

**Guidelines Concerning Appropriate  
Electric Power Dealings**  
(tentative translation)

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**Fair Trade Commission**  
**Ministry of Economy, Industry and Trade**

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# **Guideline for Proper Electric Power Trade**

## **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 so far been approved by entrance restraints under the Electricity Utilities Industry Law, and the harmful effects accompanying monopolization have been coped with by regulations on business activities (regulation on rates, obligation to supply, etc.) under the provisions of the Electricity Utilities Industry Law.

However, the Electricity Utilities Industry Law was revised in 1995, and entrance restraints were abolished in principle in the wholesale supply business. A wholesale tender system and wholesale consignment supply system were created, and as a result competition among suppliers in the wholesale supply business has been introduced.

Further, revision of the Electricity Utilities Industry Law in May 1999 introduced a partial deregulation in the retail supply business, and with regard to the supply for special high-voltage users, entrance restraints were abolished while rate restraints were abolished in principle.

The revision of the Electricity Utilities Industry Law is expected to produce a) competition for supply of electricity to users in the deregulated market among electric power companies in their service areas, and b) new entrants (wholesale business operators to supply electricity to electric power companies, business operators with power generation facilities for private use, and electric power companies outside the service area), thereby improving the efficiency of electric utilities business as a whole as well as contributing to the interests of all users.

- (2) In introducing competition as a result of the emergence of the above-mentioned new entrants in the retail supply business, it has become inevitable that, as a base for competition, existing nationwide transmission networks owned by electric power companies must be made open to new entrants for utilization under the same conditions applied to the electric power company itself. For this purpose, in

the revised Electricity Utilities Industry Law, a consignment supply system has been incorporated to guarantee impartial and fair utilization of networks owned and operated by electric power companies.

In view of the following characteristics of the electric power market, however, there is concern that the establishment of a consignment supply system alone may not, as matter of fact, produce new participation or competition in electric power market.

At the initial stage of enforcement of the revised Electricity Utilities Industry Law, existing electric power companies have almost 100% market share in each of the service areas.

Because existing electric companies number only ten, it is likely that they will engage in cooperative behavior even if there is no contact among them with regard to their intentions.

New entrants, who have no other means to compete other than to depend on the consignment supply of the relevant electric power company (which is also a competitor and has a marketing department as well as monopolistic network), will be put in a position of disadvantage if this matter is not dealt with properly by the electric power company.

The electric power companies, by possessing large-scale power generating facilities, etc., can more easily achieve energy supply of the same volume at the same time compared than new entrants.

- (3) Under these circumstances, it has become necessary to take measures in order to make the electric power market function competitively. In this case, dealing with pre-restraints under the Electricity Utilities Industry Law may be considered an option. However, achievement of efficient functioning of electricity business activities through the maximum exercise of independent management is a fundamental idea behind the recent reform of the electricity business system. For this reason a consignment supply system has been established and restraints on electric power companies in the deregulated market have been abolished in principle. On the other hand, restraints by the Antimonopoly Act, which is a common rule in the market, may also be considered an option. This Act however aims fundamentally to eliminate anticompetitive trade practices, and there are certain limits in its ability to make the electricity market more competitive.

Accordingly, it has become necessary not only to clarify the trade practices that may become problematic under the Antimonopoly Act as well as standards for

evoking alteration orders under the Electricity Utilities Industry Law, but also to show guidelines for proper electric power trade that is consistent with the Electricity Utilities Industry Law and 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. Establishing an environment in which direct administrative intervention caused by violation of the Electricity Utilities Industry Law and Antimonopoly Act may be prevented in advance and where market entrants may engage in economic trade without anxiety will lead to maximizing the respect for managerial independence and minimizing the administrative intervention, which is the philosophy of the ongoing reform.

(4) In view of the points mentioned above, guidelines for proper electric power trade that are consistent with the Electricity Utilities Industry Law and Antimonopoly Act were formulated, 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 Antimonopoly Act. Both entities have responsibility for areas in their respective jurisdictions and for coordination with each other.

(5) In preparing these guidelines, the following points have been adopted as fundamental principles

Taking into consideration the fact that these guidelines will have significance as a message for market entrants, concrete guidelines for proper electric power trade shall show conformity with specific and conceivable problematic instances and specific concerns.

Inasmuch as it is difficult to anticipate all trade practices in advance because this is 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 system reform will be taken into consideration. As it is expected that the structure of the market will change dynamically, these guidelines will be reviewed as necessary.

(6) With approximately two years having passed since the revised Electricity Utilities Industry Law was put into effect, the above concerns cannot be said to have been eliminated. Furthermore, requests for investigation, etc., have been presented by

new entrants, users, etc., on some business activities by electric power companies in connection with restraints on competition. These are with regard to trade practices not shown in current guidelines and trade practices of electric power companies that were not anticipated at the time of system reform.

While the current situation of the electric power market shows some results (seen in the entrance of new business operators and the decline in electricity rates), active competition cannot necessarily be recognized between the electric power company of the service area and the new entrants (wholesale business operators that supply electricity to the electric power company, business operators with power generation facilities for private use, electric power companies outside the service area, etc.) in the marketing activities of each user as initially expected.

