

[DOE DEPARTMENT CIRCULAR NO. DC2013-05-0006, May 06, 2013]

ENJOINING ALL GENERATION COMPANIES, DISTRIBUTION UTILITIES, SUPPLIERS AND LOCAL SUPPLIERS TO ENSURE AN EFFECTIVE AND SUCCESSFUL TRANSITION TOWARDS THE IMPLEMENTATION OF RETAIL COMPETITION AND OPEN ACCESS

WHEREAS, Section 37 of the Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA), the Department of Energy (DOE) is mandated to, among other things to:

- (a) Supervise the restructuring of the electric power industry;
- (b) Formulate rules and regulations as may be necessary to implement the objectives of EPIRA; and
- (c) Exercise such other powers, as may be necessary or incidental to attain the objectives of EPIRA.

WHEREAS, to properly guide the implementation of Retail Competition and Open Access (RCOA), the DOE promulgated Department Circular No. DC2012- 05-0005, which prescribes the general policies for the implementation of RCOA and Department Circular No. DC2012-11-0010, which provides for additional guidelines and implementing policies for RCOA and amending certain provisions of Department Circular No. DC2012-05-0005;

WHEREAS, the said Circulars uphold the objectives of EPIRA to: (i) promote customer choice; (ii) ensure fair and non-discriminatory treatment of public and private sector entities in the process of restructuring the electric power industry; and (iii) to ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability;

WHEREAS, during the series of public consultations conducted prior to the promulgation of the said Circulars, the Contestable Customers (CCs) expressed their concerns on the alleged non-responsiveness of most, if not all, licensed Suppliers and Local Suppliers on the requests of CCs for offers of terms and conditions for possible negotiation for Retail Supply Contracts (RSCs);

WHEREAS, the CCs further reported that Suppliers and Local Suppliers are not making any offers allegedly because their capacities have already been allocated to either their affiliate CCs and/ or other target CCs;

WHEREAS, the aforementioned concern was again reiterated and emphasized by the CCs during the DOE-initiated Suppliers' and Contestable Customers' Get-Together for RCOA held last 20 March 2013 at the Asian Institute of Management (AIM), in the presence of the Energy Regulatory Commission (ERC) and the Philippine Electricity Market Corporation (PEMC), and other stakeholders in the industry:

WHEREAS, the EPIRA provides that electricity Suppliers shall demonstrate their technical capability, financial capability, and creditworthiness, which are requisites to ensure their ability to secure sufficient generation capacity to continuously supply electricity service to the CCs;

WHEREAS, the ERC issued Resolution No. 05, Series of 2013 dated 22 March 2013, entitled "A Resolution on the Disclosures of Capacity and Energy Allocations by Distribution Utilities in the Luzon and Visayas Grids and Retail Electricity Suppliers," which mandates among others, for the Suppliers and Local Suppliers to disclose, in affidavit-form, the amount of capacity in megawatts (MW) and energy in megawatt-hours (MWH) that they have contracted with the power generation companies as well as disclose information on the number of CCs they have contracted for retail supply, and the capacity (in MW) and energy (in MWH) that they have allocated to their contracted CCs, and their remaining available capacity (in MW) and energy (in MWH);

WHEREAS, the DOE supports transparency, good governance and greater competition in the generation and supply sectors;

NOW, THEREFORE, for and in consideration of the foregoing premises, the DOE, in pursuit of its supervisory functions vested to it by the EPIRA, and consistent with ERC Resolution No. 5, Series of 2013 dated 22 March 2013, hereby promulgates the following:

Section 1. Obligations of Electric Power Industry Participants in the Implementation of RCOA. Pursuant to the provisions of the EPIRA, its Implementing Rules and Regulations (EPIRA-IRR), and other applicable rules and regulations, the following are hereby enjoined to fully comply with their obligations to include, but not limited to, the following:

(a) For all Generation Companies, Distribution Utilities, Suppliers, and Local Suppliers:

- (i) Identify focal and contact person/s duly authorized to interface and communicate with DOE, ERC and PEMC on matters relating to the implementation of RCOA. For purposes of this provision, the WESM Compliance Officers (WCOs) duly designated by each WESM member under DOE Department Circular No. DC 2010-07-0008 may be submitted as the focal person.
- (ii) In the case of power generation companies, submit to the DOE, on a regular basis, all power supply contracts entered into with Distribution Utilities, Suppliers, and Local Suppliers, including Directly-Connected Customers. The report shall, among others, indicate the contract price, contract levels and duration, and any value-added services.
- (iii) Comply with the intent of the EPIRA and the rules to prevent any player from exercising abuse of market power and engage in any anti-competitive behaviour. For this purpose, the above participants are prohibited from exercising abuse of market power and engaging in any anti-competitive behaviour.