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PHILIPPINE RURAL ELECTRIC COOPERATIVES ASSOCIATION, INC.
— The Philippines' Electric Cooperatives —

21 April 2023
COMMS-2023-089

DIRECTOR IRMA C. EXCONDE
Electric Power Industry Management Bureau
Department of Energy
DOE, Bonifacio Global City, Taguig City

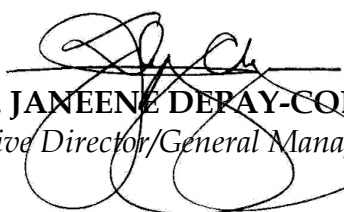
Dear **Dir. Exconde:**


Greetings of Peace and Solidarity from PHILRECA!

Respectfully forwarding herewith our organization's COMMENTS on DOE's draft Department Circular entitled "PRESCRIBING THE POLICY FOR THE DISTRIBUTION UTILITIES' MANDATORY CONDUCT OF COMPETITIVE SELECTION PROCESS FOR THE PROCUREMENT OF POWER SUPPLY FOR THE CAPTIVE MARKET."

Thank you and we look forward to your positive accommodation of these comments.

Respectfully yours,


ATTY. JANEENE DERAY-COLINGAN
Executive Director/General Manager


JOSELITO P. YAP
President

"United We Stand, We Stand United."

2nd Floor, PNB Building, No. 92 West Avenue, Quezon City, Philippines
Telephone Nos.: 8967-1580/0917-850-6830/0939-905-2206
Website: www.philreca.org; e-mail address: core@philreca.org

**TEMPLATE FOR COMMENTS ON THE DRAFT DEPARTMENT CIRCULAR ENTITLED,
 “PRESCRIBING THE POLICY FOR THE DISTRIBUTION UTILITIES’ MANDATORY CONDUCT OF COMPETITIVE SELECTION PROCESS FOR THE
 PROCUREMENT OF POWER SUPPLY FOR THE CAPTIVE MARKET”**

Section	Provisions	Comments/ Proposed Revisions	Remarks
SECTION 1.	GOVERNING PRINCIPLES		
	The procurement by DUs of power supply for the captive market shall be governed by the following principles:		
1.1.	Transparent, competitive and timely conduct of CSP through wide dissemination of bid opportunities and non-discriminatory participation of all eligible and qualified Power Suppliers to participate in the CSP and in the procurement and supply of electric power for the captive market;		
1.2.	Procurement of all power supply through a competitive process, consistent with the latest and duly accepted DDP and posted Power Supply Procurement Plan (PSPP) of DUs, shall be undertaken at least one (1) year prior to expiration of PSA or projected increase in demand;		
1.3.	Conduct of CSP shall be considered by the ERC in the determination of the DU’s compliance with its obligation to supply its captive market in the least cost manner, taking into consideration the quality, affordability, sustainability and reliability of the electric power supply;		
1.4.	Accountability in the procurement process and implementation of the PSAs awarded under the CSP of the DU and Power Supplier;		
1.5.	Encourage the development of greenfield power projects to provide additional power generation capacity; and		
1.6.	Protect the interest of the general public.		
SECTION 2.	COVERAGE		
2.1.	This Circular shall apply to any DU mandated to supply electricity in the least cost manner subject to the		

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	collection of retail rate duly approved by the ERC.		
2.2.	All power supply shall be procured through CSP, consistent with the latest and duly accepted DDP and posted PSPP. Provided however, that in the following instances the conduct of CSP shall not be required:		
2.2.1.	The provision for power supply by the National Power Corporation (NPC) in off-grid areas: (a) prior to and until the entry of New Power Providers (NPP) or (b) in emergency circumstances;		
2.2.2.	The provision for power supply by the Power Sector Assets and Liabilities Management Corporation through bilateral contracts for the power produced from the undisposed generating assets and Independent Power Producer contracts;	<p>The provision of power supply by PSALM should not be monopolized by a single utility. Instead, allowing multiple types of distribution utilities, including electric cooperatives, to participate in these bilateral contracts can promote a more competitive and diverse power market, which can ultimately lead to more affordable and reliable power supply for consumers across the country.</p> <p>Opening these bilateral contracts to electric cooperatives and other distribution utilities can also help promote more equitable and inclusive economic development, particularly in underserved and remote areas where these cooperatives are often the primary electricity providers. By having access to additional power sources through PSALM's bilateral contracts, electric cooperatives can expand their service areas and improve their service quality, which can ultimately benefit their customers.</p>	
2.2.3.	Any DU that exercises Opt-in Mechanism under Green Energy Auction Program;		
2.2.4.	Supply to the DU from any generating plant embedded in its franchise area utilizing indigenous or renewable energy resources, wherein the contracted capacity of the embedded generation plant/s shall not exceed 10 MW per Luzon DU and 5 MW per Visayas and Mindanao DU, or three percent (3%) of the DU's peak demand, whichever is higher, provided, that any capacity sold or intended to	May we be clarified on the legal and technical basis of the set threshold of 10MW per Luzon DU and 5MW per Visayas and Mindanao DU. May we appeal that the threshold of 10MW be applied to all Dus in Luzon, Visayas and Mindanao instead.	

