



DEPARTMENT OF ENERGY

**COMPENDIUM OF ENERGY LAWS
CIRCULARS AND OTHER ISSUANCES**

VOLUME 4B

ELECTRIC POWER INDUSTRY



FOREWORD

by the Secretary

“Ignorantia juris non excusat”

The Philippine energy sector has undergone significant structural transformations over the years.

Vital up to date developments including policies and programs to guide the government, stakeholders and consumers alike in making informed energy choices is now collaboratively synergized.

The Department of Energy (DOE) is proud to present the updated Second Edition of the Compendium of Energy Laws to the public, a comprehensive reference on the various Republic Acts, Protocols and Directives to guide the DOE, its attached agencies especially the upstream and downstream industry about the dynamics of the participation and responsibilities of each energy player.

I commend the invaluable efforts of the DOE-Legal Services and their partners in gathering all these in one compilation.

This publication is tangible proof of the continuing productive growth of meeting the needs of those serviced and those supplying power.

Patriotically, let us explore more ways to raise the quality of life of our Kababayans.

Para sa Lupang Hinirang.

Maraming salamat po.


ALFONSO G. CUSI



PREFACE

by the Supervising Assistant Secretary for Legal Services

The compendium of energy laws, rules, regulations and other issuances is a helpful tool to guide all industry players, relevant government entities, practitioners and the general public. While the Department of Energy (DOE) continues to craft relevant rules and regulations in the exercise of its policy making power, the compendium's density shows the sheer volume of laws, rules and regulations that are existing currently being implemented.

But what seems to be the missing link to fully achieve the common objectives of these issuances? It is the conscious and concerted effort of all stakeholders to at all times act in accord with their respective mandates.

The policy making body, the regulator and all relevant government entities must work in unison and ensure that their duties are faithfully performed. Industry players must fully comply with their corporate, environmental and social obligations without sacrificing compliance with regulatory standards.

At the end of the day, regardless of our affiliation, we are all consumers. Filling the missing link will work to our advantage because if we fail individually, we fail as a whole. A miss is as good as a mile.

This publication is a product of the resourcefulness and hardwork of the DOE Legal Services, and the hope is that this project will serve its avowed purpose of providing everyone the necessary information as to the legal aspect of energy development in the Philippines.


CARON AICITEL E. LASCANO

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Chapter I

General Policies on Power

DEPARTMENT CIRCULAR NO. DC2010-02-0002

CREATING A POWER TASK FORCE ELECTION 2010 TO ENSURE ADEQUATE AND RELIABLE ELECTRIC POWER SUPPLY BEFORE, DURING, AND AFTER THE MAY 10, 2010 AUTOMATED NATIONAL AND LOCAL ELECTIONS

WHEREAS, it is the policy of the State to ensure the reliability, quality and security of supply of electric power;

WHEREAS, the Department of Energy (DOE) is mandated to provide a mechanism for the integration, rationalization, and coordination of the various activities to carry out the energy policy of the State;

WHEREAS, the Commission on Elections (COMELEC), pursuant to the powers vested in it by the Constitution, the Omnibus Election Code, and other related election laws has prescribed the rules and procedures to ensure the holding of free, orderly, honest, peaceful and credible automated national and local elections on May 10, 2010;

WHEREAS, on December 17, 2009, the COMELEC promulgated Resolution No. 8715, which deputizes the National Electrification Cooperatives, to perform specific duties and functions for the conduct of the automated national and local elections on May 10, 2010;

WHEREAS, Section 2(1) of COMELEC Resolution No. 8715 requires the NEA, NPC, and the Electric Cooperatives to provide and maintain stable continuous nationwide electric power requirements from May 10 to 16, 2010 that will be used in the voting

and counting of votes, transmission and consolidation of results and proclamation of winning candidates;

WHEREAS, on December 17, 2009 the COMELEC also issued Resolution No. 8716, which deputizes certain Departments under the Executive Branch, Government-Owned and Controlled Corporations and Financial Institutions in connection with the May 10, 2010 automated national and local elections;

WHEREAS, Section 5 of COMELEC Resolution No. 8716 designates the DOE and its Secretary and other agencies under it, and electric cooperatives in the local government units to provide uninterrupted power supply on the day before and on election day, until the termination/conclusion of the canvassing of the election returns and proclamation of the elected officials; and to perform such other functions that the COMELEC may prescribe from time to time.

WHEREAS, premises considered, the DOE deems it necessary to adopt measures to supplement the COMELEC Resolution No. 8715 to ensure provision of stable and continuous supply of power during the automated national and local elections for the period of May 10 to 16, 2010;

NOW THEREFORE, the DOE, in support to the government's aim of holding a successful election, is issuing this Circular to create a Power Task Force Election 2010 to ensure adequate, stable and reliable power supply before, during and after the national and local elections.

Section 1. Composition. The Power Task Force Election 2010 shall be composed of the following, with the organizational structure and reporting flow attached hereto as Annex A:

a. Core Group Team

- Head : Department of Energy
- Members : National Power Corporation (NPC)
- National Transmission Corporation (TransCo)
- National Electrification Administration (NEA)
- Power Sector Assets & Liabilities Corporation (PSALM)
- Philippine Electric Market Corporation (PEMC)
- National Grid Corporation of the Philippines (NGCP)
- Manila Electric Company (MERALCO)

b. Supporting Organizations

- Philippine Independent Power Producers Association (PIPPA)
- Philippine Rural Electric Cooperatives Association, Inc. (PEPOA)
- Other associations of distribution utilities not explicitly mentioned in this Circular.

All power suppliers and service providers particularly the distribution utilities (DUs) (privately-owned, electric cooperatives (ECs)

and (LGU-owned) and the power generation companies are directed to provide full support and participation to ensure the attainment of the objective of this Circular.

Section 2. General Responsibilities. The members of the Power Task Force on Elections 2010 shall have the following general responsibilities:

1. As head of the Power Task Force Election 2010, the DOE shall be responsible for the following:
 - a. Overall management of the Power Task Force 2010;
 - b. Establishment of a systematic monitoring and reporting scheme that will ensure power interruptions are immediately acted upon by concerned agencies/ organizations;
 - c. Cause the establishment of mitigating measures to minimize, if not prevent, power outages on election day and the critical period prior to and after election;
 - d. Provide the general public with fast and accurate information on the status of power supply; and
 - e. Assign Focal Persons to coordinate with COMELEC.
2. The members shall be responsible for the following:
 - a. Ensuring operation of their respective facilities/systems and for establishing communication links with Command Center and their Contingency Teams under heightened alerts status on 24/7 basis.
 - b. Instituting mitigating measures to preclude abnormal situations in their respective areas of responsibilities.

- c. Regularly reporting the status of their facilities/systems/areas as well as immediately addressing the potential or actual problems that may affect power supply.
- 3. The members of the Power Task Force Election 2010 shall establish their contingency teams and designate their representatives to support the Sub-Task Force on Power 2010.

Section 3. Specific Responsibilities. In addition to the general responsibilities, each member of the Power Task Force Election 2010 has the following specific responsibilities:

NPC/PSALM

- 1. Ensure availability of generating units (including those already privatized) to meet demand and required reserves (regulating, spinning and back-up);
- 2. Ensure maximum reservoir lever for Kalayaan I & II prior to Election Day.
- 3. Suspend preventive maintenance and testing of generating units one week before and after the Election Day. Defer already scheduled plant maintenance and tests.
- 4. Ensure availability of its quick start units, if any.
- 5. Secure adequate fuel supplies and maintain reasonable fuel inventories.
- 6. Arrange for back-up personnel in power plants and additional maintenance and tests.
- 7. Augment security forces in major plant installations.
- 8. If necessary, lease-rental of gensets to ensure adequate stable and reliable power supply of Visayas.

TransCo and NGCP

- 1. Ensure availability of all substation facilities/transmission lines, to the extent possible, and ensure their continued operation;
- 2. Suspend maintenance and testing works on substation facilities/ transmission lines, one week before and after election day, except in extreme emergency cases;
- 3. Ensure reliability of emergency diesel generators, station batteries and air compressor systems;
- 4. Place off-duty control center and substation personnel on “on-call” basis;
- 5. Ensure standby transmission line crew and power system maintenance personnel;
- 6. Secure communication hotlines between DOE and NGCP as well as with Market Operator (MO) and other electric power industry participants;
- 7. Provide standby transportation facilities to assist in the inspection of tripped critical transmission lines;
- 8. Ensure all Area Control Center (ACC) dispatchers are prepared implement islanding operation and power restoration;
- 9. Strategically deploy Network Protection, Power System Maintenance, District/Branches, SCADA and Telecom personnel;
- 10. Check proper function of installed fault clearance system, transmit recorders and sequence of event recorders in all substations including all Special Protection Systems;
- 11. Update load shedding schedule in each grid to consider priority supply to polling places and local government offices;

12. Accelerate completion if corrective works on critical substation/transmission lines before election day;
13. Inspect the integrity of transmission line instructions, and clear obstructions, if any;
14. Inspect connection points of DUs/ECs to the grid;
15. Augment security forces in critical substations/transmission facilities;
16. Coordinate with COMELEC, National Disaster Coordination Council (NDCC), Military, Philippine National Police (PNP) and the Regional Peace and Order Council, as necessary;
17. Ensure availability of tools and materials at satellite offices; and
18. Assign service vehicles/drivers to Regional and District Command Post.

NEA

1. Supervise the preparation and compliance of ECs to the directives herein; and
2. Ensure the full cooperation to the Power Task Force Election 2010.

PSALM

1. Ensure cooperation of successor generating companies and independent IPP administrations of NPC plants/IPP to the Power Task Force Election 2010 directives; and
2. Ensure availability of its purchased generating plants or administered IPPs at their dependable capability and assure their continued normal operation.

PEMC

1. Ensure the continued operation of the Wholesale Electricity Spot Market (WESM); and
2. In coordination with NGC-System Operator (SO), ensure availability of all supervisory controls and communication networks and effective management of the power system.

Distribution Utilities (DUs)

1. Ensure availability of all its substation facilities/distribution lines, to the extent possible, and assure their continued normal operation;
2. Ensure the adequacy of connection and service entrance facilities of polling places;
3. Accelerate completions of corrective/remedial works on critical distribution lines before election day;
4. Inspect integrity of distribution line structures and clear distribution lines from obstructions;
5. Inspect of connection points to polling places and local government offices;
6. Check electrical installation of polling places for proper breaker and fuse rating;
7. Conduct information dissemination on how to avoid power supply overload/short-circuits during election;
8. Standby line crews for immediate response to problems affecting power supply;
9. Ensure availability of tools and materials for line men;
10. Assign service vehicles and drivers to line crew.

11. Ensure availability and reliability of embedded generators within their franchise area, if any; and
12. Coordinate with NGCP on the appropriate load shedding to ensure that polling places and local government offices are excluded.

Philippine Electric Plant Owners Association (PEPOA)

Philippines Independent Power Producers Association (PIPPA)

Philippine Rural Electric Cooperative Association (PHILRECA)

Other Similar Association/Federation of Electric Power Industry Participants

1. Establish respective satellite centers that will interface with distribution utilities; and
2. Provide support and assistance to distribution utilities to ensure their cooperation to Power Task Force Election 2010 directives.

In addition to the specific responsibilities of the members, the Head of the Power Task Force Election 2010 can delegate to any members other assignments, as necessary.

Section 4. Command Post. The Power Task Force Election 2010 shall establish its Main Operations Center at NGCP-Diliman, Quezon

City and Satellite Operation Centers at NGCP-Banilad, Cebu City for Visayas and NGCP-Cagayan de Oro City, for Mindanao. These centers shall be equipped with monitoring facilities and communication link-ups all electric power industry participants.

To establish communication links with the operations centers, the NPC, PSALM, TransCo, NEA, NGCP and PEMC shall create their contingency teams and designate their representatives to support the Power Task Force Election 2010 on a 24/7 basis. In addition, all DUs and ECs shall also create their own contingency teams and designate their representatives to support the Power Task Force election 2010 on 24/7 basis.

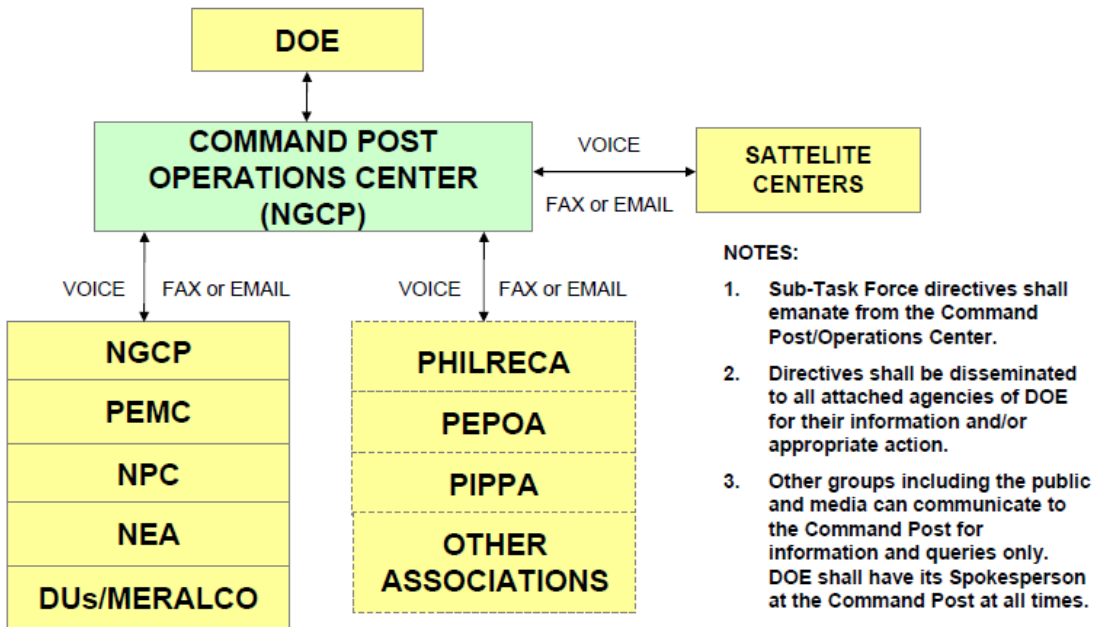
Section 5. Logistics and Budgetary Requirement. The expenses to be incurred by the members of the Power Task Force Election 2010 in the performance of the responsibilities herein shall be charged to the respective accounts of the participating agencies/entities.

Section 6. Effectivity Period. This Circular shall take effect fifteen (15) days upon its publication in a newspaper of general circulation.

Fort Bonifacio, Taguig City, Metro Manila, 15 February 2010.

(sgd) **ANGELO T. REYES**
Secretary

**POWER TASK FORCE ELECTION 2010
ORGANIZATIONAL STRUCTURE**



DEPARTMENT CIRCULAR NO. DC2010-03-0003

DIRECTING ALL POWER GENERATION COMPANIES, THE TRANSMISSION SERVICE PROVIDER, AND ALL DISTRIBUTION UTILITIES TO ENSURE ADEQUATE AND RELIABLE ELECTRIC POWER SUPPLY IN THE COUNTRY

WHEREAS, Section 5 of Republic Act No. 7638, as amended by Section 37 of Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA), mandates the Department of Energy (DOE) to, among others, 1) ensure the reliability, quality and supply of electric power, and 2) establish and administer programs for the exploration, transportation, marketing, distribution, utilization, conservation, stockpiling and storage of energy resources of all forms, whether conventional or non-conventional;

WHEREAS, the DOE is mandated 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, the DOE is also mandated to monitor private sector activities relative to energy projects in order to attain the goals of the restructuring, privatization, and modernization of the electric power sector as provided for under existing laws: Provided, That the Department shall endeavor to provide for an environment conducive to free and active private sector participation and investment in all energy activities;

WHEREAS, the DOE is further enjoined to formulate and implement programs, including a system of providing incentives and penalties, for the judicious and efficient use of energy in all energy-consuming sectors of the economy;

WHEREAS, Section 6 of the EPIRA provides that the generation of electric power is a

business affected with public interest and shall be competitive and open;

WHEREAS, as a result of the privatization of Government's power generation assets, the generation of electricity in Luzon is now dominated by the private sector and eventually, the same situation will occur in Visayas;

WHEREAS, a Generation Company has an obligation to meet the technical and financial operating criteria ensuring compliance with standards for among others, security, reliability, unplanned outages and provision of ancillary services and shall operate in accordance with such operational criteria;

WHEREAS, under the EPIRA, the distribution of electricity, a business affected with public interest, is a regulated common carrier business requiring a national franchise, which franchise may be revoked by Congress upon recommendation of the DOE and/or the Energy Regulatory Commission (ERC);

WHEREAS, Section 9 of the EPIRA mandated the National Transmission Company and/or its Concessionaire, presently the National Grid Corporation of the Philippines (NGCP) among others, to provide open and nondiscriminatory access to its transmission system to all electricity users, ensure and maintain the reliability, adequacy, security, stability and integrity of the nationwide electrical grid in accordance with the performance standards for the operations and maintenance of the grid as set forth in a Philippine Grid Code (PGC), and improve and expand its transmission facilities, consistent with the PGC and the Transmission

Development Plan (TDP) to adequately serve generation companies, distribution utilities and suppliers requiring transmission service and/or ancillary services through the transmission system: Provided, That TRANSCO shall submit any plan for expansion or improvement of its facilities for approval by the ERC;

NOW, THEREFORE, from the foregoing premises and pursuant to the mandate of the DOE under the EPIRA, this Circular is hereby promulgated:

SECTION 1. Scope. This Circular shall apply to all Generation Companies and Distribution Utilities in the country as defined in the EPIRA as well as the National Transmission Corporation (TRANSCO) or its concessionaire, presently the NGCP which is also referred to as the System Operator (SO);

SECTION 2. Responsibilities of Generation Companies. Pursuant to the EPIRA, all Generation Companies shall ensure the availability of its generation facilities at all times subject only to technical constraints duly communicated to the SO in accordance with existing rules and procedures. For this purpose, Generation Companies shall have the following responsibilities:

2.1 All Generation Companies shall operate in accordance with their Maximum Available Capacity. For this purpose, the Maximum Available Capacity shall be equal to the registered maximum capacity of the (aggregate) unit less (1) forced unit outages, (2) scheduled unit outages, (3) de-rated capacity due to technical constraints which include (a) plant equipment-related failure and ambient temperature, (b) hydro constraints which pertains to limitation on the water elevation/turbine discharge and megawatt output of the plant and (c) geothermal constraints which pertain to capacity limitation due to steam quality (chemical composition, condensable and

non-condensable gases), steam pressure and temperature variation, well blockage and limitation on steam and brine collection and disposal system.

All Generation Companies shall submit its Maximum Available Capacity and operational status on a monthly basis to the DOE-Electric Power Industry Management Bureau (EPIMB), with a copy furnished to the SO and the Philippine Electricity Market Corporation (PEMC);

2.2 Oil-based generation companies shall maintain an adequate in country stocks of fuel equivalent to at least 15-days running inventory which includes shipments in transit. For this purpose, all oil-based generation companies shall submit to DOE-EPIMB, on a monthly basis, a report on fuel inventory based on typical load dispatch and fuel consumption;

2.3 Coal power plants shall ensure the required 30-day coal running inventory, which includes shipments in transit. An inventory report shall be submitted to the DOE-EPIMB, on a monthly basis, based on typical load dispatch and fuel consumption schedule;

2.4 During the scheduled maintenance of Malampaya natural gas facilities, all affected generation companies shall maintain at least 15-days running inventory of the alternative fuel and shall operate at full capacity;

2.5 All generation companies with natural gas fired, geothermal and hydroelectric generating plants shall submit to the DOE a monthly report on the current status and a forecast of the energy sources of its generating plants;

2.6 All Generation Companies must notify and coordinate with the System Operator of any planned activity such as shutdown

of its equipment in accordance with the PGC;

- 2.7 Immediately inform the DOE of any unexpected shutdown or derating of the generating facility or unit thereof. The report shall include a description of the causes of the unexpected shutdown and estimated resumption;
- 2.8 Generating Companies shall seek prior clearance from the DOE regarding any plans for deactivation or mothballing of existing generating units or facilities critical to the reliable operation of the Grid; and

- 2.8 Strictly abide by the provisions of the PGC.

