

# GUIDELINES FOR PROPER ELECTRIC POWER TRADE

(Tentative Translation)

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Fair Trade Commission

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# GUIDELINES FOR PROPER ELECTRIC POWER TRADE

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## Part 1 Necessity and Composition of the Guidelines for Proper Electric Power Trade

### 1 Necessity of the Guidelines

- (1) In the electric power supply market, geographical monopolization in retail supply has been conventionally approved by entrance restraints under the Electricity Utilities Industry Law, and the harmful effects accompanying monopolization have been dealt with by regulations on business activities (regulations on rates, obligation to supply, etc.) under the provisions of the Electricity Utilities Industry Law. In response to changes in the business environment in recent years, the electric utility business system has been reformed in order to establish a fair and effective system that can efficiently achieve a stable supply of electric power fundamental to economic activities and people's lives in our country (Refer to Note below).

(Note) ○ Revision of the Electricity Utilities Industry Law in 1995:

- Introduction of the principle of competition to the power generation segment (Introduction of the IPP (independent power producer) system and the full-scale bidding system for thermal power generation)
- Establishment of an electricity retail industry system at the specified point of supply (special electricity industry system)
- Review of regulation on rates (Introduction of optional supply provisions)

○ Revision of the Electricity Utilities Industry Law in 1999:

- Introduction of partial deregulation in the retail supply segment
- Review of regulation on rates (Introduction of a notification system, more flexible setting of optional supply provisions)
- Introduction of the wheeling system

○ Revision of the Electricity Utilities Industry Law in 2003:

- Phased expansion of the range of deregulation
  - Establishment of a neutral organization (the organization to support transmission, distribution, and other related operations)
- Restrictions on the passage of information relating to the network department to the power generation and marketing departments, prohibition of cross-subsidization, and securing the prohibition of discriminatory treatment
- Abolition of the cross-area wheeling service charge system
- Establishment of a privately established and arbitrary wholesale electric power exchange

As a result of the reform of the electric utility business system, competition is expected to be generated between a general power utility in its own service area and new entrants (specified-scale electricity supply industries, general power utilities outside the service area, etc.) in supplying electricity to deregulated users, thereby increasing

efficiency in the entire electricity industry and promoting the benefit of all users.

- (2) In view of the following characteristics of the electric power market, however, there is concern that the establishment of a wheeling system alone may not, as a matter of fact, promote new participation or competition in the electric power market.
- a. In the electricity retail supply business, general power utilities have almost a 100% market share in the respective service areas.
  - b. Because there are only 10 general power utilities and one wholesale electricity utility that provide a cross-area wheeling service, it is likely that they will engage in cooperative behavior even if there is no contact among them with regard to their intentions.
  - c. New entrants can supply electricity using their own power lines. However, since they have no means to compete other than by depending on the wheeling service of the relevant general power utility (which is also a competitor and has a marketing department as well as monopolistic network), they will be put in a position of disadvantage unless this matter is dealt with properly by general power utilities.
  - d. General power utilities possess a number of power sources and a network control system, and therefore they can follow the load pattern, etc. more easily than can new entrants.
- (3) Under these circumstances, in order to introduce more competition into the electric power market, dealing with pre-restraints under the Electricity Utilities Industry Law may be considered as an option. However, the achievement of efficient functioning of electricity business activities is a fundamental idea of one of the series of reforms of the electricity business system. For this reason, a wheeling system has been established, and restraints on general power utilities in the deregulated market have been abolished in principle, under the Electricity Utilities Industry Law. On the other hand, restraints under the Antimonopoly Act, which is a common rule in the market, may also be considered as an option. This Act however aims to fundamentally eliminate anticompetitive trade practices, and there are certain limits in its ability to make the electric power market more competitive.

Accordingly, it has become necessary not only to clarify the trade practices that may be problematic under the Antimonopoly Act, as well as standards for invoking order of revision under the Electricity Utilities Industry Law, but also to show guidelines for proper electric power trade that are consistent with the Electricity Utilities Industry Law and the Antimonopoly Act.

Through the preparation of these guidelines, entrants in the electric power market will be given a field where they may exercise maximum independence. By establishing an environment where direct administrative intervention caused by violation of the Electricity Utilities Industry Law and the Antimonopoly Act may be prevented in

advance, and where market entrants may safely engage in economic trade, maximum respect for managerial independence, and minimum administrative intervention may be achieved, in accordance with the aims of the electric utility business system reform.

- (4) In view of the points mentioned above, in December 1999, guidelines for proper electric power trade that are consistent with the Electricity Utilities Industry Law and the Antimonopoly Act were formulated with the following points as fundamental principles, with the Ministry of International Trade and Industry (now the Ministry of Economy, Trade and Industry) having jurisdiction over the Electricity Utilities Industry Law, and the Fair Trade Commission having jurisdiction over the Antimonopoly Act. Both entities have responsibility for the areas in their respective jurisdictions, and for coordination with each other.
- a. Taking into consideration the fact that these guidelines will have significance as a message for market entrants, concrete guidelines for proper electric power trade are shown, based on specific and conceivable problem cases and specific concerns.
  - b. Inasmuch as it is difficult to anticipate all trade practices in advance with this being the first time that serious competition in the market has been introduced into electric power trade, trade practices that are conceivable in the initial stage of the system reform will be taken into consideration. As the structure of the market is expected to change dynamically, these guidelines will be revised as necessary.
- (5) Since then, the situation has changed in various aspects, including the fact that partial deregulation has made progress, and that a wide range of users, particularly large-scale users, have introduced and/or expanded self-power generation facilities. Accordingly, the first revision of the guidelines was made in July 2002, taking into account those cases not considered in the original guidelines, including individual cases regarding which the Fair Trade Commission and/or the Ministry of Economy, Trade and Industry was consulted.

Furthermore, the second revision was made in May 2005 in order to complement and enhance the guidelines in response to the further expansion of the range of deregulated retail supply; the progress of the electric utility business system reform (such as the introduction of prohibited acts); the introduction of self-power generation facilities, including cogeneration systems; and the competition regarding “All Electrification.”

Now, it has been decided to make a third revision, taking into account the commencement of trading at the wholesale electric power exchange, and individual instances regarding which the Fair Trade Commission and/or the Ministry of Economy, Trade and Industry was consulted.

## 2 Composition of the Guidelines

- (1) The guidelines are divided into the following areas; a) deregulated retail supply, b) retail supply that is still subject to some regulations, c) wheeling services, d) procurement of electricity by a general power utility, e) wholesale electric power exchange, and f) competition with other energy forms. In principle, the guidelines consist of the following:
  - 1) In general, fundamental viewpoints shall be clearly indicated.
  - 2) In particular, practices considered desirable for introducing more competition into the electric power market shall be demonstrated, trade practices likely to be problematic under the Electricity Utilities Industry Law or the Antimonopoly Act shall be indicated, and, in certain cases, the effect of cases that are not problematic under the Electricity Utilities Industry Law or the Antimonopoly Act shall be illustrated.
- (2) Furthermore, with regard to specific cases, individual judgment will be sought to conform practices to the actual situation of the market or trade; it is therefore difficult to indicate all of these cases comprehensively in advance. Accordingly, in the event that problems or disputes occur, the matters will be dealt with on a case-by-case basis, taking into account the spirit and content of the guidelines, and the accumulation of such judgments is expected to further clarify the content of the guidelines.

## Part 2 Guidelines for Proper Electric Power Trade

### I The ideal state of proper electric power trade in the deregulated retail supply business

#### 1 Viewpoint

- (1) As part of the electric utilities business system reform in 1999, it was decided in principle not to impose restraints upon general power utilities under the provisions of the Electricity Utilities Industry Law in respect of the conditions of supply for deregulated users and new entrants. This decision was made on the assumption that an efficient supply of electric power would be realized if effective competition takes place between existing general power utilities and new entrants catering to users (specified-scale demand) who are able choose suppliers (refer to Note below).

Accordingly, it was essentially left to the general power utilities not to deal with users or new entrants that do not meet conditions applicable to the rates and services of general power utilities, and to set rates and conditions that conform with electricity patterns as required by customers.

(Note) It is provided that, as an exception, a general power utility shall supply electricity to deregulated users in its service area that are unable to obtain supply from other operators under the provisions for last resort service of the Electricity Utilities Industry Law. Furthermore, with regard to such cases as may inevitably arise due to new entrances into the market, and which may only be handled by a general power utility from the wholesale supply to new entrants (specifically, a portion of 3% or less that is not delivered for the same volume and at the same time), as well as such cases which may not inevitably occur but will be difficult for entities other than general power utilities to handle (specifically, backup support for a portion within the second fluctuation range of 3 to 10% or outside of the fluctuation range, that was not delivered for the same volume and at the same time), the general power utility shall supply electricity under the rules for wheeling service of the Electricity Utilities Industry Law.

- (2) Under the circumstances, however, where a general power utility that owns and operates a network holds a market share of almost 100% in its service area, and where there is little competition among general power utilities, even deregulated users will have to depend on the existing general power utility for their power supply. Furthermore, even though new entrants can now supply electricity using their own power lines, in accordance with the revision of the Electricity Utilities Industry Law in 2003, most of them will have to depend on the existing general power utility to conduct their business activities in the electricity field. (For example, when a new entrant enters the market, it will have to utilize the network owned by the existing general power utility, and backup support of

power for imbalance will have to be obtained from the existing general power utility.) Under such circumstances, in cases where a general power utility that owns and operates a network changes or suggest to change conditions in a way that will harm the deregulated users who intend to deal with new entrants, the said users will have to give up its dealings with the new entrants. Also, in cases where the general power utility sets conditions on the new entrants that place them in an uncompetitive position in relation to itself, it is highly likely that such acts will impede the business activities of the new entrants. Inasmuch as such trade practices on the part of the general power utility are problematic under the Antimonopoly Act or the Electricity Utilities Industry Law, the general power utility will have to deal with the matter properly in conformity with the following points:

## 2 Desirable trade practices, and trade practices that may be problematic from the standpoint of fair and effective competition

### (1) Retail supply and retail supply rate setting for deregulated users

#### 1) Desirable trade practices from the standpoint of fair and effective competition (Establishment and announcement of an appropriate standard menu)

In securing fair and effective competition, it is effective for general power utilities to widely publicize their own standard retail supply rate menu (hereinafter called a “standard menu”) for deregulated retail supply, on an individual basis, and thereupon to apply a rate that conforms to the utilization pattern of the respective user groups that have the same demand characteristics. In this case, regardless of the attributes of users outside the pattern of utilization (e.g., the presence or absence of competitors, the provision or not of partial supply, the application or not of returned demand, the use or not of self-power generation facilities by new entrants, etc.), all users will be treated equally.

Furthermore, should the content of the standards menu be consistent with the tariff of general supply provisions and optional supply provisions, as well as the general supply provisions and optional supply provisions following deregulation, it will constitute a document that can be used to support the appropriateness of the rate in relation to the cost.

With regard to the rate notified under provisions for last resort service, which is set based on the standard menu that was properly established as mentioned above, it is not likely that an order of revision will be issued under the provisions of the Electricity Utilities Industry Law.

