



DEPARTMENT CIRCULAR NO. DC2015-06-0010, *as amended*

PROVIDING POLICIES TO FACILITATE THE FULL IMPLEMENTATION
OF RETAIL COMPETITION AND OPEN ACCESS (RCOA)
IN THE PHILIPPINE ELECTRIC POWER INDUSTRY

WHEREAS, Section 2 of the Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001” (EPIRA) declared the Policy of the State, among others, the following:

- (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) To 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, pursuant to Section 31 of the EPIRA, RCOA shall be mandated as follows:

- (a) Upon the initial implementation of open access, the Energy Regulatory Commission (ERC) shall allow all electricity End-users with a monthly average peak demand of at least one (1) megawatt (MW) for the preceding twelve (12) months to be the contestable market;
- (b) Two (2) years thereafter, the threshold level for the contestable market shall be reduced to 750 kilowatts (kW). At this level, Aggregators shall be allowed to supply electricity to end-users whose aggregate demand within a contiguous area is at least 750 kW; and
- (c) Subsequently and every year thereafter, the ERC shall evaluate the performance of the market. On the basis of such evaluation, it shall gradually reduce the threshold level until it reaches the household demand level.

WHEREAS, Section 37 of the EPIRA further mandates the Department of Energy (DOE), among other things to:

- (a) Supervise the restructuring of the electric power industry;

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

WHEREAS, in compliance with its mandate under the EPIRA, the DOE has promulgated policies to ensure the efficient, effective and consistent implementation of RCOA with the end view of upholding the objectives of EPIRA in promoting customer choice and fostering competition in the generation and supply sectors;

WHEREAS, the RCOA commenced last 26 June 2013, starting with electricity End-users with an average peak demand of at least one (1) MW and provided an interim option for Contestable Customers (CCs) to remain with their franchised Distribution Utilities (DUs) as Captive Market until such time that they are able to secure their respective Retail Supply Contracts (RSCs) with a licensed Retail Electricity Supplier (RES) or Local RES;

WHEREAS, as of April 2015, only about thirty five percent (35%) of the total CCs that have been certified by the ERC have chosen their RES/Local RES and registered with the Philippine Electricity Market Corporation (PEMC) as the Central Registration Body (CRB); and

WHEREAS, the DOE takes cognizance of the uncertainties brought about by the status quo regime, its impact on the preparation of Distribution Development Plan, particularly in the load or demand forecasting, and the DUs' power supply contracting for its franchise area.

NOW, THEREFORE, for and in consideration of the foregoing, the DOE hereby issues, adopts and promulgates the following policies for the continuous development and implementation of RCOA as embodied in the EPIRA:

Section 1. Compliance to Full Contestability by Contestable Customers with Average Demand of One (1) MW and Above.

All CCs, which are currently being served by their franchised DUs, are mandated to secure their respective RSCs no later than 25 June 2016, with any of the following:

- (a) Any licensed RES;
- (b) Any Generation Company, currently owning and operating power generation facilities, duly issued a Certificate of Compliance (COC) by the ERC and is offering to serve the power requirements of any CCs: *Provided*, That it secures a RES license from the ERC;
- (c) Any Prospective Generation Company. As used in this Circular, a Prospective Generation Company shall refer to any Person or Entity that power generation project is undergoing construction or planned and has been included in the DOE's Power Development Plan (PDP);

Any RSC that the CC entered into with a Prospective Generation Company shall be deemed compliant with the Mandatory Contestability prescribed in this Circular;

The CC and its counterparty RES, Generation Company or Prospective Generation Company shall submit to DOE and ERC their signed RSC for assessment, monitoring, policy and rule-making purposes particularly on the timelines and effectivity date of the RSC.

