MANDATING ALL DISTRIBUTION UTILITIES TO UNDERGO COMPETITIVE SELECTION PROCESS (CSP) IN SECURING POWER SUPPLY AGREEMENTS (PSA)

DOE Department Circular No. DC2015-06-0008, June 11, 2015

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Adopted: 11 June 2015
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WHEREAS, Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), declares among others the following policy of the State:

(a)

Ensure the quality, reliability, security and affordability of the supply of electric power;

(b)

Ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market;

(c)

Enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and distribution sectors; and

(d)

Protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power.

WHEREAS, EPIRA mandates the Department of Energy (DOE), in addition to its powers and functions under Republic Act No. 7638 or the DOE Act of 1992, to supervise the restructuring of the electric power industry, and shall undertake among others the following:

(a)

Ensure the reliability, quality and security of supply of electric power;

(i)

Encourage private sector investments in the electricity sector and promote development of indigenous and renewable energy sources; and

(ii)

Facilitate and encourage reforms in the structure and operations of distribution utilities for greater efficiency and lower costs.

(b)

Following the restructuring of the electricity sector:

(c)

Develop policies and procedures and, as appropriate, promote a system of energy development incentives to enable and encourage electric power industry participants to provide adequate capacity to meet demand including, among others, reserve requirements;

(d)

Formulate such rules and regulations as may be necessary to implement the objectives of the EPIRA, and

(e)

Exercise such other powers as may be necessary or incidental to attain the objectives of the EPIRA.

WHEREAS, Section 23 of EPIRA provides that all Distribution Utilities (DUs) shall have the obligation to supply electricity in the least-cost manner to their Captive Market, subject to the collection of retail rate duty approved by the Energy Regulatory Commission (ERC);

WHEREAS, on 05 December 2003, the DOE issued Department Circular No. DC2003-12-011 entitled "Enjoining All Distribution Utilities to Supply Adequate, Affordable, Quality and Reliable Electricity," which reiterated the state policy that all DUs must henceforth take cognizance and assume full responsibility to forecast, assure and contract for the supply of electric power within their respective franchise areas to meet their obligations as a DU particularly to their Captive Market;

WHEREAS, the un-contracted energy requirements of DUs provide the window of opportunity for the existing and prospective private investors to contract these out and invest in additional power generation capacities, both conventional and renewable energy (RE);

WHEREAS, adequate and proper power supply contracting through a transparent procedure ensures electricity demand is met, while electricity end- users is protected from unnecessary exposure in the volatility of spot prices in the Wholesale Electricity Spot Market (WESM);

WHEREAS, the DOE has conducted a series of nationwide public consultations on the proposed policy on competitive procurement of electric supply for all electricity end-users;

WHEREAS, greater efficiencies are achieved in the conduct of a Competitive Selection Process (CSP) in aggregation of un-contracted demand of DUs as evidenced by the results of the Central Luzon Electric Cooperatives (ECs), Region I ECs, among others;

WHEREAS, the DOE recognizes the adoption of competitive selection as a policy that will encourage investments in the power generation business thereby ensuring electric power supply availability in a regime of transparent process in securing Power Supply Agreements (PSAs), which is an integral part of the power sector reform agenda;

NOW, THEREFORE, for and in consideration of the foregoing premises, the DOE, hereby adopts the following:

Section 1. General Principles. Consistent with its mandate, the DOE recognizes that Competitive Selection Process (CSP) in the procurement of PSAs by the DUs ensures security and certainty of electricity prices of electric power to end-users in the long-term. Towards this end, all CSPs undertaken by the DUs shall be guided by the following principles:

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(a)

Increase the transparency needed in the procurement process in order to reduce risks;

(b)

Promote and instill competition in the procurement and supply of electric power to all electricity end-users;

(c)

Ascertain least-cost outcomes that are unlikely to be challenged in the future as the political and institutional scenarios should change; and

(d)

Protect the interest of the general public.

Section 2. Scope of Application and Coverage. This Circular shall apply to any entity that owns, operates, or controls one or more distribution systems in the main grid and off-grid areas, such as but not limited to:

(a)

Electric Cooperatives (ECs);

(b)

Private Investor-Owned Distribution Utilities (PlOUs);

(c)

Local Government Unit Owned-and-Operated Distribution Systems/Utility (LGUOUs);

(d)

Multi-Purpose Cooperatives duly authorized by appropriate Government agencies to operate electric power system;

(e)

Entities duly authorized to operate within economic zones; and

(f)

Other duly authorized entities engaged in the distribution of electricity.

Section 3. Standard Features in the Conduct of CSP. After the effectivity of this Circular, all DUs shall procure PSAs only through CSP conducted through a Third Party duly recognized by the ERC and the DOE. In the case of ECs, the Third Party shall also be duly recognized by the National Electrification Administration (NEA).

Under this Circular, CSPs for the procurement of PSAs of all DUs shall observe the following:

(a)

Aggregation for un-contracted demand requirements of DUs;

(b)

Annually conducted; and

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(c)

Uniform template for the terms and conditions in the PSA to be issued by the ERC in coordination with the DOE.

Within one hundred twenty (120) days from the effectivity of this Circular, the ERC and DOE shall jointly issue the guidelines and procedures for the aggregation of the un-contracted demand requirements of the DUs and the process for the recognition or accreditation of the Third Party that conducts the CSP as hereto provided. For clarity, the term aggregation as used in this Circular refers to the wholesale demand and energy requirements of DUs, and not of the Contestable Markets under Retail Competition and Open Access (RCOA) regime.

As used in this section, the un-contracted demand or energy requirements of the DUs shall refer to the energy and demand not yet procured individually or collectively by the DUs, excluding those energy and capacity covered by PSAs that have been filed for approval before the ERC.

Section 4. Supplemental Guidelines. To ensure efficiency and transparency of the CSP Process, the ERC, upon its determination and in coordination with the DOE shall issue supplemental guidelines and procedures to properly guide the DUs and the Third Party in the design and execution of the CSP. The supplemental guidelines should ensure that any CSP and its outcome shall redound to greater transparency in the procurement of electric supply, and promote greater private sector participation in the generation and supply sectors, consistent with the declared policies under the EPIRA.

Section 5. Non-Retroactivity. This Circular shall have prospective application and will not apply to PSAs with tariff rates already approved and/or have been filed for approval by the ERC before the effectivity of this Circular.

Section 6. Monitoring, Enforcement and Compliance. The DOE through the Electric Power Industry Management Bureau (EPIMB), together with the ERC, shall monitor compliance with the conditions of the CSPs and the compliance with the provisions of PSAs.

Section 7. 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 non-compliance of electric power industry participants to support the enforcement of this Circular.

Section 8. 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 9. 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 10. Effecfivity. 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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