#### 2) Trade practices that may be problematic from the standpoint of fair and effective competition

Cases where a general power utility, by conducting the following trade practices, impedes the business activities of new entrants and substantially restrains competition in the market (e.g. in the service area of the said general power utility, etc.) will correspond to private monopolization and therefore violate the provisions of Section 3 of the Antimonopoly Act. Furthermore, if the general power utility engages in the following trade practices that are likely impede the business activities of new entrants – even if they do not substantially restrain competition in the market – without good reason, individual trade practices will be considered unfair trade practices and violate the provisions of the Antimonopoly Act, Section 19.

It is necessary to note that this judgment is made on the assumption that the general power utility holds a market share of almost 100% in its service area, and there is almost no competition among general power utilities. It is also assumed that the general power utility has been continuously supplying electricity to the deregulated users.

(With respect to these points, the same applies to II The ideal state of proper electric power trade in retail supply business that is still subject to some regulations; III The ideal state of proper electric power trade in wheeling service; IV The ideal state of proper electric power trade in the electricity procurement business by a general power utility; V The ideal state of proper electric power trade in wholesale electric power exchange; and VI The ideal state of proper electric power trade in the field of competition with other energy forms.)

a. Confrontation with new entrants

Trade practices whereby a general power utility impedes the business activities of new entrants by offering a conspicuously low rate (as compared with the publicly announced standards menu) only to users who are negotiating with the new entrants will likely be in violation of the Antimonopoly Act (discriminatory pricing, unjust law price sales, etc.).

It is provided that this situation will not present a problem in principle under the Antimonopoly Act if the rate that deviates from the standard menu is fixed so as not to be lower than the cost of supply to the said customers, following detailed investigation of individual users' patterns of use.

(Note) Offering a competitive rate in comparison to those of competitors to cater to customers is in itself an indication of competition, and is widely seen in normal business activities. Therefore the practice itself should not be a problem.

Under the current circumstances, however, where the general power utility holds a share of almost 100% in its service area, a trade practice whereby the general power utility tries to maintain its contracts with a considerable number of customers as countermeasures against new entrants (which have an efficient cost structure), by offering rates that are conspicuously lower than the cost of supply to the said customers (with whom the new entrants are negotiating or are going to open negotiation), is likely to impede the business activities of the new entrants and

therefore constitute a violation of the Antimonopoly Act.

b. Retail supply to users with special relationships

Trade practices whereby a general power utility offers an unfairly low rate only to its subsidiaries, etc., as compared to the publicly announced standards menu, and thereby treats its subsidiaries, etc., in a conspicuously advantageous manner, are likely to be in violation of the Antimonopoly Act (discriminatory pricing, etc.).

c. Partial supply (see Note)

(Note) Partial supply means “a pattern of supply made to one site of demand from the power sources of a plural number of power utilities, with the generated electricity of each not being physically separated, as an integrated form through a service line.”

a) Unreasonable setting of partial supply rate

Setting a rate that is higher than the previous one without good reason, or setting disadvantageous tariffs against partial supply request from users, etc., is likely to be in violation of the Antimonopoly Act in the following cases. This is because these acts may cause users to depend on the general power utility for its full supply, and may impede the business activities of new entrants (discriminatory treatment, trade with exclusive conditions, etc.).

- Cases where the general power utility, in the case of partial supply, does not set a menu corresponding to the demand patterns of the said partial supply, and where it sets and applies a disadvantageous tariff without good reason, while, in the case of full supply, the utility supplies electricity by setting and applying various menus corresponding to the demand patterns, on behalf of, or in addition to, the application of a previously publicized standards menu (refer to Note).

(Note) Considering the current situation of the deregulated market concerning the pattern of contracts, etc., between deregulated users and the general power utility, the publicly announced menu from the general power utility may not necessarily be recognized as being standard.

- Cases where the rate is changed or suggestions are made that it be changed (compared with the previous rate), when a permanent increase in costs arises due to changes to partial supply, so that the increased rate exceeds than the increase in cost
- Cases where an increase (or suggestion for increase) is made to the rate to users who receive partial supply from new entrants, in addition to the supply of electricity from the general power utility, despite the demand patterns being the same, in comparison to cases where demand is supplemented by self-power generation facilities

b) Denial of partial supply

Trade practices, such as ignoring requests for partial supply from users, etc., intentionally delaying the opening or conduct of negotiations, refusing partial supply, or substantially denying partial supply by making conditions unreasonably rigid, are likely to be in violation of the Antimonopoly Act, inasmuch as such practices may cause the users to depend on the general power utility for their full supply and may impede the business activities of new entrants (dealing on exclusive terms, etc.).

Furthermore, demands by a general power utility that received a request from a user, etc. for partial supply on a new entrant providing partial supply to the said user that it receive a fulltime backup support from the general power utility are likely to be in violation of the Antimonopoly Act (tie-in sales, etc., abuse of dominant bargaining position, etc.).

c) Denial of partial supply to follow the load pattern

A proposal by a general power utility for a supply pattern to supply the prearranged fixed volume against the request for partial supply will not automatically constitute a violation of the Antimonopoly Act.

However, since adjustment of power generation output (to follow the load pattern) is necessary in the supply of electric power, unreasonable denial of partial supply by a general power utility to users who receive supply from new entrants, in order to follow the load pattern is likely to be in violation of the Antimonopoly Act in the following cases. This is because such an act may cause the users to depend on the general power utility for their full supply and may impede the business activities of new entrants (dealing on exclusive terms, etc.).

- Supply by a general power utility of only the prearranged volume to users who receive supply from new entrants that are unable to meet the request to follow the load pattern
- Provision by a general power utility of only supply to follow the load pattern in proportion to supply, to users who receive supply from new entrants that are unable to meet the request to follow the load pattern.

d) Request for excessive prior notification

Base on the current electricity utilities industry system, in which, in the case of partial supply by a general power utility, the general power utility itself matches demand and supply to follow the load patterns in its service area, it is difficult to deny that there is a certain rationality in requesting prior notification of planned volume of supply by new entrants for the sake of scheduled power generation.

However, inasmuch as a service charge for backup support out of the fluctuation range, etc., is charged to the new entrants under the rule for wheeling service, if the actual

volume of supply is lower than the pre-notified planned volume by a certain amount in the retail supply by new entrants utilizing the transmission lines of the general power utility, requests for time limits on pre-notification, content, etc., exceeding those necessary for preparation of daily generation plans by the general power utility, are likely to impede the business activities of new entrants and therefore be in violation of the Antimonopoly Act (discriminatory treatment, etc.).

For instance, the following requests to users for pre-notification of planned volume of supply by new entrants are likely to constitute a violation of the Antimonopoly Act:

- Requests for pre-notification of planned volume of supply by new entrants prior to the time considered necessary from the standpoint of the preparation of power generation plans by the general power utility, as well as from the standpoint of power system operation.
- Requests for pre-notification of planned volume of supply per detailed unit hour, compared with the planned volume of supply per minimally required unit hour, from the standpoint of the preparation of power generation plans by the general power utility.
- Imposition of undue burden in the pre-notification procedure by prohibiting assignment to new entrants of clerical matters related to pre-notification.

d. Unreasonable setting of high rates, etc., at the time of returned demand (see Note)

Application of (or suggestion of application of) an unreasonably high rate, in comparison to a publicly announced standard menu, by a general power utility to users who intend to change their source of supply to the general power utility from new entrants (i.e., “returned demand”) is likely to be in violation of the Antimonopoly Act. This is because it will deprive users of their right to choose suppliers, and impede the ability of new entrants to easily find customers. Likewise, application of the provision for last resort service accompanied by a higher rate, without meeting for negotiations on returned demand, is likely to be in violation of the Antimonopoly Act (discriminatory pricing, etc.). However, it is provided that setting a rate that reflects a reasonable increase in costs due to utilization of reserved power in order to cope with returned demand, does not in principle constitute a violation of the Antimonopoly Act.

(Note) “Returned demand” refers to the demand of users, who once entered into a contract with new entrants, that is returned to the general power utility through a request for a new supply contract for electricity.

e. Cancellation and unreasonable alteration of supplementary supply contracts on self-power generation facilities

Users who have self-power generation facilities need conclude supplementary supply

contracts on self-power generation facilities to obtain supply of electric power in cases of breakdown of self-power generation facilities, etc. Such users, however, find it substantially difficult to obtain similar services from other than a general power utility, in view of the difficulty that other parties face in maintaining facilities in reserve to cope with unexpected events, as well as the necessity to shoulder wheeling service charges.

Under such circumstances, cancellation (or suggestion of cancellation) by a general power utility of a supplementary supply contract on self-power generation, or the setting of (or suggestion of) a higher rate than before to users who have self-power generation facilities (hereinafter called “holders of special self-power generation facilities”) and who intend to receive supply of electric power from new entrants (or supply electric power to them) and to enter the market utilizing such facilities, is likely to constitute a violation of the Antimonopoly Act in the following cases. This is because such acts may cause the holders of special self-power generation facilities to give up dealings with new entrants and/or their own new entry into the market (dealing on exclusive terms, discriminatory pricing, etc.).

- Cancellation of a supplementary supply contract on self-power generation with a holder of special self-power generation facilities.
- Setting a rate for a supplementary supply contract on self-power generation with a holder of special self-power generation facilities (individual supplementary supply contract on self-power generation facilities) that is higher than that for supplementary supply contracts on self-power generation facilities accompanying full supply from the general power utility, despite a similar pattern of demand.

f. Unreasonable provisions for last resort service

In cases where the provisions for last resort service determined by a general power utility sets a rate unreasonably higher than the publicized standard menu, an order of revision under the provisions of the Electricity Utilities Industry Law will be issued, as this may seriously impair the interests of users who receive supply under the provisions for last resort service (Electricity Utilities Industry Law Section 19-2).

However, it is provided that setting a rate that reflects a reasonable increase in cost compared with the standard menu in cases where the users to whom the provisions for last resort service is applied represent returned demand, and where the general power utility utilizes facilities in reserve to cope with the situation, is not in principle problematic under the Electricity Utilities Industry Law.

g. Cancellation and unreasonable alteration of demand/supply adjustment contracts

Many users of electric power for industrial use (raw materials manufacturing, etc.) conclude demand/supply adjustment contracts (see Note) with a general power utility. These

contracts have become important in the business activities of users of industrial electric power. Furthermore, new entrants' sources for procuring electric power are mainly users holding self-power generation facilities, most of whom on their part conclude demand/supply adjustment contracts with a general power utility.

(Note) Demand/supply adjustment contracts are menus with the purpose of contributing to an efficient operation of the facilities by contributing to the leveling off of load by shifting peak hour load to light load hours, enabling the setting of a lower maximum rate of electric power to be consumed at peak hours, based on the load patterns of the users; and contributing to the improvement of the demand/supply situation of the general power utility. Compared with other menus, the unit rate is set high for peak hours and low for light load hours (around midnight), providing a smaller shouldering of charges to correspond to the load patterns of the manufacturing industry, etc., which has a high operating ratio around midnight.