SECTION 3. Responsibilities of TRANSCO and/or its concessionaire. Pursuant to its mandate under the EPIRA, TRANSCO and/or its concessionaire, presently NGCP, shall:

- 3.1 Ensure that transmission facilities pursuant to the TDP approved by the DOE are adequately provided and available for access by all electricity users in all areas of the grid. The NGCP, in the preparation of the TDP shall include all the transmission requirements of the generation companies, distribution utilities and suppliers. Any necessary modifications/adjustments duly endorsed and approved by the DOE shall be incorporated in the TDP by the NGCP prior to its finalization;
- 3.2 Undertake rigid evaluation of circumstances attendant prior to approval of deactivated shutdown in accordance with the criteria laid down in the System Operator Procedure Manual;
- 3.3 Submit to the DOE for consideration the Grid Operating and Maintenance Program (GOMP) including any updates and monitor the compliance of the generation companies thereof;

- 3.4 Immediately inform the DOE of any power interruptions or existence of such threats. The report shall include a description of the, magnitude, duration, causes and the areas affected, as well as the contingency or mitigating measures that were undertaken; and

- 3.5 Ensure the institutionalization of the necessary connection agreements with all the Grid Users (i.e., Generation Companies, DUs and Direct Customers) and impose all the pertinent requirements in the PGC.

SECTION 4. Responsibilities of Distribution Utilities. Distribution utilities shall:

- 4.1 Regularly submit to the DOE the prescribed Distribution Utility Development Plan (DDP) to monitor the existing, available and future supply requirements and the PDUs Monthly Operations Report (MOR) and Monthly Financial and Statistical Report (MFSR) for ECs;
- 4.2 Comply with all the requirements of the PGC and Philippine Distribution Code (PDC) at all times and report significant load interruptions in its franchise area or any threats that may lead such events;
- 4.3 Ensure that the power requirements within their franchise areas are adequately covered by supply contracts or spot purchases from the WESM at all times; and
- 4.4 In cases of Red Alert, status as declared by the System Operator, immediately submit to the DOE its manual load-dropping schedule.

SECTION 5. Lead Agency. The DOE, being the agency tasked to supervise and oversee the electric power industry, shall be the lead agency in ensuring that all plans and programs to achieve the objectives of this Circular are properly carried out.

SECTION 6. Monitoring, Enforcement and Compliance. The DOE, through EPIMB, shall monitor the compliance of all Generation Companies, all Distribution Utilities and the NGCP. The DOE, in consultation with the ERC, shall formulate and implement enforcement and penalty mechanism in cases of non-compliance to this Circular by the Generation Companies, Distribution Utilities and the NGCP. For the purpose of monitoring and assessing the overall reliability performance of the Grid and the Grid User facilities, a Grid Reliability Task Force to undertake the necessary studies and policy recommendations to the DOE and ERC shall be created which members and specific task shall be defined in a separate Circular.

SECTION 7. Regulatory Support. The ERC shall ensure the timely recovery of generation cost of the power plants in accordance with existing laws and procedures.

SECTION 8. Linkage with other government entities. The DOE may seek assistance from other government agencies such as Bureau of Customs and National Water Resources Board in the monitoring of the fuel inventory and supply of water resources for power use.

SECTION 9. Effectivity. This Circular shall take effect immediately fifteen (15) days from its publication in a newspaper of general circulation.

Signed this _____ day of _____ 2010 at the DOE, Energy Center, Merritt Road, Fort Bonifacio, Taguig City, Metro Manila.

(sgd.) ANGELO T. REYES
Secretary

DEPARTMENT CIRCULAR NO. DC2012-03-0004

DIRECTING COMPLIANCE WITH THE ELECTRIC POWER INDUSTRY REFORM ACT OF 2001 (EPIRA) TO ADDRESS THE POWER SUPPLY SITUATION INCLUDING THE RATIONALIZATION OF THE AVAILABLE CAPACITIES IN THE MINDANAO GRID

WHEREAS, pursuant to the declared policy of the State under Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), the Department of Energy (DOE) is mandated to ensure the reliability, quality and security of supply of electric power;

WHEREAS, the DOE issued DC 2003-12-011 dated 05 December 2003 reiterating the policy of the State that all distribution utilities must take cognizance and assume full responsibility to forecast, assure and contract for the supply of electric power in their respective franchise areas to meet their obligations as a distribution utility;

WHEREAS, the DOE likewise issued DC-2010-03-003 on 26 February 2010 directing the Distribution Utilities to ensure that the power requirements within their franchise areas are adequately covered by supply contracts;

WHEREAS, the National Grid Corporation of the Philippines (NGCP), since January 2012 has been issuing a “red” alert status in the Mindanao grid due to current generation deficiencies, ranging from 50 MW to 300 MW, brought about by various constraints in optimizing available capacities which resulted in rotating brownouts in various parts of the region;

WHEREAS, the Transition Supply Contracts (TSCs) between Power Sector Assets and

Liabilities Management Corporation (PSALM) and its customers, which expired on 25 August 2011, were renewed until 31 December 2012, at proportionately reduced levels from the previous ones, taking into consideration the available generation capacity of PSALM contracts and assets;

WHEREAS, PSALM through the National Power Corporation (NPC) has prepared the Load-to-Maintain Matrix and confirmed by NGCP which serves as the basis for load curtailment;

WHEREAS, it has been observed that several customers are not complying with the Load-to-Maintain schedules by withdrawing from the grid over and above their Load-to-Maintain levels to the prejudice of other customers and threatens the security of the grid;

WHEREAS, to ensure security of the grid there is a need to implement sanctions including disconnection where technically feasible for failure to comply with the dispatch protocols including Load-to-Maintain matrix;

WHEREAS, after a series of focused group discussions, consultations and meetings with relevant electric power industry participants in Mindanao and concerned energy agencies, the DOE has determined the urgent need to come up with a framework that will optimize and rationalize the utilization of all available generation capacities in Mindanao, including a provision for the reserve requirements in order to meet the demand for electricity in Mindanao region;

NOW THEREFORE, premises considered, the DOE hereby declares as follow:

SECTION 1. Scope and Application. This Circular shall apply to all agencies and entities named herein and all electric power industry participants in Mindanao, including generation companies, distribution utilities – private investor-owned utilities, Electric

Cooperative (ECs) and other customers.

SECTION 2. Responsibilities. Pursuant to their respective mandates and functions under the EPIRA and its implementing Rules and Regulations, the Philippine Grid Code (PGC), the Philippine Distribution Code and other relevant laws, rules, and issuances, the following are enjoined to extend their full cooperation and action, the actions and measures provided for in this Circular, to address the power supply situation in Mindanao;

- a) **National Grid Corporation of the Philippines (NGCP).** The NGCP is hereby directed to perform its obligations of ensuring and maintaining the reliability, adequacy, security, stability and integrity of the nationwide electricity grid in accordance with the performance standards for the operations and maintenance of the grid, as set forth in the Philippine Grid Code.
- b) **Power Sector Assets and Liabilities Management Corporation (PSALM) and National Power Corporation (NPC).** PSALM and NPC having control of total installed capacities of 982.1 MW of hydro and 518.1 MW thermal power plants shall:
 - i. fully utilize all available capacities of all power plans in the Mindanao region for energy purposes taking into consideration the fluctuating demand requirements of large industrial users in the Mindanao region;
 - ii. implement measures to increase PSALM/NPC plants' generation output, including but not limited to;
 - a. immediate implementation of selective dredging and flushing of Agus and Pulangi rivers, as applicable;

- b. maximize available contractual stipulations in existing agreements; and
- c. complete and accomplish on time all scheduled maintenance services and repairs of generating units in an efficient and cost-effective manner.
- iii. allocate equitably the available capacity at any given point in time to their customers;
- iv. provide timely information dissemination (week-ahead and/or day-ahead) to the stakeholders of the load-to-maintain schedules and any changes thereon.
- v. facilitate the negotiation/execution of power supply contracts with other power suppliers of ECs with power supply deficiency; and
- vi. assist the ECs in the conduct of information and education campaign on the power supply situation and the roles and mandates of ECs.

Within thirty (30) days from effectivity of this Circular, NEA shall ensure that the revised nomination protocol are assigned and additional power supply contracts from available capacities in the grid other than those of the generating facilities of PSALM are entered into by the ECs.

Towards this end, PSALM and NPC shall immediately comply with the herein directives immediately upon the effectivity of this Circular.

c) **National Electrification Administration (NEA).** Consistent with its statutory obligations, NEA is directed to provide all the necessary assistance to ECs to include:

- i. ensure that ECs have properly forecasted and assured the contracts for the supply of electric power in their respective franchise areas to meet their obligations as distribution utilities.
- ii. ensure the implementation of default minimum nominations of power supply contracted by ECs;
- iii. ensure the signing/execution of the revised nomination protocol;
- iv. ensure compliance of ECs with the Load-to-Maintain Matrix schedules prepared by NPC and confirmed by NGCP;
- d) **Electric Power Industry Participants.** All electric industry participants are hereby enjoined to provide full cooperation and to take all appropriate action and compliance to the protocol to be established to ensure that the objectives set out in this Circular are attained.
 - i. All private investor utilities and ECs, including industrial/commercial loads, shall promote demand side management likewise optimize the use of embedded generating facilities;
 - ii. All government facilities and installations shall comply with the Government Energy Management Program;
 - iii. Private companies and industrial users shall endeavor to expand and implement their respective energy efficiency programs; and
 - iv. All generators and customers shall agree on a dispatch protocol to be the basis for their compliance.

In the performance of its obligations, NGCP is hereby directed to:

- i. use any and all available capacities to maintain load-generation balance including the minimum reserve requirements that may be determined in consideration of the available supply;
- ii. monitor closely the compliance by all customers to the Load-to-Maintain matrix and report to the DOE all instances of non-compliance;
- iii. issue a generation deficiency level notice for customers to implement voluntary load curtailment based on the Load-to-Maintain Matrix consistent with this Circular;
- iv. upon the DOE's directive, disconnect customers that are not compliant and likewise impairs the integrity of the grid;
- v. ensure that its transmission facilities are well-maintained so that no available generating capacity is further constrained; and
- vi. closely coordinate with NCP to harmonize available generation capacity as nominated to ensure optimum dispatch.

Upon the effectivity of this Circular, the NGCP shall immediately comply with the directives set out in this Circular and shall continue to dispatch all available capacities to meet the power requirement of Mindanao.

NGCP is directed to closely coordinate with the Power Sector Assets and Liabilities Management Corporation (PSALM), TransCo, the National Power Corporation (NPC), pertinent contracting parties for such capacity and the DOE to ensure that all pre-

requisites and conditions for the utilization of the available capacities are complied with and completed.

Section 3. Monitoring Enforcement and Compliance. The DOE, through the Electric Power Industry Management Bureau, shall monitor the compliance of all Generation Companies, Distribution Utilities and NGCP. Likewise, the DOE in consultation with the Energy Regulatory Commission (ERC), shall formulate and implement enforcement and penalty mechanisms in cases of non-compliance to this Circular by Generation Companies, Distribution Utilities and the NGCP.

Section 4. Regulatory Support. The ERC is requested to support the enforcement of the regulatory requirements to implement the measures identified herein and, when necessary the imposition of fines and penalties in order to address the power situation in Mindanao, in accordance with existing laws and procedures.

Section 5. Lead Agency. The DOE shall be the lead agency in ensuring that all plans and programs are properly carried out to achieve the objectives of this Circular.

Section 6. Effectivity. This Circular shall take effect immediately and will remain in effect until otherwise revoked by the DOE.

Done this MAR 19, 2012, Taguig City, Metro Manila, Philippines.

(sgd) **JOSE RENE ALMENDRAS**
Secretary

DEPARTMENT CIRCULAR NO. DC2012-05-0005

PRESCRIBING THE GENERAL POLICIES FOR THE IMPLEMENTATION OF THE RETAIL COMPETITION AND OPEN ACCESS

WHEREAS, Section 2 (c) of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), declares that it is the policy of the State “to 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”;

WHEREAS, Section 37 of the EPIRA provides that the Department of Energy (DOE) is mandated to, among others, supervise the restructuring of the electric power industry, formulate rules and regulations as may be necessary to implement the objectives of the EPIRA, and exercise such other powers as may be necessary or incidental to attain the objectives of the EPIRA;

WHEREAS, Section 31 of the EPIRA provides that the Retail Competition and Open Access (RCOA) shall be implemented not later than three (3) years upon the effectivity of the EPIRA subject to the fulfilment of the five pre-conditions, to wit:

1. Establishment of the wholesale electricity spot market
2. Approval of unbundled transmission and distribution wheeling charges;
3. Initial implementation of the cross subsidy removal scheme;
4. Privatization of at least seventy (70%) percent of the total capacity of generating assets of National Power Corporation (NPC) in Luzon and Visayas; and

5. Transfer of the management and control of at least seventy percent (70%) of the total energy output of power plants under contract with NPC to the Independent Power Producer (IPP) Administrators.

WHEREAS, the above preconditions have been fulfilled as certified by the Energy Regulatory Commission (ERC) in ERC Case No. 2011-0041-RdMa ted 06 June 2011;

WHEREAS, Section 31 further provides that upon the initial implementation of RCOA, the ERC shall allow all electricity end-users with a monthly average peak demand of at least one megawatt (1 MW) for the preceding twelve (12) months to be the Contestable Market. Two (2) years thereafter, the threshold level for the Contestable Market shall be reduced to seven hundred fifty kilowatts (750 kW), where at this level, Aggregators shall be allowed to supply electricity to end-users whose aggregate demand within a contiguous area is at least seven hundred fifty kilowatts (750 kw). Subsequently and every year thereafter, the ERC shall evaluate the performance of the market. On the basis of such evaluation, it shall gradually reduce threshold level until it reaches the household demand level;

WHEREAS, all Generating Companies, Distribution Utilities, Suppliers, Bulk Consumers/end-users and other similar entities authorized by the ERC shall be eligible to become members of the Wholesale Electricity Spot Market (WESM), subject to the compliance with the membership criteria set forth under the WESM Rules;

WHEREAS, on 17 June 2011, the DOE issued Department Circular No. DC2011-06-0006 entitled, “Creating the Steering Committee

Defining the Policies for the Implementation of Retail Competition and Open Access,” to ensure that the appropriate conditions for the efficient transition to RCOA implementation are in place;

WHEREAS, one of the functions of the RCOA Steering Committee is to “review existing rules and procedures on RCOA, develop and recommend policies to implement systems and processes needed to govern the transaction therein”;

WHEREAS, after several deliberations and a careful study, the RCOA Steering Committee recommended the following policies:

1. to integrate the RCOA in the WESM; and
2. to define specific policies to operationalize the RCOA concepts such as customer empowerment or customer choice, the business of supply of electricity, supplier, supplier of last resort and membership in the WESM, among others.

NOW THEREFORE, for and in consideration of the foregoing premises, the DOE, in the exercise of its supervisory functions in the implementation of the EPIRA, hereby declares the following:

Section 1. Declaration of Policy. Consistent with the EPIRA it is hereby declared that the transition to RCOA should promote genuine competition greater efficiency, customer choice, and the true cost of electricity. For this purpose, the power of choice of supplier as envisioned in the EPIRA is hereby provided to Contestable Customers (CCs) subject to the rules and regulations herein discussed as well as to subsequent rules and regulations as may be promulgated by the DOE.

Section 2. Definition of Terms. Unless otherwise provided, the terms used in this circular shall have the same meaning as defined in the EPIRA and its Implementing Rules and Regulations (IRR).

- a) “*Contestable Customer*” refers to the electricity end-user who is a part of the Contestable Market.
- b) “*Contestable Market*” refers to the electricity end-users who have a choice of a supplier of electricity, as may be determined by the ERC in accordance with EPIRA.
- c) “*Captive Market*” refers to the electricity end-users who do not have a choice of a supplier of electricity, as may be determined by the ERC in accordance with EPIRA.
- d) “*Central Registration Body*” refers to the entity assigned to undertake the development and management of the required systems and processes and information technology system that shall be capable of handling customer switching and information exchange among retail electricity market participants, as well as the settlement of their transactions in the WESM. The Philippine Electricity Market Corporation (PEMC) was designated as the Central Registration Body (CRB) through DOE Department Circular No. DC 2012-02-0002 dated 24 February 2012 and ERC Resolution No. 15 Series of 2006.
- e) “*Certificate of Eligibility*” refers to the certificate issued by the ERC to a CC to be recognized as such.
- f) “*Directly Connected Customers*” refer to industrial or bulk electricity end-users, which are directly supplied with electricity by a Generation Company or Power Sector Assets and Management Corporation (PSALM) or NPC through Subtransmission Assets.
- g) “*Last Resort Supply Event*” refers to an event when a supplier of a CC fails to provide electricity for reasons caused by a default of the Supplier, including

but not limited to: (i) cessation of its operation; (ii) revocation of its license; (iii) non-payment for transmission and distribution services; and (iv) suspension of its membership in the WESM due to non-compliance to WESM Rules.

- h) *“Open Access Date”* refers to the date determined by the ERC that marks the commencement of the operations of RCOA in the grid/s specified.
- i) *“Supplier”* refers to any person or entity authorized by the ERC to sell, broker, market or aggregate electricity to the end-users.
- j) *“Structural Unbundling”* refers to the separation of different activities through the creation of separate divisions or department within a single company or, at the option of any Electric Power Industry Participant, a separation into different juridical entities, with a clear separation of accounts between regulated and non-regulated business activities.
- k) *“Functional Unbundling”* refers to the separation of functions into different components, i.e., separation of the wire from the supply functions of a Distribution Utility or separation of the products from the sale of electricity by a Generation Company.

Section 3. RCOA Integration into the WESM.

Consistent with the definition of Open Access, CCs are hereby allowed the use of the transmission and distribution systems and shall therefore be integrated into the WESM. For this purpose, all CCs shall become members of the WESM as Trading Participant directly or indirectly, as herein provided.

Section 4. Customer/s Choice. Upon Open Access Date, a CC shall be allowed to choose where to source its electricity. For this purpose, a CC can source from a Generation Company, a Supplier, an affiliate of a DU,

which has constituted itself as a Supplier, or the Supply Business of a Distribution Utility (DU) within its franchise area.

- 4.1 All CCs shall only deal with a supplier of electricity duly licensed by the ERC. This includes DUs that have structurally or functionally unbundled their business into Wire and Supply businesses, duly approved by the ERC.
- 4.2 The ERC shall certify all eligible CCs at least six (6) months prior to the initial implementation of the RCOA. For this purpose, all DUs are hereby mandated to provide DOE, ERC and PEMC the list of CCs including pertinent information, such as but not limited to load profile for the last twelve (12) months, name of customers, among others.
- 4.3 The PEMC is hereby directed to register all eligible CCs certified by the ERC within three (3) months prior to Open Access Date.

Section 5. Supplier of Electricity. All Suppliers duly licensed by the ERC shall register with the PEMC as a WESM direct member Trading Participant. Further, all Suppliers shall provide PEMC with its offer of terms and conditions to the CCs for publication in the PEMC website.

Section 6. Supply Contract. For the initial implementation of the RCO and Supply Contracts entered into by CCs shall have a minimum term of one (1) year following the WESM billing cycle. The CCs shall provide the PEMC, the ERC and the DOE copies of the Supply Contracts for reference in the development of rules, guidelines and policies necessary for the effective implementation of RCOA.

Section 7. Directly Connected Customers.

- 7.1 From the effectivity of this Circular, existing Directly Connected Customers (DCCs) must register as a Customer, either

as a Direct or Indirect Trading Participant in the WESM.

7.2 Upon expiration of the Power Supply Contracts, all DCCs that meet the demand threshold shall be treated as CCs and shall be subject to all the rules and regulations on RCOA.

7.3 In case a DCC does not qualify as a CC it may seek for ERC's approval to be considered as a CC.

Section 8. Embedded Generation.