While further discussions are currently taking place with regard to the electricity utilities industry system, as it ought to be, the Fair Trade Commission and Ministry of Economy, Trade and Industry have decided to revise the “Guidelines for Proper Electric Power Trade” in order to supplement and enhance the current version, based on instances of dispute, etc., presented so far to administrative authorities. This is from the standpoint that it is important to show proper electric power trade (as it should be under the current system) more specifically and clearly to the parties concerned (e.g., electric power companies, new entrants, users, etc.) in order to establish an environment where they may exercise maximum managerial independence pending the implementation of system reform.

## **2. Composition of the Guidelines**

- (1) The guidelines are divided into the following areas: deregulated retail supply, consignment supply, procurement of electricity by electric power companies, retail supply that is still subject to some regulations, and business concerning new construction or expansion of facilities by users with power generation facilities for private use. In principle, the guidelines consist of the following:
  - A. In general, fundamental views shall be clearly indicated.
  - B. In particular, trade practices considered desirable for making the electric power market function competitively shall be demonstrated, trade practices likely to be problematic under the Electricity Utilities Industry Law or Antimonopoly Act shall be indicated, and, in certain cases, the effect of instances that will not be

problematic under the Electricity Utilities Industry Law or 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 matter will be dealt with case-by-case by taking the spirit and content of the guidelines into account, and the accumulation of such judgments is expected to further clarify the content of the guidelines.

## **Part 2 Guidelines for Proper Electric Power Trade**

### **1. Proper electric power trade, as it ought to be, in the deregulated retail supply business**

#### **1. Viewpoint**

- (1) As part of electric utilities industry system reform in 1999, it was decided in principle not to impose restraints upon electric power companies under the provisions of the Electricity Utilities Industry Law in respect of the conditions of supply for deregulated users and new entrants. This was on the assumption that an efficient supply of electric power would be realized if effective competition is born between existing electric power companies and new entrants that cater to users (special high-voltage users) that are able to choose suppliers (Refer to Note below).

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

(Note) It is provided that, as an exception, an electric power company shall supply electricity to deregulated users in its service area that are unable to obtain supply from other operators under the ultimate guarantee rule of the Electricity Utilities Industry Law. Furthermore, with regard to such cases

as may inevitably occur due to new entrances in the market and which may only be handled by an electric power company out of the wholesale supply to new entrants (specifically, a portion of 3% or less that was not delivered for the same volume and at the same time, as well as back-up support in case of accident), the electric power company shall supply electricity under the consignment supply rule (connection supply rule) of the Electricity Utilities Industry Law.

- (2) Under the circumstances, however, where an electric power company that owns and operates a network holds a market share of almost 100% in its service area, and where the competition is not keen among electric power companies, even deregulated users will have to depend on the existing electric power company for supply of electric power. Furthermore, new entrants will have to depend on the existing electric power company in conducting 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 electric power company, and if an accident occurs, backup support will have to be obtained from the existing electric power company.) Under such circumstances, in cases where an electric power company that owns and operates a network changes or suggests to change conditions in a way that they harm the deregulated users who intend to deal with new entrants, the said users will have to give up the transactions with the new entrants. Also, in cases where the electric power company 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 electric power company are problematic under the Antimonopoly Act and the Electricity Utilities Industry Law, the electric power company 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

- A. Desirable trade practices from the standpoint of fair and effective competition  
(Establishment and announcement of an appropriate standard menu)

In ensuring a fair and effective competition, it is effective for electric power companies to make public a standard retail supply rate menu (hereinafter called a “standard menu”) individually for deregulated retail supply, and thereupon to apply a rate that conforms to the utilization patterns of the respective user groups that have the same demand peculiarities. In this case, despite the advantages of users outside the pattern of utilization (e.g., with or without competitors, partial supply, returned demand, new entrance utilizing power generation facilities for private use, etc.), all users will be treated equally.

Furthermore, should the content of the standard menu be consistent with the tariff of current supply rule and optional rule as well as the supply rule and optional rule after deregulation, it will become a material to support the appropriateness of the rate vis-à-vis cost.

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

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

Cases where an electric power company, by conducting the following trade practices, impedes the business activities of new entrants and substantially restrains competition in the market (e.g., service area of the said electric power company, etc.) will correspond to private monopolization and therefore violate the provisions of Section 3 of the Antimonopoly Act. Furthermore, if the electric power company 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 electric power company holds a market share of almost 100% in its service area, and that there is almost no competition among electric power companies. It is also assumed that the electric power company has been continuously supplying electricity to the deregulated users.

(With respect to these points, the same applies to Proper electric power trade, as it ought to be, in the consignment supply business; Proper electric power trade, as it ought to be, in the electricity procurement business by electric power companies; Proper electric power trade, as it ought to be, in retail supply business that is still subject to some regulations; and Proper electric power trade, as it ought to be, regarding new construction or expansion of facilities, etc., by users with power generation facilities for private use.)

#### Confrontation with new entrants

Trade practices whereby an electric power company impedes the business activities of new entrants by offering a conspicuously low rate (as compared with the publicly announced standard menu) only to users who are negotiating with the new entrants will likely be in violation of the Antimonopoly Act (discriminatory rate offering, unreasonable price competition, etc.).

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

(Note) Offering a competitive rate in comparison with 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 electric power company holds a market share of almost 100% in its service area, the trade practice whereby the electric power company tries to maintain its contracts with a considerable number of customers as a countermeasure against the new entrants (who 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 is therefore a violation of the Antimonopoly Act.