The conclusion or non-conclusion of demand/supply adjustment contracts by a general power utility with users will not in itself become constitute a violation of the Antimonopoly Act. Under such circumstances, however, cancellation of (or suggestion of cancellation of) a contract without good reason by a general power utility that has an existing demand/supply adjustment contract with users who hold self-power generation facilities and intend to receive supply of electric power from new entrants (or supply electric power to them), is likely to be in violation of the Antimonopoly Act in the following cases. This is because such acts may cause the said users to give up trade in electric power with new entrants, and/or their own new entrance in the market (discriminatory treatment, interference of trade, etc.).

- Cancellation of (or suggestion to cancel) existing demand/supply adjustment contracts in cases where users accept partial supply from new entrants other than the general power utility, in spite of the fact that the pattern of loading supplied by the general power utility has not worsened
- Cancellation of (or suggestion to cancel) existing demand/supply adjustment contracts with users who have self-power generation facilities, and who switch their sales of surplus electric power from the general power utility to new entrants, in spite of the fact that the pattern of load supplied by the general power utility has not worsened
- Cancellation of (or suggestion to cancel) existing demand/supply adjustment contracts with users (including cases where the users have been purchasing electric power from the general power utility) who expand their own self-power generation facilities, and who sell surplus electric power to new entrants, in spite of the fact that the pattern of load supplied by the general power utility has not worsened
- Cancellation of (or suggestion to cancel) existing demand/supply adjustment contracts with users (including cases where the users have been purchasing electric power from the general power utility) who intend to enter the market utilizing the electric power capacity of their expanded self-power generation facilities, in spite of the fact that the

pattern of load supplied by the general power utility has not worsened.

#### h. Cancellation and unreasonable alteration of surplus electric power purchase contracts

Business operators who conduct wholesale supply to a general power utility (wholesale electricity utility supply operators, wholesale suppliers, users having self-power generation facilities, etc.; hereinafter called “wholesale business operators”) are permitted to newly enter the market through wholesale supply of a portion of their generated power to new entrants, as well as through direct supply to users. The entrance into the market of these business operators is expected from the standpoint of facilitating fair and free competition in the electric utility business.

However, cancellation of (or suggestion to cancel) a purchase contract by a general power utility for the supply portion that the utility receives, that is entered into with a wholesale business operator which intends to provide wholesale supply to new entrants or to make a direct sale to users; or lowering or (suggestion to lower) the purchase rate, is likely to be in violation of the Antimonopoly Act. This is because such acts would cause the wholesale business operator to give up trade with new entrants (refusal of trade, discriminatory rate offering, etc.).

Furthermore, in contrast to cases where business operators having power generation sources engage in wholesale supply of all of their electric power to a general power utility, in cases where those operators divert a part of the volume to retail sale and where there occurs a fluctuation in the surplus volume of electric power following a fluctuation in the retail volume, a lowering of a unit rate of purchase by the general power utility in a manner that properly reflects decline in the stability of supply, compared with the former case above, will not automatically be problematic under the Antimonopoly Act.

#### i. Cancellation and unreasonable alteration of wholesale supply contracts

Wholesale business operators are permitted to newly enter the market through wholesale supply of a portion of their generated power to new entrants, as well as through direct supply to users, for example by altering their wholesale supply contracts with general power utility. The entrance into the market of these business operators is expected from the standpoint of facilitating fair and free competition in the electric utility business.

However, cancellation of (or suggestion to cancel) a wholesale supply contract by a general power utility for the supply portion that the utility receives, that is entered into with a wholesale business operator that intends to provide wholesale supply to new entrants or to make a direct sale to users; or lowering or (suggestion to lower) the wholesale supply contract rate, is likely to be in violation of the Antimonopoly Act. This is because such acts would cause the wholesale business operator to give up trade with new entrants, and/or their own new entrance in the market (refusal to deal, discriminatory

pricing, etc.).

Furthermore, in contrast to cases where business operators possessing power generation sources engage in wholesale supply of all of their electric power to a general power utility, in cases where those operators divert a part of the volume to retail sale and where there occurs a fluctuation in the wholesale supply volume of electric power following a fluctuation in the retail volume, a lowering of a unit rate of purchase by the general power utility in a manner that properly reflects the decline in the stability of supply, compared with the former case above, will not automatically constitute a violation of the Antimonopoly Act.

j. Collection of unreasonable penalties and adjustment money

Determination of the period of a contract with users, as well as how to set penalties concerning cancellation during the term of the contract, is in principle left to the independent judgment of business operators.

However, in cases where users cancel an existing contract in order to receive supply of electric power from new entrants, there are occasions when the users may have to give up trade with new entrants because of the collection of unreasonably high penalties and adjustment money. In this sense, the following cases are likely to be in violation of the Antimonopoly Act (dealing on restrictive terms, dealing on exclusive terms, etc.):

- Setting unduly high penalties and adjustment charges, in addition to requests for a return of the amount of the discount enjoyed prior to the cancellation of the contract, targeting users who wish to enter into contracts with new entrants during the terms of contracts with special menus, etc., such as contracts depending on the load ratio, etc.
- Unilateral setting, in cases where a supplementary contract (e.g., a special contract for a discount weekend rate) is being concluded with a user, by the general power utility, of a contract renewal date that is different from the main contract, thereby causing the said user to pay adjustment charges in the event that it wishes to switch to new entrants.

k. Suspension of commodity purchases and services trade

Suspension of (or suggestion to suspend) the purchase of commodities or the trade of services by a general power utility, or reduction of (or suggestion to reduce) the volume of purchase, etc., by the same utility, directed at users with whom the utility has had a continuous relationship with regard to commodities and services (e.g., business operators that sell equipment on infrastructure indispensable to the electric utility business, such as power generation equipment, transmission equipment, etc.), in cases where the said users intend to receive supply of electric power from new entrants or supply surplus electric power to them, is likely to be in violation of the Antimonopoly Act. This is because such acts would cause the users to give up trade with new entrants (dealing on exclusive terms,

etc.).

Furthermore, restraining the business activities of new entrants through persons who have influence over the new entrants, by suspending (or suggestion to suspend), by a general power utility, the purchase of commodities or services, or reducing (or suggestion to reduce), by the same utility, the volume of purchase, to business operators with whom the utility has had a continuous relationship with regard to commodity purchase and services, and who have influence over new entrants (e.g., persons who have a capital relationship with the new entrants, financial institutions having accounts with the new entrants, etc.), is also likely to be in violation of the Antimonopoly Act (interference of trade, etc.).

#### l. Access to users' information

Failure by a general power utility to disclose customer information of the utility (in the same manner as it would disclose it to its own marketing department) to other business operators who need the information for their business activities and who obtained permission of access to the information from the said customer, is likely to be in violation of the Antimonopoly Act (discriminatory treatment, etc.).

#### m. Interruption practices against entrance through a combination of practices

Unfair practices against users who are negotiating with new entrants, by a general power utility with a monopolistic position in the retail supply market in its service area, with the combination of practices (such as the cancellation of the existing contract during its term, the discount of electricity rates as countermeasures, and the conclusion of a new long-term contract accompanied by compensation for cancellation) to impede the business activities of the new entrants, are likely to be in violation of the Antimonopoly Act (interference of trade, etc.).

#### (2) Wholesale supply to new entrants

The following are categories in whole sale supply to the new entrants by a general power utility: backup support for imbalance, including a) wholesale supply of 3% or less representing the portion that was not supplied for the same volume at the same time (backup support for “removing wrinkles” within the first fluctuation range (Note 1)); b) wholesale supply to be selected between 3% and 10%, representing the portion that was not supplied for the same volume at the same time within the second fluctuation range (backup support within the second fluctuation range); and c) wholesale supply representing the portion that was not supplied for the same volume at the same time exceeding the fluctuation range (Note 2) (backup support out of the fluctuation range) and d) other forms of the continuous wholesale supply

ply (fulltime backup).

Since (a) of the above inevitably occurs in the case of new entrance into the market, and no entity other than a general power utility are able to provide such wholesale supply, this category is to be stipulated in the rule for wheeling service as supplementary to wheeling service under the Electricity Utilities Industry Law. With regard to (b) and (c), though they do not necessarily occur in the case of new entrance into the market, these categories are to be similarly stipulated in the rule for wheeling service, because no entities other than a general power utility are able to provide such wholesale supply either. As for (d), this category is not regulated under the Electricity Utilities Industry Law. It is not desirable for new entrants to be too dependent on fulltime backup support for an extended period of time, and with the establishment of the wholesale electric power exchange, these functions are expected to shift to the exchange. For that purpose, however, various conditions for trading at the wholesale electric power exchange need to be prepared, including a sufficient volume of trading as well as a sufficient monitoring of the market.

(Note 1) “Removing wrinkles” means that a general power utility makes up for deficiencies in power generation by new entrants in their supply against the demand of users.

(Note 2) Exceeding the fluctuation range means either: exceeding 3% if the second fluctuation range of 3 to 10% is not selected, or exceeding the selected fluctuation range if the second fluctuation range is selected.

#### 1) Desirable trade practices from the standpoint of fair and effective competition

##### Backup support for imbalance

It is desirable that a backup support rate be set based reasonable costs, from the standpoint of fair and effective competition.

#### 2) Trade practices that may be problematic from the standpoint of fair and effective competition

##### a. Backup support within the first fluctuation range

Setting an unreasonable high rate not based on appropriate costs will invoke an order of revision under the Electricity Utilities Industry Law, because such acts are likely to significantly impede new entrants’ ability to obtain wheeling service (Electricity Utilities Industry Law Section 24-3).

##### b. Backup support within the second fluctuation range

Cases where an unreasonable high rate is set, not based on appropriate costs, and the fixed cost recovery rate used for setting the base rate is unreasonably higher than the fixed cost recovery rate included in the base rate, will invoke an order of revision under the Electricity Utilities Industry Law, because such acts are likely to significantly impede new entrants' ability to obtain wheeling service (Electricity Utilities Industry Law Section 24-3).

c. Backup support outside of the fluctuation range

Either of the following three cases will invoke an order of revision under the Electricity Utilities Industry Law, because such acts are likely to significantly impede new entrants' ability to obtain wheeling service (Electricity Utilities Industry Law Section 24-3): cases where the operating time used for setting does not reflect the actual usage outside of the fluctuation range; where the breakdown by season and by hour is unreasonable; or where the breakdown of the rate by season and by hour unduly penalizes the occurrence of excessive imbalance.

Furthermore, under such circumstances where the supply for backup support for imbalance by business operators other than a general power utility is difficult, practices by a general power utility to deny supply or to set unreasonably high rates, are likely to impede the business activities of new entrants and be in violation of the Antimonopoly Act (refusal to deal, etc.).

d. Fulltime backup support

The wholesale electricity market is less than well matured, represented by the low volume of trading still at the wholesale electric power exchange. In the current situation, fulltime backup support continues to be a major means for new entrants to procure power sources, and it can be under no circumstances be replaced by trading at the wholesale electric power exchange, etc. Furthermore, under the circumstances where general power utilities hold most of power generation facilities needed to supply new entrants and users, and where there is almost no competition taking place outside the service areas of the existing general power utilities, most new entrants will have to depend on the existing general power utility for their fulltime backup support, as it is difficult for the new entrants to find sources of supply for fulltime backup support, other than general power utility.