The DOE and ERC shall recognize such compliance of the CCs to the Mandatory Contestability if any of the following conditions are met:

- (a) The CC has entered into an RSC with any existing RES;
- (b) The CC has entered into an RSC with any Generation Company: *Provided*, That the RSC shall be effective only upon the Generation Company's acquisition of a RES' license from the ERC;
- (c) The CC has entered into a Forward RSC with a Prospective Generation Company, with the following conditions:
 - (i) The effectivity date of the RSC has been clearly spelled out;
 - (ii) The RSC shall indicate the commitment of the Prospective Generation Company to commence the commercial operations of its power project on or before the effectivity date of the RSC;
 - (iii) Notwithstanding any RSC signed by a CC with a Prospective Generation Company, the concerned franchised DU shall continue to serve the electricity requirements of the CC until the RSC between the CC and the Prospective Generation Company has become effective; and
 - (iv) The Prospective Generation Company has secured its RES license from the ERC.

Any Prospective Generation Company that fails to comply with the provisions of its Forward RSC with the CC shall be imposed with fines and penalties, and an alternative RES shall be appointed by the ERC to supply the affected CC, which shall be given a six (6) months to secure a new RES.

Section 2. Contestability of End-Users with Average Demand from 750 kW and Above.

- (a) All CCs with an average demand ranging from 750 kW and 999 kW for the preceding 12-month period, are mandated to secure their RSCs with a RES no later than 25 June 2016;
- (b) Effective 26 June 2016, Aggregators shall be allowed to compete with RES, Generation Company and Prospective Generation Company;
- (c) In the case of retail aggregation, any CCs within a contiguous area may individually or collectively aggregate their electricity supply requirements to an Aggregator, duly licensed by the ERC. The aggregated demand shall in no case be lower than 750 kW.

Aggregators, as defined in the EPIRA, refers to a person or entity, engaged in consolidating electric power demand of End-users in the contestable market, for the purpose of purchasing and reselling electricity on a group basis. The Aggregator may secure the same through a Competitive Supply Procurement (CSP) process to be prescribed by the ERC in a separate issuance.

- (d) To ensure timely implementation and continuity of the contestability in the Supply Sector, the ERC shall promulgate the applicable guidelines on retail aggregation.

Section 3. Lowering the Contestability Threshold to Below 750 kW. All electricity End-Users with an average demand ranging from 501 kW to below 750 kW for the preceding twelve (12) months may be allowed to choose their respective RES effective 26 June 2018, subject to the determination of the ERC on the basis of its evaluation on the performance of the Retail Market. Voluntary contestability for End-users with average demand of 500 kW and below for the preceding twelve (12) months shall be based on the continuing evaluation and assessment by the ERC.

Section 4. Treatment of Distribution Utilities Displaced Contract Capacity or Energy (DCC/E) Arising from the Migration of Customers to RCOA. Any DU, which may incur DCC/E, resulting to the End-users' exercise of Contestability, shall inform the ERC, copy furnished the DOE, of its impending DCC/E. Towards this end, the ERC in the exercise of its functions under EPIRA, shall issue the necessary rules and procedures in addressing the treatment of the DU DCC/E.

Upon verification and conduct of public hearing by the ERC, the recovery of DCC/E may be through any or a combination of the following:

- (a) Be renegotiated with the contracted Generation Company. In cases where a DU has multiple contracts with various Generation Companies, the renegotiation of the reduction of capacity and energy volumes shall be done on a pro-rated manner. For those Generation Companies that entered into a RSC with any CCs, as provided under Section 1 of this Circular, the renegotiation or buy-back shall be mandatory;
- (b) Be auctioned to other DUs, RES or Aggregators through a CSP process, as defined in a separate issuance by the ERC; or
- (c) Be declared in the Wholesale Electricity Spot Market (WESM) as quantity for sell, only in cases where the DU is not a Local RES: *Provided*, That this shall only be allowed after determination of the ERC and until the expiration of the DU's bilateral contracts declared as having DCC/E.

Renegotiated PSAs of the franchised DUs shall only be effective after the approval of the ERC. Any modalities of addressing DCC/E shall be revenue neutral to the affected DU.