#### Retail supply to users with special relationships

Trade practices whereby an electric power company offers an unfairly low rate only to its subsidiaries, etc., as compared with the publicly announced standard menu, and treats its subsidiaries, etc., in a conspicuously

advantageous manner, are likely to be in violation of the Antimonopoly Act (discriminatory rate offering, etc.).

#### Partial supply (Note)

(Note) Partial supply means “the pattern of supply made to one site of demand from the power sources of a plural number of electricity supply business operators, 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 electric power company for its full supply and may impede the business activities of new entrants (discriminatory treatment, dealing on exclusive terms, etc.).

Cases where the electric power company does not set a menu, in the case of partial supply, to correspond 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 company 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 standard menu (Refer to Note).

(Note) Taking into consideration the current situation of the deregulated market concerning the pattern of contracts, etc., between deregulated users and the electric power company, the publicly announced menu by the electric power company 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 becomes higher than the cost increase.

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 supply of electricity from the electric power company, despite demand patterns being the same, in comparison with cases where demand is supplemented by power generation facilities for private use.

(b) Refusal of partial supply

Trade practices, such as ignoring requests for partial supply from users, etc., delaying the opening or conduct of negotiations, unreasonably refusing partial supply, or substantially refusing 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 electric power company for their full supply and may impede the business activities of the new entrants (dealing on exclusive terms, etc.).

Furthermore, demands by electric power companies 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 constant backup supply from the electric power company are likely to be in violation of the Antimonopoly Act (tied-in sale, etc., abuse of dominant bargaining position, etc.).

(c) Refusal of partial supply to follow the loading pattern

A proposal by an electric power company for a supply pattern to supply the prearranged fixed volume against the request for partial supply will not automatically be problematic under the Antimonopoly Act.

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

Supply by an electric power company of only the prearranged volume to users who receive supply from new entrants that are unable to meet the request to follow the loading pattern.

Provision by an electric power company of only supply to follow the

loading pattern in proportion to supply to users who receive supply from new entrants that are unable to meet the request to follow the loading pattern.

(d) Request for prior notification when necessity is exceeded

Based on the current electricity utilities industry system, in which, in the case of partial supply by electric power company, the electric power company itself matches demand and supply to follow loading patterns, 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, etc., in case of accident is charged to the new entrants under the connection supply rule if the actual volume of supply is lower than the pre-notified planned volume by a certain extent in the retail supply by new entrants utilizing the transmission lines of the electric power company, requests for time limits on pre-notification, content, etc., exceeding those necessary for preparation of daily power generation plans by the electric power company are likely to impede the business activities of new entrants and therefore be in violation of the Antimonopoly Act (discriminatory treatment, etc.).

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

Request for pre-notification of planned volume of supply by new entrants prior to the time considered necessary from the standpoint of preparation of power generation plans by the electric power company as well as from the standpoint of system administration.

Request for pre-notification of detailed planned volume of supply per unit hour, compared with the minimally required planned volume of supply per unit hour, from the standpoint of preparation of power generation plans by the electric power company.

Imposition of undue burden in the pre-notification procedure by prohibiting assignment to new entrants of clerical matters related to pre-notification.

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

Application of (or suggestion of application of) an unreasonably high rate compared with a publicly announced standard menu by an electric power company to users who intend to change their source of supply to the electric power company from new entrants (i.e., “returned demand”) is likely to be in violation of the Antimonopoly Act. This is because it will deprive the users of their right to choose customers and impede new entrants’ ability to easily find customers. Likewise, application of the ultimate guarantee rule accompanied by a higher rate, without meeting for negotiations on returned demand, is likely to be in violation of the Antimonopoly Act (discriminatory rate offering, 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 is not in principle problematic under the provisions 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 electric power company through a request for a supply contract for electricity.

#### Cancellation and unreasonable alteration of supplementary supply contracts on power generation for private use

Users who have power generation facilities for private use must conclude supplementary supply contracts on power generation for private use to obtain supply of electric power in cases of breakdown of power generation facilities, etc. Such users, however, find it substantially difficult to obtain similar services from other than electric power companies in view of the difficulty that other parties face in maintaining facilities in reserve to cope with an outbreak of unexpected events as well as the necessity to shoulder consignment supply charges.

Under such circumstances, cancellation (or suggestion of cancellation) of a supplementary supply contract on power generation for private use, or setting (or suggestion of setting) of a higher rate than before by an electric power company to operators who have power generation facilities for private use (hereafter called “holder of special power generation facilities for private use”) and who intend to receive supply of electric power from new entrants (or supply electric power to them) or to enter the market utilizing such facilities is likely to be a violation of the Antimonopoly Act in the following cases. This is because such acts may cause the users holding power generation facilities for

private use to give up trade with new entrants (dealing on exclusive terms, discriminatory rate offering, etc.).

Cancellation of a supplementary supply contract on power generation for private use with a holder of special power generation facilities for private use.

Setting a rate for a supplementary supply contract on power generation for private use with a holder of special power generation facilities for private use (individual supplementary supply contract on power generation for private use) that is higher than that for supplementary supply contracts on power generation for private use accompanying full supply from the electric power company despite a similar pattern of demand.

#### Unreasonable ultimate guarantee rule

In cases where the ultimate guarantee rule determined by an electric power company sets a rate unreasonably higher than the publicized standard menu, an alteration order 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 ultimate guarantee rule (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 ultimate guarantee rule is applied represent returned demand, and where the electric power company utilizes facilities in reserve to cope with the situation, is not in principle problematic under the Electricity Utilities Industry Law.

