

**[ DEPARTMENT CIRCULAR NO. DC 2018-02-0003,  
February 13, 2018 ]**

**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**

*Adopted: 01 February 2018*

*Date Filed: 13 February 2018*

**WHEREAS**, Section 5 (d) of Republic Act No. 7638 or the "Department of Energy Act of 1992" declares, among others, that the Department of Energy (DOE) has the powers and functions to supervise and control over all the government activities relative to energy projects in order to attain the goals embodied in this Act;

**WHEREAS**, Section 2 of the "Electric Power Industry Reform Act of 2001" or "EPIRA" declares, among others, that it is policy of the State to: (1) ensure the quality, reliability, security and affordability of the supply of electric power; (ii) ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability; (iii) enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and distribution sectors; (iv) protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power; and (v) encourage the efficient use of energy and other modalities of demand-side management;

**WHEREAS**, Section 37(i) of the EPIRA mandates the DOE, in addition to its powers and functions under Republic Act No. 7638 to supervise the restructuring of the electricity industry and to 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;

**WHEREAS**, Section 2 of Republic Act No. 9513 or the "Renewable Energy Act of 2008" states the policy of the State to increase the utilization of Renewable Energy (RE) resources by institutionalizing the development of national and local capabilities in the use of renewable energy systems, and promoting its efficient and cost-effective commercial application by providing fiscal and non-fiscal incentives, among others;

**WHEREAS**, consistent with Section 23 of the EPIRA, all distribution utilities (DUS) must supply electricity in the least-cost manner to their respective Captive Market;

**WHEREAS,** Section 43 of the EPIRA mandates the Energy Regulatory Commission (ERC) to promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electric industry;

**WHEREAS,** on 26 January 2004, DOE issued Department Circular No. DC2004-01-001 entitled "Prescribing the Rules and Procedures for Private Sector Participation in Existing NPC-SPUG Areas Pursuant to Rule 13 of the Implementing Rules and Regulations of the Electric Power Industry Reform Act of 2001 (EPIRA-IRR)" requiring the conduct of Competitive Selection Process (CSP) as the basis of the DUs in off-grid areas for selecting New Power Providers (NPPs) and entering into corresponding Power Supply Agreement (PSA), among others;

**WHEREAS,** on 11 June 2015, the DOE issued Department Circular No. DC2015-06-0008, entitled "Mandating All Utilities to Undergo Competitive Selection Process (CSP) in Securing Power Supply Agreements (PSA)", which required all DUs to conduct CSP, through a Third Party, in the procurement of PSAs for their captive market;

**WHEREAS,** there is a need to formulate a specific CSP Policy for all DUs in the country defining a clear, transparent and fair supply procurement process that will promote competition and greater private sector participation in the provision of adequate generation capacity to meet the demand in the captive market, and full accountability of the DUs in the provision of affordable electricity prices to their captive market;

NOW, THEREFORE, premises considered, and pursuant to its authority under EPIRA and its Implementing Rules and Regulations, the DOE hereby adopts and prescribes the "Policy for the Competitive Selection Process in the Procurement by the Distribution Utilities of Power Supply Agreement for the Captive Market" in both grid and off-grid areas, herein attached as Annex "A" and is an integral part of this Circular.

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

Issued on \_\_\_\_\_ at Energy Center, Bonifacio Global City, Taguig City.

(SGD) ALFONSO G. CUSI  
*Secretary*

ANNEX "A"

**POLICY FOR THE COMPETITIVE SELECTION PROCESS IN THE  
PROCUREMENT BY THE DISTRIBUTION UTILITIES OF POWER SUPPLY  
AGREEMENT FOR THE CAPTIVE MARKET**

**SECTION 1. GOVERNING PRINCIPLES**

The procurement of power supply for the Captive Market shall be governed by the following principles:

1.1 Transparency in the conduct of Competitive Selection Process (CSP) through wide dissemination of bid opportunities and participation of all Generation Companies (Gen Cos);

1.2 Competitiveness by extending equal opportunity to eligible and qualified Gencos to participate in the CSP;

1.3 Least cost manner in ensuring that each distribution utility (DU) is able to meet the demand for its Captive Market at any given time;

1.4 Simple, streamlined and efficient procurement process applicable to the specific requirements of each DU in accordance with its Distribution Development Plan (DDP). These requirements shall specify the following technical, economic and other parameters: (1) baseload, mid-merit and/or peaking capacities; (ii) the amount of energy to be delivered; (ii) type of fuel or resource, whether conventional fossil fuel (such as oil, coal, or natural gas) or renewable energy resources (such as biomass, geothermal, solar, hydro, ocean and wind); (iv) choice of other emerging systems and technology; (v) environmental standards, (vi) timing and delivery of supply; and (vii) other considerations of the DU, as may be applicable; and

1.5 Accountability involved in the procurement process and implementation of the Power Supply Agreements (PSAs) awarded under the CSP.