8.1 All embedded generators shall register with PEMC as non-scheduled Generation Company.

8.2 Subject to the most beneficial arrangement, the policy for embedded generation shall be developed by the DOE in coordination with relevant stakeholders.

Section 9. Metering.

9.1 Except for the DCCs connected to the system operated by NGCP, the DU shall be the Metering Service Provider (MSP) and owner of all billing and the associated metering equipment prior to the implementation of competitive metering services.

9.2 The metering requirement for the CC shall be compliant with the WESM metering standards.

Section 10. Supplier of Last Resort. The franchised DU shall act as the Supplier of Last Resort (SOLR) in instances of Last Resort Supply Event. To cover the requirement of the Last Resort Supply Event, the DU-SOLR shall source electricity to be supplied to the CC through WESM or any available supply in the market.

Section 11. Disconnection. In consultation with the various stakeholders, the

Disconnection Policy promulgated by the DOE shall be reviewed and amended to reflect the necessary changes considering the integration of RCOA to WESM. The policy shall apply the concept of cross-default disconnection to all DUs, Suppliers and CCs.

Section 12. Customer Switching. CCs shall only be allowed to switch to another supplier every six (6,) months from the implementation of the RCOA or upon the entry of the CC into RCOA and shall be made only at the end of the billing period.

Formal Advise/Notification to PEMC of the CCs' intent to exercise the switching shall be done at least one (1) month prior to switching.

Section 13. Protection for Captive Customers.

13.1 Consistent with its mandate under the EPIRA, DUs shall secure Supply Contract in the least cost manner for its Captive Customers.

13.2 DU may continue to provide electricity services to CCs within its franchise area as a local Supplier, a separate entity.

Section 14. Billing and Settlement for Contestable Customers. As far as practicable, a single billing policy shall be adopted with the Supplier as the billing entity in charge of issuing the bills to the CC, which reflects all applicable charges. Single billing policy is adopted to minimize impact to current billing arrangements and avoid possible double charging and multiple layers of attendant administrative costs.

Section 15. Regulatory Support on RCOA Policies. The ERC shall ensure the provision of support in the regulatory requirements consistent with the policies set forth under this Circular and in accordance with existing laws and procedures.

Section 16. Responsibilities of Philippine Electricity Market Corporation. In accordance

with the policies set forth in this Circular, the PEMC shall perform its responsibilities and obligations under DC 2012-02-0002 designating it as the CRB.

Section 17. 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 18. Separability Clause. If for any reason, any section or provisions of this Circular is declared unconstitutional or

invalid, such parts not affected shall remain in full force and effect.

Section 19. Effectivity. This Circular shall take into effect immediately following its publication in at least two (2) newspapers of general circulation and shall remain in effect until otherwise revoked.

Issued this 9th day of May 2012 Fort Bonifacio, Taguig City, Metro Manila.

(sgd) **RENE D. ALMENDRAS**
Secretary

DEPARTMENT CIRCULAR NO. DC 2012-06-0007

DIRECTING THE NATIONAL ELECTRIFICATION ADMINISTRATION TO DEVELOP A MECHANISM FOR ENSURING THE ADEQUACY OF COMPLIANCE BY THE ELECTRIC COOPERATIVES WITH THE PRESCRIBED PRUDENTIAL REQUIREMENTS IN THE WHOLESALE ELECTRICITY SPOT MARKET AND SPEARHEAD THE COLLECTIVE PETITION THEREOF FOR THE APPROVAL OF THE ENERGY REGULATORY COMMISSION

WHEREAS, it is the policy of the state to 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;

WHEREAS, Section 37 of Republic Act No. 9136, otherwise known as the Electric Power Reform act of 2001 (EPIRA), provides that the Department of Energy (DOE) is mandated to supervise the restructuring of the electric power industry, formulate rules and regulations as may be necessary to implement the objectives of the EPIRA, and exercise such other powers as may be necessary or incidental to attain the objectives of the EPIRA;

WHEREAS, pursuant to Section 30 of the EPIRA, the DOE, jointly with the electric

power industry participants, established the Wholesale Electricity Spot Market (WESM) and formulated the detailed WESM Rules;

WHEREAS, under Clause 3.15 of the WESM Rules, members are required to comply with the minimum Prudential Requirements (PR)¹ to ensure the credibility and viability of the WESM operation by providing a level of comfort that WESM Trading Participants have adequate cover to meet their obligations in the WESM, shall result to suspension and de-registration;

WHEREAS, Department Circular No. 2010-08-0010 provides that suspension and de-registration of the WESM member is a ground for disconnection from the grid;

WHEREAS, the DOE notes the increasing number and frequency of Electric Cooperatives (ECs) that are receiving Margin Calls² from the Philippine Electricity Market Corporation (PEMC) due to their below the minimum level PRs;

WHEREAS, based on consultations with PEMC, it is evident that most ECs are encountering financial difficulties in maintaining the amount that complies with their respective PR in the WESM thereby exposing the ECs particularly the electricity end-users on a possible disconnection of electricity services;

WHEREAS, to cover the required PRs, the DOE deems it necessary for ECs to be afforded the opportunity to obtain adequate funds that is not currently recognized in the current tariff structure of the ECs, subject to the review and approval of the Energy Regulatory Commission (ERC);

WHEREAS, under Section 58 of the EPIRA the National Electrification Administration (NEA) is expressly mandated among others, to undertake the following;

- a. Develop and implement programs to prepare ECs in operating and competing under the deregulated electricity market, specifically in an environment of open access and retail wheeling;
- b. Strengthen the technical and financial capability of the ECs; and
- c. Review and upgrade the regulatory policies with the view to enhancing the viability of the ECs as electric utilities.

NOW, THEREFORE, for and in consideration of the foregoing premises, the DOE consistent with its supervisory functions in the implementation of the EPIRA hereby promulgates the following;

Section 1. Scope. This Circular shall only apply to ECs located in Luzon and Visayas where WESM operates. However, NEA may include proposed regulatory changes to ECs in Mindanao to strengthen their technical and financial capability.

Section 2. Mandate of National Electrification Administration (NEA). Consistent with its mandate under the EPIRA, NEA is hereby directed to immediately develop a roll out plan that will assist the ECs in meeting their respective PR in the WESM. Specifically, NEA is hereby directed to:

- a. Review the current regulatory policies applied to the ECs and recommend within ninety (90) days from the issuance of this Circular the proposed mechanism to ensure that the ECs shall be able to generate funds to adequately cover the WESM-prescribed minimum PR; and
- b. Provide guidance to ECs in the preparation of the appropriate consolidated filing or petition for the approval of the ERC, the proposed amendment in the current rate methodology for the ECs, taking into consideration the objective of providing the ECs to obtain adequate cover to post the required PRs in the WESM.

Section 3. Responsibilities of Electric Cooperatives. All ECs are hereby directed to:

- a. Fully cooperate with the NEA by providing timely data and information necessary in the conduct of the study;
- b. Expedite completion of all documentary requirements in the filing of the petition to ERC;
- c. Fully comply with the WESM Rules particularly in maintaining the required PRs;
- d. Conduct extensive public consultation and consumer education campaign

on the latest development in the EC operations; and

- e. Perform other tasks that maybe required in pursuance of this Circular.

Section 4. Responsibilities of the Philippine Electricity Market Corporation (PEMC). In pursuit of its role of ensuring the credibility of the WESM, PEMC is hereby directed to undertake the following:

- a. Review the WESM rules and recommend amendments where necessary to support the directives issued to NEA;
- b. Submit a monthly report to the DOE on the compliance with PR and issuance of Margin Call notices to WESM Trading Participants; and
- c. Identify and implement necessary improvements in the billing and settlement systems to ensure timely provision of information to WESM members, DOE and ERC.

Section 5. Regulatory Support. The ERC shall ensure the provision of support in the

regulatory requirements consistent with the policies set forth under this Circular and in accordance with existing laws and procedures.

Section 6. 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 7. Separability Clause. If for any reason, any section or provisions of this Circular is declared unconstitutional or invalid, such parts not affected shall remain in full force and effect.

Section 8. Effectivity. This Circular shall take into effect immediately following its publication in at least two (2) newspapers of general circulation and shall remain in effect until otherwise revoked.

Issued on June 23 2012 in Fort Bonifacio, Taguig City, Metro Manila.

(sgd) **JOSE RENE D. ALMENDRAS**
Secretary

DEPARTMENT CIRCULAR NO. DC2012-11-0010

PROVIDING FOR ADDITIONAL GUIDELINES AND IMPLEMENTING POLICIES FOR RETAIL COMPETITION AND OPEN ACCESS AND AMENDING DEPARTMENT CIRCULAR NO. (DC) 2012-05-0005 ENTITLED "PRESCRIBING THE GENERAL POLICIES FOR THE IMPLEMENTATION OF THE RETAIL COMPETITION AND OPEN ACCESS"

WHEREAS, Section 31 of Republic Act No. 9136, otherwise known as the "The Electric Power Industry Reform Act of 2001" or "EPIRA," the Department of Energy (DOE) is mandated to, among other things:

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

- (b) formulate 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, on 06 June 2011, the Energy Regulatory Commission (ERC) certified the fulfillment of the five (5) pre-conditions for the implementation of the Retail Competition and Open Access (RCOA):

- (a) Establishment of the Wholesale Electricity Spot market (WESM). The WESM started its commercial operation in Luzon on 26 June 2006, while Visayas Grid was integrated in the WESM on 26 December 2010;
- (b) **Approval of unbundled transmission and distribution wheeling charges.** The ERC approved the unbundled rates of the national Power Corporation (NPC) on 26 March 2002, which includes the transmission tariffs of the National Transmission Corporation (TRANSCO) and the NPC generation tariffs. Likewise, the ERC has rendered its decision on the various applications unbundling of distribution wheeling charges of distribution utilities;
- (c) **Initial implementation of the cross subsidy removal scheme.** The ERC approved the removal of inter-class cross-subsidies simultaneously with the unbundling of rates application filed by NPC and Distribution Utilities (DUs). Since 2002, the NPC and TRANSCO have completely removed the inter - and - intra-grid cross subsidies in their tariffs, while almost all of DUs have completed their cross-subsidy removal process;
- (d) **Privatization of at least seventy (70%) percent of the total capacity of generating assets of NPC in Luzon and Visayas.** Pursuant to its mandate, the Power Sector Assets and Liabilities Management Corporation (PSALM) has privatized a total of nineteen (19) power plants of power plants of different fuel resources in Luzon and Visayas with a total capacity of 3,222 megawatts (MW), equivalent to 79.56 percent (29.56%) of

the total generating capacity of NPC in Luzon and Visayas thereby breaching the 70 percent (70%) condition for RCOA;

- (e) **Transfer of the manager and control of at least seventy percent (70%) of the total energy output of power plants under contract with NPC to the IPP Administrators.** PSALM has successfully bid out 3,345.75 MW of NPC-contracted energy outputs with equivalent proceeds of US\$3,228.00 Million. This is equivalent to 76.85 percent (76.85%) of the total NPC-IPP contracted energy output in Luzon and Visayas.

WHEREAS, on 17 June 2011, the DOE issued Department Circular (DC) No. DC2011-06-0006 entitled, "Creating the Steering Committee Defining the Policies for the Implementation of Retail Competition and Open Access," which tasks include among others:

- (a) provide the transition framework for the RCOA implementation; and
- (b) synchronize the preparatory actions towards ensuring the sufficiency of existing rules, infrastructures, and other institutional requirements necessary to achieve the goals of EPIRA;

WHEREAS, the RCOA Steering Committee (RCOA-SC) and its Technical Working Groups (TWG) conducted a series of meetings and consultations with electric power industry stakeholders as well as government agencies for the purpose of identifying the attendant issues and challenges that each sector of the industry are facing or may encounter, including assessment of the readiness of the systems and processes to warrant the effective implementation of RCOA;

WHEREAS, after series of meetings of the RCOA-SC and its TWG resolved to endorse to the DOE the following:

- (a) defer the Open Access Date to 26 December 2012;
- (b) integrate the RCOA in the WESM;
- (c) appoint the Philippine Electricity Market Corporation (PEMC) as the Central Registration Body (CRB);
- (d) define specific policies to operationalize the RCOA concepts such as customer empowerment or customer choice, the business of supply of electricity, and Supplier of Last Resort (SOLR), and membership in the WESM, among others;

WHEREAS, on 24 February 2012, Department Circular No. DC2012-02-0002 appointed PEMC as CRB;

WHEREAS, the DOE as part of its continuing effort to align the policies and regulations that have been put in place, and in consultation with the stakeholders and the ERC issued on 09 May 2012, DC2012-05-0005, entitled “prescribing the General Policies for the Implementation of Retail Competition and Open Access”;

WHEREAS, the DOE jointly with the RCOA-SC and the ERC, conducted another round of public consultations and focused group discussions with the stakeholders, with the end view of developing and implementing rules and regulations for the implementation of RCOA, and in order to provide all stakeholders sufficient time to adequately prepare for the eventual transition to RCOA regime:

Date	Venue	Participants
18 July 2012	DOE Head quarters	Manila Electric Company (MERALCO) and Visayan Electric Company (VECO)
19 July 2012	DOE Head quarters	Batangas II Electric Cooperative, Inc. (BATELEC II), Cebu I Electric Cooperative, Inc (CEBECO I), Cebu II Electric Cooperative, Inc (CEBECO II) and the Philippine Rural Electric Cooperatives Association (PHILRECA)

31 July 2012	Waterfron Hotel, Lahug, Cebu City	Contestable Customers, Generation Companies, and Distribution Utilities in the Visayas Grid
16 August 2012	Holiday Inn, Clark, Pampanga	Contestable Customers, Generation Companies, and Distribution Utilities in the Luzon Grid
23 August 2012	DOE Head quarters	Government Entities duly Certified Contestable Customers by ERC
03 September 2012	DOE Head quarters	Retail Electricity Suppliers Association (RESA) and Suppliers
04 September 2012	Legend Hotel, Mandaluyong City	Contestable Customers
05 September 2012	PEZA, Roxas Boulevard, Pasay City	PEZA Economic Zone Locators
05 September 2012	Legend Hotel, Mandaluyong City	Directly Connected Customers

WHEREAS, as a result of the series of public consultations and focused group discussions, the DOE jointly with the ERC, the PEMC and the RCOA-SC, resolved to introduce additional policies and guidelines and provide amendments to the DC2012-05-0005;

NOW, THEREFORE, for and in consideration of the foregoing, the DOE hereby issues, adopts and promulgates the following additional guidelines and implementing policies for the implementation of RCOA, providing additional policies and amending certain provisions of the DC2012-05-0005:

Section 1. Declaration of Policy. Consistent with the declared policy of the State under Section 2 of EPIRA, this Circular reiterates the following policies as to their relevance to the RCOA implementation:

- (a) To ensure the quality, security and affordability of the supply of electric power;
- (b) To ensure fair and non-discriminatory treatment of public and private sector entities in the process of restructuring the electric power industry;

- (c) To assure socially and environmentally compatible energy sources and infrastructure;
- (d) To 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, promote consumer choice and enhance the competitiveness of Philippine products in the global market;
- (e) To protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power; and
- (f) To encourage the efficient use of energy and other modalities of Demand Side Management (DSM).

Section 2. Objectives. This Circular is issued with the following objectives:

- (a) To ensure smooth transition to RCOA regime through provision of transparent and reasonable rules and procedures for all sectors of the electric power industry;
- (b) To foster competition in the power generation and supply business, while empowering electricity end-users;
- (c) To clearly define the respective responsibilities of each person or entity in so far as implementation of RCOA is concerned;
- (d) To ensure that RCOA shall not result to diminution of service which includes transparency in electricity fees and charges; and
- (e) To ensure protection of electricity end-users particularly those who have no power to choose their electricity suppliers.

Section 3. Coverage. This Circular shall govern the framework for the RCOA, including the responsibilities of Electric Power Industry Participants and government authorities, such as, but not limited to the DOE, ERC, PEMC, National Electrification Administration (NEA), National Grid Corporation of the Philippines (NGCCP), and DUs.

Section 4. Amendments to Section 2 of DC2012-05-0005.

4.1 The following definition in Section 2 of DC2012-05-0005 are hereby amended, as follows:

xxx xxx xxx

- f) **“Directly Connected Customers”** refer to industrial or bulk electricity end-users, which are directly supplied with electricity by a Generation Company or Power Sector Assets and Management Corporation (PSALM) or NPC pursuant to Republic Act No. 6395 as amended by Presidential Decree No. 395;

xxx xxx xxx

- g) **“Last resort Supply Event”** refers to an event when a supplier of a Contestable has defaulted on its obligations or fails to provide electricity based on the following reason; (i) cessation of its operation; (ii) revocation of its license; (iii) non-payment of transmission and distribution services; (iv) suspension of its membership in the WESM due to non-compliance to WESM Rules and retail market rules to be promulgated consistent with this Circular; and (v) such other grounds that may be specified by the ERC;

4.2 A new definition is hereby added to Section 2 of Department Circular No. DC2012-05-0005, as follows:

- 1) **“Local Supplier”** refers to the non-regulated supply business of Distribution Utility (DU) catering to the Contestable Customers within its franchise are, duly authorized by the ERC. This shall also include the Philippine Economic Zone Authority (PEZA) and the PEZA-accredited Utility Ecozone Enterprises in the public and private Economic Zones (EZs), respectively.

4.3 All other terms defined under DC2012-05-0005, and other related rules and regulations shall have the same meaning in so far as they are not inconsistent with this Circular.

Section 5. Responsibilities of Energy Agencies and Stakeholders. Consistent with EPIRA and EPIRA-IRR, the following energy agencies and stakeholders shall have the following responsibilities in so far as the RCOA implementation is concerned:

- (a) **The ERC.** In the exercise of its mandate to promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry, the ERC shall perform the following regulatory functions in relation to RCOA:
 - (i) Declare Open Access Date;
 - (ii) Establish and approve a methodology for setting transmission and distribution wheeling, rates of the transmission and distribution system, and for setting retail rates for the Captive Market of a DU;

- (iii) Prescribe qualifications and evaluate applications for supply of electricity to the Contestable market, and for this purpose, issue license to suppliers, metering service providers, and other service providers as may be necessary for the implementation of RCOA;
 - (iv) Upon the initial implementation of RCOA, specify the Contestable Market through the issuance of Certificate of Contestability to electricity end-users with an average twelve months peak demand of one (1) megawatt and above;
 - (v) Evaluate the performance of the market and based on its evaluation, gradually reduce the threshold level for the Contestable Market until it reaches the household demand level;
 - (vi) Determine the appropriate mechanism to mitigate the impact of migration of Contestable Customers in the operation of the DU and its Captive Market;
 - (vii) Ensure customer choice and promote competition, encourage market development, and discourage/penalize abuse of market power, cartelization, and any anti-competitive or discriminatory behavior, in order to further the intent of the EPIRA and protect the public interest; and
 - (viii) Provision of regulatory support on the recoveries of needed investments to support the efficient and effective implementation of RCOA.
- (b) **PEMC.** As the designated CRB, PEMC shall perform its mandate pursuant to DC2012-02-0002 issued on 24 February 2012.

