



Republic of the Philippines
DEPARTMENT OF ENERGY
(Kagawaran ng Enerhiya)

DEPARTMENT CIRCULAR NO. _____

**PRESCRIBING THE POLICY FOR THE DISTRIBUTION UTILITIES' MANDATORY
CONDUCT OF COMPETITIVE SELECTION PROCESS FOR THE
PROCUREMENT OF POWER SUPPLY FOR THE CAPTIVE MARKET**

WHEREAS, Sections 2 (b) and (c) of Republic Act No. 9136 or the *Electric Power Industry Reform Act of 2001* (EPIRA), declare that it is the policy of the State to ensure the quality, reliability, security and affordability of the supply of electric power; and to ensure the transparent and reasonable prices of electricity in a regime of free and fair competition and full accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market;

WHEREAS, Section 2 (f) of the EPIRA declares that it is also the policy of the State to protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power;

WHEREAS, Section 23 of the EPIRA provides that a distribution utility (DU) shall, among others:

- 1) have the obligation to supply electricity in the least cost manner to its captive market, subject to the collection of retail rate duly approved by the Energy Regulatory Commission (ERC); and
- 2) prepare and submit to the Department of Energy (DOE) its annual Distribution Development Plan (DDP). In the case of Electric Cooperatives (ECs), such plan shall be submitted through the National Electrification Administration (NEA).

WHEREAS, Section 37 (p) of the EPIRA mandates the DOE to formulate rules and regulations as may be necessary to implement the objectives of the EPIRA;

WHEREAS, the Supreme Court, in its Decision in *Alyansa Para sa Bagong Pilipinas v. Energy Regulatory Commission, et al.* (G.R. No. 227670, 3 May 2019), reaffirmed the DOE's mandate in Section 37 of the EPIRA, while the ERC, in the exercise of its power and functions under the EPIRA, shall issue and enforce the implementing rules and regulations;

WHEREAS, the DOE issued the following policies related to Competitive Selection Process (CSP) for the procurement of power supply of the DU for the captive customers:

- 1) Department Circular (DC) No. DC2015-06-0008¹ on 11 June 2015;

¹ "Mandating All Distribution Utilities to Undergo Competitive Selection Process (CSP) in Securing Power Supply Agreements (PSA)"

- 2) DC No. DC2018-02-0003² on 01 February 2018;
- 3) DC No. DC2021-09-0030³ on 24 September 2021; and
- 4) DC No. DC2022-06-0027⁴ on 20 June 2022.

WHEREAS, on 02 March 2021, the DOE issued DC No. DC2021-03-0003⁵, providing the guidelines in the formulation of DDP which is the program of DUs for managing the distribution system through timely identification of infrastructure requirements and procurement of power supply to ensure the continuity of supply of electric power to end-users at the least cost manner;

WHEREAS, Section 11 of DC2021-03-0003 provides that the annually submitted DDP of DUs, and thereby accepted by the DOE, will serve as reference by the ERC, in the exercise of its functions under the EPIRA, in the review and approval of the Power Supply Agreements (PSA) and Capital Expenditures applications of DUs;

WHEREAS, on 22 September 2022, the DOE issued an Advisory to all DUs, ERC and NEA, providing clarification on the implementation of CSP prescribed under DC No. DC2018-02-0003, as amended and supplemented by DC No. DC2021-09-0030, and in consideration of the powers and functions of the DOE and ERC under the EPIRA;

WHEREAS, to ensure efficient, timely and transparent procurement of power supply to the captive market, there is a need to streamline the conduct of CSP and the responsibilities of the DOE, ERC, and NEA under the EPIRA that is adaptable and flexible to the needs of the DU;

NOW, THEREFORE, in consideration of the foregoing, the DOE hereby issues this policy on the conduct of CSP of DUs.

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 (PSP) 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

² "Adopting and Prescribing the Policy for the Competitive Selection Process in the Procurement by the Distribution Utilities of Power Supply Agreement for the Captive Market"

³ "Amending Certain Provisions of and Supplementing Department Circular No. DC2018-02-0003 on the Competitive Selection Process in the Procurement by the Distribution Utilities of Power Supply Agreement for the Captive Market"

⁴ "Providing the Guidelines for the Accreditation of Third Party Auctioneer Pursuant to Section 5 of Department Circular No. DC2021-09-0030"

⁵ "Prescribing the Policy and Guidelines for the Formulation of the Distribution Utilities Distribution Development Plan Integrating the Relevant Laws, Policy Issuances, Rules and Regulations"

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 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;
 - 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 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
 - 2.2.6. Off-Grid Areas with less than 1 MW demand with 24-hour electricity service not covered in 2.2.1.

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

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 PSCP and Invitation to Bid (ITB).
- 3.3. **Competitive Selection Process** or **CSP** refers to the 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 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.
- 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 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.
- 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.
- 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

The ERC shall provide the following regulatory support:

- 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.
- 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.
- 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.

- 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.

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.

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).

Issued on _____ at Energy Center, Bonifacio Global City, Taguig City.

RAPHAEL P. M. LOTILLA
Secretary