#### Cancellation and unreasonable alteration of demand/supply adjustment contracts

Many users of electric power for industrial purposes (raw materials manufacturing, etc.) conclude demand/supply adjustment contracts (Note) with electric power companies. 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 large-scale power-generation facilities for private use, most of whom on their part conclude demand/supply adjustment contracts with electric power companies.

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

Conclusion or non-conclusion of demand/supply adjustment contracts by electric power companies with users will not in itself become problematic under the Antimonopoly Act. Under such circumstances, however, cancellation of (or suggestion of cancellation of) a contract without good reason by an electric power company that has an existing demand/supply adjustment contract with users who hold power generation facilities for private use 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 act may cause the said users to give up trade in electric power with new entrants as well as their own new entrance in the market (discriminatory treatment, etc., 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 electric power company in spite of the fact that the pattern of loading supplied by the electric power company has not worsened.

Cancellation of (or suggestion to cancel) existing demand/supply adjustment contracts with users who have power generation facilities for private use and who switch their sales of surplus electric power from the electric power company to new entrants, in spite of the anticipation that the pattern of loading supplied by the electric power company will not worsen.

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 electric power company) who expand their own power generation facilities for private use and who sell surplus electric power to new entrants, in spite of the anticipation that the pattern of loading supplied by electric power company will not worsen.

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 electric power company) who intend to enter the market utilizing the electric power capacity of their expanded power generation facilities for private use, in spite of the anticipation that the pattern of loading supplied by the electric power company will not worsen.

Unreasonable alteration of surplus electric power purchase contracts, etc.

Business operators who conduct wholesale supply to electric power companies (wholesale electric utility supply operators, wholesale supply operators, users having power generation facilities for private use, 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 in 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 an electric power company for the supply portion that the company 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 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 to deal, 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 electric power companies, in cases where those operators divert a part of the volume to retail sale and where there occurred a fluctuation in the surplus

volume of electric power following a fluctuation in the retail volume, lowering of a unit rate of purchase by the electric power company 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.

#### 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 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 of unduly high penalties and adjustment money in addition to requests for return of the amount of discount enjoyed prior to the cancellation of the contract directed at users who wish to enter into contracts with new entrants during the term of contracts of special menu, etc., such as contracts depending on the ratio of loading, etc.

Unilateral setting, in the cases where a supplementary contract (e.g., special menu with lower rate in weekend) is being concluded with a user, by the electric power company of a contract renewal date that is different from the main contract, thereby causing the said user to pay adjustment money in the event that it wishes to switch to new entrants.

#### Suspension of commodity purchase and services trade

Suspension of (or suggestion to suspend) purchase of commodities or services trade by an electric power company, or reduction of (or suggestion to reduce) the volume of purchase, etc., by the same company, directed at users with whom the company has had a continuous relationship with regard to commodities and services (e.g., business operators that sell equipment on infrastructure indispensable for 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 (trade with exclusive conditions, etc.).

Furthermore, restraining the business activities of new entrants by suspending (or suggesting to suspend) the purchase of commodities or services, or reducing (or suggesting to reduce) the volume of purchase by an electric power company, to business operators with whom the company has had a continuous relationship with regard to commodity purchase and services and who have influence over the 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.).

#### Access to users' information

Non-disclosure, by an electric power company (in the same manner as it would to its own marketing department), of customer information of the company 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.).

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

The following are categories in wholesale supply to the new entrants by electric power companies: wholesale supply in case of accident (backup support in case of accident), wholesale supply of 3% or less representing the portion that was not supplied for the same volume at the same time (backup support of 3% or less for "removing wrinkles"), wholesale supply exceeding 3%, representing the portion that was not supplied for the same volume at the same time, other forms of continuous wholesale supply (fulltime backup).

Since and of the above are items that unavoidably occur in new entrance in the market, and nobody other than electric power companies is able to provide such wholesale supply, they are to be stipulated in the consignment supply rule as supplementary to consignment supply under the Electricity Utilities Industry Law. and are not regulated under the Electricity Utilities Industry Law and their rates are set freely.

(Note) "Removing wrinkles" means that an electric power company makes up for

deficiencies in power generation by new entrants in their supply against the demand of users.

A. Desirable trade practices from the standpoint of fair and effective competition

Backup support in case of accident

A rate of backup support in case of accident, which is similar to retail supply in its pattern of supply as accompanied by consistency in trade, is desirable from the standpoint of fair and effective competition if the rate is set as consistent with the standard menu in retail supply, and it is unlikely to invoke an alteration order under the Electricity Utilities Industry Law.

Furthermore, while the rate of backup support in case of accident is considered to have a certain degree of rationality as calculated based on the “Connection Supply Rule-Rule of Rate Calculation” (Ministry of International Trade and Industry Ordinance: effective on December 3, 1999), it shows in most cases a single menu, as a result of which new entrants will be asked to choose standardized services regardless of the technological peculiarities of their own power generation facilities, know-how on power generation, etc. It is desirable from the standpoint of fair and effective competition that a plural number of rate menus for backup support contracts in case of accident be shown so that new entrants will be able to choose a supplementary menu in case of accident that conforms to the actual situation of their own power generation facilities.