- (c) **National Grid Corporation of the Philippines (NGCP).** As the Concessionaire of the National Transmission Company. NGCP shall, among others:
- (i) Abide by the methodology approved by the ERC for setting transmission wheeling rates upon the implementation of RCOA;
 - (ii) As the System Operator, provide open and non-discriminatory access to its transmission system to all electricity users; and
 - (iii) Ensure reliability and adequacy of transmission system to cater to the RCOA requirements.
- (d) **National Electrification Administration (NEA).** In pursuit of its additional mandates under Section 58 of EPIRA Rule 3, Section 3 of EPIRA-IRR, the NEA shall undertake among others the following:
- (i) Prepare Electric Cooperatives (ECs) for the RCOA regime and provide the technical, financial and institutional support and assistance necessary in ensuring that the ECs are able to complete and perform their mandates under a competitive environment;
 - (ii) Assist the ECs in educating their respective member-consumers about the implementation of RCOA and its impact on electricity end-users; and
 - (iii) Develop mitigating measure to address any impact on the operations and viability of the ECs resulting from the possible migration of Contestable Customers to their Suppliers.
- (e) **Distribution Utilities (DUs).**
- (i) Provide open and non-discriminatory access to its distribution system to all electricity end-users, including suppliers;
 - (ii) Ensure reliability and adequacy of distribution system to cater to the RCOA requirements;
 - (iii) Ensure least-cost supply to electricity end-users as well as transparency in the rates and charges applied to both regulated and competitive services;
 - (iv) Perform the role as the default Metering Service Provider (MSP) and ensure compliance with the WESM Rules and Retail Rules to be promulgated by the DOE pursuant to RCOA;
 - (v) Ensure provision of pertinent information necessary for Contestable Customers' transition to RCOA to include, among others, load profile data which shall be provided to Contestable Customers, forty five (45) days prior to Open Access Date to assist them in negotiating for supply contracts with various Suppliers;
 - (vi) Continuously review and update respective Distribution Development Plan (DDP) and prepare for the investments necessary to adequately respond to the RCOA requirements;
 - (vii) Notify ERC of its intent to recover stranded contract costs submitting thereto an estimate of such obligations, including the present value thereof and such other supporting data as may be required by the ERC; and

- (viii) Conduct regular Information Education Campaign to all electricity end-users particularly the Captive Customers on the RCOA and its impact to the end-users.

Section 6. Transition to RCOA Implementation and Timelines. To ensure smooth implementation of RCOA and to prepare all stakeholders, it is hereby prescribed that a Transition Period of six (6) months shall be observed, from the Open Access Date as declared by the ERC.

During the Transition Period, the following activities, among others, shall take place:

- (a) The DU shall continue to serve Contestable Customers in their respective franchise are;
- (b) Contestable Customers shall start with or continue to negotiable and enter into supply contracts with Suppliers; provided, however, that such supply contract shall only take effect at the end of the Transition Period i.e., the day that immediately follows the end of the sixth from the Open Access Date;
- (c) The ERC shall continue to evaluate and issue Certificate of Contestability to all eligible Contestable Customers;
- (d) The ERC shall identify DUs that will act as the SOLR services in areas where the franchised DUs were deemed not capable to perform their roles as the default SOLRs;
- (e) The CRB shall begin the registration of Contestable Customers and Suppliers as well as conduct of trainings to the RCOA participants;
- (f) The CRB shall conduct trial operations including mock settlements; and

- (g) The DOE shall spearhead the development and conduct of a comprehensive Information and Education Campaign to all stakeholders on the RCOA and its implementation.

After the Transition Period prescribed herein and pursuant to the Transitory Rules to be promulgated by the ERC, the full commercial operation of the RCOA, hereinafter referred to as the “Full RCOA Commercial Operation Date” shall take effect.

Section 7. Mandatory Contestability and Customer Choice. Consistent with the EPIRA, the RCOA should promote genuine competition, greater efficiency, customer choice, and the true cost of electricity. For this purpose, the power of choice is conferred to Contestable Customers subject to the rules and regulations prescribed herein as well to subsequent issuances by the DOE.

Accordingly, all Contestable Customers shall be allowed to choose where to source its supply of electricity. For this purpose, any Contestable Customer may source its electricity supply requirements from a Supplier duly licensed by ERC, a local Supplier duly authorized by ERC to perform such, or through the WESM. In the latter case, the Contestable Customer shall be responsible to manage its registration and compliance with the WESM Rules and Manuals, and managing its own risks as well.

As a general policy, a Contestable can have one Supplier of electricity per Metering point. Thus, any Contestable Customer may have several contracted Suppliers based on the number of its Metering points. However, should a Contestable Customer opts to enter into a multiple supply contracts even with only single metering Point, it shall be allowed, provided arrangement shall be consistent with the Circular and the Retail Rules to be promulgated by the DOE, and ERC rules and regulations.

Section 8. Supply Contract and Customer Switching. After the Transition Period and during the initial year of the Full RCOA Commercial Operation Date, all Contestable Customers shall have supply contracts with a minimum term of one (1) year with a Supplier. Notwithstanding, Contestable Customers shall be allowed to switch to a new supplier six (6) months after the Full RCOA Commercial Operation Date, provided, further, that any or all outstanding obligations of either party to the other party is fully settled.

One (1) year after the Full RCOA Commercial Operation Date, the Contestable Customers and Suppliers shall have the flexibility on the duration of their supply contracts and shall undertake switching in accordance with the Retail Rules to be promulgated by the DOE and consistent with the manual of procedures adopted by the CRB.

In such case, the switching shall take effect at the beginning of the WESM billing month, while formal advice/notification to the CRB of the Contestable Customer's intent to exercise the switching shall be done at least one (1) month prior to switching date.

The Suppliers shall provide the DOE, ERC and CRB with copies of their supply contracts for purposes of monitoring policy development, formulation of necessary rules and guidelines for the effective implementation RCOA.

Further, for purposes of assisting the Contestable Customers in supply contracting forty-five (45) days prior to the Open Access Date, Suppliers shall submit to the CRB, for posting in its website, contracting parameters, to include its general offer terms and conditions such as indicative average contract price and scope of services offered.

Section 9. Directly Connected Customers. Existing Directly Connected Customers, regardless of their average peak demand for the last twelve (12) months from the effective date of this Circular, shall register with PEMC,

either as Direct or Indirect Customer Trading Participant in the WESM. Existing supply contracts Directly-Connected Customers and the Generators prior to Open Access Date shall not be affected by reason of the implementation of RCOA and as such shall there be diminution of services.

All Directly-Connected Customers shall therefore be considered Contestable Customers and shall secure Certificate of Contestability from the ERC. Any Directly-Connected Customer, in ensuring its supply requirements, may secure additional energy requirements from a Supplier duly licensed by the ERC, to supplement its current contract with a power generator. As such, a Directly-Connected Customer may have supply contract with a power generator registered in the WESM, and a Supplier electricity.

Section 10. Role Embedded Generation. The PEMC shall register embedded generators in accordance with the WESM, Rules and relevant market manuals. Subject to the most beneficial arrangement, the policy for embedded generation shall be developed by the DOE in coordination with relevant stakeholders, as part of the government's effort to make any supply available in the grid. Towards this end, the DOE shall endeavor to develop policies and programs that will encourage Demand response in coordination with the ERC and industry stakeholders.

Section 11. Supplier of Last Resort (SOLR). In the event that the Supplier is not able to perform its obligations to its Contestable Customers consistent with the Circular, the franchised DU shall act as the SOLR in the Last Resort Supply Even as defined in this Circular. However, should the franchised DU is deemed not capable to perform the SOLR service, the ERC, prior to the Fully RCOA Commercial Operation Date, shall designate another DU which will perform the SOLR function to be supplied to the Contestable Customers through the WESM or any available source of energy supply. The SOLR shall be allowed

to recover their costs attributable to its SOLR services.

Notwithstanding, the ERC shall design a mechanism to prevent the occurrence of a Last Resort Supply Event, which may include among others, adequate due diligence on the technical and financial capability and other parameters used in the issuance of Supplier License. The CRB, on the other hand, shall issue timely notification of Suppliers' compliance with the prudential requirement pursuant to the WESM Rules.

Section 12. Government Entities as Contestable Customers. In cognizance of government entities that are considered as Contestable Customers, the DOE in coordination with the Government Procurement Policy Board (GPPB) and the Department of budget and Management (DBM) shall issue supplementary rules on the procurement of electricity supply under the RCOA regime. Prior to Open Access Date, the DOE, DBM, and GPPB shall issue a step-by-step procedure that will serve as guide for government entities Considered as Contestable Customers.

As a general rule, all Government Entities that are either Contestable Customers or Directly Connected Customers shall comply with the requirements of EPIRA and EPIRA-IRR.

Section 13. Separability Clause. If any section provision of this Circular is declared invalid, the other parts of provisions hereof which are not affected thereby shall continue to be in full force and effect.

Section 14. 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 responsibility provided for under existing rules.

Section 15. Effectivity. This Circular shall take effect fifteen (15) days following its publication in at least two (2) newspapers of general circulation.

Issued on November 28, 2012 in Energy Center, Bonifacio Global City, Taguig City.

(sgd) **CARLOS JERICO L. PETILLA**
Secretary

DEPARTMENT CIRCULAR NO. DC2012-12-0011

CREATING A POWER TASK FORCE ELECTION 2013 TO ENSURE ADEQUATE AND RELIABLE ELECTRIC POWER SUPPLY BEFORE, DURING, AND AFTER THE MAY 13, 2013 NATIONAL AND LOCAL ELECTIONS

WHEREAS, it is the policy of the State to ensure the reliability, quality and security of supply electric power;

WHEREAS, the Department of Energy (DOE) is mandated to provide a mechanism for the integration, rationalization, and coordination of the various activities to carry out the energy policy of the State;

WHEREAS, the Commission on Elections (COMELEC), pursuant to the powers vested in

it by the Constitution, the Omnibus Election Code, and other related election laws, has prescribed the rules and procedures to ensure the holding of a free, orderly, honest, peaceful, and credible automated national and local elections on 13 May 2013;

WHEREAS, the DOE, as Standard Operating Procedure issued on 15 February 2010, Department Circular No. DC2010-02-0002, creating a Power Task Force Election 2010;

WHEREAS, as part of its mandate, the DOE deems it necessary to adopt measures to ensure provision of stable and continuous supply of power during the national and local elections for the period of 10 to 17 May 2013;

NOW THEREFORE, The DOE, in support to the government's aim of holding a successful election, is issuing this Circular to create a Power Task Force Election 2013 to ensure adequate, stable and reliable power supply before, during and after the national and local elections.

Section 1. Composition. The Power Task Force Election 2013 shall be composed of the following with the organizational structure and reporting flow attached hereto as Annex A:

a. Core Group Team

Head: Department of Energy (DOE)

Members : National Power Corporation (NPC)

National Transmission Corporation (TransCo)

National Electrification Administration (NEA)

Power Sector Assets & Liabilities Corporation (PSALM)

Philippine Electricity Market Corporation (PEMC)

National Grid Corporation of the Philippines (NGCP)

Manila Electric Company (MERALCO)

b. Supporting Organizations

Philippine Independent Power Procedures Association (PIPPA)

Philippine Rural Electric Cooperatives Association (PHILRECA)

Private Electric Power Operators Association, Inc. (PEPOA)

Other associations of distribution utilities not explicitly mentioned in this Circular.

All power suppliers and service providers particularly the distribution utilities (DUs) privately-owned, electric cooperatives (ECs) and LGU-owned, and the power generation companies are directed to provide full support and participation to ensure the attainment of the objective of this Circular.

Section 2. General Responsibilities. The members of the Power Task Force on Election 2013 shall have the following general responsibilities;

1. As head of the Power Task Force 2013, the DOE shall be responsible for the following:

a. Overall management of the Power Task Force 2013;

b. Establishment of a systematic monitoring and reporting scheme that will ensure power interruptions are immediately acted upon by concerned agencies/organizations;

c. Cause the establishment of mitigating measures to minimize, if not prevent, power outages on election day and the critical period prior to and after election;

d. Provide the general public with fast and accurate information on the status of power supply; and

e. Assign focal persons to coordinate with COMELEC.

2. The members shall be responsible for the following:

a. Ensuring operation of their respective facilities/systems and for establishing communications links with Command

Center and their Contingency teams under heightened alert status on 24/7 basis;

- b. Instituting mitigating measures to preclude abnormal situations in their respective areas of responsibilities;
 - c. Regularly reporting the status of their facilities/systems/areas as well as immediately reporting any problem that may affect power supply; and
 - d. Immediate addressing potential or actual problems that may affect power supply.
3. The members of the Power Task Force Election 2013 shall establish their contingency teams and designate their representatives to support the Sub-Task Force on Power 2013.

Section 3. Specific Responsibilities. In addition to the general responsibilities, each member of the Power Task Force Election 2013 has the following specific responsibilities:

PSALM and NPC

1. Ensure availability of generating units (including those already privatized) to meet demand and required reserves (regulating, spinning and back-up), in close coordination with NGCP;
2. Ensure maximum reservoir for hydropower plants prior to election day;
3. Suspend preventive maintenance and testing of generating units one week before and after election day;
4. Defer already scheduled plan maintenance and tests;
5. Ensure availability of its quick start units, if any;

6. Secure adequate fuel supplies and maintain reasonable fuel inventories;
7. Arrange for back-up personnel in power plants and additional maintenance crew to assist in case of emergencies;
8. Augment security forces in major plant installations;
9. If necessary, lease-rental of gensets to ensure adequate, stable and reliable power supply;
10. Ensure cooperation of NCP plans/IPPs to the Power Task Force Election 2013 directives; and
11. Ensure availability of PSALM's purchased generating plants or administered IPPs at their dependable capability and assure their continued normal operation.

TransCo and NGCP

1. Ensure availability of all substation facilities/transmission lines, in the extent possible, and assure their continued normal operation;
2. Suspend maintenance and testing works on substation/facilities/transmission lines, one week before and after election day, except in extreme emergency cases;
3. Ensure reliability of emergency diesel generators, station batteries and air compressor systems;
4. Place off-duty control center and substation personnel "on-call" basis;
5. Ensure standby transmission line crew and power system maintenance personnel;
6. Secure communication hotlines between the DOE and NGCP as well as with Market Operator (MO) and other electric power industry participants;

7. Provide standby transportation facilities to assist in the immediate inspection of tripped critical transmission lines;
8. Ensure all Area Control Center (ACC) dispatchers are prepared to implement islanding operation and power restoration;
9. Strategically deploy Network Protection, Power System Maintenance, District/Branches SCADA and Telecom personnel;
10. Check proper function of installed fault clearance system, transient recorders and sequence of event recorders in all substations including all Special Protection Systems;
11. Update load shedding schedule in each grid to consider priority supply to polling places and local government offices;
12. Accelerate completion of corrective works on critical substation/transmission lines before election day;
13. Inspect the integrity of transmission line structures and clear obstructions, if any;
14. Inspect connection points of DUs/ECs to the grid;
15. Augment security forces in critical substations/transmission facilities;
16. Coordinate with COMELEC, National Disaster Coordination Council (NDCC), Military, Philippine National police (PNP) and the Regional Peace and Order Council as necessary;
17. Ensure availability of tools and materials at satellite offices; and
18. Assign service vehicles/drivers to regional District Command post.

NEA

1. Oversee the preparation of the Electric Cooperatives for the 13 May 2013 national and local elections, and ensure the readiness and reliability of the distribution systems;
2. Direct the Electric Cooperatives to ensure the availability of their technical personnel especially during the election day and until the canvassing of votes; and
3. Ensure the full cooperation of the Electric Cooperatives to all activities of the Power Task Force Election 2013.

PEMC

1. Ensure the continuous operation of the Wholesale Electricity Spot Market (WESM); and
2. In coordination with NGCP-System Operator (SO), ensure availability of all supervisory controls and communication networks and effective management of the power system.

DUs

1. Ensure availability of all its substation facilities/distribution lines, to the extent possible, and assure their continued normal operation;
2. Ensure the adequacy of connection and service entrance facilities of polling places and canvassing centers;
3. Accelerate completion of corrective/remedial works on critical distribution lines before election day;
4. Create special and emergency line crews to undertake the following;
 - (a) Inspect integrity of distribution line structure and clear distribution lines from obstructions;

- (b) Inspect connection points to polling places for proper breaker and fuse rating;
 - (c) Check electrical installation of polling places for proper breaker and fuse rating;
 - (d) Conduct information dissemination on how to avoid power supply overload/short-circuits during election; and
 - (e) Respond to emergency cases affecting power supply within the service areas.
5. Provide logistics support to special and emergency line crews such as:
 - (a) Availability of tools and equipment for all crew members/line men;
 - (b) Service vehicles and drivers
 - (c) Adequate supply of replacement parts, and power line devices and equipment.
 6. Ensure availability and reliability of embedded generators within their franchise area, if any, and
 7. Coordinate with NGCP on the appropriate load shedding to ensure that polling places and local government offices are excluded.

Philippine Independent Power Procedures Association (PIPPA)

Philippine Rural Electric Cooperatives Association (PHILRECA)

Private Electric Power Operators Association, Inc. (PEPOA)

Other Similar Associations/Federation of Electric Power Industry Participants

1. Establish respective satellite centers that will interface with distribution utilities; and

2. Provide support and assistance to distribution utilities to ensure their cooperation to Power Task Force Election 2013 directives.

In addition to the specific responsibilities of the members, the head of the Power Task Force Election 2014 can delegate to any members other assignments, as necessary.

Section 4. Command Post. The Power Task Force Election 2013 shall establish its Main Operations Center at NGCP-Diliman, Quezon City and Satellite Operation Centers at NGCP-Banilad, Cebu City for Visayas and NGCP-Cagayan de Oro City for Mindanao. These centers shall be equipped with monitoring facilities and communication link-ups with all electric power industry participants.

To establish communication links with the operations centers, the NPC, PSALM, TransCo, NEA, NGCP, PEMC shall create their contingency teams and designate their representatives to support the Power Task Force Election 2013 on a 24/7 basis. In addition, all DUs and ECs shall also create their own contingency teams and designate their representatives to support the Power Task Force Election 2013 on 24/7 basis.

Section 5. Logistics and Budgetary requirement. The expenses to be incurred by the members of the Power Task Force Election 2013 in the performance of the responsibilities herein shall be charged to the respective accounts of the concerned agencies/entities.

Section 6. Effectivity Period. This Circular shall take effect fifteen (15) days upon its publication in a newspaper of general circulation.

Issued this DEC 10 2012 at Energy Center, Bonifacio Global City, Taguig City.

(sgd) **CARLOS JERICHO L. PETILLA**
Secretary

DEPARTMENT CIRCULAR NO. DC 2013- 07-0015

PRESCRIBING THE IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 10531, OTHERWISE KNOWN AS THE “NATIONAL ELECTRIFICATION ADMINISTRATION REFORM ACT OF 2013”

Pursuant to Section 16 of Republic Act No. 10531,” otherwise known as the “National Electrification Administration Reform Act of 2013,” hereinafter referred to as the “Act,” the Department of Energy (DOE), in coordination with the National Electrification Administration (NEA) and Cooperative Development Authority (CDA) and in consultation with the Electric Cooperative (ECs), the electric power industry participants, relevant government agencies, non-government organizations and other stakeholders, hereby issues, adopts and promulgates the following rules and regulations implementing the provisions of the Act.

RULE I.

GENERAL PROVISIONS, TITLE AND SCOPE, DECLARATION OF POLICY AND DEFINITION OF TERMS

Section 1. Title. These rules and regulations shall be referred to as the “Implementing Rules and Regulations (IRR) of the Act.”

Section 2. Scope. This IRR shall provide the framework for the implementation of the structural reforms of the NEA and the ECs in pursuit of the country’s total electrification in an accelerated and sustainable manner and such other objectives of the Act.

