

[**DOE DEPARTMENT CIRCULAR NO. DC 2004-01-001, January 26, 2004**]

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)

WHEREAS, it is the declared policy of the State to ensure and accelerate the total electrification of the country;

WHEREAS, under Section 1 of Rule 13 of the EPIRA IRR, the Department of Energy (DOE) is tasked to issue specific guidelines on how to encourage the inflow of private capital and the manner whereby other parties including distribution utilities and qualified third parties can participate in the missionary electrification;

WHEREAS, under Section 3 of the EPIRA IRR, the Small Power Utilities Group of the National Power Corporation (NPC-SPUG), is mandated to periodically assess the requirements and prospects of bringing power generation and associated power delivery systems to commercial viability on an area-by-area basis including a program to encourage private sector participation;

WHEREAS, missionary electrification functions of NPC-SPUG are funded from the revenues from sales in missionary areas and from the Universal Charge, the participation of private sector shall reduce the burden on the missionary electrification component on the Universal Charge (UC-ME);

WHEREAS, the participation of private sector in missionary areas shall reduce the burden on the UC-ME;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE FOREGOING PREMISES, the DOE hereby issues the following guidelines and procedures to guide and encourage the private sector to participate in existing NPC-SPUG areas:

SECTION 1. Definition of Terms - Unless the context otherwise indicates, the terms used in this Circular shall have the following meanings:

- a. **"Act"** refers to Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001;"
- b. **"Best New Entrant Tariff"** refers to the tariff which would need to be charged by an efficient entrant to cover its costs and earn an reasonable return on capital;

c. **"Commercially Viable"** refers to an area or service where the resultant True Cost Generation Rate is equal to or less than the Socially Acceptable Generation Rate;

d. **"Conclusion Program"** refers to the program prescribing the period/duration that the UC-ME will be made available to the New Private Provider (or "NPP") from the effectivity date of the take over of an NPC-SPUG area;

e. **"Floor Price"** refers to the price at which NPC-SPUG specifies it is willing to sell an asset to an NPP selected to serve an NPC-SPUG area. The Floor Price may be set at a fair value, as appraised by an independent appraiser, or to the book value of the asset;

f. **"Graduate"** refers to any area where provision of Missionary Electrification Subsidy is remove/stopped, by reason that the area or service is deemed Commercially Viable;

g. **"IRR"** refers to the implementing rules and regulations of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001;"

h. **"Missionary Electrification"** refers to the provision of basic electricity service in Unviable Areas with the ultimate aim of bringing the operations in these areas to viability levels;

i. **"Missionary Electrification Subsidy"** refers to the subsidy approved by ERC to be paid to an NPP to allow it to recover its True Cost Generation Rate while charging the Distribution Utility the Socially Acceptable Generation Rate. The Missionary Electrification Subsidy shall be funded from the UC-ME based on the petition filed by NPC-SPUG;

j. **"New Missionary Areas"** refers to an area declared Unviable by the Distribution Utility for any reason and offered to private sector for supply of electricity;

k. **"New Private Provider" or "NPP"** refers to an entity deemed technically and financially capable to serve/take over existing NPC-SPUG areas, resulting from the competitive bidding exercise;

l. **"NPC-SPUG"** refers to the functional unit of NPC created to pursue the Missionary Electrification function;

m. **"NPC-SPUG Area"** refers to a geographic area currently supplied with electricity generated by NPC-SPUG;

- n. **"Power Supply Agreement" or "PSA"** refers to an Agreement between a power producer and a Distribution Utility for supply of power;
- o. **"Socially Acceptable Generation Rate"** refers to the rate, which ERC has determined would be desirable, on social acceptability grounds, for a Distribution Utility to pay for power to supply a current or former NPC-SPUG area. The Socially Acceptable Generation Rate combined with the Missionary Electrification Subsidy should equal the True Cost Generation Rate;
- p. **"Transaction Advisor"** refers to a professional/expert engaged by DOE to assist in developing the most appropriate privatization program for existing NPC-SPUG areas;
- q. **"True Cost Generation Rate"** refers to the full efficient costs of generating power in an area. For the purpose of this Circular, True Generation Rates shall be determined on the same basis provided for under Section 43(f) of the Act for setting or determining transmission wheeling rates and retail rates for the captive market of a Distribution Utility to allow sufficient recovery of just and reasonable costs and a reasonable return on rate base (RORB) to enable the entity to operate viably; and
- r. **"Unviable Area"** refers to a geographical area within the Franchise Area of a Distribution Utility where immediate extension of distribution line is not feasible;

Other words and phrases have the same meanings as in EPIRA and its IRRs.

SECTION 2. Declaration of Policies for Missionary Electrification -

- a. This Circular shall only apply to all areas being served by NPC-SPUG.
- b. All existing NPC-SPUG areas are hereby declared open for private sector participation. For the purpose of this Circular, private sector participation shall mean "the take over of the supply of electricity to any existing NPC-SPUG areas, either through outright purchase or lease of existing NPC-SPUG assets, and/or installation of new power generating facilities including associated power delivery systems."
- c. NPC-SPUG shall endeavor to privatize its power generation facilities and associated power delivery systems.
- d. When NPC-SPUG ceases to serve an area, it may sell its

assets in the area or redeploy to serve another area. The sale of assets of NPC-SPUG shall follow the government's standard accounting procedures.

e. Distribution utilities currently sourcing power supply from NPC-SPUG, wholly or partly, are encouraged to seek NPPs. The NPPs shall be selected based on competitive bidding with the view to minimize power purchase cost of the Distribution Utility.

f. In cases where a Distribution Utility does not select an NPP, NPC-SPUG will assign its existing Power Supply Agreement (PSA) to a competitively selected NPP, if this would lead to a reduction in the total cost of power supply.

g. DOE shall promote policies that will strengthen governance structure such as protection of investors' rights and consumer education in NPC-SPUG areas that were taken over by NPPs.

h. The DOE shall prescribe the Conclusion Program in existing NPC-SPUG areas taken over by NPPs to optimize the utilization of the UC-ME.

SECTION 3. Procedures for Selection of New Power Providers -

a. A competitive process shall be used to select one or more NPPs to supply power to each NPC-SPUG area.

b. The competitive process shall be designed to ensure that prospective NPPs intending to participate in NPC-SPUG privatization program possess suitable level of financial and technical capacity. The process design shall give due consideration to achieving the lowest long-term cost of power and services, environmental compatibility with the local area, and the most advantageous implementation schedule.

c. Distribution Utilities operating in existing NPC-SPUG areas shall have the following options in managing the competitive process for the selection of their respective NPPs:

i. Request DOE to secure a Transaction Advisor or engage the services of a Transaction Advisor, at its own cost, to assist in selecting the appropriate NPP;

ii. Allow NPC-SPUG to assign its existing PSA to an NPP through a competitive process; or

iii. Manage the competitive selection process by itself.