



**December 20, 2010**

**Hon. Zenaida G. Cruz-Ducut**  
Energy Regulatory Commission  
Pacific Center Building  
San Miguel Avenue, Ortigas Center  
Pasig City

Dear Hon. Ducut:

**Further clarifications on the Rules for Prepaid Retail Electric Service (ERC Resolution No. 15, Series of 2009)**

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We would like to thank the Honorable Commission for the clarifications it provided in its letter dated October 26, 2010 on the applicability of certain provisions of the *Rules for Prepaid Electric Service Using a Prepaid Metering System* (the "Rules") to our prepaid metering technology.

Further to the Honorable Commission's response, we respectfully request guidance and clarification from this Honorable Commission on certain matters relating to the Rules. This Honorable Commission's guidance will greatly facilitate the preparation and implementation of the prepaid retail electricity service by Xen Energy Services, Inc. ("XESI") and its partner distribution utilities ("DU").

These matters are as follows:

**1. Fees on the purchase of prepaid credit**

In the prepaid metering system which XESI seeks to implement with its partner DUs, the customer shall pay the actual cost of electricity (that is, the DU's approved retail rate) for the electricity consumed.

In order to ensure maximum accessibility of prepaid credit to customers (which is essential to the promotion and success of the prepaid electricity service), prepaid credit shall be made available to customers through retailers such as sari-sari and convenience stores, much like in the case of prepaid mobile phone credit.

When a customer purchases prepaid credit from a retailer, the retailer will collect the amount of the credit (which is the amount applied to the electricity consumed) and a fee for the credit purchase transaction.

We are of the view that the said fee is not subject to regulatory approval. In this regard, we entreat this Honorable Commission to consider the following:

- a) At the outset, we submit that the implementation of the prepaid metering system essentially involves two (2) different transactions, which fact is determinative of whether the said fee is subject to this Honorable Commission's regulation.

The said transactions are: *first*, the purchase of prepaid credit by the customer from the retailer; and, *second*, the provision of electricity service by the DU to the customer which is paid for with credit previously purchased.

It is submitted that the first transaction involves a form of a deposit facility where the credit purchased represents an amount from which payment for future purchases of power may be sourced. This transaction does not involve the DU, except to the extent that it is the entity that ultimately receives the payment when the customer consumes power.

The second transaction involves the regulated business of the DU. The cost of the provision of electricity service in this transaction is certainly subject to the regulation of this Honorable Commission. While the payment is sourced from the aforementioned payment facility, the matter subject of regulation is the rate to be applied; the payment facility is only a means by which the DU is paid.

- b) The said fee is separate and distinct from, and not part of the prepaid electricity rate.

It is collected separately, albeit simultaneously, as the prepaid credit. As mentioned earlier, the credit purchased by the customer is the amount which is applied to the electricity consumed. Parenthetically, the application of credit will be based on the actual cost of electricity.

Needless to state, it is the cost of electricity that is subject to this Honorable Commission's regulation.

- c) The said fee is not charged by the regulated DU. Rather, the fee is collected by the retailers. The regulated DU has no involvement or participation in collection of the said fees.
- d) The said fee pertains to revenue not involving the DU.

For purposes of distribution of prepaid credit to be made available for sale to customers, XESI will employ a network of regional and local distributors who distribute credit to retailers. In addition, XESI will establish, operate and maintain a system for the administration of credit distribution, outstanding customer credits, customer short-message-service notifications, and the like.

The said fee pertains to revenue relating to the foregoing, including that of distributors and retailers. Under the system that is sought to be implemented, the DU has no involvement in the distribution and sale of prepaid credit. Thus, the said fee does not involve the DU, much less the DU's regulated business.

- e) The transaction to which the said fee pertains does not involve the terms and conditions of the DU's service, which is subject of regulation.

This Honorable Commission's regulatory authority under the Rules is premised on Section 43 (h) of Republic Act No. 9136<sup>1</sup> which vests upon it the authority to review and approve any changes on the terms and conditions of service the any DU.<sup>2</sup>

As stated earlier, the distribution and sale of prepaid credit under the system sought to be implemented does not involve the DU. Hence, we submit that this Honorable Commission's authority does not apply.

In addition, it may be noted that the actual fee charged by a retailer may vary, in the same manner as the price of a particular commodity from one sari-sari store to another, as the actual price is determined by the sari-sari store owner. In fact, it is observed that retailers, particularly sari-sari stores, which sell prepaid mobile phone credit charge differing amounts for the same amount of credit, depending on the retailer's own price markup. The same may very well be the case for prepaid electricity credit. Notably, the same is not within the control of XESI or the DU. This may be more reason towards our assertion that the aforementioned fee is not subject to regulation.

In view of the foregoing, we respectfully seek confirmation from this Honorable Commission on whether the said fee requires regulatory approval.

## **2. Recovery of the cost of prepaid meters as part of the utility's asset base**

A significant concern on the part of the implementing distribution utility is the recovery of the cost of the prepaid meters. Under the Rules,<sup>3</sup> customers shall not be made to advance the cost of or purchase the prepaid meter. Prepaid meter deposits shall not be collected from the customers.

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<sup>1</sup> Please see recitals of the Prepaid Metering Rules.

<sup>2</sup> "Sec. 43. Functions of the ERC. – The ERC shall promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry. In appropriate cases, the ERC is authorized to issue cease and desist order after due notice and hearing. Towards this end, it shall be responsible for the following key functions in the restricted industry:

x x x

h. Review and approve any changes on the terms and conditions of service of the TRANSCO or any distribution utility;"

<sup>3</sup> Section 2.5, Prepaid Metering Rules.

The foregoing indicates that the cost of the prepaid meter shall not be shouldered by or recovered from the customer. However, the Rules do not indicate how the same may be recovered. Ideally, this concern should be resolved before the utility considers adopting a prepaid metering system. Needless to state, uncertainty on how such cost may be recovered may dissuade utilities from adopting a prepaid metering system, defeating the objective of the Rules.

As the cost of the prepaid meters cannot be recovered from the prepaid customers, it appears that the only reasonable means for recovery may be the inclusion of the said costs in the utility's asset base.

We therefore seek confirmation from this Honorable Commission on whether such means of recovery is permissible and within the contemplation of the Rules. Confirmation from this Honorable Commission is critical for utilities in deciding to adopt a prepaid metering system.

It is noted that in its application for approval to provide prepaid retail electricity service, the utility must indicate "the manner by which to recover the cost of the prepaid meter and metering system."<sup>4</sup> However, the filing of the application presupposes that the utility has made all the necessary preparations for the implementation of a prepaid metering system. While the recovery remains subject to the review and approval of this Honorable Commission, prior confirmation of whether recovery through the asset base is permissible would nevertheless be greatly beneficial to the utility and to the promotion of the prepaid metering service in general. The particulars of the recovery, such as the actual cost of the meters, may be threshed out during the proceedings.

We respectfully request clarification from the Honorable Commission on the foregoing. We greatly appreciate the Honorable Commission's action on this matter.

Very truly yours,



**Ariel R. dela Cruz**  
President  
Xen Energy Systems, Inc.

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<sup>4</sup> Section 2.1.7, Prepaid Metering Rules.