Under such circumstances, trade practices by general a power utility whereby they deny supply of fulltime backup, restrain (without good reason) the volume of supply, or set improper rates, despite having a sufficient surplus capacity of supply and while providing wholesale supply to other general power utilities, are likely to be in violation of the Antimonopoly Act in the following cases. This is because such acts may impede the

business activities of new entrants (refusal to deal, discriminatory treatment, etc.).

(Note) Judgment whether or not such practices fall under refusal to deal, etc. will be made, by taking into consideration the trend of the wholesale electricity market, etc., including the wholesale electric power exchange, depending on whether or not practices by a general power utility in individual trade are likely to unduly impede the business activities of new entrants.

- Denial of fulltime backup supply, or restraining without good reason the volume of supply to new entrants
- Setting of a rate higher than the rate (see Note) for retail supply to users with similar patterns of demand

(Note) Judgment on fulltime backup support rates regarding whether or not they are proper will be made by taking into consideration such factors as increase or decrease in costs, such as deduction of expenses for wheeling service or marketing expenses pertaining to supply for users, which do not occur in fulltime backup support.

- Inhibiting the right of new entrants that are supplying multiple users to choose, in respect to supply of fulltime backup support, a single backup support contract for the said supply, or separate backup support contracts depending on each user.
- Acceptance, by a general power utility, of only a single contract, in spite of the fact that the new entrants (who are supplying multiple users) have requested separate contracts in respect to fulltime backup support, or charging of adjustment charges to new entrants in cases where they reduce the contracted volume of electric power supply following a decline in seasonable demand.

### (3) Other trade practices

#### 1) Desirable trade practices from the standpoint of fair and effective competition

For the sake of impartiality in access to the information of users, it is desirable for general power utility, from the standpoint of fair and effective competition, to set up contact points, which provide new entrants with information on users and prepare in advance items of information available with the consent of users, documents and formats necessary for application for provision of information, and procedures that include the period required for reply, etc. The contact points will also publicize the above items.

#### 2) Trade practices that may be problematic from the standpoint of fair and effective competition

Provision by a general power utility of improper information to users in the course of its marketing activities (e.g., information detailing common occurrence of power failures in the electricity supply by new entrants, instability of voltage and frequency, etc.) and

interference thereby in trade between new entrants and users, is likely to be in violation of the Antimonopoly Act (interference of trade).

Furthermore, the stability of electric power systems is secured by the following: a) under the wheeling system, new entrants shall observe the supply of the same volume at the same time to users, and business operators who are unable to observe supply of the same volume at the same time shall not be permitted to enter the market; b) general power utility maintain the stability of the system through the overall management of networks, and new entrants therefore share the costs as ancillary services of the wheeling supply.

II The ideal state of proper electric power trade in the retail supply business that is still subject to some regulations

### 1 Viewpoint

In the retail supply business, two types of business, namely, deregulated business (liberalized business) and regulated business exist in parallel. With regard to regulated rates (under general supply provisions), a system of notification for reductions in rates has been introduced, and optional supply provision system is expanding. Therefore, it is possible to systematically set flexible regulated rates now.

Under this system, it is necessary for general power utility to deal with matters for setting regulated rates appropriately, taking into account the following points, in addition to comparison with unregulated rates.

2 Desirable trade practices and trade practices that may be problematic from the standpoint of proper electric power trade

#### 1) Desirable trade practices from the standpoint of proper electric power trade

It is desirable that unregulated rates be set to be consistent with regulated rates, and that the regulated rates will incorporate, in the current system, the originality of the unregulated rates. It is expected that, as a result of the above, a diverse rate system, corresponding to cost, will be realized in both unregulated and regulated rates, and that the effect of rationalization will spread across all users, as purposed by the electric utility business system reform.

#### 2) Trade practices that may be problematic from the standpoint of proper electric power trade

In cases where disputes arise between regulated users and general power utility, to the effect that a regulated rate is conspicuously inconsistent with the equivalent unregulated rate, the Ministry of Economy, Trade and Industry will settle the dispute through an administrative process of dispute settlement. If the regulated rate is found, in this process, to in fact be improper, and likely to impair the interests of regulated users, an order to apply for approval of general supply provisions or an order of revision the optional supply provisions rule under the Electricity Utilities Industry Law will be issued (Electricity Utilities Industry Law Section 19-8, or Section 23).

### III The ideal state proper electric power trade in wheeling services

#### 1 Viewpoint

(1) From the standpoint of fair and effective competition, it is essential that networks be made open to new entrants under the same conditions as those for internal trade by general power utilities themselves.

Specifically, such impartiality is sought in both wheeling rates and network operation, such as instruction in supplying electric power, etc.

- a. Under the Electricity Utilities Industry Law, with regard to wheeling rates, a general power utility shall establish, in the rules for wheeling service, rates of wheeling service and backup support (within the first fluctuation range, within the second fluctuation range, and out of the fluctuation range) ancillary to wheeling service and other conditions of supply, and the said rule shall be notified to the Minister of Economy, Trade and Industry. In the event that the said rule for wheeling service is improper (in that it impedes the use of wheeling service by the new entrants, etc.), an alteration order shall be issued by the Minister of Economy, Trade and Industry.
- b. With regard to network operation, in the event that a general power utility refuses (without good reason) to engage in wheeling service, an order to provide wheeling service shall be issued by the Minister of Economy, Trade and Industry. Furthermore, prohibited acts in wheeling services include the use of information which has become known in association with wheeling service for other than intended purposes, as well as discriminatory treatment in wheeling service (Electricity Utilities Industry Law Section 24-6). If any act in violation related to the above is found, an order to stop or alter the said act may be issued by the Minister of Economy, Trade and Industry. (The above prohibited acts shall be applied with necessary modifications to cross-area wheeling service provided by wholesale electricity utility.)

(Note) In cases where disputes arise between new entrants and a general power utility over network operation, the dispute shall be settled by the parties concerned first. In the event, however, the dispute is not settled, the Ministry of Economy, Trade and Industry will ultimately settle the dispute in accordance with the Electricity Utilities Industry Law. In such cases, the general power utility shall provide an adequate explanation concerning the facts pertaining to, and the judgment on, the cause of the dispute, taking into consideration the fact that the general power utility manages the network information in a unified manner.

- c. Furthermore, a system relating to organizations supporting transmission, distribution, and other related operations, which develop impartial and transparent rules, etc. for network operation, has been introduced, and general power utility that operate their network will prepare their own rules, taking into account the operation rules

developed by the organization to support transmission, distribution, and other related operations, to carry out transmission, distribution, and other related operations. The Minister of Economy, Trade and Industry, if it is recognized that impartiality and transparency are not secured in the operation of the organization to support transmission, distribution, and other related operations, can deal with the matter by invoking an order required for supervision, etc.

- (2) While these points are secured, under the Electricity Utilities Industry Law, by a notification and an order of revision the rules for wheeling service, the scheme of an order to provide wheeling service, prohibited acts, the system concerning the organization to support transmission, distribution, and other related operations, it is necessary for a general power utility to deal such matter properly from the standpoint of fair and effective competition, taking into consideration the following points:

## 2 Desirable trade practices, and trade practices that may be problematic from the standpoint of fair and effective competition

- (1) Securing impartiality in wheeling rates, etc.

### 1) Desirable trade practices from the standpoint of fair and effective competition

With regard to wheeling rates set by a general power utility, sharing of the same cost burden by a general power utility and new entrants in accordance with the pattern of utilization, based on a reasonable cost, to the greatest degree possible, is desirable from the standpoint of fair and effective competition.

Furthermore, it is desirable, from the standpoint of fair and effective competition, for a general power utility to respond to inquiries from persons who are considering entry into the market, or from new entrants, with respect to the wheeling rates to be borne for a specified place of demand. In the event that the wheeling service department of a general power utility deals with the matters of such inquiries, it is proper to strictly restrict the passage of information to the marketing department and other departments. Furthermore, for the sake of securing transparency, it is desirable for a general power utility to specify the amount charged for wheeling services on the bills and receipts of deregulated users.

(Note) With regard to their own wheeling service, which are not regulated under the Electricity Utilities Industry Law, it is desirable from the standpoint of fair and effective competition that general power utilities independently make the conditions for their own wheeling service consistent with the conditions of retail wheeling service.

- 2) Trade practices that may be problematic from the standpoint of fair and effective

## competition

### a. Base for calculating wheeling rates

In the following cases, an order of revision will be invoked under the Electricity Utilities Industry Law, because such acts are likely to significantly impede the ability of new entrants to obtain wheeling service (Electricity Utilities Industry Law Section 24-3).

- Cases where the factors to be incorporated as forward-looking costs are improper. (Such factors include: actual expenses in the past; estimated management efficiency improvement during the cost accounting period; estimated technical innovation during the cost accounting period; estimated demands during the cost accounting period; and estimated macroeconomic indicators such as the inflation rate during the cost accounting period.)
- Cases where the cost accounting period is improperly set.
- Cases where, in calculating wheeling rates, the standards in accordance with the actual situation of a general power utility notified by the said utility are improper, according to the rules for calculating rates for wheeling service in the general electricity industry.
- Cases where wheeling rates are not fairly set as compared to the cost borne by a general power utility, and an unreasonable disparity in the standard wheeling rate by type of demand is acknowledged as compared to the cost of network usage by the said general power utility under similar patterns of utilization.
- Cases where, in calculating the adjustment cost concerning cross-area wheeling service under the provisions of the Law Section 24-3 to be included in the cost of wheeling rates, the content submitted by a general power utility according to the ministerial ordinance concerning the cost related to cross-area wheeling service between utilities is inappropriate.
- Cases where the setting of supply conditions according to “contracts concerning wheeling service, standards for load dispatching instructions, etc.” (hereinafter called the “wheeling service usage rule”) are inappropriate, and parties planning to engage (or now engaging) in specified-scale electricity supply business are found to be unable to obtain wheeling service under the conditions equal to general power utility.
- Cases where it is impossible to calculate rates according to electricity consumption, etc. based on the tariff and formulas specified in the rules for wheeling service.
- Cases where the setting of supply conditions (such as bearing construction costs) based on the “wheeling service usage rule” under the rules for wheeling service is inappropriate, and parties planning to engage (or now engaging) in a specified-scale electricity supply business are found to be unable to obtain wheeling service under conditions equal to those applied to general power utility.
- Cases where wheeling rates are not equal for all users of wheeling service, excluding

cases where a distinction is made with good reason, provided that wheeling rates are determined based on the rules to calculate rates for the rules for wheeling service in the general electricity industry.

- Cases where the rules for wheeling service include items (such as charges due to cross-area wheeling service, special facilities, and loss of cross-area wheeling service) that impede the smooth and region-wide circulation of electricity.
- Cases where excessive profit or loss has been annually recorded for two years or so in the transmission and distribution department, or where there is a large gap between the planned total costs and actual expenses in the transmission and distribution department, and where re-estimation of wheeling rates is not made, and no rational reason is given. However, the following cases will be excluded in principle; cases where wheeling rates as a national average are actually reduced by about 7% every two years or so, or cases where, in referring to the management efficiency improvement plan, etc., the forecast of the efficiency improvement similar to the above is shown in the calculation of wheeling rates.
- Cases where, even after the cost accounting period is over, no reasonable or sufficient explanation is given regarding the reason why re-estimation of costs – which is the factor for calculating wheeling rates – is not carried out.