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	be sold by the embedded generation facility outside the DU's franchise area shall undergo CSP;		
2.2.5.	Negotiated procurement of emergency power supply wherein the Emergency Power Supply Agreement (EPSA) shall be filed directly with the ERC within thirty (30) calendar days after the occurrence of the Force Majeure/Fortuitous Events. The EPSA shall have a maximum period of one (1) year without further extension; and	<p>The provision stating that the EPSA shall have a maximum period of one (1) year without a further extension may not be ideal for an electric cooperative, especially in cases where the emergency persists beyond one year.</p> <p>In some instances beyond control of the ECs, it may take longer than one year to establish a stable power supply. We appeal for an exemption in extra ordinary cases.</p>	
2.2.6.	Off-Grid Areas with less than 1 MW demand with 24-hour electricity service not covered in 2.2.1.	<p>Raising the capacity limit could mean that more Off-Grid electric cooperatives could benefit from the exemption, as they would have greater flexibility in procuring power supply without going through the CSP process. This could reduce the administrative burden and costs associated with conducting a CSP process for a relatively small power demand, which may attract few potential suppliers.</p> <p>We therefore recommend not to limit exemption to 1 MW capacity only.</p>	
	All the above instances are subject to the ERC's determination of the DU's compliance with its obligation to supply electricity in the least cost manner to Page 4 of 7 its captive market, taking into consideration the quality, affordability, sustainability and reliability of the electric power supply.		
SECTION 3.	DEFINITION OF TERMS		
3.1.	Captive Market refers to the electricity end-users who do not have the choice of a supplier of electricity, as may be determined by the ERC in accordance with EPIRA.		
3.2.	Certificate of Conformity refers to the certificate issued by the DOE and NEA, certifying consistency of contract quantity and cooperation period in the DUs' latest and posted PSPP and Invitation to Bid (ITB).		
3.3.	Competitive Selection Process or CSP refers to the		

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	process wherein a Power Supplier or, in the case of Off-grid areas, a NPP is selected to supply electric power requirements of a DU through transparent and competitive bidding undertaken by a DU to secure supply of electricity based on the evaluation criteria to achieve least-cost supply to its captive market.		
3.4.	Distribution Development Plan or DDP refers to the program for managing the distribution system through timely identification of infrastructure requirements and procurement of power supply to ensure the continuity, reliability and affordability of electricity service to the consumers, which is prepared by the DU and submitted to the DOE for integration with the Power Development Plan and Philippine Energy Plan. In the case of ECs, such plan shall be submitted through the NEA for review and consolidation.		
3.5.	Distribution Utility or DU refers to any ECs, private corporation, government owned utility or existing local government unit, with an exclusive franchise or is authorized by law to distribute electricity to end- users.		
3.6.	DOE CSP e-based Portal refers to the portal in the DOE website, managed by the DOE that shall be used as the primary and centralized source of information regarding all CSP activities of all DUs.		
3.7.	Force Majeure or Fortuitous Event refers to any extraordinary event not foreseeable or avoidable, or to an event that could not be foreseen, or which, though foreseen, is inevitable and independent of human will or the DU's participation, whether by active intervention, neglect or failure to act. This further refers to an event or circumstance generally caused: (1) by nature, such as, but not limited to, fires, floods, typhoons or other catastrophes, or acts of God; and/or (2) by the acts of man, such as, but not limited to, war, national		

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	emergencies, revolution, riot, insurrection, civil unrest, or any other similar violent or threatening actions. It may likewise pertain to any analogous event that may relate to a power system emergency that shall affect the continuity of delivery of power by the DUs.		
3.8.	Off-Grid Area refers to an area or system that is not connected to the Grid.		
3.9.	Power Supplier refers to a generation company, recognized by ERC, providing supply from a single or portfolio of generating plants.	May we be clarified on the basis of recognition by the Commission of a generation company. Will the Dus be advised of the list of recognized generation companies?	
3.10.	Power Supply Procurement Plan or PSPP refers to a DU's plan for the acquisition of a variety of demand-side and supply-side resources to cost effectively meet the electricity needs of its customers. The PSPP is an integral part of the DU's DDP.		
SECTION 4.	COMPETITIVE SELECTION PROCESS		
	The DU, as the mandated entity, shall have the responsibility to conduct the CSP in accordance with this policy. Likewise, the DUs are strongly encouraged to include in its planned CSPs the procurement of power supply from greenfield power generation projects		
4.1.	The DU shall prepare and submit the DDP and PSPP in accordance with the applicable and existing guidelines and policies of the DOE.		
4.2.	On or before 30th of June of each year, the DU, through its authorized representative, shall upload in the DOE CSP e-based Portal the latest PSPP, consistent with the duly accepted DDP by the DOE, which shall be considered as the final PSPP of the DU for the applicable year.		
4.3.	Prior to the publication of the ITB of the DUs, except ECs, the DOE, through the Electric Power Industry Management Bureau (EPIMB), shall issue the Certificate of Conformity in accordance with their latest and duly		