Section 3. Declaration of Policy. It is hereby declared the policy of the State to:

- a. Promote the sustainable development in the rural areas through rural electrification;
 - b. Empower and strengthen the NEA to pursue the electrification program and bring electricity, through the ECs as its implementing arm, to the countryside even in missionary or economically unviable areas; and
 - c. Empower and enable the ECs to cope with the changes brought about by the restructuring of the electric power industry pursuant to Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001” or “EPIRA.”
- Section 4. Definition of Terms.** For the purpose if this IRR, the following terms are defined as follows:
- a) “**Act**” refers to Republic Act No.10531, otherwise known as the “National Electrification Administration Reform Act of 2013;”
 - b) “**Barangay**” refers to the basic political unit as defined under Republic Act No. 7160, otherwise known as the “Local Government Code if 1991;”
 - c) “**Cooperative Code**” refers to Republic Act No. 9520, otherwise known as the “Philippine Cooperative Code of 2008;”
 - d) “**Cooperative Development Authority**” or “**CDA**” refers to the government entity created under Republic Act No. 6939;
 - e) “**Corporation Code**” refers to Batas Pambansa Bilang 68, otherwise known as the “Corporation Code of the Philippines;”

- f) **“Department of Energy”** or **“DOE”** refers to the Government agency created pursuant to Republic Act No. 9513 otherwise known as the **“Renewable Energy Act of 2008;”**
- g) **“Electric Cooperative”** or **“EC”** refers to an electric distribution utility organized and registered pursuant to Presidential Decree No. (PD) 269, as amended, Republic Act No. 9520, and other related laws;
- h) **“Energy Regulatory Commission”** or **“ERC”** refers to the independent quasi-judicial regulatory body created under the EPIRA;
- i) **“EPIRA”** refers to Republic Act No. 9136, otherwise known as the **“Electric Power Industry Reform Act of 2001;”**
- j) **“Generating Facility”** refers to a facility for the production of electricity;
- k) **“Grid”** refers to the high voltage backbone system of interconnected transmission lines, substations and related facilities, located in each of Luzon, Visayas, Mindanao, or as may otherwise be determined by the ERC in accordance with Section 45 of the EPIRA;
- l) **“Missionary Electrification”** refers to the provision of basic electricity service in unviable areas with the ultimate aim of bringing the operations of these areas to viability levels;
- m) **“National Electrification Administration”** or **“NEA”** refers to the Government agency created under PD 269, as amended by PD 1645 and Republic Act No. 10531 with additional mandate set forth in EPIRA;
- n) **“Securities and Exchange Commission”** or **“SEC”** refers to the Government agency created under Commonwealth Act No. 83, as amended;
- o) **“Small Power Utilities Group”** or **“SPUG”** refers to the functional unit of National Power Corporation (NPC) created to pursue missionary electrification;
- p) **“Stock Cooperative”** refers to an autonomous and duly registered association of persons, with a common bond of interest, who have voluntarily joined together to achieve their social, economic, and cultural needs and aspirations by making equitable contributions to the capital required and accepting a fair share of the risk and benefits of the undertakings in accordance with the universally accepted cooperative principles as defined under Republic Act No. 9520; and
- q) **“Stock Corporation”** refers to an artificial being created by operation of Law, with capital stock divided into shares, and authorized to distribute to its Shareholders’ dividends out of its surplus profits, having the right of succession and the powers, attributes and properties and properties expressly authorized by law or incident to its existence.

RULE II

THE NATIONAL ELECTRIFICATION ADMINISTRATION

Section 5. Powers, Functions and Privileges of the NEA. The supervisory and oversight functions of the NEA, as detailed in the Act and this IRR, shall be applicable to both stock and non-stock ECs.

Pursuant to Section 4 of PD 269, as amended by the Act, the NEA in order to strengthen the ECs, shall help them become economically viable and prepare them for the implementation of retail competition and open access pursuant to Sections 31 of the EPIRA, is authorized and empowered to:

- a) Have a continuous succession under its corporate name until otherwise provided by law;

- b) Adopt and use a seal and alter it at its pleasure;
- c) Sue and be sued in any court: *Provided*, That the NEA shall, unless it consents otherwise, be immune to suits for acts *ex delicti*;
- d) Make contracts of every name and nature and execute all instruments necessary or convenient for the carrying of its business;
- e) Supervise the management and operations of all ECs;
- f) Exercise step-in rights as defined in Rule IV of this IRR;
- g) Provide institutional, financial and technical assistance to ECs upon request of the ECs;
- h) Pursue the total electrification of the country through the ECs by way of enhancing distribution development and, in case of missionary areas, shall be done in coordination with the NPC-SPUG which shall be responsible for the generation and transmission requirements, as necessary;
- i) Devote all returns from its capital investments to attain the objectives of the Act;
- j) Ensure the economic and financial viability and operation of all ECs;
- k) Restructure ailing ECs with the end in view of making them economically and financially viable;
- l) Develop, set and enforce institutional and governance standards for the efficient operation of ECs such as, but not limited to, the observance of appropriate procurement procedure, including transparent and competitive bidding. Such standards shall be enforced through a mechanism of incentives and disincentives to complying and non-complying ECs, respectively;
- m) Formulate and impose administrative sanctions and penalties and when warranted, file criminal cases against those who are found in violation of any of the provisions of the Act and this IRR;
- n) Serve as guarantor to qualified ECs in their transactions with various parties such as, but not limited to, co-signing in power supply contracts. For this purpose a guarantee fund shall be established which will come from the equity releases based on the NEA's authorized capital stock under Section 5 of the Act;
- o) Grant loans to ECs, for the construction or acquisition, operation and maintenance of sub-transmission and distribution facilities and all related properties, equipment, machinery, fixtures, and materials for the purpose of supplying area coverage service, and the thereafter to grant loans for the restoration, improvement or enlargement of such facilities or for such other purposes as may be deemed necessary;
- p) Subject to the prior approval and/or opinion of the Monetary Board, borrow funds from any source, private or government, foreign or domestic, and secure the lenders thereof by pledging, sharing or subordinating one or more of the NEA's own loan securities;
- q) Exercise primary and exclusive jurisdiction of complaints against EC officers, election disputes and all matters relating to the effective implementation of the provisions of the Act;
- r) As quasi-judicial agency, deputize local law enforcement agencies to enforce or implement its orders or decisions,

with the power to cite for contempt any party or witness to any case before it for contumacious conduct; and

- s) Exercise such powers and do such things as may be necessary to carry out the business and purpose for which the NEA was established, or which from time to time may be declared by the Board of Administrators as necessary, useful, incidental or auxiliary to accomplish such purposes.

The NEA shall ensure that all ECs comply with the timely submission of the reportorial requirements set forth in this IRR. For this purpose, the NEA shall prepare monthly and quarterly assessment reports on the abovementioned information. Said reports shall be submitted by the NEA to the DOE and the Joint Congressional Power Commission (JCPC) together with its recommended policies to attain the objectives of the Act.

For this purpose, the authorized capital stock of the NEA is hereby increased to Twenty-five billion pesos (P25, 000,000,000.00) divided into two hundred fifty million (P250, 000,000.00) shares with a par value of One hundred pesos (P100.00)

Section 6. Supervisory Powers of the NEA over ECs. Pursuant to Section 4-A of PD 269, as amended by the Act, in the exercise of its power of supervision over the ECs, the NEA shall have the following additional powers:

- a) Issue orders, rules and regulations, *motu proprio* or upon petition of third parties, to conduct investigations, referenda and other similar actions on all matters affecting the ECs;
- b) Issue preventive or disciplinary measures including, but not limited to, suspension or removal and replacement of any or all of the members of the board of directors and officers of the EC, as the NEA may deem fit and necessary to take any other

remedial measures as the law or any agreement or arrangement with the NEA may provide, attain the objectives of the Act; and

- c) Appoint independent board of directors in the EC.

The NEA shall, in the exercise of its supervisory and disciplinary powers under the Act, strictly observe due process of law.

Section 7. Jurisdiction of NEA over Administrative Cases. The NEA in the exercise of its quasi-judicial functions, shall have primary and exclusive jurisdiction over the following administrative cases:

- a. Cases involving complaints against the EC Officers, including those cases or investigation and other similar actions arising from the NEA's exercise of its *motu proprio* powers as provided in Section 6 of the Act. For the purpose of this section, the ECs officers referred to shall be the following:
 - i. Members of the Board of Directors;
 - ii. General Manager;
 - iii. Department managers;
 - iv. Sub-Office Area Managers;
 - v. Members of the Bids and awards Committee; or
 - vi. Other designated/responsible officers with functions or rank equivalent to any one of those enumerated above.
- b. Election disputes involving any elective officer of an EC; and
- c. Cases or disputes involving any matter relating to the effective implementation of the provisions of the Act.

Section 8. Step-In Right in Cases of Ailing ECs. Consistent with Section 4-B of PD 269, as

amended by the Act and Rule IV of this IRR, the NEA shall be guided by the following:

- a. The NEA shall immediately step-in and take over from its Board the operations of any ailing EC. Within one hundred eighty (180) days after takeover, the NEA may convert the ailing EC to either a stock cooperative registered with the CDA or a stock corporation registered with the SEC;
- b. The NEA shall, in determining the propriety of the conversion, be guided by the ability of the member consumers of said EC to pay for their shares in the stock cooperative or stock corporation; and
- c. The NEA may appoint or assign third persons to the board of the EC until the NEA decides that the election of a new board of directors to manage the EC is necessary. The NEA may create a management team for the purpose: Provided, that the NEA shall call for the election of a new set of board of directors within ninety (90) days from the exercise of the step-in rights.

Section 9. Injunction or Temporary Restraining order. Pursuant to PD 269, as amended by Section 3, 5 and 7 of PD 1645 and further amended by the Act, no injunction or temporary restraining order shall be issued against the implementation of any order, ruling or decision of the NEA, whether in the exercise of its quasi-judicial, rulemaking, supervisory powers or oversight functions, except by the Court of Appeals, and only upon the posting of a bond sufficient to cover the liabilities and expenditures arising during the pendency of the writ or injunction or temporary restraining order: Provided, that the injunction shall only be effective for a period of not exceeding sixty (60) days.

RULE III.

THE ELECTRIC COOPERATIVES

Section 10. Mandates, Powers, Functions and Privileges of ECs. In addition to the mandates, powers, functions, and privileges accorded to ECs under the EPIRA and its IRRs, and pursuant to Section 16(j) of PD 269, as amended by the Act, the ECs are hereby empowered to:

- a. To construct, acquire, own, operate and maintain electric sub-transmission and distribution lines along, upon, under and across publicly owned lands and public thoroughfares, including, without limitation, all roads, highways, streets, alleys, bridges, and causeways. In the event of the need of such lands and thoroughfares for the primary purpose of the government, the EC shall be properly compensated.

For This purpose, the DOE and the Department of Public Works and Highways (DPWH) shall, within one hundred eighty (180) days from the effectivity of this IRR, issue implementing rules and regulations to carry out the preceding section, consistent with the issuances of the ERC on cost recovery.

- b. To engage in power generation within its franchise area. For the purpose of clarity, the EC shall ensure the quality of electricity service consistent with the standard provided in the EPIRA and its IRR, the Philippine Grid Code, the Philippine Distribution Code, and other relevant laws and standards including environmental, health and safety standards. The engagement of any EC in the power generation business shall contribute to greater efficiency and lower cost of operations as a distribution utility. In the exercise of its mandate, any EC may engage in power generation business through any of the following:
 - i. Construction of embedded generating facility in accordance with the cross ownership and market

share limitations and standards set forth in the EPIRA and its IRRs, as well as health, safety and environmental clearances from the appropriate government agencies under existing laws;

ii. Acquisition of an existing generating facility from:

1. Privately-owned generation facility;
2. Government-owned generating facility in the main grid;
3. For NPC-SPUG areas, an EC may participate in a bid on an existing NPC-SPUG generating facility and its qualified bid shall be given preference in case of a tie: *Provided, however,* That in case where there is no other qualified bidder, the lone bid shall remain as valid basis for the determination of the final award subject to the following conditions:

- A. bid offer is not lower than the valuation of the assets using Commission on Audit (COA) rules and regulations;
- B. EC is prepared to fully take over the generation function of the rea from the NPC-SPUG. For this purpose, the NEA and the EC concerned shall, in consultation with the NPC-SPUG, prescribe the parameters from which the full takeover date shall be determined.

The full takeover date refers to the date where the EC shall assume the ownership, operation and maintenance

of the generating facility.

In the exercise of its oversight function over ECs, the NEA shall ensure that such takeover shall not adversely affect the viability of the EC as a distribution utility and shall redound to better services and least-cost supply for its captive market; and

- C. EC submits its graduation program from the Universal Charge for Missionary Electrification (UC-ME) subsidy.

For this purpose, the DOE shall, in consultation with the ERC, develop a graduation policy for the availment of the UC-ME subsidy.

- iii. Generate electricity through lease and/or rental of a generating facility for purposes of supplying its franchise area requirement in the least-cost manner.

Any EC that opts to engage in power generation business shall include such plan and activities in its annual Distribution Utility Development Plan (DDP), duly approved and endorse by the NEA.

The EC shall submit a monthly report on the operations and performance of its generating facility/ies to the DOE, the ERC and the NEA not later than the 15th day of the succeeding month.

- c. Explore the option of forming a consortium or partnership among ECs, which have contiguous franchise areas

or share a common sub-transmission line, in order to become financially and technically capable to engage in the business of generation of electricity supply.

Section 11. Registration of ECs. Pursuant to Section 32 of PD 269, as amended by the Act, the following shall govern the registration of ECs:

a. All ECs may choose to remain as a non-stock, non-profit cooperative or convert into and register as:

- i. Stock Cooperative under the CDA; or
- ii. Stock Corporation under the SEC, in accordance with the guidelines in the IRR.

Such choice shall carry with it the attendant requirements of compliance with the laws and regulatory guidelines governing the respective government agencies having jurisdiction over their registration.

b. Regardless of the choice made, the NEA shall have the authority over the ECs, whether stock or non-stock, to require the submission of reportorial requirements as may be necessary relative to their operations as electric distribution utilities including, but not limited to:

- i. Monthly Financial and Statistical report (MFSR);
- ii. Monthly status of barangay and *sitio* energization and house connections;
- iii. Monthly Institutional Services Department (ISD) Report;
- iv. Monthly Performance Standard Monitoring Report (PSMR);

v. Monthly summary of complaints received and acted upon;

vi. Monthly report on compliance with the Philippine Grid and Distribution Codes;

vii. Monthly Engineering Report;

viii. Quarterly report on power supply contracts;

ix. Annual work plan;

x. Annual Distribution Development Plan (DDP);

xi. Five (5)-year investment plan submitted annually;

xii. Annual Cash Operating Budget (COB);

xiii. Audited financial statements;

xiv. Collective Bargaining Agreement (CBA) or Collective Negotiation Agreement (CAN); and

xv. Copy of Capital Expenditures (CapEx) and Operating Expenditures (OpEx) plans; and

xvi. For ECs on grid with isolated area/s served by the NPC-SPUG, separate submission of MFSR, Monthly Engineering report and barangay and *sitio* electrification report.

c. In the event that an EC opts to register with the CDA, it shall continue to enjoy the benefits provided for under the Act;

d. Existing ECs may likewise opt to register as stock corporations with the SEC: Provided, however, that ECs registered with the SEC shall no longer enjoy the incentives provided for in the Act;

- e. Despite the registration of the ECs under the CDA or the SEC, the NEA shall retain its supervisory and disciplinary power over them in the conduct of its operation as electric distribution utilities.

Section 12. Government Structure of ECs.

In compliance with Section 26 of PD 269, as amended by the Act, the independence of the Board of Directors and Officers of ECs is hereby prescribed.

To ensure the long-term business and economic viability of ECs, the management operations and strategic planning of ECs shall, as much as practicable, be insulated from local politics.

Section 13. Board of Directors. The Board of Directors is the collegial body composed of representatives elected from each district to promulgate policies, rules and regulations necessary for the viable operation of the EC and the exercise of its corporate power.

Section 14. Qualifications of a Director and Officer. Pursuant to Section 26-B of PD 269, as amended by the Act, a candidate’s integrity, experience, education, competence and probity shall be considered in determining whether he/she shall be fit and proper to become a director or officer of the EC. For this purpose, the minimum qualifications of a director or officer of the EC shall be as follows:

- a. He or she is a Filipino citizen;
- b. He or she is a graduate of a four (4)-year course;
- c. He or she should at least be twenty-one (21) years old and not over seventy (70) years old on the date of election;
- d. He or she is of good moral character;

For purposes of this IRR, good moral character may be established with the submission of a certificate issued by any of the following:

- i. Barangay where the candidate resides;
- ii. National Bureau of Investigation
- iii. Philippine National Police; or
- iv. Leader of the religious sect where the candidate is affiliated.

- e. He or she is a member of the EC in good standing for the last five (5) years immediately preceding the election or appointments and shall continue to be a member in good standing during his or her incumbency;

For purposes of this IRR, a member of good standing shall mean that said member:

- i. Must have no unsettled or outstanding obligations to the cooperative during his membership in the cooperative whether personal or through commercial; or industrial connections of which he or she is the owner/co-owner;

An unsettled or outstanding obligation is an account which has not been paid within seven (7) days after the due date. For incumbent member of the Board who will seek re-election, unsettled or outstanding obligation includes power bills, cash advances, disallowances (including NEA audit findings) and materials and equipment issuances. At any given time during his membership in the cooperative, he or she must be totally free of any unsettled or outstanding indebtedness and/or disallowances with the EC.

- ii. Has not been apprehended for electric pilferage;

A mere apprehension of electric pilferage by the EC, even without conviction for such offense by

any court, shall be valid ground for disqualification. The word “apprehension” should be taken in the strict context as used in Republic Act No. 7832, otherwise known as “Anti-Electricity and Electric Transmission Lines or materials Pilferage Act of 1994,” which means that a person is caught in *flagrante delicto* for violating the provision of the said Act;

- iii. Has not been removed for cause as director or employee from any EC;

In general, removal or termination of service from the EC is caused by a grave offense or violation/s of policies, rules and regulations. A former director or employee with a record of termination/removal for cause from public office or for just cause as defined in Article 282 of the Labor Code as amended, shall not be qualified to be elected or appointed as director of an EC.

- f. He or she is an actual resident and consumer in the district that he or she seeks to represent for at least two (2) years immediately preceding the election; and
- g. He or she has attended at least two (2) Annual General Membership Assemblies (AGMA) for the last five (5) years immediately preceding the election or appointment.

Section 15. Disqualifications of a Director and Officer. Pursuant to section 26-B of PD 269, as amended by the Act, any person shall be ineligible to be elected or be appointed as member of the board of directors or officers of an EC if:

- a. Such person or his or her spouse holds any public office. For the purpose of disqualification, a person holding

an elective position or an appointive position with a salary grade of sixteen (SG 16) or higher or its equivalent shall not be eligible to be elected as member of the Board of Directors or Officers of an EC;

- b. Such person or his or her spouse has been a candidate in the last preceding local or national elections;
- c. Such person has been convicted by final judgement of a crime involving moral turpitude;
- d. Such person has been terminated from public office/government employment or private employment for just cause as defines in Article 282 of the labor Code.

For this purpose, termination from public office shall mean removal;

- e. Such person is related within the fourth civil degree of consanguinity or affinity to any member of the EC Board of Directors, Department manager, NEA-appointed Project supervisor (PS) or Acting General Manager (AGM) and its equivalent or higher position; and
- f. Such person is employed by or has financial interest in a competing enterprise or a business selling electric energy or electrical hardware to the cooperative or doing business with the EC including, but not limited to, the use or rental of poles.

For purposes of this IRR, “*doing business*” shall refer to the transactions related to the core or main line of business of the EC, which is conveyance of electricity through its distribution facilities.

Section 16. Continuing Qualification Requirement. To ensure that the management and operations of the ECs are carried out with due regard to its economic viability, the

NEA shall prescribe, pass upon and review the qualifications and disqualifications of individuals appointed or elected as EC director or officer and disqualify those found unfit.

An EC director or officer, in order to remain as such, must continue to possess all the qualifications and none of the disqualifications throughout his/her term or tenure of office.

The foregoing continuing qualifications shall not apply to the following:

- a. General manager; and
- b. Project Supervisor and/or Independent Director.

Section 17. Suspension or Removal of a Director or Officer. The NEA may, after due notice to the Board of Directors and Officers of the EC, disqualify, suspend or remove any Director or Officer, who commits any act which renders him or her unfit for the position in accordance with the standards of Section 26-A and 26-B of PD 269, as amended by the Act.

The proceedings herein may be undertaken *motu proprio* or through a complaint initiated against the Director or Officer.