Meanwhile, the following information shall be taken into consideration for judging the above cases.

- Information obtained in the process according to the “guidelines for dispute settlement concerning electric power and gas trade” in the event that disputes over setting the rules of wheeling service arises between specified-scale electricity supply industries and general power utility providing wheeling service, and the dispute has been brought to the Ministry of Economy, Trade and Industry because it has not been settled by the parties concerned

#### b. Denial of usage of interconnection lines and other facilities

With regard to interconnection lines and frequency converters (hereinafter called “interconnection lines, etc.”), organizations supporting transmission, distribution, and other related operations disclose their available capacity and manages and coordinates transmission capacity for the usage of interconnection lines, etc. by business operators. The Minister of Economy, Trade and Industry will invoke an order required for supervision to the organization, if it is acknowledged necessary in order to ensure the fair and accurate implementation of operation of such services (Electricity Utilities Industry Law Section 99-3).

### (2) Securing neutrality in network operations

(2) – 1 Wheeling service by a general power utility

(2) – 1 – 1 Prohibition of the use by a general power utility of information which has become known in association with wheeling service, for other than intended purposes

1) Desirable trade practices from the standpoint of fair and effective competition

- a. Contact points for provision of information for specified-scale electricity supply industries related to wheeling service shall be the power transmission service center / the load dispatching center rather than the department engaged in sales and marketing activities of electricity or in making contracts, etc. (hereinafter called the “marketing department”). Furthermore, contact points for the receipt and provision of information for electricity supply firms related to wheeling service (including firms intending to newly engage in supplying electricity) shall be clarified.
- b. Employees engaged in wheeling service in either the power transmission service center, the load dispatching center, or departments conducting operations related to planning the construction of electricity circulation facilities (such as studying connection, or implementing system interconnection work) shall not engage in operations in the power generation or marketing department; provided, however, that this shall not prevent those belonging to the marketing department from conducting operations of the transmission and distribution department in case of accidents in supply facilities or disasters, where supply trouble must be urgently resolved.
- c. In addition to the provisions in the above paragraph (b), a general power utility shall pay attention not to cause excessive inflexibility or inefficiency of power distribution operations of the general power utility now conducted in coordination with the marketing department. The general power utility shall also clarify the operations if any to be conducted in coordination between departments.
- d. In order to restrict the passage of information on other electricity supply firms and electricity users which has become known in association with wheeling service (hereinafter called the “related information”), employees engaged in wheeling service shall stringently store documents and data describing the related information, and strictly manage the communication of the related information from the department conducting wheeling service to other departments, as well as the sharing of the related information (exchange of internal documents, access to common servers, etc.) between both departments. Furthermore, the department conducting wheeling service and other departments shall be physically separated, for example, being located on separate floors.
- e. At the time of personnel interchanges between the department conducting wheeling service and the power generation and marketing departments, the standards of conduct shall be established and the said personnel shall be made to observe the standards in

order to secure restrictions on the related information between the two departments. Furthermore, such employees and executives in the position to supervise both departments shall also be made to observe the standards of conduct.

- f. If the related information provided to the power transmission service center or the load dispatching center must be requested or communicated by a relevant department engaged in wheeling service to other departments, in order to perform the said service, the said information shall be stringently managed so that other departments cannot use it for other than intended purposes. The methods to deal with this matter include requesting operations, etc. by codifying (at the power transmission service center or the load dispatching center) the data that are not required to be specified, such as the names of electricity supply firms and the relevant power plants and users of electricity.
- g. With regard to restrictions on the passage of the related information between the department engaged in wheeling service and other departments, internal rules or internal manuals shall be developed and announced. Also, a person responsible for managing the state of compliance with the said internal rules shall be assigned and announced.
- h. The trading department, which is engaged in procurement and sales of supply capacity in the wholesale electricity trading market, shall be positioned as part of the power generation and marketing departments, and restrictions on the passage of information to and from the transmission and distribution department shall be secured.

## 2) Trade practices that may be problematic from the standpoint of fair and effective competition

If any acts using or providing information on other electricity supply firms or electricity users which has become known in association with wheeling service, for purposes other than the said supply purposes are found, an order to stop or alter the said acts shall be issued to the general power utility (Electricity Utilities Industry Law Section 24-6).

“Information on other electricity supply firms or electricity users which has become known in association with wheeling service” means information that may influence the activities of the said firms if it has come to the knowledge of other firms. Such information includes, for example, the following information and the information that can be obtained by calculation based on the same.

- a. Power sources of other electricity supply firms (including those procured by contracts; hereinafter the same) and the status of the development of power sources
  - (a) Planned location of connection to power sources, planned start of operation, final scale
  - (b) Assumed suspension and discontinuation time of individual power sources
  - (c) Specifications of power generators of individual power sources (electrical and mechanical systems), specifications of power generator control systems,

specifications of transformers, system configurations in premises, etc.

b. Operation plan of power sources, output allocation, operation conditions, etc. of other electricity supply firms

(a) Operation plan of power sources (suspension plan of power source operations, parallel input schedule of power sources (yearly, monthly, weekly, next day, same day), etc.)

(b) Generator output allocation, generator operation status

(c) Operation conditions and limiting conditions for power source operations

(d) Wheeling service status (volume of wheeling service electric power, amount of imbalance, generator accident status, etc.)

c. Demand trend, actual demand results, etc. of electricity users of other electricity supply firms

(a) Demand trend (load factor, demand forecast of individual users, distribution of users and their scale, etc.)

(b) Actual demand results (maximum electric power, yearly (daily) load factor, load fluctuation status, trend of individual users, etc.)

(c) Wheeling service status (volume of wheeling service electric power, electric energy subject to discount rates due to adjacency etc.)

“Acts using or providing information for other than the said supply purposes” mean the use of the said information, for example, for the following purposes:

a. Grasping the management status of other electricity supply firms

b. Proposing electricity supply competing against other electricity supply firms

c. Conducting marketing activities targeting specific users of other electricity supply firms

d. Using the information to switch users of other electricity supply firms to itself or to its related firm, or to interrupt the change of contracts of other electricity supply firms

e. Using the information to realize trade results advantageous to itself or its related firm

Furthermore, the transmission department of general power utility engaged in wheeling service will obtain information from new entrants who intend to obtain wheeling service, on the demand side (such as information on users, and magnitude of demand), as well as the supply side (such as information on power generation facilities, and capacity of power generation). The transmission department is, therefore, in a position to be able to obtain information on new entrants and their customers in the process of negotiating wheeling service with the said new entrants.

Under such circumstances, putting new entrants at a competitive disadvantage by making the information on the said new entrants and their customers, which was obtained through wheeling service with the new entrants, available to the marketing department and other business departments of a general power utility is likely to be in violation of the Antimonopoly Act, because such acts are likely to impede their business activities

(interference of trade, etc.).

(2) – 1 – 2 Prohibition of discriminatory treatment by general power utility in wheeling service

1) Desirable trade practices from the standpoint of fair and effective competition

- a. With regard to disclosure and sharing common awareness of power system operation and power system information, based on the basic guidelines specified by the organization to support transmission, distribution, and other related operations, internal rules applicable to all electricity supply firms shall be established and disclosed, and wheeling service shall be operated in compliance with the said rules.
- b. With regard to the setting and changing of contracted electric power supply with regards to wheeling service, reasonable and objective standards shall be developed and announced, and they shall be handled in a unified manner based on the standards.

2) Trade practices that may be problematic from the standpoint of fair and effective competition

In cases where acts such as treating specific electricity supply firms with undue favoritism, or unfairly bestowing benefits on them, or treating them unfairly unfavorably, or conferring benefits on them with regards to wheeling services, have become known in association with wheeling service, an order to stop or alter the said acts shall be issued to the general power utility concerned (Electricity Utilities Industry Law Section 24-6).

“Cases where acts such as treating specific electricity supply firms unfairly favorably, or bestowing benefits unfairly on them, or treating them unfairly unfavorably, or conferring benefits on them with regards to wheeling service, have become known,” mean for example the following cases.

a. Discriminatory application of individual rules by the transmission and distribution department

Cases where, with regard to the plan adjustment process, the study of power system access, and power system operation, etc., related to reinforcement of cross-area interconnection lines, undue discrimination is exercised between the power generation and marketing departments (including the trading department, which is engaged in procurement and sales of supply capacity in the wholesale electricity trading exchange; hereinafter the same) of a general power utility, and those of other electricity supply firms, for example, as follows:

- (a) Cases where, with regard to the study of power system access, unreasonable

differences are found between the power generation and marketing departments of a general power utility, and those of other electricity supply firms, in the period required for the study, the content of the study, the way to deal with changes in conditions, the content of responses, the applicable criteria and technical standards, the cost to be borne, or the method of dealing with the termination of the plan.

- (b) Cases where, with regard to the power system operation, undue discrimination is exercised between the power generation and marketing departments of a general power utility, and those of other electricity supply firms, for example, with load dispatching instructions differing in conditions (see Note 1)

(Note 1) If the basic guidelines for priority load dispatching instructions concerning long-term fixed power sources such as nuclear power generation (developed by the organization to support transmission, distribution, and other related operations) are observed, no problems will be posed in principle.

- (c) Cases where, with regard to coordination in advance and provision of information on repair of transmission lines and work on instruments, undue discrimination is exercised between the power generation and marketing departments of a general power utility, and those of other electricity supply firms.

- (d) Cases where, with regard to the use of transmission capacity, undue discrimination is exercised between the power generation and marketing departments of a general power utility, and those of other electricity supply firms (Note 2).

(Note 2) If the basic guidelines for priority allocation of available capacity concerning long-term fixed power sources such as nuclear power generation (developed by organizations supporting transmission, distribution, and other related operations) are observed, no problems will be posed in principle.

- (e) Cases where, in response to application for power system access, undue discrimination is exercised between the power generation and marketing departments of a general power utility, and those of other electricity supply firms, with regard to the preparation of underground transmission lines and power system transmission lines, etc., by detouring transmission lines that are already in installation, etc. without good reason.

b. Discriminatory disclosure and sharing of information possessed by the transmission and distribution department

Cases where, with regard to the disclosure and sharing of information possessed by the transmission and distribution department (such as the revision of wheeling rates and power system information), undue discrimination is exercised between the power generation and marketing departments of a general power utility and those of other electricity supply firms, for example, as follows:

- (a) Cases where there are differences between the power generation and marketing

departments of a general power utility and other electricity supply firms, in information (e.g., information on transmission line routes, forecasted power flow, available capacity, transmission line construction plans, etc.) disclosed in advance for the study on power system access (see Note 3); provided, however, that this does not apply to cases where differences in disclosed information are caused by differences in targets of the access study, such as the site location, the interconnection voltage, and the scale of interconnection facilities.