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	accepted DDP and posted PSPP. In the case of ECs, the NEA shall issue the Certificate of Conformity, copy furnished the DOE and ERC. The Certificate of Conformity shall be issued by the DOE, through the EPIMB, and NEA within three (3) working days from the receipt of the complete documents, which shall cover the contract quantity and cooperation period.		
4.4.	The DU shall publish the ITB, in compliance with the Certificate of Conformity which shall be valid for forty-five (45) calendar days from the date of certification.		
4.5.	The ITB, including the TOR, all bid bulletins, related announcements, and the results of the CSP including all bid offers in the conduct of the CSP shall be posted by the DU in the DOE CSP e-based Portal.	It is highly recommended that a standard template for ITB and TOR be issued to facilitate compliance by the DUs and review by the concerned regulatory agencies.	
4.6.	The conduct of CSP shall be in accordance with this policy and the implementing guidelines by the ERC.		
SECTION 5.	RESPONSIBILITY OF THE NATIONAL ELECTRIFICATION ADMINISTRATION		
5.1.	For an EC with limited capability to undertake CSP, the NEA shall provide the necessary assistance and resources including, but not limited to, the mobilization of competent manpower of the NEA and other ECs, and if necessary, the involvement of the NPC and National Transmission Corporation in Off-Grid areas, which shall be at no expense to the EC.	Request for assistance should emanate from the concerned EC through a Board Resolution specifying the details of the needed assistance.	
5.2.	Prior to the publication of the ITB of the ECs, the NEA shall issue the Certificate of Conformity, copy furnished the DOE and ERC.		
5.3.	Advise all ECs on the conduct of CSP one (1) year before the expiration of their PSAs. In case an EC is unable to complete the CSP six (6) months before the expiration of such PSAs, the NEA shall undertake the CSP on behalf of the EC.		
SECTION 6.	REGULATORY SUPPORT		

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	The ERC shall provide the following regulatory support:	For the provision: In cases under Section 2.2, the ERC may include CSP in the equipment procurement. May we recommend that the equipment to be covered by the CSP be duly specified.	
6.1.	Issue the implementing guidelines in the conduct of CSP and evaluation of PSAs resulting from CSP of DUs. In cases under Section 2.2, the ERC may include CSP in the equipment procurement.		
6.2.	Prescribe a PSA Template.		Using a standardized PSA template can help ensure transparency and fairness in the negotiation and approval of PSAs and can also facilitate the review and approval process for both the ERC and the industry stakeholders involved.
6.3.	Review all PSAs and determine the DUs' compliance with their obligation to supply its captive market in the least cost manner, taking into consideration the quality, affordability, sustainability and reliability of the electric power supply.	Provide a timeline for ERC to review the PSAs.	
6.4.	In the exercise of its powers and functions under the EPIRA, establish and impose fines and/or penalties for non-compliance of electric power industry participants to support the enforcement of this policy.		
SECTION 7.	TRANSITORY PROVISION		
7.1.	All DUs with ongoing CSP activities and have been issued with Certificate of Posting (COP), prior to the effectivity of this policy shall continue to observe the CSP policy in accordance with DC No. DC2018-02-0003, as amended and supplemented by DC No. DC2021-09-0030. All COP issued by the DOE, and Notice to Proceed by the NEA, shall be valid for 45 calendar days from the date of issuance of COP.		

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	7.2. All applications for Certificate of Exemption from the conduct of CSP and Third Party Bids and Awards Committee (TPBAC)/Joint TPBAC Selection Process pending before the DOE prior the effectivity of this policy, shall be reviewed by the DOE pursuant to DC No. DC2018-02-0003, as amended and supplemented by DC No. DC2021-09-0030.		
	7.3. All PSAs procured and executed, including those filed and pending before, and approved by the ERC, pursuant to pertinent CSP policies and prior to this policy, shall be processed in accordance with the applicable regulations.	May we recommend that the “pertinent CSP policies” be clearly be specified.	
SECTION 8.	REPEALING CLAUSE		
	All rules and regulations, or any portion thereof, that are inconsistent with this Circular are hereby repealed or modified accordingly. DC Nos. DC2015-06-0008, DC2018-02-0003, DC2021-09-0030 and DC2022-06- 0027 are repealed.		This can help avoid confusion and ensure that the provisions of the new circular are properly implemented. The specific mention of the DC numbers being repealed also helps to clearly identify the previous rules that are no longer in effect.
SECTION 9.	SEPARABILITY CLAUSE		
	If for any reason that any section of this Circular is declared unconstitutional or invalid, such parts not affected shall remain in full force and effect.		
SECTION 10.	EFFECTIVITY		
	This Circular shall take effect fifteen (15) calendar days upon its publication in at least two (2) newspapers of general circulation. Copies thereof shall be filed with the University of the Philippines Law Center — Office of National Administrative Register (UPLC-ONAR).		