Backup support of 3% or less for “removing wrinkles”

A backup support rate of 3% or less for “removing wrinkles”, if it is set based on reasonable costs according to the pattern of supply (supply available at all times but subject to fluctuation in a delicate range), is desirable from the standpoint of fair and effective competition and is unlikely to invoke an alteration order under the Electricity Utilities Industry Law.

Fulltime backup support

Fulltime backup support, which in reality is considered to be the same as partial supply in retail supply, is desirable from the standpoint of fair and effective competition, if the rate is set as consistent with the standard menu in retail supply.

B. Trade practices that may be problematic from the standpoint of fair and effective

competition

#### Backup support in case of accident

Setting a rate for backup support in case of accident by an electric power company that is unreasonably high compared with the standard menu in retail supply will invoke an alteration order under the Electricity Utility Industry Law, as such act will impair new entrance (Electricity Utilities Industry Law Section 24-4).

It is provided, however, that setting a rate that reflects a reasonable increase in costs, compared with the standard menu, in view of the uncertain nature of accidents, which thus forces the electric power company to utilize facilities in reserve on such occasions, will not in principle be problematic under the Electricity Utilities Industry Law.

Furthermore, rates of backup support in case of unavoidable accidents, etc., pertaining to consignment supply and other conditions of supply shall be laid down in the connection supply rule, and the said rule shall be notified to the authorities. If the content of the said rule are improper (e.g., the connection supply rule cannot be easily applied by new entrants), an alteration order under the provisions of the Electricity Utilities Industry Law shall be given. Also, in cases where an electric power company refuses, without good reason, to engage in consignment supply, an order to provide consignment supply shall be given under the provisions of the Electricity Utilities Industry Law.

However, in view of the situation whereby it is essential for new entrants to obtain backup support in case of accident when entering the market, and that it is difficult to find an entity other than an electric power company to provide backup support, etc., in case of accident, etc., the following cases are likely to be in violation of the Antimonopoly Act. This is because such cases will impede the business activities of new entrants (refusal to deal, etc.).

Refusal by an electric power company, without good reason, to hold negotiations on matters left to negotiation by the parties concerned, such as the kilowatt level of the backup support contract in case of accident, etc., or unilateral decisions by the electric power company on matters for negotiation.

#### Backup support of 3% or less for “removing wrinkles”

Setting by an electric power company of an unreasonably high rate for

backup support of 3% or less for “removing wrinkles” that is not based on a proper estimation of cost will invoke an alteration order under the Electricity Utilities Industry Law (Electricity Utilities Industry Law Section 24-4).

#### Supply for the portion exceeding 3%

In the event that supply of electric power used by new entrants for their supply to large-scale users shows a deficiency due to an accident, an electric power company shall provide backup support to supplement such deficiency. This shall be laid down in the rule of connection supply (Electricity Utilities Industry Law Section 24-4).

On the other hand, in cases other than the occurrence of accident, where supply of electric power shows a deficiency exceeding the extent of the same volume at the same time that the entrants are required to achieve (fluctuation in demand of 3% or less per 30 minutes), or in cases where entrants presuppose fulltime backup support in advance, no restraints exist under the Electricity Utilities Industry Law. Therefore, the rates and other conditions of contract are fundamentally left to independent managerial decisions.

However, refusal by an electric power company to supply the portion exceeding 3%, or trade practices whereby the electric power company sets an unreasonably high rate, under circumstances where the market for procuring sources of power generation to meet fulltime or temporary demand are not matured, and where business operators other than electric power company, who have a sufficient supply capability in reserve, are not able to provide backup supply of electric power, is likely to be in violation of the Antimonopoly Act, as such acts may impede the business activities of new entrants (refusal to deal, etc.).

#### Fulltime backup support

Under the circumstances, where the wholesale supply market of electric power is not matured, existing electric power companies hold most of the power generation facilities needed to supply new entrants and users, and there is no competition taking place outside the service area of the existing electric power companies. Therefore, most new entrants will have to depend on the existing electric power companies for their fulltime backup support, as it is difficult for the new entrants to find sources of supply for fulltime support other than electric power companies.

Under such circumstances, trade practices by electric power companies whereby they refuse 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 electric power companies, 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.).

Refusal of fulltime backup supply or restraining without good reason the volume of supply to new entrants.

Setting of a rate higher than the rate (Note) for retail supply to users with similar patterns of demand.

(Note) Judgments on fulltime backup support rates regarding whether or not they are proper will be made by taking into consideration properly such factors as increase or decrease in costs, such as deduction of expenses for consignment supply 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 to a plural number of users to choose, in respect of 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 an electric power company, of only a single contract, in spite of the fact that new entrants (who are supplying to a plural number of users) have requested separate contracts in respect of fulltime backup support, or charging of adjustment money to new entrants in cases where they reduce the contracted electric power supply following a decline in seasonal demand.

### (3) Other trade practices

#### A. 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 electric power companies, from the standpoint of fair and effective competition, to set up contact points that provide new entrants with information on users and prepare in advance procedures that include items of information available with the consent of users, documents and formats necessary for application for provision of information, and the period required for reply, etc.

The contact points will also publicize the above items.

**B. Trade practices that may be problematic from the standpoint of fair and effective competition**

Provision by an electric power company 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 are likely to be in violation of the Antimonopoly Act (interference of trade).

Furthermore, stability of electric power systems is secured by the following: under the consignment supply system, new entrants shall observe 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; Electric power companies maintain the stability of the system through overall management of networks and new entrants therefore share the costs as ancillary services of consignment supply.