- (b) Cases where there are unreasonable differences between the power generation and marketing departments of a general power utility and those of other electricity supply firms, in the disclosure of information on the electric power flow situation (see Note 4). In the event that disclosure of information by the organization to support transmission, distribution, and other related operations unduly differs between the power generation and marketing departments of a general power utility and other electric utilities, an order necessary for supervision will be issued to the organization to support transmission, distribution, and other related operations if it is acknowledged necessary to ensure fair and accurate implementation of the supporting service of the said supporting organization under the Electricity Utilities Industry Law (Electricity Utilities Industry Law Section 99-3).

(Notes 3 and 4) If it is not appropriate to disclose information from the standpoint of information security according to the basic guidelines for information disclosure developed by the organization to support transmission, distribution, and other related operations, nondisclosure of the said information does not pose problems in principle.

- (c) Cases where, in the event, for example, that the marketing department of a general power utility makes marketing activities using a new rate menu immediately after the announcement of new wheeling rates, there are unreasonable differences, between the power generation and marketing departments of a general power utility and those of other electricity supply firms, in sharing common awareness of information in advance regarding the revision of rates or changes in conditions
- (d) Cases where disclosure of information on users of electricity (e.g., actual daily load data) possessed by the transmission and distribution department is treated in an unduly discriminatory manner between the power generation and marketing departments of a general power utility and other electricity supply firms

### c. Discriminatory treatment of users

Cases where, in dealing with power failure (inquiries about the circumstances of the power failure, or order of steps taken in recovery from power failure, etc.), replacing meters, etc. by the transmission and distribution department, users are treated in an unreasonably discriminatory manner depending on whether they are users of a general

power utility or users of other electricity supply firms, for example, in the following ways:

- (a) Cases where, with regard to the transmission and distribution department in dealing with power failure (inquiries about the situation of power failure, order of recovery from power failure, etc.), users are treated in an unduly discriminatory manner depending on whether they are users of a general power utility or users of other electricity supply firms, (provided, however, that eventual differences in the order of recovery are not in themselves problematic)
- (b) Cases where, with regard to whether or not meters installed at users facilities are to be replaced or when they are replaced, users are treated in an unduly discriminatory manner, depending on whether they are users of a general power utility or users of other electricity supply firms

#### d. Discriminatory treatment in provision of wheeling rate menu services

Cases where, with regard to the provision of wheeling rate menus according to wheeling service contracts, or the provision of service in the wheeling service business, etc., undue discrimination is exercised between the power generation and marketing departments of a general power utility, and those of other electricity supply firms, for example, in the following ways:

- (a) Cases where, because electricity supply firms cannot select a transmission service menu by time period of day for each user under a wheeling service contract, electricity supply firms cannot provide service equivalent to the service by time period of the day, provided by a general power utility to their users, as an option for each customer
- (b) Cases where, because electricity supply firms cannot make contracts for terms shorter than a year, or cancel contracts and make necessary adjustments for terms shorter than a year, electricity supply firms cannot provide service equivalent to the service of temporary power or temporary adjustment being provided by a general power utility to its users as an option for each customer
- (c) Cases where, because the time required and method undertaken for the transmission and distribution department of a general power utility to provide information of electricity consumption in wheeling service are differ unduly between the marketing department of the general power utility and those of electricity supply firms, electricity supply firms cannot provide service equivalent to the service being provided by the general power utility to notify its users of their power consumption
- (d) Cases where the setting and changing of contracted electric power related to wheeling service is performed based on standards that differ between the marketing department of a general power utility and other electricity supply firms

Furthermore, undue delay of wheeling service procedures or the denial of usage of

facilities such as interconnection lines by a general power utility is likely to be in violation of the Antimonopoly Act in the following cases, as such acts are likely to impede the business activities of new entrants (refusal to deal, discriminatory treatment, etc.).

- Acts by a general power utility acknowledged to substantially deny wheeling service, such as not sufficiently disclosing information required for wheeling service or not procuring materials required for wheeling service, so as to delay wheeling service procedures, or acts to put new entrants at a competitive disadvantage with regard to information disclosure and procedures
- Restraints by general power utility, without good reason, on the use of electricity or the contract unit of minimum and total usable electricity, in response to the application of new entrants for the use of interconnection lines, etc.

(2) – 2 Cross-area wheeling service of wholesale electricity utility

Information on other electricity supply firms will become known to wholesale electricity utility associated with cross-area wheeling service provided to general electricity industries. Furthermore, wholesale electricity utility are required to treat equally any general power utilities, and also to treat equally special electricity supply firms using wheeling service provided by a general power utility that use cross-area wheeling service made available by wholesale electricity utility. Accordingly, the Electricity Utilities Industry Law “Prohibited acts associated with wheeling service of general power utility” (Electricity Utilities Industry Law Section 24-6) is applied with necessary modifications to Section 24-7 of the same Law. Meanwhile, as of the time of issuance of the present guidelines, only Electric Power Development Co., Ltd. engages in “cross-area wheeling service of wholesale electricity utility.”

(2) – 2 – 1 Prohibition by wholesale electricity utility of use of information on cross-area wheeling service for other than intended purposes

1) Desirable trade practices from the standpoint of fair and effective competition

“Desirable trade practices from the standpoint of fair and effective competition” concerning wheeling service of general power utility of (2) – 1 – 1 above shall be applied with necessary modifications. In this case, “wheeling service” shall read “cross-area wheeling service,” “specified-scale electricity supply business” shall read “general electricity industry,” the “power transmission service center” shall read the “contact points for information related to cross-area wheeling services,” and the “transmission and distribution department” shall read the “transmission and transformer department.” Meanwhile, paragraph 1(c) related to wheeling service of general power utility is not applicable because there are no power distribution operations in cross-area wheeling service of

wholesale electricity utility.

2) Trade practices that may be problematic from the standpoint of fair and effective competition

In the case of cross-area wheeling service of wholesale electricity utility, which differ from those of general power utility:

- wholesale electricity utility do not supply electricity directly to users using their own network facilities;
- wholesale electricity utility do not directly receive application for wheeling services or request for study of connection to power sources from specified-scale electricity suppliers; or
- wholesale electricity utility do not operate networks (monitoring status of other companies' power sources, individual demand, and/or load dispatching instructions).

Therefore, “practices related to cross-area wheeling service” are automatically limited.

However, wholesale electricity utility prepare, operate and maintain their own transmission and transformer facilities in conducting cross-area wheeling service. Accordingly, through application of general power utility’ “trade practices that may be problematic from the standpoint of fair and effective competition” with necessary modifications, acts to use or acts that are acknowledged to provide the following information for other than the purpose of providing the said service, will invoke an order to stop or alter the said acts, similarly to cases involving general power utility (application with necessary modifications of provisions of prohibited acts associated with wheeling service of general power utility in Section 24-7 of the Electricity Utilities Industry Law).

- a. Power sources, the power source development status, etc. which have become known in association with the connection of the said transmission and transformer facilities to power sources of other electricity supply firms
- b. Power source operation plan of other electricity supply firms which have become known in association with the adjustment of the operation suspension plan of the said transmission and transformer facilities (suspension plan of power source operations, parallel input schedule of power sources, etc.)
- c. Wheeling service statuses of other electricity supply firms which have become known in association with the operation of the said transmission and transformer facilities (cross-area wheeling service electric power volume, generator accident status, etc.)

(2) – 2 – 2 Prohibition of discriminatory treatment in cross-area wheeling service of wholesale electricity utility

1) Desirable trade practices from the standpoint of fair and effective competition

“Desirable trade practices from the standpoint of fair and effective competition”

concerning wheeling service of general power utility of (2) – 1 – 2 above shall be applied with necessary modifications. In this case, “wheeling service” shall read “cross-area wheeling service” and “applicable to all electricity supply firms” shall read “applicable to general power utility”.

2) Trade practices that may be problematic from the standpoint of fair and effective competition

In the case of cross-area wheeling service of wholesale electricity utility, which differ from those of general power utility:

- wholesale electricity utility do not supply electricity directly to users using their own network facilities;
- wholesale electricity utility do not directly receive application for wheeling service or request for study of connection to power sources from specified-scale electricity suppliers; or
- wholesale electricity utility do not operate network (status monitoring of other companies’ power sources and individual demand, or load dispatching instruction).

Therefore, “practices related to cross-area wheeling service” are automatically limited.

However, wholesale electricity utility prepare, operate and maintain their own transmission and transformer facilities in conducting cross-area wheeling service. Accordingly, acts whereby the following treatment is acknowledged will invoke an order an order to stop or alter the said acts, similarly to cases involving the wheeling service of general power utility (application with necessary modifications of provisions of prohibited acts associated with wheeling services of general power utility in Section 24-7 of the Electricity Utilities Industry Law).

- a. Unduly discriminatory treatment between the utilities’ own power generation and marketing departments, and those of other electricity supply firms, in the case of the study on access to the said transmission and transformer facilities or the repair or maintenance of the said facilities (including the study conducted for design)
- b. Unduly discriminatory treatment of between the utilities’ own power generation and marketing departments, and those of other electricity supply firms, in the case of disclosure and sharing common awareness of information, such as information on the operation suspension plan and information on recovery from an accident.

#### IV The ideal state of proper electric power trade in the electricity procurement business by general power utility

##### 1 Viewpoint

- (1) There are four main options, as listed below, in the methods for procuring electricity by general power utility.
  - a. Long-term fixed power sources, such as nuclear and hydraulic power sources, are characterized by the fact that they require a large initial investment with a long investment payback period. From both the standpoint of achieving public interests (such as securing energy security, and environmental preservation) and the standpoint of region-wide operations, whereby geographical gaps in demand and supply among general power utility due to differences in the geographical conditions of the locations of their power sources, etc. are filled, it is necessary to maintain an investment environment that facilitates the risk management of investment in long-term fixed power sources. Accordingly, priority shall continue to be given to the development in accordance with a plan based on the supply schedule, under the Electricity Utilities Industry Law.
  - b. With regard to the development of thermal power sources, in the case of construction by the utility concerned, the development shall be made in a well-planned manner in accordance with a plan based on the supply schedule, under the Electricity Utilities Industry Law. In the case of procurement from others, procurement can be made either by way of bidding, or, in principle, at the regulated rate as wholesale supply under the Electricity Utilities Industry Law.
  - c. In order to secure supply capability or pursue economic rationality by substituting the power sources now owned by the utility with lower-rate power sources owned by other entities, procurement is also possible through the wholesale electricity trading market.
  - d. Besides the above, as measures for the adjustment of power system operation between general power utility, the following accommodating measures are taken: i) mutual support and accommodation relating to demand and supply, for procurement to make up for urgent shortage in supply capability; and ii) region-wide mutual cooperative accommodation for urgent surplus supply; provided, however, that the said accommodation can be only utilized by system operators, on the condition that the trading department has attempted to procure from, or to input into, the wholesale electricity trading market, etc. in advance, and no other measures than the said accommodation are found available to fill the gap between demand and supply.
- (2) With regard to the extent of development of nuclear and hydraulic power sources, it is reasonable to make decisions preemptively based on the standpoint of meeting public

interests. And, also, with regard to securing efficiency, it is reasonable to depend on approval of or notification and orders of revision on regulated retail supply rates, as well as notification and orders of revision on wholesale supply rates, under the Electricity Utilities Industry Law.