Section 18. Incentives of ECs. Consistent with Section 32-A of PD 269, as amended by the Act, ECs which comply with the financial and operational standards set by the NEA shall enjoy the following incentives:

- a. To be entitled to congressional allocations, grants, subsidies and other financial assistance for rural electrification: *Provided*, That the subsidy shall not include UC-ME provided for in Section 34(b) of the EPIRA;
- b. To receive all subsidies, grants and other assistance which shall form part of the donated capital and funds of the EC: *Provided*, that such donated capital

and funds shall not be sold, traded nor divided into share holdings at any time. These donated capital and funds shall be appraised and valued for the sole purpose of determining the equity participation of the members: *Provided*, That in case of dissolution or conversion of the EC, said donated capital and funds shall be subject to escheat; and

- c. To avail of the preferential rights granted to cooperatives under Republic Act No. 7160, otherwise known as the "Local Government Code of 1991," and other related laws. For this purpose, the DOE and the Department of Finance (DOF) through the Bureau of the Local Government – Finance (BLGF) shall draft within one hundred eighty (180) days from the effectivity of this IRR, the applicable guidelines for this purpose.

As a further incentive, the NEA may prioritize the grant of incentives in favor of the ECs that are managed effectively and efficiently and comply consistently with its mandates and directives.

RULE IV.

NEA STEP-IN RIGHTS

Section 19. Obligations of NEA. To carry out its expanded mandate and to ensure that the ECs are financially viable and able to meet the operational and financial standards and take preventive measures, the NEA shall have the following obligations:

- a. To develop standards and protocols for the efficient operations of the ECs, which shall consider the following:
 - i. Observance of appropriate procurement procedures, including transparent and competitive bidding;
 - ii. Financial, Operational, Institutional and Governance Standards;

- iii. Incentives for compliant ECs including options for conversion to stock cooperative under the CDA or stock corporation under the SEC;
 - iv. Fines and Penalties for non-compliant ECs;
 - v. Timelines and Procedures for Enforcement and Monitoring;
 - vi. Audit; and
 - vii. Reportorial; Requirements for the ECs as set forth in this IRR.
- b. To develop financial and operational parameters to serve as triggers for intervention of the NEA in the EC operations at least one (1) year prior to being categorized as ailing EC: *Provided*, That the obligations as set forth in paragraphs (a) and (b) of this section, shall be developed within sixty (60) days from the issuance of this IRR and shall be approved by the DOE: *Provided further*, That subsequent amendments thereto shall likewise be approved by the DOE;
- c. To evaluate and categorize ECs based on standards set with due consideration to the ailing ECs;
- d. To enforce performance standards and submit quarterly compliance report to the DOE and JCPC which shall include summary of compliance to key performance standards and recommendation for rehabilitation or takeover in case of ailing ECs;
- e. To create a NEA rehabilitation team to assist the ailing ECs improve its financial and technical conditions. The rehabilitation team shall, among others:
- i. Monitor list and status of ailing ECs;
 - ii. Recommend action plans for the recovery of the ailing EC which may include the following:
 1. Convert the ailing EC to either stock cooperative registered with the CDA or stock corporation registered with the SEC: *Provided*, that such conversion shall be guided by the ability of the member-consumers of said EC to pay for their shares in the stock cooperative or stock corporation;
 2. Appoint or assign third persons to the Board of the EC until the NEA decides that the election of a new board of directors to manage the EC is necessary. The NEA may create a management team for the purpose; and
 3. Provide for the settlement of outstanding obligations with generating companies and power suppliers/sources of electricity, the TransCo or its Concessionaire and related creditors, if any.
 4. In the exercise of its step-in rights, the NEA shall strictly observe due process of law.
 - iii. Recommend alternative options to ensure the rehabilitation of the ailing EC which may include sector participation; and
 - iv. Prepare a report on the implementation of the rehabilitation plan for submission to the DOE and JCPC.

Section 20. Ailing ECs. In accordance with the standards set under this IRR, the NEA may declare an EC as an “Ailing EC” when such EC falls under any of the following circumstances:

- a. Has negative Net Worth for the last three (3) years. For this purpose, “*Negative Net Worth*” shall mean as the financial condition of an EC in which its liabilities are greater than its assets;
- b. Has accumulated ninety (90) days arrearages in power supply purchases from generating companies and power suppliers/sources of electricity, and the transmission charges by the TransCo or its Concessionaire;
- c. Unable to provide electric service due to technical and/or financial inefficiencies including, but not limited to, high system loss, low collection efficiency, below standard current ratio, operating loss, huge liabilities and/or institutional problems such as governance, and non-adherence to NEA and EC policies;
- d. Unable to efficiently perform its electric distribution utility obligations or continue in business due to organizational, external and internal factors;
- e. When an EC has failed to meet operational standards established by NEA; and
- f. Unable to set up or continuously support its Wholesale Electricity Spot Market prudential requirements.

The NEA shall, within sixty (60) days from the effectivity of this IRR, submit a set of standards to determine the classification of the RCs guided by the parameters of this IRR: *Provided*, That the NEA shall classify the ECs based on the standards mentioned in the preceding sentence: *Provided further*, That the classification shall serve as the baseline and/or trademark of the particular EC.

Section 21. NEA’s Exercise of Step-In Rights.

The NEA shall immediately exercise its step-in rights over an ailing EC through the following:

- a. Appoint or assign a PS or AGM or assign third persons to the Board of the EC until

the NEA decides that the election of a new Board of Directors to lead the EC is necessary. The NEA may also create a Management Team for the purpose.

- b. In case of organizational and/or internal conflicts as provided under circumstances in this IRR, the NEA shall give the CDA or other appropriate government agency where the EC is legally registered, the opportunity to resolve or take remedial measures without prejudice to the exercise of its step-in rights.
- c. May enter into partnership with a qualified private sector investor, under any of the following frameworks:
 - i. Joint Venture;
 - ii. Investment Management Contract;
 - iii. Management Contract;
 - iv. Operations and Maintenance Contract;
 - v. Special Equipment and Materials Lease Agreement;
 - vi. Concession;
 - vii. Merger and Consolidation; and
 - viii. Other variants deemed applicable to the EC.

For these purpose the NEA is hereby constituted as the agent of the converted EC.

- d. If within a reasonable period, not exceeding one hundred eighty (180) days from its takeover, the NEA determines that such EC is unable to continue its operation in the ordinary course of business, it may:
 - i. Initiate structural reforms such as conversion of the ailing EC to either a Stock Cooperative registered with the CDA or a Stock corporation registered with the SEC; or

- ii. Institute appropriate legal actions such as Extra-judicial Foreclosure and Insolvency (Voluntary/Involuntary) and Bankruptcy proceedings, without prejudice to the right of the creditors.

RULE V.

CONVERSION OF ELECTRIC COOPERATIVES

Section 22. Conversion of ECs. Consistent with Section 32 of PD 269, as amended by the Act, any EC may choose to remain as a non-stock, non-profit cooperative or, in accordance with the conversion guidelines set in this IRR, convert into and register as:

- a. A stock cooperative under the CDA; or
- b. A stock corporation under the SEC.

Section 23. Conversion Guidelines. The NEA shall, in determining the propriety of the conversion, be guided by the ability of the member-consumers of the said EC to pay for the shares in the stock cooperative or stock corporation. Specifically, the conversion shall adhere to the following:

- a. Compliance by the EC to the standards to be set by NEA pursuant to this IRR;
- b. ECs conduct, in coordination with the NEA, of a massive information-education and communication (IEC) campaign in the district level within the EC's coverage area, on the importance of the Act and the IRR including rights, duties and obligations of an EC whether stock or non-stock, incentives and disincentives, options and effects of the ECs' conversion and the authority and responsibilities of NEA over the ECs;
- c. ECs conduct of consultation with its bona fide member-consumers on whether to convert or not, through series of district meetings, which shall be undertaken in the following manner:

- i. Simultaneously, where the meetings or consultations are held on the same day at various venues (barangay); or
- ii. Sequentially, where the meetings or consultations are held one after the other in different in different venues (barangays).

d. In the conduct of consultations, the EC shall comply with the following:

- i. **Notice of Membership Meeting.** At least ten (10) days before the scheduled consultation/meeting, all the bona fide members-consumers in the district shall be notified through print and broadcast media. In addition, the complete information on the said meeting/consultation shall be mailed or delivered to the addresses of the member-consumers. Likewise, the said notice shall be posted in strategic places within the district;
- ii. **Master list of Voters.** A sanitized master list of bona fide member-consumers entitled to vote in each district shall be prepared by the EC through its Institutional Services Department or equivalent department. Such list shall be the basis for determining the attendance or turn out of voters in each meeting held, whether simultaneous or sequential;
- iii. **Required Number of Votes for Conversion.** The approval of at least a simple majority, or fifty per centum (50%) plus one (1), of all members entitle to vote of the EC, shall be considered a valid decision for conversion;
- iv. **Voting System.** Each bona fide member-consumer shall be entitled to one (1) vote. The voting shall be

done through secret balloting and no proxy voting shall be allowed; and

- v. **Over-all Decision.** The final decision on the issue on conversion, on whether or not the EC will convert, will be based on the majority decision, as culled from the result of the general assembly, or the cumulative result of the district meetings, as the case may be: *Provided*, that the conduct of referendum may only be conducted ten (10) years from the last conducted referendum.

Section 24. Conversion Requirements. In addition to the provisions of Republic Act No. 9520 and Batas Pambansa Bilang 68, the ECs must comply with the provisions of Sec. 7 (c) (i) of Rule 7 of the IRR of the EPIRA.

Section 25. Conversion procedures and/or Mechanics. The following shall guide the mechanics and/or procedures for the conversion provided in the preceding sections:

- a. The Board of Directors shall pass a Resolution scheduling the district/s, date/s, venue/s and time of the assembly/meetings. Likewise, the Board of Directors shall appropriate the corresponding budget for the program/activities;
- b. The concerned departments, spearheaded by the EC's Institutional Services Department shall prepare and execute the requirements set under the said resolution;
- c. In not less than twenty five (25) days before the General Assembly or District Meetings, the Institutional Services Department or its equivalent department shall prepare the Sanitized Master list of Voters in alphabetical order and classified according to barangays to facilitate registration and voting;

- d. The Board Member of the concerned district shall be responsible for ensuring the success of the assembly/referendum/meeting in the said district. Likewise, he shall preside in the district assembly meeting/s;
- e. There shall be a determination of attendance where only the bona fide member-consumers whose names are listed in the sanitized master list of voters prepared by the EC shall be allowed to vote.
- f. Where meetings are held simultaneously, as defined in this section, the total number of votes shall be determined on a cumulative basis;
- g. Where meetings are held sequentially, as defined in this section, the same procedure shall be followed;
- h. For all the meetings conducted regardless of the Procedure/Mechanics applied, the Presiding Officer shall introduce and present to the assembly the issues related to conversion, such as the following:
 - i. Historical profile of the EC;
 - ii. The advantages/disadvantages of each of the three options;
 - iii. Open Forum;
 - iv. Casting of votes;
 - v. Declaration of the results of voting by the Presiding Officer; and
 - vi. Adjournment.
- i. Documentation Requirements:
 - i. Preparation of the minutes of meeting indicating the highlights, particularly the over-all decision of the bona fide member-consumers whether to convert or not.
 - ii. Regardless of the results of the voting, a Certificate of Membership Decision to convert or not, indicating

the over-all decisions of the bona fide member-consumers of the EC and certifying the truthfulness and veracity of the statements therein, shall be executed and attested on behalf of the RC by its Board President or Board Vice-President.

For the purpose of the foregoing, a bona fide member-consumer shall refer to a person who is a member-consumer in good standing who has met all the requirements set within the context of the ECs by-laws and has been listed/included in the master list of voters, to have voting rights, under the one-member, one vote policy of the EC.

Within one hundred eight (180) days from the effectivity of this IRR, the NEA shall cause the conduct of referenda of all remaining non-stock ECs and the ECs shall have decided and issued a Board Resolution on options to:

- a. Remain as on-stock, non-profit EC;
- b. Convert into stock cooperative under the CDA; or
- c. Convert into stock corporation under the SEC.

For monitoring purposes, the NEA shall submit to the DOE a quarterly report detailing the progress of the registration.

RULE VI.

TOTAL ELECTRIFICATION

In pursuit of the total electrification of the country, the NEA and all ECs shall electrify all remaining unelectrified households. In the case of missionary areas, the same shall be done in coordination with the NPC-SPUG which shall be responsible for the generation and transmission requirements, as necessary.

Section 26. Total Electrification Plan. Towards this end, the NEA shall, in consultation with the ECs or with NPC-SPUG, in case of

missionary areas, develop within ninety (90) days from the effectivity of this IRR, a Total Electrification Plan (herein referred to as the Plan), which will detail among others:

- a. Time bound targets for the attainment of the individual electrification program in each of the ECs' franchise areas. For this purpose, the ECs are encouraged to adopt appropriate and least-cost technology;
- b. Financial requirements and sources of funds for project implementation; and
- c. Work program and schedules

The NEA shall update and submit the Plan to the DOE, every fifteenth (15th) of March of each year: *Provided*, That such Plan shall be approved by the DOE, for implementation by the NEA and the ECs: *Provided further*, That the ERC shall provide the necessary regulatory support in recognizing the cost associated in providing missionary electrification.

RULE VII.

FINAL PROVISIONS

Section 27. Supervisory Powers of the DOE over the NEA. Consistent with Section 58 of EPIRA, the NEA shall continue to be under the supervision of the DOE, and shall comply with all reportorial requirements under this IRR and as may be deemed necessary by the DOE.

Section 28. Penalties. Pursuant to Section 14 of the Act, any person who willfully violated any rule or regulation promulgated pursuant to the authority granted in this IRR shall, upon conviction, be punished by a fine of not less than fifty thousand pesos (P50,000.00) but not more than five hundred thousand pesos (P500,000.00) or by imprisonment of not less than six (6) months but not more than one (1) year, or both, at the discretion of the court: *Provided*, That if the violation is committed by a juridical person, the penalty herein prescribed shall be imposed upon the official and/or employee thereof

responsible for the violation: *Provided, further,* That if the violation is committed by a government official or employee, including those in government-owned or controlled corporations, such person shall in addition to the penalty provided herein, be subjected to administrative disciplinary action.

Section 29. Congressional Oversight. To enhance the effectiveness of the JCPC in the exercise of its oversight function over the implementation of the Act, the Board of Administrators shall submit to the JCPC a semi-annual report on the initiatives and activities on rural electrification, including the supervision of the NEA over the ECs in the performance of their franchise obligations.

Section 30. Transitory Clause. Pursuant to the objectives of the Act of strengthening the ECs, the NEA shall, upon the instruction of the DOE, exercise the step-in rights for ailing ECs identified by the DOE, pending the issuance of the standards set forth in Rule IV Section 20, of this IRR: Provided, that the NEA's exercise of step-in rights under this section shall be governed by Section 4-B of

PD 269, as amended by the Act: Provided further that the NEA shall takeover and exercise the powers provided in the Act over ECs that may be identified by the DOE as urgent and necessary to ensure public safety, security and welfare, such as but not limited to, the imminent threat of disconnection of electricity supply.

Section 31. Separability Clause. If any provision of this IRR is declared invalid or unconstitutional, the other provisions not affected thereby shall remain valid and subsisting.

Section 32. Effectivity. This IRR shall take effect fifteen (15) days from its publication in at least two newspapers of general circulation and shall remain in effect until otherwise revoked.

Issued in Energy Center, Bonifacio Global City, Taguig City on July 26, 2013

(sgd) **CARLOS JERICO L. PETILLA**
Secretary

DEPARTMENT CIRCULAR NO. DC2013-06-0012

DIRECTING THE NATIONAL GRID CORPORATION OF THE PHILIPPINES TO SUBMIT TO THE DEPARTMENT OF ENERGY PERTINENT DATA TO ENHANCE THE FORMULATION OF THE DEMAND FORECASTS FOR THE POWER DEVELOPMENT PLAN

WHEREAS, Section 2 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA) has declared among others, that it is the policy of the State to ensure reliability, quality and security of supply of electric power;

WHEREAS, Section 37 of the EPIRA mandates the DOE to prepare and update annually a Power Development program (PDP), and integrate the same into the Philippine Energy Plan (PEP);

WHEREAS, the PDP shall consider and integrate the individual or joint development plans of the transmission, generation and distribution sectors of the electric power industry which are submitted to the DOE;

WHEREAS, the DOE is further mandated to develop policies and procedures to encourage electric power industry participants to provide adequate capacity to meet the projected demand;

WHEREAS, the DOE continuously aims to improve its demand forecasts, reflective of the foreseen economic activities in the country;

WHEREAS, there is a need to validate the Distribution Development Plan information and/or data submitted by the Distribution Utilities to the DOE including the hourly demand to be able to match the appropriate type of power plants and to identify load management programs;

NOW THEREFORE, for and in consideration of the above premises, the DOE hereby issues this Circular.

Section 1. Score and Application. This Circular shall apply to the National Grid Corporation of the Philippines (NGCP) and all its customers including Distribution Utilities, Directly-Connected Customers and other non-utility customers.

Section 2. NGCP Responsibilities. Pursuant to its mandates and functions under the EPIRA and its implementing rules and regulations, the Philippine Grid Code and other relevant laws, rules and issuances, the NGCP, as the system Operator, shall provide the DOE with the following data/information:

- a. Historical Daily Coincident Peak Demand of all its customers from 2010 to 2012; and
- b. Hourly – Daily Coincident Peak Demand of all its customers to be submitted on a monthly basis starting January 2013 and onwards.

Section 3. Confidentiality. The data to be provided to the DOE shall be used strictly for planning and policy purposes and shall not in any way be used for commercial purposes or legally against or to the disadvantage of NGCP and its customers.

Section 4. Separability Clause. If for any reason, any section or provision of this Circular is declared unconstitutional or invalid, such parts not affected shall remain in full force and in effect.

Section 5. Effectivity. This Circular shall effect immediately and will remain in effect until otherwise revoked by the DOE.

Done this 26 June 2013 at Energy Center, Bonifacio Global City, Taguig City.

(sgd) **CARLOS JERICO L. PETILLA**
Secretary

DEPARTMENT CIRCULAR NO. DC2013-07-0013

PROVIDING SUPPLEMENTAL POLICIES TO EMPOWER THE CONTESTABLE CUSTOMERS UNDER THE REGIME OF RETAIL COMPETITION AND OPEN ACCESS AND ENSURE GREATER COMPETITION IN THE GENERATION AND SUPPLY SECTORS OF THE PHILIPPINE ELECTRIC POWER INDUSTRY

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

- a) Ensure the quality, reliability, security and affordability of the supply of electric power;
- b) Ensure transparent and reasonable prices accountability 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; and
- c) Protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power.

WHEREAS, the Department of Energy (DOE) is mandated, among other things to:

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

WHEREAS, in compliance with its mandate under the EPIRA and to ensure that the implementation of Retail Competition and Open Access (RCOA) will redound to better

electricity services at reasonable price, brought about by the competition introduced in the supply sector, the DOE promulgated policies and attendant guidelines through the following:

- a) Department Circular No. DC2012-05-0005, issued on 09 May 2012, which prescribes the general policies for the implementation of RCOA;
- b) Department Circular No. DC2012-11-0010, issued on 28 November 2012, which provides for additional guidelines and implementing policies of RCOA and amending certain provisions of Department Circular No. DC2012-05-0005; and
- c) Department Circular No. DC2013-05-0006, issued 06 May 2013, which enjoins electric power industry participants to ensure an effective and successful transition towards implementation of RCOA through transparency, good governance and greater competition in the generation and supply sectors.