**Proper electric power trade, as it ought to be, in consignment supply business**

**1. Viewpoint**

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

Specifically, such impartiality is sought in both consignment supply rate and network operation, such as instruction in supply electric power, etc.

(Note) Under the revised Electricity Utilities Industry Law, electric power companies shall establish, in the rule of consignment supply, rates of consignment supply, rates of unavoidable backup support (in case of accident and 3% or less for “removing wrinkles”) ancillary to consignment supply and other conditions of supply, and the said rule shall be notified to the authorities. In the event that the content of the said rule is improper (by impeding the use of the consignment

supply rule by the new entrants, etc.), an alteration order shall be issued by the authorities. Also, in the event that an electric power company refuses (without good reason) to engage in consignment supply, an order to provide consignment supply shall be issued by the authorities.

- (2) While these points are secured by the Electricity Utilities Industry Law and notification of the rule of consignment supply, alteration order and consignment supply order, it is necessary, in order to avoid ex post facto intervention by authorities, for electric power companies to deal with such matters properly, from the standpoint of fair and effective competition, in order to conform with 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 the consignment supply rate**

#### **A. Desirable trade practices from the standpoint of fair and effective competition**

With regard to consignment supply rates set by electric power companies, sharing of the same cost burden by electric power companies 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. Such acts are unlikely to invoke an alteration order under the Electricity Utilities Industry Law.

Furthermore, for the sake of securing transparency, it is desirable, from the standpoint of fair and effective competition, for electric power companies to respond to inquiries from operators who are considering entry into the market or from users who are expecting to purchase electricity supplied by new entrants with respect to rates of consignment supply to be borne for a specified place of demand. In the event that a power transmission department of an electric power company deals with the matters of such inquiries, it is proper to strictly restrict passage of information to the marketing department and others.

- (Note) With regard to own consignment supply, which is not regulated under the Electricity Utilities Industry Law, it is desirable from the standpoint of fair and effective competition that electric power companies will independently make the conditions of their own consignment supply consistent with the conditions of retail consignment supply.

B. Trade practices that may be problematic from the standpoint of fair and effective competition

Base for calculating consignment supply rates

Cases in which a consignment supply rate is not set based on reasonable costs, or where there is an unreasonable difference in the consignment supply rate to be borne by new entrants as compared with utilization by an electric power company, will invoke an alteration order under the Electricity Utilities Industry Law, as such acts may impair new entrance into the market (Electricity Utilities Industry Law Section 24-4).

Unreasonable delay in consignment supply procedures, etc.

Trade practices whereby an electric power company is recognized as refusing consignment supply by, for instance, not properly disclosing information necessary for consignment supply, not procuring necessary machinery and materials for consignment supply or whereby it treats new entrants disadvantageously compared with itself in respect of disclosure of information and other procedures, are likely to be in violation of the Antimonopoly Act (refusal to deal, discriminatory treatment, etc.).

Refusal of usage of connection lines and other facilities

Restriction, without good reason, placed by an electric power company on the utilization of its facilities, or limitations placed on minimum available electric power and contract unit for available electric power in applications from new entrants for the utilization of its connection lines and frequency switching facilities, is likely to be in violation of the Antimonopoly Act (refusal of trade, discriminatory treatment, etc.).

(2) Securing neutrality in network operations (instruction on supply electric power, etc.)

A. Desirable trade practices from the standpoint of fair and effective competition

In respect of network operations by electric power companies, fair and effective competition will not be realized if it is not accompanied by impartial and proper handling of network operations by the electric power companies.

Specifically, while issues of public interests (such as system stability, securing of energy security, and preservation of the environment) are secured by

instructions on supply electricity by electric power companies, etc., such instructions on supply electricity by electric power companies, etc., will have to be made on the condition that they treat the power sources of the electric power companies themselves and those of new entrants equally.

Furthermore, electric power companies are by no means allowed to stand in an advantageous position in competition with new entrants by means of acquisition, through force of their marketing departments, of information obtained by the network departments of these companies from the standpoint of fair and effective competition. Electric power companies must therefore seek to establish a rigid wall controlling information exchange between network departments and other departments of the company through segregation of functions.

Measures for securing neutrality of instruction on supply electric power and cutting off of information are primarily left to the independent discretion of each electric power company and to ex post facto intervention by authorities if problem arises. While electric power companies have declared that they will take the independent measures listed below, it is desirable from the standpoint of fair and effective competition that these measures will be strictly followed.

With respect to neutrality of instruction on supply electric power, electric power companies will publicize manuals on instruction on supply electric power in advance in order to make clear that their own power sources and those of new entrants shall be treated equally. This item shall be strictly followed.

With respect to cutting off of information, electric power companies shall take the independent measures listed below, and these shall be strictly followed by taking measures implemented in other countries into consideration.

- (a) Contact points for provision of information related to consignment supply for new entrants shall be transmission departments rather than marketing departments.
- (b) Transmission departments and other departments shall be physically separated, as on separate floors.
- (c) Personnel in transmission departments shall not be engaged in generation departments and marketing departments.
- (d) At the time of personnel interchange between transmission departments and marketing departments, restrictions on information

exchange between the two departments shall be secured.

- (e) With respect to information provided to transmission departments, the information shall be strictly managed by codifying the names of new entrants, etc., so that the information will not be utilized by other departments.