(3) On the other hand, in reference to procurement from power sources other than nuclear or hydraulic sources, etc., it is important that general power utility deal with matters appropriately, taking the following points into account from the standpoint of fair and effective competition.

(4) In April 2005, procurement from economic distribution was terminated and trading at the wholesale electric power exchange, or a privately established and arbitrary market, started. For the wholesale electric power exchange, as Japan's first attempt, it is required to make the most of its risk management function for business operators, such as the formation of index prices and enhancement of sale and procurement methods to resolve demand-supply mismatch problems, and it is also expected to play an important role in the current electric utility business system reform. For general power utility now holding most of the power generation facilities, input into the wholesale electric power exchange at the initial stage of trading, as well as procurement from the wholesale electric power exchange as required, is expected. In the case of input or procurement of electricity using the wholesale electric power exchange, it is also required to trade in accordance with transparent and fair procedures, and fair rules, as specified by the said wholesale electric power exchange.

## 2 Trade practices that may be problematic from the standpoint of fair and effective competition

### a. Unreasonable rate setting in wholesale supply

With regard to procurement of electricity from existing thermal power sources, procurement shall be made as wholesale supply, using a rate that has been notified to the Minister of Economy, Trade and Industry under the Electricity Utilities Industry Law. The rate, if not set satisfactorily to include an appropriate margin on appropriate costs, will invoke an order of revision under the Electricity Utilities Industry Law (Electricity Utilities Industry Law Section 22).

### b. Restrictions on entrance into the retail supply market placed on wholesale business operators (IPP, etc.)

Cancellation of (or suggestion to cancel), by a general power utility, a wholesale supply contract with a wholesale supply business operator (e.g., a wholesale electricity utility, a

wholesale supplier, a user with self-power generation facilities, etc.) who provides wholesale supply to the general power utility and who intends to enter the retail supply market by utilizing a surplus in excess of its wholesale supply to the general power utility, or by lowering (or suggesting to lower) the purchase rate, is likely to be in violation of the Antimonopoly Act, as such an act will interfere entrance into the market (refusal to deal, etc.).

c. Abuse of dominant bargaining position against wholesale business operators (IPP, etc.)

Trade practices whereby a general power utility places unreasonably disadvantageous conditions in respect to conditions or execution of trade, in the light of normal business practices, on business operators who make wholesale supply to the general power utility (e.g., a wholesale electricity utility, a wholesale supplier, a user with self-power generation facilities, etc.) are likely to be in violation of the Antimonopoly Act (abuse of dominant bargaining position).

d. Purchase of power generation facilities by a general power utility

Purchase, by a general power utility, of power generation facilities from existing business operators with self-power generation facilities, in order to reinforce and supplement its own power supply capability is fundamentally a matter of managerial judgment of the general power utility.

However, indication that the general power utility has offered an unreasonably high purchase price to a business operator who is negotiating to sell generation facilities to new entrants, or that it is making the rate of electric power supplied to the said business operator and other conditions of trade more advantageous than before, or, in the case that sale was made to a new entrant, that it is setting (or suggesting to set) a rate more disadvantageous than before, is likely to be in violation of the Antimonopoly Act in the following cases, as such acts will cause the said business operator to give up the sale to the new entrants (interference of trade, etc.).

- Indication of a remarkably high purchase price compared with the current asset value, despite sufficient surplus electric power.
- Discount in rates for services provided by the utility itself, on condition that sale is to be made to the utility.
- Refusal by the utility to provide services, or the setting of higher rates for services provided by the utility, in cases where sale was made to a new entrant.

## V The ideal state of proper electric power trade in wholesale electric power exchange

### 1 Viewpoint

With regard to the wholesale electricity market, no significant structural changes are seen, and long-term negotiated transactions by general power utility are mainstream. With the progress in deregulation, however, forms of transaction have become more diverse, and the liquidity of the market is gradually increasing.

The “Framework of the Desirable Future Electricity Industry System”, a report adopted by the Electricity Industry Committee (February 15, 2003), proposed the establishment of wholesale electric power exchange, in order to reinforce the risk management function of business operators, including the formation of index prices (to help assessment of investment risk), and the enhancement of sale and procurement methods in the case of demand-supply mismatch problems. In response to the report, actual trading started in April 2005 at the wholesale electric power exchange. While the trading volume is still small, all parties concerned with wholesale electricity trade can participate in this market, and it is expected to play an important role in the wholesale electricity market.

Trading at the wholesale electric power exchange is important for new entrants, from the standpoint of the diversification of electric source procurement, and its significance will increase if fulltime backup support is shifted to the wholesale electric power exchange. Also, spot trading at the wholesale electric power exchange has a mechanism enabling the offering of bids of surplus electricity, and the procuring electric power source in order to prevent imbalance from occurring, which is essential for new entrants in terms of sustaining their business.

### 2. Desirable trade practices and trade practices that may be problematic from the standpoint of fair and effective competition

#### (1) Desirable trade practices from the standpoint of fair and effective competition

##### 1) Sale bid

Inasmuch as general power utility hold most of the power generation facilities, if such power sources are not traded at the wholesale electric power exchange, a sufficient volume of trading is not expected at the wholesale electric power exchange. Accordingly, it is desirable from the standpoint of fair and effective competition for general power utility to proactively input their surplus power sources to the wholesale electric power exchange.

##### 2) Market monitoring

Electricity industry utilities which hold a large share in the power generation segment, can

possibly set the trading volume and price advantageous to themselves in trading at the wholesale electric power exchange independently, or in cooperation with other electricity industry utilities. Accordingly, it is desirable from the standpoint of fair and effective competition not only to monitor illegal trading practices, but also to monitor the market, including verification of practices by these dominant business operators at the wholesale electric power exchange.

### 3) Information disclosure

Disclosure, at the wholesale electric power exchange, of trading information contributing to securing the reliability of price formation, as well as appropriate disclosure of market monitoring results, is desirable from the standpoint of fair and effective competition.

## (2) Trade practices that may be problematic from the standpoint of fair and effective competition

Wholesale business operators can put part of their generated electricity to bid by altering an existing contract, etc. with a general power utility. In order to activate trading at the wholesale electric power exchange, the participation of these operators is expected.

Under the circumstances where the wholesale electric power exchange is expected to play an important role as a means for new entrants to procure electricity, unreasonable interference by a general power utility in the participation of wholesale business operators in wholesale electric power exchange (who intend to participate in the wholesale electric power exchange) is likely to be in violation of the Antimonopoly Act in the following cases, as such acts may impede the business activities of new entrants.

### 1) Cancellation or unreasonable alteration of supplementary supply contracts on self-power generation facilities

Cancellation (or suggestion to cancel) by a general power utility of a supplementary supply contract on self-power generation facilities, or setting of (or suggestion to set) a higher rate than before to users with self-power generation facilities who intend to participate in wholesale electric power exchange, utilizing such facilities (trade with binding conditions, discriminatory rate offering, etc.)

### 2) Cancellation or unreasonable alteration of demand/supply adjustment contracts

Cancellation (or suggestion of cancellation) by a general power utility of an existing demand/supply adjustment contract with those holding self-power generation facilities who intend to participate in wholesale electric power exchange (trade with binding conditions, discriminatory treatment, etc.)

3) Cancellation or unreasonable alteration of surplus electric power purchase contracts

Cancellation of (or suggestion to cancel), by a general power utility, a surplus electric power purchase contract for the supply portion that the utility receives, that is entered into with a wholesale business operator who intends to participate in the wholesale electric power exchange, or lowering or (suggestion to lower) the purchase rate (trade with binding conditions, discriminatory rate offering, etc.)

4) Cancellation or unreasonable alteration of wholesale supply contracts

Cancellation of (or suggestion to cancel), by a general power utility, a wholesale supply contract for the supply portion that the utility receives, that is entered into with a wholesale business operator who intends to participate in wholesale electric power exchange, or lowering or (suggestion to lower) the wholesale supply contract rate (trade with binding conditions, discriminatory rate offering, etc.)

## VI The ideal state of proper electric power trade in the field of competition with other energy forms

### 1 Viewpoint

Self-power generation facilities including cogeneration systems are increasingly being used by a wide range of users, and the introduction of self-power generation facilities, etc. puts them in competition with general power utilities providing electric supply.

On the other hand, many users with self-power generation facilities are in a situation whereby they must depend on existing a general power utility. This is exemplified by the fact that they receive of electric power supply from general power utility (in addition to power from their own generation facilities), that their own facilities are interconnected with the networks of general power utility in order to secure the stable operation of their own facilities, and receive provision of ancillary services, conclude supplementary contracts on self-power generation facilities, and so on.

(Note) Refer to the paragraphs shown below for trade practices that may be problematic from the standpoint of fair and effective competition in cases where these users either wholesale the surplus volume of their generated electric power, etc. to new entrants, or at the wholesale electric power exchange; or they newly enter the market.

I Retail supply business: “e. Cancellation and unreasonable alteration of supplementary supply contracts on self-power generation facilities”; “g. Cancellation and unreasonable alteration of demand/supply adjustment contracts”; “h. Cancellation and unreasonable alteration of surplus electric power purchase contracts”; “i. Cancellation or unreasonable alteration of wholesale supply contracts”;

V Wholesale electric power exchange: “1) Cancellation and unreasonable alteration of supplementary supply contracts on self-power generation facilities”; “2) Cancellation and unreasonable alteration of demand/supply adjustment contracts”; “3) Cancellation and unreasonable alteration of surplus electric power purchase contracts”; and “4) Cancellation and unreasonable alteration of wholesale supply contracts.”

Also, in recent years, the electricity retail supply business has been faced with stronger competition than ever from other types of energy, particularly gas, in both deregulated (liberalized) or regulated business. Under these circumstances, a general power utility is taking measures such as actively developing promotional campaigns for “All Electrification,” where all heating is powered by electricity. In view of such situations, there is concern that a general power utility may impede fair competition by using fair or unfair means to promote All Electrification.

In a business such as this, where there is competition between types of energy, a general power utility will also have to handle matters appropriately with regards to the following

points, from the standpoint of fair and effective competition.

## 2 Desirable trade practices, and trade practices that may be problematic from the standpoint of fair and effective competition

### (1) Introduction or expansion of self-power generation facilities

#### 1) Desirable trade practices from the standpoint of fair and effective competition

When self-power generation facilities are interconnected with power systems, it is important to fulfill the technical requirements specified in the following: the ministerial ordinance to specify a technical standard for electric facilities (No. 52 of the 1997 International Trade and Industry Ministerial Ordinance) established under the provisions of Sections 39 and 56 of the Electricity Utilities Industry Law from the standpoint of securing public safety; and technical guidelines for grid interconnection for electricity quality assurance (2004 Resource / Electricity Div. N0.114) (October 1, 2004) (hereinafter called “technical guidelines for grid interconnection”).