WHEREAS, the DOE recognizes the issues and concerns raised by significant number of Contestable Customers (CCs) on the difficulties to get clear and firm offers for Retail Supply Contracts (RSCs) with the Retail Electricity Suppliers (RES);

WHEREAS, during the conduct of Information and Education Campaigns (IECs), the CCs relayed that most RES have preference over larger loads with higher load factors, and the offers, if there is any, are higher than existing rates, and if competitive with existing rates,

CCs are tied with long-term contracts and stringent pre-termination provisions;

WHEREAS, despite the nineteen (19) RES duly licensed and eight (8) Local RES duly authorized by the Energy Regulatory Commission (ERC), the RCOA is being perceived to be the Suppliers' market making the CCs confined to the limited offers and terms or no offer at all, which is contrary to the Customer Empowerment espoused under EPIRA;

WHEREAS, the DOE deems it necessary to issue supplemental policies to empower the CCs and promote greater competition in the generation and supply sectors in order to achieve the objectives of RCOA;

NOW, THEREFORE, for and in consideration of the foregoing premises, the DOE, in pursuit of its supervisory functions vested to it by the EPIRA, hereby provides the following policies:

Section 1. Customer Choice. Consistent with the objectives of the EPIRA and its Implementing Rules and Regulations (EPIRA-IRR), and other applicable rules and regulations, a CC may source its electricity supply requirements from ERC-licensed RES; ERC-authorized Local RES; and, on its option, directly through the Wholesale Electricity Spot Market (WESM). Furthermore, a CC shall be allowed to enter into a Retail Supply Contract (RSC) with a Prospective Generation Company; provided, that the Generation Company is issued a Certificate of Compliance (COC) by the ERC and successfully registered as a Trading participant in the WESM; and provided, further, that before the effective date of the RSC, the Generating Company shall have secured a Supplier's license from the ERC.

Section 2. Supply Contract and Customer Switching. Regardless of the contract period of the RSC entered into by a CC and its RES, such RSC shall provide "Customer Switching" provision whereby the CC shall be allowed

to terminate its RSC with its incumbent RES should there be a competitive supply contract package that is more responsive to the needs of the CC. The incumbent RES shall have the right to retain the RSC provided that it can match the superior offer to the CC.

Notwithstanding and consistent with Section 8 of DOE Circular No. DC2012-11-0010, the initial switch of a CC to its new Supplier shall only be allowed six (6) months after the full RCOA Commercial Operation Date. The actual switching shall be based on a considerable period of time as may be determined by the RES and the CC, but should not exceed the applicable notification requirement by the CRB, as provided in the same DOE Circular.

Towards this end, the ERC shall provide the necessary guidelines in determining competitiveness of an RSC. The competitiveness of a supply contract package may include determination on among other things, price, quality of power, and value added services.

Section 3. Transparency of Electricity Rates under RCOA Regime. A CC which has no choice due to absence of acceptable offer from RES or Local RES shall continue to remain with its franchised DU or current service provider, and shall be charged based on its existing rates until it is able to secure an RSC. In such event, the CC may switch to its new Supplier, subject to notification requirements to the Central registration Body (CRB) and its incumbent RES.

For the purpose of customer empowerment, transparency and competitiveness, the power bill of the CC that shall continue to be served by its franchised DU shall have two sets of power bill. These are: (i) its current power bill; and (ii) a new set of power bill, further unbundled and grouped according to competitive and regulated charges of the franchised DU, duly approved by the ERC. For illustration purposes, the second or the other power bill of the CC shall reflect the following:

(i) generation and relevant supply charges; (ii) regulated charges such as transmission and distribution wheeling charges; (iii) other pass through charges such as government taxes and subsidies. The intent of the second power bill is to prepare the CCs to understand and be familiarized as to how its power bill will transition from its current state to the competitive billing system.

As regards the billing of a RES to CC, the ERC shall ensure that there are no double charges particularly on the approved administrative charges due to the DU to compensate its administrative expenses in contracting for the supply of electricity to serve its captive customers prior to the RCOA implementation. The transmission and distribution wheeling rates, including pass-through charges shall be publicly disclosed and posted in the DOE, ERC, and PEMC websites for the guidance and information of all CCs.

Towards this end, all DUs shall submit to the DOE its monthly summary schedule of rates not later than ten (10) days after the reference month.

Section 4. Regulatory Support. The ERC shall issue guidelines and parameters on the determination of superior offer by the

RES. As such, in cases of disputes arising in determining the superiority of the package being offered by the new RES, the matter shall be referred to and decided by the ERC.

Section 5. Repealing Clause. Except insofar as may be manifestly inconsistent herewith, nothing in this Circular shall be construed as to repeal any of the mechanism already existing or responsibilities already provided for under existing rules.

Section 6. Separability Clause. If for any reason, any section or provision of this Circular is declared unconstitutional or invalid, such parts not affected shall remain in full force and effect.

Section 7. Effectivity. This Circular shall take effect fifteen (15) days following its publication in at least two (2) newspapers of general circulation and shall remain in effect until otherwise revoked.

Issued this 2 July 2013 in Energy Center, Bonifacio Global City, Taguig City.

(sgd) **CARLOS JERICO L. PETILLA**
Secretary

DEPARTMENT CIRCULAR NO. DC2013-07-0014

PROMULGATING THE RETAIL MARKET MANUAL FOR THE IMPLEMENTATION OF RETAIL COMPETITION AND OPEN ACCESS AND PROVIDING FOR TRANSITORY ARRANGEMENTS

WHEREAS, in Section 37 of the Republic Act No. 9136, otherwise known as “The Electric Power Industry Reform Act of 2001” (the *Act*), the Department of Energy (DOE) is mandated, among others, 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 the Act;

WHEREAS, on 06 June 2011, the Energy Regulatory Commission (ERC) through Resolution No. 10 Series of 2011, certified that the five (5) pre-conditions for the implementation of retail Competition and Open Access as provided in Section 31 of the EPIRA have already been met;

WHEREAS, in preparation for the implementation of Retail Competition and Open Access (RCOA), the DOE:

- a. Conducted a series of public consultations and focus group discussions with qualified customers in the Contestable Market, Suppliers, other relevant stakeholders of electric power industry and government agencies aimed at soliciting comments on the draft implementing rules and guidelines as well as identifying specific areas of concerns that requires formulation of policy; and
- b. Following the public consultations and focus group discussions, promulgated the prescribed policies (collectively "*Prescribed Policies*") that will govern the implementation of Retail Competition and Open Access through Department Circular (DC) No. 2012-05-0005 dated 09 May 2012 entitled "*Prescribing the General Policies for the Implementation of Retail Competition and Open Access*" and DC No. 2012-11-0010 dated 28 November 2012, entitled "*Providing for Additional Guidelines and Implementing Policies for Retail Competition and Open Access and Amending Department Circular No. (DC 2012-05-0005 entitled "Prescribing the General Policies for the Implementation of the Retail Competition and Open Access"*";

WHEREAS, the ERC promulgated on 17 December 2012 the "Transitory Rules for the Initial Implementation of Open Access and Retail Competition" and published the same in the ERC website at www.erc.gov.ph on 21 December 2012;

WHEREAS, consistent with the above cited policies and rules, the DOE spearheaded the formulation of the *Rules for the Integration of Retail Competition and Open Access in the Wholesale Electricity Spot Market (the Retail Rules)*;

WHEREAS, following the series of public consultations with stakeholders of the electric power industry, the DOE promulgated the Rules for the Integration of Retail Competition and Open Access in the Wholesale Electricity market or the Retail Rules through DC No. 2013-01-0002 dated 09 January 2013, entitled "*Promulgating the Retail Rules for the Integration of Retail Competition and Open Access in the Wholesale Electricity Spot Market*";

WHEREAS, pursuant to the Retail Rules, the *Central Registration Body* (CRB) drafted the necessary Market Manuals containing the criteria, guidelines and procedures for i) the registration of participants in the retail market; ii) market transactions procedures; iii) disclosure and confidentiality of Contestable Customer Information; and iv) metering standards and procedures for the Retail Market.

WHEREAS, the draft Market Manuals were published on 1-8 February 2013 in the DOE website at www.doe.gov.ph to further solicit comments. Views and suggestions from the stakeholders of the electric power industry; Said deadline was extended as requested by some stakeholders;

WHEREAS, the DOE received comments and suggestions from the following:

- Distribution Management Committee
- Manila Electric Company (MERALCO)
- Retail Electricity Suppliers Association of the Philippines
- Batangas Electric Cooperative II, Inc.
- MPOWER (MERALCO Local RES)
- Kratos RES, Inc.

- National Grid Corporation of the Philippines
- National Power Corporation
- Philippine National Bank
- Aichi Forging Company

WHEREAS, the proposed Market Manuals were then revised and finalized based on the comments, views and suggestions solicited from the stakeholders;

NOW THEREFORE, pursuant to its mandate under the Act, the DOE hereby issues, adopts and promulgates the following:

Section 1. Approval and Adoption of Market Manuals. Inconsideration of the foregoing, the Manuals listed below and presented as Annexes to this Circular are hereby approved and adopted.

- Annex A – Retail Manual on Registration Criteria and procedures*
- Annex B – Retail manual on Market Transactions Procedures*
- Annex C – Retail Manual on Disclosure and Confidentiality of Contestable Customer Information*
- Annex D – Retail Manual on Metering Standards and Procedures.*

Section 2. Transitory Provision.

Notwithstanding the timetables provided for in the Retail Manual on Registration Criteria and Procedures and the Retail Manual on Metering Standards and Procedures, it is hereby provided that –

- Contestable Customers* that applied for registration or whose applications for registration were submitted prior to the commencement of the Commercial Operation of Retail Competition and Open Access on 26 June 2013 (“*Commencement date*”) but were unable to submit any of

the following: Retail Supply Contracts, Load Profile and Distribution Wheeling and Metering Services Agreement prior to said Commencement Date shall be registered by the *Central Registration Body*. It is provided, however, that the said requirement must be complied with to the satisfaction of the *Central Registration Body* no later than ninety (90) days from the promulgation of this Circular. In the event of non-compliance, the non-complying *Contestable Customer* shall be suspended by the *Central Registration Body* in accordance with the *Retail Rules* and the *Retail Manual on Registration Criteria and Procedures*.

- Pursuant to the *Retail Manual on Metering Standards and Procedures*, all *Retail Metering Services Providers* shall provide the *Central Registration Body* with the metering data of all *Contestable Customers* being served by them on the following trading day. It is provided, however, that in cases of incomplete or erroneous metering data, the relevant *Retail Metering Services Provider* shall be allowed to submit the completed or corrected meter data no later than three (3) days after the end of the relevant billing period. It is provided, furthermore, that this arrangement shall be allowed only for the first three (3) billing periods from the Commencement Date. Thereafter, all *Retail Metering Services Providers* shall strictly comply with the timetable and procedures for submission of metering data provided for in the *Retail Manual on Metering Standards and Procedures*.
- Bilateral contract quantities in favor of *Contestable Customers* that the contract counterparties wish to be accounted for in the settlements of the *Wholesale Electricity Spot Market* transactions shall be declared to the *Market Operator* after each *trading day*. It is provided, however, that the relevant *Trading Participant* that declared the bilateral contract quantities

may review its daily declarations and submit corrected declarations no later than three (3) days from the end of each billing period. It is provided, furthermore, that this arrangement shall be allowed only for the first three (3) billing periods from the Commencement Date. Thereafter, all relevant *Trading Participants* shall strictly comply with the timetable for declaration of bilateral contract quantities.

Section 3. Separability Clause. If for any reason, any section or provision of this Circular or the attached manuals and Annexes

is declared unconstitutional or invalid, such parts not affected shall remain in full force and effect.

Section 4. Effectivity. This Circular shall take effect immediately following its publication in at least two (2) newspapers of general circulation.

Signed this 9th day of July 2013 in Fort Bonifacio, Taguig City, Metro Manila.

(sgd) **CARLOS JERICO L. PETILLA**
Secretary

DEPARTMENT CIRCULAR NO. DC2013-08-0019

IMPLEMENTING RULES AND REGULATIONS FOR THE MINDANAO MODULAR GENERATOR PROGRAM

Pursuant to Section 5 of Executive Order No. (EO) 137, Series of 2013, “The Mindanao Modular Generator Sets (Gensets) Program,” herein after referred to as “the Program,” the Department of Energy (DOE) in coordination with the Mindanao Development Authority (MinDA) and the Mindanao Power Monitoring Committee (MPMC) hereby issues, adopts and promulgates the following implementing rules and regulations for the effective and efficient implementation of the Program.

RULE I.

GENERAL PROVISIONS

Section 1. Title. These rules and regulations shall be referred to as the “Implementing Rules and Regulations (IRR) of the Program.”

Section 2. Coverage. This IRR shall provide for the guidelines in the implementation of the Program.

Section 3. Definition of Terms. For the purpose of this IRR, the following terms are defined as follows:

- a. “AMRECO” refers to the Association of Mindanao Electric Cooperatives;
- b. “BTr” refers to the Bureau of Treasury;
- c. “COA” refers to the Commission on Audit;
- d. “DBM” refers to the Department of Budget and Management;
- e. “DOE” refers to the Department of Energy;
- f. “EC” refers to an electric cooperative;
- g. “ERC” refers to the Energy Regulatory Commission;
- h. “MinDA” refers to the Mindanao Development Authority;
- i. “MPMC” refers to the Mindanao Monitoring Committee;
- j. “NEA” refers to the National Electrification Administration;
- k. “OP” refers to the Office of the President;
- l. “Program” refers to the Mindanao Modular Generator Sets (Gensets) Program;

RULE II.
MINDANAO MODULAR GENERATOR
PROGRAM

Section 4. Program Description. The Program is intended to provide and immediate relief or an alternative measure to supply the needed power in each of the franchised areas if ECs in Mindanao while power generation projects are still under various development stages. Under the Program, the EC managements have the options to eventually retain the generator sets or return the generator sets to the Government when the power supply situation in Mindanao have stabilized due to entry of new power generation projects.

Section 5. Fund Sourcing. The funding of FOUR BILLION FIVE HUNDRED MILLION PESOS (4,500,000,000.00) for the Program shall be sourced from the DOE-Special Account in the General Fund (SAGF)-151 specifically from Gas-Malampaya Revenue (Service Contract No. 38 - Malampaya), to be released to the NEA.

The DOF through the BTr shall provide the DOE with the certification of available fund collections under DOE SAGF-151 of Service Contract No.38 - Gas Malampaya Collection, copy furnished the DBM.

Section 6. Fund Release. The DBM shall approve the special budget submitted by the NEA though the DOE and release to the NEA the Special Allotment Release Order (SARO) and the corresponding Notice of Cash Allocation (NCA) to the schedule of availing EC of the Program.

The release of the NCA shall be based on the projected funding requirements stated in the Cash Program to be submitted by the NEA through the DOE requests of the NEA relative for the program will be expeditiously resolved by the DBM and BTr.

Section 7. Guidelines for the Program. Consistent with the Program's objectives of

providing and immediate short-term solution to the electricity requirements of Mindanao until new power plants come online by 2015, the NEA shall develop the following plans for the Program guided by the following:

- a. **For the Loan Facility.** The loan facility shall provide that:
 - i. Open to Mindanao ECs that decide to acquire modular generator sets or gensets;
 - ii. Low interest rate of six percent (6%) or less;
 - iii. Priority of fund release for those delivering modular gensets within three (3) months or less;
 - iv. Participating ECs must execute a Loan Agreement with the NEA: Provided, that the NEA shall have the templates of this agreements approved by the DOE;

b. **For the Acquisition of Modular Gensets.**

The NEA shall ensure that participating ECs observe the following:

- i. Participating ECs or AMRECO may resort to other methods of procurement apart from bidding: *Provided*, That such method shall meet the standards of competitive selection process of the NEA or the DOE; and
- ii. Fund release shall be directly made to the selected proponent if the availing EC;

For the purpose, the NEA shall require the presence of its representatives and that of the DOE, in the conduct of all processes relating to the acquisition of modular gensets by the participating ECs.

Section 8. Cost Recovery of the Gensets. All ECs that have availed of the Program shall be responsible for the operation and

maintenance of the gensets, either through a third party or by their own administration. The NEA shall assist the ECs in the preparation and filling of the petition before the Energy Commission (ERC) for the cost recovery.

Section 9. Guidelines for Disposal of Returned Gensets. The NEA shall develop a plan for The disposal of returned gensets: *Provided*, That priority shall be given to Small Power Utilities Group (SPUG) areas experiencing power service of six (6) hours or less, then SPUG areas experiencing power service of six (6) hours to twelve (12) hours: *Provided further*, That the NEA shall seek the approval of the DOE prior to any disposal of returned gensets: *Provided finally*: That the DOE may likewise direct the NEA to retain the returned gensets for purpose of energy security.

RULE III.

OTHER PROVISIONS

Section 10. Reportorial Requirement. The NEA shall submit a quarterly report of the implementation of the Program that among other contains the following information:

- a. Details on the Beneficiaries;
- b. Amounts of Actual Use and Disbursements; and
- c. Such Information, that may be requires by the COA and DOE.

The quarterly report shall be submitted to the DOE on or before the twentieth day (20th)

for the period covering the preceding month for transmittal to the Office of the President, copy furnished the MinDA.

Section 11. Information, Education and Communication Activities to Stakeholders.

The DOE, through the NEA shall develop and implement an intensive and massive information, education and communication (IEC) that are designed to increase the public awareness of the impact of the Program to the public.

Section 12. Separability Clause. If any provisions if this Circular is declared unconstitutional, the remainder of this Circular or the provisions not otherwise affected shall remain valid and subsisting.

Section 13. Repealing Clause. Any Department Circular or issuance, contrary to or inconsistent with this IRR is hereby repealed, modified or amended accordingly.

Section 14. Effectivity. This Circular shall take effect fifteen (15) days after its publication in at least two (2) newspaper of general circulation.

Issued at the Energy Center, Rizal Drive, Bonifacio Global City, Taguig City.

(sgd) **CARLOS JERICO L. PETILLA**
Secretary

August 5, 2013

DEPARTMENT CIRCULAR NO. DC2013-10-0026

ENJOINING THE RELEVANT GOVERNMENT AGENCIES, THE NATIONAL GRID CORPORATION OF THE PHILIPPINES (NGCP) AND ELECTRIC POWER INDUSTRY PARTICIPANTS TO ENSURE CONTINUOUS POWER SUPPLY IN THE COUNTRY BEFORE, DURING, AND AFTER THE 28 OCTOBER 2013 BARANGAY ELECTION

WHEREAS, it is the policy of the State to ensure the reliability, quality and security of supply of electric power;

WHEREAS, Republic Act No. 9166 or the “Electric Industry Reform Act of 2001” (EPIRA) mandates the Department of Energy (DOE) mandated to provide a mechanism for the integration, realization, and coordination of the various activities to carry out the energy policy of the State;

WHEREAS, the Commission on Elections (COMELEC), pursuant to the powers vested in it by the Constitution, the Omnibus Election Code, and other related election laws, has prescribed the rules and procedures to ensure the holding of a free, orderly honest, peaceful and credible barangay election on 28 October 2013;

WHEREAS, the COMELEC Resolution No. 9036, promulgated on September 2013 deputized the DOE in connection with the barangay election; and

WHEREAS, as part of its mandate, the DOE deems it necessary to adopt measures to ensure provision of stable and continuous supply of power during the barangay election for the period of 21 October to 04 November 2013.

NOW THEREFORE, the DOE, in support to the government’s aim of holding a successful barangay election, declares as follows:

Section 1. Scope and Application. This Circular shall apply to the following:

- (a) National Grid Corporation of the Philippines (NGCP);
- (b) National Electric Administration (NEA)
- (c) National Power Corporation (NPC) and its Small Power Utilities Group (SPUG);
- (d) Power Sector Assets and Liabilities Management Corporation (PSALM);
- (e) All Power Generation Companies; and
- (f) All Distribution Utilities.

Section 2. General Responsibilities. Pursuant to the objectives and general mandates and functions under the EPIRA and its implementing Rules and Regulations, the Philippine Grid Code (PGC), the Philippine Distribution Code (PDC), and other relevant laws, rules and issuances, the abovementioned agencies and electric power industry participants are hereby enjoined to extend their full support to ensure the provision of continuous and adequate supply of electric power before, during and after the 28 October 2013 Barangay Election.

Section 3. Reporting Requirement. For the purposes of compliance with the directives under this Circular, NGCP, NEA, NPC-SPUG, PSALM and other electric power industry participants are required to submit to the Office of the Undersecretary for Power and the Director of the Electric Power Industry Management Bureau, accurate hourly reports on the Power situation during the 28 October 2013 Barangay Election.

Section 4. Logistics and Budgetary Requirement. The Expenses to be incurred by the herein agencies in the performance

of the responsibilities shall be charged to the respective accounts of the concerned agencies/entities.