(Note) It is possible that a dispute may arise between new entrants and an electric power company regarding network operation (on, for example, neutrality of instructions on supply electric power, etc.) in spite of the fact that the above independent measures were taken by the electric power company. In such cases, solution will be sought first among the parties concerned; however, if solution is not achieved, the authorities will issue an order under the consignment supply rule of the Electricity Utilities Industry Law to solve the dispute. In this case, it is proper, from the standpoint of fair and effective competition, to let the electric power company, considering that it engages in unified management of network information, have responsibility for substantiating the legitimacy of facts/judgments that were the cause of dispute (i.e., the content of an instruction to supply electric power and whether there was equal treatment between the power source of the electric power company and that of the new entrant).

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

Transmission departments of electric power companies, which operate consignment supply, receive information from new entrants, who intend to receive consignment supply services, on the demand side (such as users and magnitude of demand) as well as on the supply side (such as power generation facilities and capacity of power generation). For this reason, transmission departments will be in a position where, through the course of negotiations on consignment supply with new entrants, they will obtain information on the said new entrants as well as on their customers.

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 the consignment supply with the new entrants, available to marketing departments and other business departments of electric power companies is likely to be in violation of the Antimonopoly Act

(interference of trade, etc.).

## **Proper electric power trade, as it ought to be, in the electricity procurement business by electric power companies**

### **1. Viewpoint**

- (1) There are three main options, as listed below, in the methods for procuring electricity by electric power companies.

Prioritized development of power sources such as nuclear and hydraulic power in accordance with a plan based on the supply schedule under the Electricity Utilities Industry Law that takes public interests (such as securing of energy security and preservation of the environment) into account, as well as from the standpoint of region-wide operations whereby geographical gaps in demand and supply among electric power companies due to differences in geographical and social conditions in the locations of their power sources, etc., are filled.

Development of thermal power sources, irrespective of construction by the company in question or procurement from others, shall be undertaken by way of tender. However, it is provided that procurement from existing power sources of others shall be made in principle as wholesale supply using a regulated rate under the Electricity Utilities Industry Law.

Furthermore, spot procurement by way of accommodation among electric power companies (Note: not regulated by the Electricity Utilities Industry Law) shall be undertaken in order to pursue economic rationality by substituting a company's own power source with the lower-rate power sources of others.

(Note) Accommodation, which represents mutual wholesale supply of electric power among electric power companies, consists of two types: namely, accommodation made from the standpoint of meeting public interests (such as region-wide solution of geographical gaps in supply and demand) as well as accommodation to pursue economic rationality (economic distribution).

- (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 regulated retail supply rates as well as notification and alteration orders 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 from the standpoint of fair and effective competition that electric power companies deal with matters appropriately, taking the following points into account, with regard to wholesale supply under the full tender system and from existing power sources, as well as spot transactions in accommodation among electric power companies.

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

### **(1) Procurement from thermal power sources**

#### **A. Desirable trade practices from the standpoint of fair and effective competition**

With regard to development of new thermal power sources, a full tender system, in which electric power companies who implement the tender themselves participate in the tender, has been commenced in 2002. In order to secure equal treatment of a company's own power source and other tenderers (IPP), guidelines for a fair and transparent tender process, as it ought to be, (Interim Report of Fundamental Policy Subcommittee, Electric Utilities Industry Council Fundamental Policy Committee, December 1997 [revised in July, 1999]) were formulated, according to which electric power companies are requested to strictly implement the tender.

#### **B. Trade practices that may be problematic from the standpoint of fair and effective competition**

##### **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 authorities under the Electricity Utilities Industry Law. The rate, if not set satisfactorily as a rate that includes an appropriate margin on appropriate costs, will invoke an alteration order under the Electricity Utilities

Industry Law (Electricity Utilities Industry Law Section 22).

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

Cancellation of (or suggestion to cancel), by an electric power company, a wholesale supply contract with a wholesale supply business operator (wholesale electric utility supply operator, wholesale supply operator, user having power generation facilities for private use, etc.) who provides wholesale supply to the electric power company, or lowering of (or suggestion to lower) the purchase rate, in case that said operator intends to enter the retail supply market by utilizing a surplus in excess of its wholesale supply to the electric power company, is likely to be in violation of the Antimonopoly Act, as such act will impede new entrance into the market (private monopolization, refusal of trade, etc.).

Abuse of superior position against wholesale business operators (IPP, etc.)

Trade practices whereby an electric power company places unreasonably disadvantageous conditions in respect of conditions of trade or its implementation in light of normal trade practices on business operators who make wholesale supply to the electric power company (wholesale electric utility supply operator, wholesale supply operator, user having power generation facilities for private use, etc.) are likely to be in violation of the Antimonopoly Act (abuse of dominant bargaining position).

Purchase of power generation facilities by electric power companies

Purchase, by an electric power company, of power generation facilities from existing business operators holding power generation facilities for private use in order to reinforce and supplement its own power supply capability is fundamentally a matter of management judgment of the electric power company.

However, indication that the electric power company has offered an unreasonably high purchase price to a business operator who is negotiating to sell power 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) conditions more disadvantageous than before, is likely to represent a violation of the

Antimonopoly Act in the following cases. This is because 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 company itself on condition that sale is to be made to the company.

Refusal by the company to provide services, or setting of higher rates than before for services provided by the company, in cases where sale was made to a new entrant.