## **SECTION 2. COVERAGE**

2.1 This Policy shall govern all DUs, grid and off-grid.

2.2 All PSAs shall be procured through CSP; Provided however, that the following instances shall warrant a Certificate of Exemption from the Department of Energy (DOE) on the conduct of CSP:

2.2.1 Any generation project owned by the DU funded by grants or donations. The DU may be allowed to infuse internally generated funds; Provided, that the amount shared by the DU shall not exceed 30% of the total project cost; Provided further, that taxes to be paid by the DU shall not be included in the total project cost;

2.2.2 Negotiated procurement of emergency power supply; Provided, that the cooperation period of the corresponding PSA shall not exceed one (1) year; Provided further, that the rate shall not be higher than the latest ERC approved generation tariff for same or similar technology in the area;

2.2.3 Provision of power supply by any mandated Government Owned and Controlled Corporation (GOCC) for off-grid areas prior to, and until the entry of New Power Providers (NPP) in an area; and

2.2.4 Provision of power supply by the Power Sector Assets and Liabilities

Management (PSALM) Corporation through bilateral contracts for the power produced from the undisposed generating assets and Independent Power Producer (IPP) contracts duly sanctioned by the "Electric Power Industry Reform Act of 2001" or EPIRA as deemed by the DUs, subject to a periodic review by the DOE.

2.3 The Certificate of Exemption shall be issued by the DOE within ten (10) working days from receipt of the application.

24 For PSAs contemplated under Section 2.2.2, the grant of a Certificate of Exemption shall authorize the DU to immediately implement such PSAs, without prejudice to the evaluation and final decision of the ERC within sixty (60) working days from filing of the relevant application for approval thereof.

2.5 The DU shall be required to inform the Energy Regulatory Commission (ERC), National Power Corporation (NPC) and National Electrification Administration (NEA) of the exemption.

### **SECTION 3. DEFINITION OF TERMS**

3.1 **"Aggregation"** refers to the joint action of DUs to aggregate their demand and energy requirements to jointly contract for their power supply to achieve economies of scale.

3.2 **"Aggregated Demand"** refers to the consolidated level in MW and volume in MWh of electric power of the DUs hourly, daily, monthly or annually.

3.3 **"Base-load"** refers to the minimum amount of electric power delivered or required over a given period of time.

3.4 **"Bidding Documents"** refers to the complete set of documents given to interested bidders, including at the minimum the Terms of Reference (TOR) for technical, legal and financial requirements sufficient to allow such bidders to submit a qualified bid.

3.5 **"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.

3.6 **"Certificate of Exemption"** refers to Certificate issued by the DOE under Section 2.2 of this policy.

3.7 **"Competitive Bidding"** refers to a method of procurement which is open to participation by any interested party and consists of the following processes: a) advertisement or publication; b) pre-bid conference; c) pre-qualifications d) bid evaluation; e) post-qualification, if any and h) award of contract.

3.8 **"Competitive Selection Process"** or "CSP" refers to the process wherein a Generation Company or, in the case of off-grid areas, New Power Provider, is awarded to supply electric power requirements of a DU through transparent and Competitive bidding undertaken by a DU or by Aggregated DUs to secure supply of electricity based on the evaluation criteria adopted by the DUs

in accordance with the requirements of this policy. For purposes of, and throughout the Policy, the terms "Competitive Bidding" and "CSP" shall have the same meaning and shall be used interchangeably.

3.9 **"Distribution Development Plan" or "DDP"** is the program for expansion, reinforcement and rehabilitation of the distribution system 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 electric Cooperatives (ECS), such plans shall be submitted through the NEA for review and consolidation.

3.10 **"Distribution Utility" or "DU"** refers to any electric cooperative, private corporation, government-owned utility or existing local government unit which has an exclusive franchise or is authorized by law to distribute electricity to end-users.

3.11 **"E-based Power Procurement Information Portal" or "DOE E-based Portal"** refers to a portal, to be developed and managed by the DOE that shall be used as the primary and centralized source of information regarding all CSP activities of all DUs.

3.12 **"EPIRA"** refers to Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001.

3.13 **"Emergency Power"** refers to the power required by the DU in the event that a DU's actual power supply falls below its load demand due to Force Majeure and Fortuitous Events or other analogous circumstances that are beyond the control of the DU and such shortfall cannot be addressed through any reasonable means within a month, subject to the final determination by the DOE.

3.14 **"Energy Regulatory Commission" or "ERC"** refers to the regulatory agency created under EPIRA.

3.15 **"Generation Company" or "Genco"** refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity.

3.16 **"Grid"** refers to the high voltage backbone system of interconnected transmission lines, substations and related facilities, located in each of the island groups of Luzon, Visayas and Mindanao, or as may otherwise be determined by the ERC in accordance with Section 45 of the EPIRA, together with the sub-transmission systems that are connected to or part of that system and are owned and operated by the Regulated Entity.

3.17 **"Joint Third Party Bids and Awards Committee" or "Joint TPBAC"** refers to Aggregated DUs whose composition where established through a Memorandum of Agreement of the participating DUs in accordance with Section 5 of this policy.

3.18 **"National Electrification Administration" or "NEA"** refers to the government agency created under the Presidential Decree 269, as amended by RA 10531.