rules for Prepaid Electric Service Using a Prepaid Metering System* (the "Rules"), approved and adopted by the Commission in Resolution No. 15, Series of 2009.

Set forth hereunder are the concerns you have raised, which we shall clarify and confirm, in seriatim:

1. The application of the true retail cost of power for prepaid transactions, as opposed to a fixed rate set at the time of the purchase of credit

In your letter, you stated that it may be more appropriate that the actual cost or price of electricity at the time of consumption be used as the basis for determining the equivalent energy credit, rather than the post-paid retail rate current at the time of the purchase of the credit and that your system is capable of applying real-time changes in the rate to reflect changes in the actual cost of electricity.

The Commission notes the points you raised in support of your position. However, the second paragraph of Section 2.6 clearly provides that the rates to be applied in any prepaid transaction should be based on the effective post-paid retail rate current at the time of purchase.

2. Confirmation by way of Short Message Service ("SMS") message, complemented by easy and immediate access to account information as well as the option of obtaining written confirmation from the distribution utility, in lieu of written confirmation at the time of purchase of prepaid credits

Section 2.7 requires the distribution utilities to provide their customers with a receipt or written confirmation for every payment made for the purchase of electric energy credit. Like any other sale transaction, a receipt or written confirmation is necessary for the protection of the customers.

In your letter, you stated that energy credits are to be purchased from retailers, such as convenience and sari-sari stores, where an SMS confirmation is to be sent to the customers for every payment made, in lieu of a receipt or written confirmation. Also, they may also view the details of their payments online. More importantly, you added that the receipt of the SMS confirmation does not obviate the option of obtaining receipt from the distribution utility's office or payment centers.

In view of the foregoing, an SMS confirmation may be considered a substantial compliance of Section 2.7. This provision is, in reality, more appropriate for payments made directly with the distribution utilities. The availability of prepaid credit through retailers may be considered beneficial to the customers and may actually help promote the implementation of the prepaid metering service.

Moreover, additional safeguards, such as availability of the information online and from the distribution utilities ensure that the customers will be able to obtain confirmation of their purchase of credits. Sending SMS confirmation is an accepted practice in the telecom industry. We find no reason not to apply this to the power industry for as long as the customers are fully protected.

3. Whether the arrangement of not interrupting electric service during off-hours is compliant with or permissible under the Rules

As stated in your letter, your system can be programmed to prevent interruption of service during off-hours, or the period when retail outlets selling prepaid credit are closed.

However, Section 2.8 clearly requires that residential customers should have easy access to the purchase of electric energy credit for 24 hours, to ensure continuous service. It bears stressing that the focus of the provision is on the availability/accessibility of electric credits and not on the interruption of the service itself. Thus, while your system may help lower the risk of being disconnected since the customers will be given a grace period within which to purchase energy credits, it does not follow that the said requirement is already complied with. Clearly, no disconnection during off hours does not equate to accessibility of electric energy credits for 24 hours.

Technically, your system and technology appears to have departed from the wording of Sections 2.6, 2.7 and 2.8 of the Rules. The Commission, however, welcomes alternative arrangements not necessarily on point with the provisions of the Rules, for as long as the same are fair and reasonable, beneficial to the customers, and promotes the policy objectives of the Rules in establishing the prepaid metering system. In fact, Section 7.1

of the Rules provides that where good reason appears, the Commission may allow an exception from any provision thereof, if such exception is found to be in the public interest and is not contrary to law or any other pertinent rules and regulation.


In this light, the Commission finds your justifications as stated in your letter acceptable and deems you in compliance with Section 2.7. In addition, the Commission likewise confirms your compliance with the other provisions of Article 2 of the Rules, which you have explained in your letter.

However, as far as Sections 2.6 and 2.8 are concerned, compliance therewith cannot be dispensed with. However, a distribution utility or any other party with substantial interest in the matter may file a Petition to Initiate Rule-Making under Rule 21 of the Commission's Rules of Practice and Procedure, where an amendment to the Rules, including Sections 2.6 and 2.8, may be proposed, subject to the proceedings stated therein. The points discussed in your letter may be raised during the public consultations for the consideration of the Commission.

In view of the foregoing, your system and technology may be considered compliant with the Rules, subject to the requirement of Sections 2.6 and 2.8, and provided that the other provisions not discussed herein are likewise complied with.

Please be guided accordingly,

Very truly yours,


ZENAIDA CRUZ-DUCUT
Chairperson and CEO