(2) Procurement from economic distribution (spot transaction)

A. Desirable trade practices from the standpoint of fair and effective competition

With regard to electricity trade, such as spot transactions in economic distribution, it is desirable, from the standpoint of fair and effective competition, to improve transparency and impartiality by disclosing conditions and actual results of trade. Furthermore, positive response to new entrance in economic distribution, if any, will lead to improved transparency and impartiality, and is desirable from the standpoint of fair and effective competition.

This will not only facilitate entrance in the wholesale supply market by operators other than electric power companies, but also has significance in diversifying sources of procurement of electricity by electric power companies themselves, thereby making the procurement of electricity efficient.

B. Trade practices that may be problematic from the standpoint of fair and effective competition

With regard to economic distribution, joint refusal of participation to persons wishing to newly participate, or refusal, without good reason, of new entrants' participation in exercises to draw up rules for trade under circumstances where the procurement of electric power from economic distribution occupies an important position in said entrants' business activities, is likely to be in violation of the Antimonopoly Act (unreasonable restraint of trade, joint refusal, discriminatory treatment in the business operators organization, etc.)

**Proper electric power trade, as it ought to be, in the retail supply**

## **business that is still subject to some regulations**

### **1. Viewpoint**

Due to a partial deregulation of the retail supply business, two types of businesses, namely, unregulated business (liberalized business) and regulated business exist in parallel. With regard to regulated rates (supply rule), a system of notification for reduction in rates was introduced in recent system reforms, expanding the optional rule system.

Accordingly, under the circumstances where setting of more flexible regulated rates has become systematically possible, it has become necessary for electric power companies to deal with matters for setting regulated rates appropriately in comparison with deregulated rates, taking the following points into account.

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

#### **A. Desirable trade practices from the standpoint of proper electric power trade**

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

#### **B. Trade practices that may be problematic from the standpoint of proper electric power trade**

In cases where disputes arises between regulated users and electric power companies to the effect that a regulated rate is conspicuously inconsistent with an unregulated rate, authorities will settle the dispute through an administrative process of dispute settlement. If the regulated rate is found, in this process, to be in fact improper and likely to impair the interests of regulated users, an order to apply for approval of the supply rule or alteration order of the optional rule under the Electricity Utilities Industry Law will be issued (Electricity Utilities Industry Law Section 19 Subsection 8, or Section 23).

**Proper electric power trade, as it ought to be, regarding new construction or expansion of facilities, etc., by users with power generation facilities for private use**

**1. Viewpoint**

Power generation facilities for private use have been becoming more common among users, notably large-scale users, and new construction or expansion of power generation facilities for private use, etc., is now in a competitive relationship with electric power supply from electric power companies. On the other hand, many users having power generation facilities for private use are in a situation whereby they must depend on existing electric power companies. This is exemplified by the fact that these users receive supply of electric power (in addition to power from their own power generation facilities) from electric power companies, connect their own facilities to the networks of electric power companies in order to secure the stable operation of their own facilities, receive provision of ancillary services, conclude supplementary supply contracts on power generation facilities for private use, etc.

It is important, from the standpoint of fair and effective competition, to eliminate trade practices that interrupt new construction or expansion of power generation facilities for private use, etc., and therefore electric power companies are requested to cope with the matter properly by taking the following points into account.

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

Interruption of new construction or expansion of power generation facilities for private use, etc.

Unreasonable restraints, by electric power company, on new construction or expansion of power generation facilities for private use will help maintain and strengthen the position of electric power companies in the market, and such acts are likely, in the following cases, to be in violation of the Antimonopoly Act (trade with binding conditions, etc.).

Supply of electric power, discount of rates for services provided by the company (such as supply of electric power, etc.), or setting of advantageous rates on condition that there shall be no new construction or expansion of power generation facilities for private use.

Refusal of (or suggestion to refuse) supply of electric power, provision of services (such as supplementary supply of electric power) to power generation facilities for private use, etc., or setting of (or suggestion to set) rates and other conditions of trade, without good reason, that are disadvantageous to users who intend to construct or expand power generation facilities for private use, thereby causing new construction or expansion of power generation facilities for private use to be abandoned.

Collection of (or suggestion to collect) charges, without good reason, for ancillary services, etc., that are necessary for users having power generation facilities for private use from users who intend to construct or expand power generation facilities for private use, notwithstanding the fact that such charges have not been collected previously, thereby causing construction or expansion of power generation facilities for private use to be abandoned.

#### Disadvantageous demands made on users with power generation facilities for private use

Many users having power generation facilities for private use are in a situation whereby they must depend on existing electric power companies. This is exemplified by the fact that they receive supply of electric power (in addition to power from their own power generation facilities) from electric power companies, connect their own facilities to the networks of electric power companies in order to secure the stable operation of their own facilities, receive provision of ancillary services, conclude supplementary supply contracts on power generation facilities for private use, etc.

Under such circumstances, where users having power generation facilities for private use have no choice but to accept disadvantageous conditions if so proposed by electric power companies, the following cases are likely to be in violation of the Antimonopoly Act (sale with binding conditions, etc., abuse of a superior position, etc.)

Unilateral setting, without good reason, of rates and other conditions of trade on services necessary for users having power generation facilities for private use, such as ancillary services, supplementary supply for power generation facilities for private use, etc.

Requests to users for purchase of power generation facilities for private use from the company itself or from a business operator designated by the

company.