For purposes of this Circular, DCC/E shall refer to the excess in the contracted capacity and energy of a DU from a Generation Company, resulting from the potential unutilized volume of capacity and energy allocated to the migrating CCs. As such, the capacity or energy that shall remain with the DU shall be adequate to supply the power requirements of its remaining Captive Market including the DU's projected demand growth.

Section 5. Licensing of Retail Electricity Suppliers. Pursuant to the EPIRA, any entity engaged in the distribution of electricity to End-users shall provide open and non-discriminatory access to its distribution system. To ensure compliance with this EPIRA provision, and that all players are afforded a level playing field, the DOE is cognizant that ERC is in the process of reviewing its guidelines, taking into account the following:

- (a) Immediate lifting of its Moratorium issued on licensing and to include Generation Companies and Prospective Generation Companies among the entities qualified to be RES.
- (b) "Future" or "Forward" Contracting of Prospective Generation Company with any CCs shall be allowed and shall be deemed as eligibility to become a RES, subject to compliance with the licensing requirements prescribed by the ERC;
- (c) A simplified licensing process for Generation Companies to serve CCs;
- (d) Prohibiting over contracting of capacities by RES with Generation Company: *Provided however*, That Forward RSCs shall not be considered as overcontracting;
- (e) Prohibiting Suppliers from engaging in supply of electricity other than with CCs;
- (f) Prohibiting RES from exclusive self-retailing or catering only to the RES affiliates and subsidiaries;
- (g) Cross-ownership limitations that would allow a competitive level playing field for entities interested to engage in the Supply Business; and
- (h) Prohibiting DU to engage in the Supply Business beyond its Captive Customers: *Provided*, That the existing Local RES after the effectivity of this Circular may continue to perform its Local RES function until expiration of its RSCs entered into with CCs as of the effectivity of this Circular.

Section 6. Regulatory Support. For the proper implementation of the policies set herein, the ERC is hereby enjoined to promulgate the supporting guidelines including but not limited to contestability, aggregation, DCC/E, RES licensing, support to the Central Registration Body (CRB) and competition rules: *Provided*, That the guidelines shall specify a set of sanctions and penalties that may be imposed to electric power industry participants for breaching the promulgated policies and guidelines in line with the EPIRA and its IRR: *Provided further*, That the ERC shall issue the Certification of Contestability for all affected electricity End-users considering the timeline of implementation stipulated in this Circular.

Section 7. Responsibility of the Philippine Electricity Market Corporation. As the Central Registration Body and in support of the policies prescribed in this Circular, the Philippine Electricity Market Corporation (PEMC) shall:

- (a) Recommend appropriate changes to the WESM Rules, the Retail Market Rules, and Market Manuals;

- (b) Develop an Implementation Plan for Section 4(c) of this Circular with utmost consideration to ensuring consumer protection and preserving and enhancing the competitive state of the Wholesale and Retail Markets; and
- (c) Propose policy to ensure that developments of the new RCOA policies set forth herein shall redound to benefits for electricity end-users, and facilitate investments in power generation.

Section 8. Interpretation of Terms. For the avoidance of doubt and confusion, all other terms used in this Circular will have the same definition as provided under the EPIRA and its implementing rules and regulations.

Section 9. Separability Clause. If any section or provision of this Circular is declared invalid, the other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

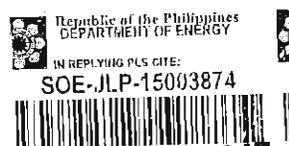
Section 10. Repealing Clause. Except insofar as may be manifestly inconsistent herewith, nothing in this Circular shall be construed as to repeal any of the mechanisms already existing or responsibilities already provided for under existing rules.

Section 11. Penalty Clause. Failure of any Generation Company, RES or Local Supplier, and any affected entities to comply with their obligations set forth under this Circular may be subject to the imposition of fines and penalties by the ERC and, as so required to protect the public interest, may result in suspension or revocation of licenses and authorizations.

Section 12. Effectivity. This Circular shall take effect immediately following its publication in at least two (2) newspapers of general circulation.

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


CARLOS BERICHO L. PETILLA
Secretary



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