

PROVIDING FOR ADDITIONAL GUIDELINES FOR DISTRIBUTION UTILITIES IN COMPLYING WITH THEIR MANDATE TO ENSURE SUPPLY SECURITY

DOE Department Circular No. DC2015-06-0009, June 15, 2015

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Adopted: 15 June 2015

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WHEREAS, pursuant to the declared policy of the State under Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001 (EPIRA),” the Department of Energy (DOE) is mandated to ensure reliability, quality and security of electric power;

WHEREAS, on 05 December 2003, the DOE issued Department Circular No. DC003-12-011, entitled “Enjoining All Distribution Utilities to Supply Adequate, Affordable, Quality and Reliable Electricity” reiterating the policy of the State that all Distribution Utilities (DUs) must take cognizance and assume full responsibility to forecast, assure and contract for the supply of electric power in their respective franchise areas to meet their obligations as a DU;

WHEREAS, on 26 February 2010, the DOE issued Department Circular No. DC2010-03-003, entitled “Directing All Power Generation Companies, the Transmission Service Provider, and All DUs to Ensure Adequate and Reliable Electric Power Supply in the Country” directing the DUs to ensure that the power requirements within their franchise areas are adequately covered by supply contracts;

WHEREAS, the Energy Regulatory Commission (ERC) conducted nationwide public consultations on the proposed “Rules Governing the Execution, Review, and Evaluation of Power Supply Agreements (PSAs) Entered into by DUs for the Supply of Electricity to their Captive Market” or the PSA Rules on 18 February 2014 (Davao), 20 February 2014 (Cebu) and 24 February 2014 (Manila);

WHEREAS, on 17 April 2015, the DOE issued Department Circular No. DC2015-04-002, entitled “Directing All Generation Companies, DUs and Independent Power Producer Administrators to Submit to the DOE Reportorial Requirements and Other Pertinent Data as may be Required for the Formulation of the Power Supply and Demand Forecasts of the Power Development Plan,” which aims to provide reliable and accurate demand forecast reflective of the actual demand consumption brought about by economic activities in the country and developments in the electric power industry such as the implementation of the Retail Competition and Open Access (RCOA), Interim Mindanao Electricity Market (IMEM), among others;

WHEREAS, the EPIRA provides that all DUs shall have the obligation to supply electricity in the least-cost manner to its Captive Market, subject to the collection of retail rate duty approved by the ERC;

WHEREAS, the DOE recognizes the need to mitigate the significant impact on the general public of delays in the commercial operations of on-going and committed power projects and/ or recommissioning and resumption of generation facilities from outages to the overall status of available, power supply in the country.

NOW, THEREFORE, for and in consideration of the foregoing premises, the DOE, declares as follows:

Section 1. Policy Statement and Objective. This Circular aims to ensure supply security through the incorporation of standard contractual terms to clearly delineate the responsibilities of the contracting parties in the event of any forced outages or events affecting the delivery of power or delays in the commercial operations of committed power projects.

Section 2. Scope and Application. This Circular shall apply to Power Supply Agreements (PSAs) entered into by DUs for supply to its Captive Customers within their respective franchise areas after the effectivity of this Circular: Provided however, That for PSAs entered into prior to this Circular, may opt to renegotiate certain provisions of their existing PSAs to suit the standard terms to be prescribed by the ERC.

Section 3. Responsibility of the Distribution Utilities. All DUs shall ensure that PSAs entered into with a Generation Company shall contain a provision for allowances and penalties to clearly define the responsibilities and obligations of the Generation Company in case the delivery of electric supply is not fulfilled due to delays in the commercial operation and/or occurrence of any Forced Outages: Provided, That, provision for the allowances and penalties for delays in the operations and/or any Forced Outages shall be consistent with those to be set by the ERC under the PSA Rules: Provided further, That the penalty in the PSAs may be at par with the cost of replacement power and the annual allowance for all outages shall not exceed the number of days to be determined under the PSA Rules for issuance of the ERC.

Further, to avoid stranded contract quantities, all DUs shall consider in their PSAs, a provision on the automatic reduction of contracted quantities due to possible migration of its Contestable Customers within their franchise area.

Section 4. Monitoring, Enforcement and Compliance. The DOE through the Electric Power Industry Management Bureau (EPIMB), together with the ERC, shall monitor compliance with this Circular. Towards this end, the DOE-EPIMB is hereby empowered to require the submission of the pertinent documents from DUs to determine the compliance with this Circular for policy purposes.

Section 5 Regulatory Support. The ERC, in the exercise of its powers and functions under the EPIRA shall establish and impose existing fines/ and or penalties for noncompliance of electric power industry participants to support the enforcement of this Circular.

Section 6. Repealing Clause. Nothing in this Circular shall be construed as to amend, supersede, or repeal any of the mechanism or institutions already existing or responsibilities already allocated and provided for under any existing law, rule, or contract.

Section 7. Separability Clause. If for any reason, any section or provision of this Circular is declared unconstitutional or invalid, the other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

Section 8. Effectivity. This Circular shall take effect immediately upon its publication in two (2) newspapers of general circulation and shall remain in effect until otherwise revoked.

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

(SGD) CARLOS JERICHO L. PETILLA
Secretary

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