Technical consultations on system interconnection by those who intend to install self-power generation facilities are received at a sales office of each electric power utility, as long as wheeling service is not involved; however, the marketing staff of the said sales office tend to conduct their work without a clear awareness of themselves as different from the staff in the distribution department in making decisions on technical requirements for interconnection. The said consultations are not directly connected with the wheeling service business, and therefore do not fall under the Prohibited Acts of the Electricity Utilities Industry Law (Section 24-6). In light of the fact, however, that such work should essentially be conducted not by the marketing department but by the transmission and distribution department, it is desirable, taking into consideration such cases where system interconnection of power generation facilities related to wheeling service is handled, to set up the contact point of the said consultations at the transmission and distribution department and clarify it in sales offices, as well as to properly manage information obtained in the course of the said consultations; provided, however, that this does not prevent the fact of the introduction of self-power generation facilities from becoming known by the marketing department of the general power utility, with the progress of contract related work, such as reviewing the existing retail supply contract.

Regarding the concept of flexible operations of the power receiving and transforming facilities as a result of system interconnection (see Note), it is desirable for general power utility to prepare the concept in written form or the like in advance, in order to ensure predictability for users with power generation facilities.

Furthermore, in handling reverse power flow in system interconnection, it is desirable

able for each general power utility to treat each user with power generation facilities equally, and also give an appropriate explanation to users with power generation facilities, in compliance with legal regulations, as well as based on the concept of technical requirements of the technical guidelines for grid interconnection.

(Note) According to the concept of “technical guidelines for grid interconnection for electricity quality assurance”, even if the electric power capacity per user with power generation facilities exceeds the capacity of the principle of the interconnected power system voltage class, flexible operations in power receiving as a lower voltage class are allowed, as long as there are no problems in technical requirements for standard facility formation, taking into account the actual facility situation, and the trends in demand, etc. of the power system.

2) Trade practices that may be problematic from the standpoint of fair and effective competition

a. Interruption etc. of introduction or expansion self-power generation facilities

Unreasonable restraints, by a general power utility, on the introduction or expansion of self-power generation facilities, will help maintain and strengthen the position of general power utility in the market, and such acts are likely to be in violation of the Antimonopoly Act (dealing on restrictive terms, etc.) in the following case, on the condition that self-power generation facilities are not going to be introduced: the supply of electric power, the discounting of rates or the setting of advantageous rates for services provided by the utilities (such as supply of electric power, etc.), as well as the discounting of prices of electric power related facilities such as storage batteries.

Furthermore, denial of (or suggestion to deny) provision of service, such as the supply of electric power, supplementary supply of electric power to self-power generation facilities, etc., or the setting (or suggestion to set) rates and other conditions of trade, without good reason, that are disadvantageous to users who intend to introduce self-power generation facilities, etc., when self-power generation facilities, etc., have actually been introduced, is likely to be in violation of the Antimonopoly Act, in the following cases, as such acts will cause the abandoning of the introduction of self-power generation facilities (dealing on restrictive terms, etc.).

- Cancellation of (or suggestion to cancel) existing demand/supply adjustment contracts with users who intend to introduce self-power generation facilities such as cogeneration systems, even in cases where requirements of the demand/supply adjustment contracts, such as load shift, are fulfilled.
- Suggestion to deny supply of electric power to users who intend to introduce self-power generation facilities such as cogeneration systems, unless they change to

the *extra high-voltage* transmission line for receiving power, despite the fact that their receipt of power from the high voltage transmission line has been acknowledged, in cases where conditions have not changed to the extent of changing to the extra high-voltage transmission line for receiving power.

In addition, collection of (or suggestion to collect) charges, without good reason, for ancillary services, etc. necessary for users with self-power generation facilities, from users who intend to introduce self-power generation facilities, etc. when self-power generation facilities, etc. have actually been introduced, despite the fact that such charges have not been collected previously, thereby causing the introduction of self-power generation facilities to be abandoned, is likely to be in violation of the Antimonopoly Act (dealing on restrictive terms).

b. Disadvantageous demands made on users with self-power generation facilities

Many users with self-power generation facilities are in a situation whereby they must depend on existing general power utility. This is exemplified by the fact that they receive supply of electric power (in addition to power from their own generation facilities) from general power utility, their own facilities are interconnected with the networks of general power utility in order to secure the stable operation of their own facilities, they receive provision of ancillary services, conclude supplementary contracts on self-power generation facilities, and so on.

Under such circumstances, where users with self-power generation facilities have no choice but to accept disadvantageous conditions if such conditions are proposed by general power utility, the following cases are likely to be in violation of the Antimonopoly Act (tie-in sales, etc., abuse of dominant bargaining position, etc.).

- The unilateral setting, without good reason, of rates and other conditions of trade on services necessary for users with self-power generation facilities, such as ancillary services, supplementary supply of power for self-power generation facilities, etc.
- Requests to users for self-power generation facilities from the utility itself, or from a business operator designated by the utility.

(2) “All Electrification,” etc.

1) Desirable trade practices from the standpoint of fair and effective competition

The electricity general supply provisions and the optional supply provisions (hereinafter called the “general supply provisions, etc.”), that specify the trade conditions standardized in advance for unregulated general users shall be applied impartially, regardless of the characteristics of users; however, due to the nature of general supply

y provisions, etc., where it is difficult to standardize all of diverse trade conditions in advance, a part of such rules shall be determined according to individual consultations with users. Therefore, from the standpoint of securing impartiality and transparency in implementing general supply provisions, etc., it is desirable to establish and announce reasonable and objective standards for items that are likely to give rise to doubt that they have been arbitrarily implemented, in cases where general power utility implement individual items described in general supply provisions, etc.

## 2) Trade practices that may be problematic from the standpoint of fair and effective competition

### a. Arbitrary implementation by a general power utility

In cases where general power utility implement individual items described in general supply provisions, etc., if they are implemented properly in accordance with the establish of reasonable and objective standards in advance, such acts will not be problematic under the Electricity Utilities Industry Law.

However, if a general power utility makes the following arbitrary decisions, without technical or other good reasons and in violation of the implementation standards, simply as conditions for All Electrification (including partial electrification to replace other energies for demand for hot water supply or in the kitchen; hereinafter the same), such acts will be in violation of the obligation to comply with general supply provisions that prohibits rates and other supply conditions except those approved or notified under the Electricity Utilities Industry Law; or may invoke an order concerning betterment of business procedures (Electricity Utilities Industry Law Section 21 or 30).

- Cases of making decisions on adopting underground service lines to replace overhead service lines as facilities supplied by the general power utility.
- Cases of making decisions on whether to adopt the supply method that requires installation of a power supply transformer room, etc. or to adopt a supply method that does not require installation of a power supply transformer room, etc. as a power supply method for collective housing, such as condominiums or commercial buildings.
- Cases of making decisions on the number of locations for power supply transformer rooms used as a power supply means for collective housing, such as condominiums.

Furthermore, in cases where a general power utility applies optional supply provisions for users of All Electrification, if the utility approves the application of the s

aid optional supply provisions on the condition that gas facilities (such as gas meters and gas piping) be removed in spite of the fact that the said optional supply provisions do not require the removal of gas meters and gas piping, such acts will be in violation of the obligation to comply with optional supply provisions that prohibits rates and other supply conditions except those notified under the Electricity Utilities Industry Law; or may invoke an order concerning betterment of business procedures (Electricity Utilities Industry Law Section 21 or 30).

b. Indoor wiring work for which general power utilities bear the cost

If a general power utility bears the work cost for indoor wiring (which is the user's property) in a regulated business, excluding cases where work is performed as a temporary measure for safety, such an act, regardless of whether or not there are any conditions required for All Electrification, will be in violation of the obligation to comply with general supply provisions that prohibits rates or other supply conditions except those approved or notified under the Electricity Utilities Industry Law; or may invoke an order concerning betterment of business procedures, as such acts are not permitted under general supply provisions, etc. (Electricity Utilities Industry Law Section 21 or 30).

Also, if a general power utility bears the cost of work on indoor wiring (which is the user's property) in deregulated business, regardless of whether or not there are any conditions required for All Electrification, and records the said cost as an electricity business cost, and counts it in the cost calculation of the rates for regulated business, such an act will be in violation of regulations on the keeping of accounts under the Electricity Utilities Industry Law; or may invoke an order to apply for approval of general supply provisions, as such acts will result in improper keeping of accounts and improper costs in rates, and are likely to impair the interests of regulated users (Electricity Utilities Industry Law Section 34 or 23, etc.).

c. Excessive promotion and advertising activities by a general power utility of electrical equipment

In cases where general power utility conduct promotion and advertising activities for electrical hot-water supply equipment, electrical kitchen appliances, etc., including All Electrification, if they are conducted within the range of socially accepted norms, such acts will not be problematic under the Electricity Utilities Industry Law.

However, if a general power utility conducts the said activities while unduly deviating from the range of socially accepted norms, and thereby records an improper cost as an electricity business cost and counts it in the cost calculation of the rates for regulated business, such an act will be in violation of keeping of accounts u

nder the Electricity Utilities Industry Law; or may invoke an order to apply for approval of general supply provisions, as such acts will result in the improper keeping of accounts and improper costs in rates, and are likely to impair the interests of regulated users (Electricity Utilities Industry Law Section 34 or 23, etc.).

d. Purchase by a general power utility of real estate

In cases where a general power utility has purchased some units of an All-Electric condominium in accordance with the guarantee conditions agreed upon with the developer of the new condominium that the general power utility shall purchase units of the condominium left unsold, if the said units of the condominium are used for the utility's company houses, such acts will not be problematic under the Electricity Utilities Industry Law.

However, if the utility purchases condominium units that are not to be used as the utility's company houses, and records them as fixed assets of their electricity business, and counts them in the cost calculation of the rates for regulated business, such an act will be in violation of regulations on the keeping of accounts under the Electricity Utilities Industry Law; or may invoke an order to apply for approval of general supply provisions, as such acts will result in improper keeping of accounts and improper costs in rates and are likely to impair the interests of regulated users (Electricity Utilities Industry Law Section 34 or 23, etc.).

e. Provision of unjust benefits, etc. on the condition of All Electrification

Provision of (or suggestion to provide) unjust benefits, by a general power utility, in the light of the normal business practices on the condition of All Electrification of houses, etc., unjustly making All Electrification a condition of trade, or unjust discriminatory treatment of business operators other than those adopting All Electrification, is likely to be in violation of the Antimonopoly Act in the following cases, as such acts may impede the business activities of gas utilities (customer inducement by unjust benefits, dealing on restrictive terms, discriminatory treatment, etc.).

- Cases where a general power utility accepts, without good reason, the request for underground service line installation for houses, etc. in response to the said request, on the condition of All Electrification. Also, cases where a general power utility bears, without good reason, the cost for underground service line installation, which is not normally borne, on the condition of All Electrification of houses, etc.
- Cases where a general power utility exempts, without good reason, the installation of a power supply transformer room for collective housing, on the condition of

f All Electrification of the said collective housing.

- Cases where a general power utility bears, without good reason, the work cost for indoor wiring for houses, etc. on the condition of All Electrification of houses, etc.
- Cases where a general power utility guarantees to purchase, without good reason, units of the collective housing left unsold for the developer of collective housing, etc. on the condition of All Electrification of the said collective housing.

Furthermore, request by a general power utility, without good reason, to users to remove gas meters and gas piping (which are assets of users, etc.) on the condition of All Electrification is likely to be in violation of the Antimonopoly Act, as such acts may impede the business activities of gas utilities (dealing on exclusive terms, interference of trade, etc.).