Section 5. Affectivity Period. This Circular shall take effect fifteen (15) days upon its publication in a newspaper of general circulation and filing with the University of the Philippines Law Center, Office of the

National Administrative Register.

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

(sgd) **CARLOS JERICHO L. PETILLA**
Secretary

October 9, 2013

DEPARTMENT CIRCULAR NO. DC 2013-05-0006

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 private and public 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 the 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 interfere 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 behavior. For this purpose, the above participants are prohibited from exercising abuse of market power and engaging in any anti-competitive behavior.
 1. For the purposes of uniformity and guidance in the submission of compliance reports, refer to “Annexes A-1” (Power Generation Companies) and “A-

2" (Suppliers and Local Suppliers) of this Circular.

b. For Suppliers and Local Suppliers:

- i. Submit pertinent information for the monitoring and evaluation of the progress of RCOA implementation, including but not limited to, supply portfolio, list of CCs, contact levels and duration, price ranges and other documentary requirements as may be required by DOE, ERC and PEMC;
- ii. Conduct business in a fair and transparent manner by providing the CCs the reasons for any refusal to provide retail supply services. This shall be done in writing by the WCO or the duly designated focal person identified under Section 1(a)(i) hereof. A declaration of insufficient capacity shall not be considered a valid reason for refusal to provide retail electricity services unless the DOE certified that the Supplier or Local Supplier concerned is deemed no longer capable, at the time of such declaration was made, to serve the current and any additional requirements of the CCs;
- iii. Engage in negotiations with CCs to ensure customer choice and protection; and
- iv. Provide the CCs pertinent and truthful information including but not limited to contact details, coverage of the services offered, duration of the RSC, the manner by which the prices are determined and the actual or price ranges in Philippine Peso per kWh. Such information shall likewise be submitted to the DOE and published in their respective websites.

c. For Distribution Utilities

- i. Provide services and perform its obligations in a non-discriminative manner over its franchise area.
- ii. Submit quarterly report to the DOE on the development of contestability within its franchise area.
- iii. Submit to DOE, a quarterly operational report, detailing among others, the segregated sales to Captive and CCs within each franchise area, and activities undertaken as the default Suppliers of last Resort (SOLR).

For purposes of uniformity and guidance in the submission of compliance reports, refer to "Annex B" of this Circular.

Section 2. Additional Responsibilities of the Philippine Electricity market Corporation. In addition to its responsibilities provided for under DOE Circular No. 2012-02-0002 and in pursuit of its role as Central Registration Body, the PEMC shall undertake the following, but not limited to:

- a) Monitor and submit a monthly report to the DOE and the ERC detailing the registration status including a list of Suppliers with their counterparty CCs.
- b) Submit Issues Paper to the DOE on a quarterly basis, to include among others, proposed policy actions necessary to enhance implementation of a truly competitive and efficient integrated wholesale and retail supply.
- c) Undertake a training program, for the focal persons identified in Section 1(a)(i) above.

Section 3. Regulatory Intervention. As mandated under Section 43 (k) and 45 of the EPIRA, the ERC shall enforce all policies and determine regulatory actions necessary to

facilitate provision of a competitive electricity industry environment and to mitigate any potential abuse of market power and anti-competitive behavior between and among market participants, including but not limited to, any contingency measures to ensure sufficient protection of the Captive and CCs.

Section 4. Compliance Monitoring. To ensure that all the information requirements and all other reportorial requirements prescribed in this Circular is complied with, the DOE, through the Electric Power Industry Management Bureau (EPIMB), shall submit a quarterly report to the DOE Secretary, copy furnish the ERC Chairperson for proper courses of action on the needed policies and regulatory actions including any remedial or punitive or disciplinary actions for non-compliance of any electric power industry participant.

Section 5. Penalty Clause. Failure of any Generation Company, Supplier or Local Supplier to comply with their obligations set forth in this Circular shall 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 6. Repealing Clause. Except insofar as may be manifestly inconsistent herewith, nothing in this Circular shall be construed as to repeal any of the mechanism already existing or responsibilities already provided for under existing rules.

Section 8. Effectivity. This Circular shall take effect fifteen (15) days following its publication in at least two (2) newspapers of general circulation and shall remain in effect until otherwise revoked.

Issued this 6th day of May 2013 in Energy Center, Rizal Drive, Bonifacio Global City, Taguig City.

(sgd) **CARLOS JERICO L. PETILLA**
Secretary

DEPARTMENT CIRCULAR NO. DC 2014-01-0002

AMENDING CERTAIN PROVISIONS OF DEPARTMENT CIRCULAR NO. DC 2013-07-0015 OR THE IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 10531 OTHERWISE KNOWN AS THE NATIONAL ELECTRIFICATION REFORM ACT OF 2013

WHEREAS, Section 16 of Republic Act No. (R.A.) 10531, otherwise known as the “National Electrification Administration (NEA) Reform Act of 2013” provides that the Department of Energy (DOE) is tasked to formulate the rules and regulations IRR);

WHEREAS, on 29 July 2013, pursuant to the said mandate, the DOE issued Department Circular No. DC-2013-07-0015 or the “Implementing Rules and Regulations of the Republic Act No. 10531” which took effect on 13 August 2013;

WHEREAS, the Department of Energy (DOE) and the NEA have received requests for the interpretation of some provisions of the NEA Reform Act of 2013 and its Implementing Rules and Regulations; and

WHEREAS, under existing laws and jurisprudence, the Implementing Rules and Regulations may be amended in pursuit to clarify and carry out the objectives of the law;

NOW THEREFORE, pursuant to its authority under the R.A. 10531, the DOE hereby issues, adopts and promulgates the following amendments to Department Circular No. 2013-07-0015:

Section 1. Amendments to the IRR of RA 10531. The following provisions are hereby amended as follows:

- a. Paragraph i. of e) of Section 14 of Rule III is hereby amended to read -

RULE III.

ELECTRIC COOPERATIVES

xxx xxx xxx

Section 14. Qualifications of a Director and Officer.

xxx xxx xxx

e) He or she is a member of the EC in good standing for the last five (5) years immediately preceding the election or appointment and shall continue to be a member in good standing during his or her incumbency;

For purpose of this IRR, a member of good standing shall mean that said member:

- i. must have no unsettled or outstanding obligations to the cooperative during his membership in the cooperative whether personal or through commercial or industrial connections of which he or she is the owner/ co-owner;

An unsettled or outstanding obligation is an account which has not been paid within seven (7) days after the due date. For the purpose of this subsection, “due date” shall refer to the date of receipt of the obligation: **Provided, That in the case of power bills, it shall refer to the ninth (9th) day reckoned from receipt thereof.**

For incumbent members of the EC Board who will seek re-election, unsettled or outstanding obligation shall be deemed to include power bills, cash advances, disallowances (including NEA audit findings) and materials and equipment issuances. At any given time during his membership in the cooperative, he or she must be totally free of any unsettled or outstanding obligations and/or disallowances with the EC.

(Amendments in **bold**)

- b. Section 16 of Rule III is hereby amended to read -

RULE III.

ELECTRIC COOPERATIVES

xxx xxx xxxx

Section 16. Continuing Qualifications Requirement. To ensure that the management and operations of the ECS are carried out with due regard to its economic viability, the NEA shall prescribe, pass upon and review the qualifications and disqualifications of individuals appointed or elected as EC director or officer and disqualify those found unfit.

An EC director or officer, in order to remain as such, must continue to An EC Director or officer in order to remain as such, must continue to possess all the qualifications and none of the disqualifications throughout his/her term or tenure of office. **To this end, no EC Director shall be allowed to stay in office in a hold-over capacity if he/she fails to meet all the qualifications or is deemed disqualified under the two (2) preceding sections.**

(Amendments in **bold**)

The foregoing continuing qualifications shall not apply to the following:

- a) General Manager; and
- b) Project Supervisor and/or Independent Director.

xxx

- c) Paragraph I, Subsection d) of Section 23, Rule V is hereby amended to read -

xxx xxx xxx

RULE V.

CONVERSION OF ELECTRIC COOPERATIVES

xxx xxx xxx

Section 23. Conversion Guidelines.

xxx xxx

d) In the conduct of consultations, the EC shall comply with the following:

- i. Notice of Membership Meeting. At least ten (10) days before the scheduled consultation/meeting, all bona fide member-consumers in the shall be notified through print and broadcast media.

In addition, the complete information on the said consultation/ meeting **shall be posted in conspicuous places, such as but not limited to the municipal and barangay halls, churches, public markets within the district, and mailed to all the local chief executives including barangay chairmen in the said locality.** (Amendments in **bold**)

xxx xxx xxx

d. Paragraph iii, Subsection (d) of Section 23, Rule V is hereby amended to read -

xxx xxx xxx

RULE V.

CONVERSION OF ELECTRIC COOPERATIVES

xxx xxx xxx

Section 23. Conversion Guidelines.

xxx xxx xxx

d) In the conduct of consultations, the EC shall comply with the following:

xxx xxx xxx

iii. Required Number of Votes for Conversion. **The plurality of the total votes of the bona fide member-consumers attending the said meeting shall be considered a valid decision for conversion.** (Amendments in **bold**)

xxx xxx xxx

e. Paragraph v, Subsection d) of Section 23, Rule V is hereby amended to read -

xxx xxx xxx

RULE V.

CONVERSION OF ELECTRIC COOPERATIVES

xxx xxx xxx

Section 23. Conversion Guidelines.

xxx xxx xxx

d) In the conduct of consultations, the EC shall comply with the following:

xxx xxx xxx

v. Over-all Decision. The final decision on the issue on conversion, on whether or not the EC will convert, shall be based on the **plurality** of the total votes cast, as culled from the result of the general assembly, or the cumulative result of the district meetings, as the case may be; *Provided*, That the conduct of referendum may only be conducted ten (10) years from the last conducted referendum. (Amendments in **bold**)

xxx xxx xxx

f. A new Section 25-A is hereby inserted in place of the last two paragraphs of Section 25, Rule V as follows -

xxx xxx xxx

RULE V.

CONVERSION OF ELECTRIC COOPERATIVES

xxx xxx xxx

Section 25. Conversion Procedure and/or Mechanics.

xxx xxx xxx

For the purpose of the foregoing, a bona fide member-consumer shall refer to a person who is a member-consumer in good standing who has met all the requirements set within the context of the ECS by-laws and has been listed/ included in the Master list of voters, to have voting rights, under the one-member, one vote policy of the EC.

Section 25-A- **Period for the Conduct of Referendum. Within two (2) years from publication hereof**, the NEA shall cause the conduct of all

remaining non-stock ECS and the ECS shall have decided and issued a Board Resolution on options to:

- a) Remain as non-stock, non-profit EC;
- b) Convert into stock cooperative under the CDA; or
- c) Convert into stock corporation under the SEC.

For monitoring purposes, the NEA shall submit to the DOE a quarterly report detailing the progress of the registration. (Amendments in bold)

xxx xxx xxx

Section 2. Separability Clause. If any provision of this Circular is declared invalid or unconstitutional, the other provisions not affected thereby shall remain valid and subsisting.

Section 3. Effectivity. These amendments shall take effect immediately from its publication in at least two newspapers of general circulation and shall remain in effect until otherwise revoked.

Issued in Energy Center, Bonifacio Global City, Taguig City on 08 January 2014.

(sgd) **CARLOS JERICO L. PETILLA**
Secretary

DEPARTMENT CIRCULAR NO. DC 2014-03-0006

DIRECTING THE OPERATION OF ALL EXISTING GENERATION CAPACITIES IN THE MINDANAO GRID

WHEREAS, Republic Act No. 9136 otherwise known as the “Electric Power Industry Reform Act of 2001” (EPIRA) declares as policy of the State, among others, to ensure the quality, reliability, security and affordability of the supply of electric power,

WHEREAS, pursuant to Section 37 of the EPIRA, the Department of Energy (DOE) is mandated to supervise the restructuring of the electric power industry as well as among other things, to:

- (a) Formulate policies for the planning and implementation of a comprehensive program for the efficient supply and economical use of energy consistent with the approved national economic plan and with the policies on environmental protection and conservation and maintenance of ecological balance, and provide a mechanism for the integration, rationalization, and coordination of

the various energy programs of the Government;

- (b) Ensure the reliability, quality and security of supply of electric power;
- (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; and
- (d) Exercise such other powers, formulate rules and regulations as may be necessary to implement and attain the objectives of the EPIRA.

WHEREAS, on 27 February 2014, a significant event triggered a total Mindanao system collapse and thereafter resulted to a reduced power supply capability and recorded on the

average an aggregate outage of 2-8 hours for most of the DUS in the region;

WHEREAS, in the coming summer months, it is expected that there will be tight supply situation in the Mindanao Grid due to increase in the demand for electricity along with lower generation output from hydroelectric power plants thus, the need to bring out and make use of available generating units most particularly from the embedded generators and/ or standby facilities of large electricity end-users;

WHEREAS, based on previous coordination with electricity end-users owning and operating standby generating facilities, concerns have been raised on the applicability of the current Certificate of Compliances (COCs); and

WHEREAS, based on the survey of the DOE, and as reconciled with the records of the Energy Regulatory Commission (ERC), there is approximately 400 MW of generating capacities from embedded generators and standby generating units in Mindanao, which may still be made available to address the supply deficit in the grid.

NOW, THEREFORE, for and in consideration of the foregoing premises, the DOE, consistent with its mandate under EPIRA, hereby declares as follows:

Section 1. Making All Generation Units Available for Use. Pursuant to the provisions of the EPIRA to ensure adequate supply of electricity in the Mindanao Grid, all existing generation companies including embedded generators and owners and operators of standby generating facilities, shall make available their generating units to augment the power supply in the Grid.

For this purpose, electricity end-users owning and operating standby generation facilities, shall apply before the ERC for a change of the COC category to cover the commercial and

transactional requirements to trade available capacities for use of the Grid: Provided, That these generation facilities may make their capacities immediately available to the Grid upon the effectivity of this Circular: Provided further, That in recognition of the need to provide reasonable cost recovery for the operation of these generating units, in the interim the suggested provisional rate for such capacities may be the latest ERC-approved rates for similarly situated generation facilities such as those under the Interruptible Load Program (ILP) or the Interim Mindanao Electricity Market (IMEM) Rules: Provided finally, That the final compensation for the generated output and the final rates to be charged shall be approved by the ERC.

Section 2. Additional Responsibilities of Relevant Agencies. To ensure efficient implementation of this Circular, the following are hereby directed to undertake the following:

- (a) The National Grid Corporation of the Philippines (NGCP) shall coordinate the efficient dispatch of capacities taking into consideration the additional power generation from all sources.
- (b) DUS shall ensure the integration and coordination of all available supply options within their respective service areas through any or all of the following initiatives:
 - i. Implement existing arrangements under the ILP;
 - ii. Encourage all electricity end-users with standby generating units to implement provision of the Voluntary Load Curtailment, as prescribed in the IMEM Rules.
 - iii. Trigger the use of contracted embedded generation facilities.

All DUS are encouraged to implement and intensify campaign on energy efficiency and conservation measures to manage electricity demand particularly during peak hours of the day.

Section 3. Regulatory Support. The ERC shall ensure the provision of support in the regulatory requirements of this Circular as required under Section 1 of this Circular.

Section 4. 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 5. Separability Clause. If for any reason, any section or provision of this Circular is declared unconstitutional or invalid, such parts not affected shall remain in full force and effect.

Section 6. Effectivity. This Circular shall take effect immediately upon its publication in at least two (2) newspaper of general circulation and shall remain in effect until otherwise revoked.

Issued at Energy Center, Bonifacio Global City, Taguig City. 04 March 2014.

(sgd) **CARLOS JERICO L. PETILLA**
Secretary

DEPARTMENT CIRCULAR NO. DC 2014-07-0011

AMENDING SECTION 2, ITEM (A) OF DEPARTMENT CIRCULAR DC2009-01-0001

WHEREAS, Section 2 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA) has declared among others, that it is the policy of the State to ensure reliability, quality and security of supply of electric power;

WHEREAS, the Department of Energy (DOE) issued DC-2009-01-0001 dated 16 January 2009 directing DOE attached agencies, all electric power industry participants, consumers and various stakeholders to adopt and implement contingency measure to ensure adequate and reliable electric power supply in Visayas Grid particularly in the islands of Cebu, Negros and Panay.

WHEREAS, since the issuance of DC-2009-01-0001 new generating capacities have come on stream and the power supply condition in the Visayas Grid has greatly improved;

WHEREAS, the DOE has received a request from the National Grid Corporation of

the Philippines (NGCP) requesting for the relaxation of Section 2, item (a) of DC2009-01-0001 and allow for the performance systems tests and Ancillary Services Certification (ASC) during weekdays; and

WHEREAS, after review and evaluation, the DOE has determined that it is to the benefit of the Visayas Grid that ASC testing be conducted whenever necessary.

NOW THEREFORE, for and in consideration of the above premises, the DOE hereby issues this Circular.

Section 1. Amendment of Section 2, item (a) of DC-2009-01-0001. Section 2, item 2 (a) on the Responsibilities of the NGCP is hereby amended to read as,

- (a) Notify the DOE 7-days prior to the implementation of maintenance of major transmission line/s and substation equipment that will

add to the load limitation to generating plant/ unit and the performance of ASC.

xxx xxx xxx

Section 2. Effectivity. This Circular shall take into effect fifteen (15) days from its publication in at least two (2) newspapers of general circulation and shall remain in effect until otherwise revoked.

Done this 01 July 2014, Energy Center, Bonifacio Global City, Taguig City.

(sgd) **CARLOS JERICO L. PETILLA**
Secretary

DEPARTMENT CIRCULAR NO. DC2014-07-0012

ACCELERATING HOUSEHOLD ELECTRIFICATION IN OFF-GRID AND ISOLATED AREAS THROUGH ELECTRICITY SUPPLY BY REGULATED SOLAR HOME SYSTEMS

WHEREAS, Section 2 of Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001” or “EPIRA,” declares the policy of the State to ensure and accelerate the total electrification of the country as well as to ensure the quality, reliability, security and affordability of the supply of electric power;

WHEREAS, Section 23 of the EPIRA states that the Distribution Utilities (DUs) shall provide universal service within their franchise area, over a reasonable time from the requirement thereof, including unviable areas, as part of their social obligation, in a manner that shall sustain the economic viability of the utility, subject of the approval of the Energy Regulatory Commission (ERC), in the case of private or government-owned utilities;

WHEREAS, Section 4(f) of Rule 7 of the Implementing Rules and Regulations of EPIRA (EPIRAIRR) provides that in order to meet its universal service obligation, a Distribution Utility is allowed to collect different rates, subject to the approval of the ERC, in order to sustain its economic viability;

WHEREAS, Republic Act No. 10531, also known as the “National Electrification Administration

(NEA) Reform Act of 2013,” declares the policy of the State to promote the sustainable development of the rural areas through rural electrification, and further mandates NEA to pursue total electrification of the country through the Electric Cooperatives (ECs) by way of enhancing distribution development and to ensure their economic and financial viability and operation, among others;

WHEREAS, in pursuance of the above declared policies of the State, the Government, through the Department of Energy (DOE), has formulated the Household Electrification Development Plan (HEDP), which aims to identify the strategies, programs and projects that will help accelerate the attainment of ninetypercent (90%) household electrification by 2017;

WHEREAS, to achieve the goals of the HEDP, the DOE in partnership with NEA and other government agencies and industry stakeholders, has committed to implement the household electrification program of the Government in a holistic and sustainable manner, which includes among others, intensification program in energized areas, sitio electrification program, opening up areas that the Distribution Utilities cannot

serve to alternative electric service providers such as qualified third parties, among others;

WHEREAS, Republic Act No. 9513, otherwise known as the “Renewable Energy Act of 2008,” or “RE Act,” declares the policy of the State to increase the utilization of renewable energy (RE) resources, such as, but not limited to, solar, wind, hydropower, geothermal, and ocean energy sources, and including hybrid system by institutionalizing the development of national and local capabilities in the use of RE systems, and promoting its efficient and cost-effective commercial application by providing fiscal incentives;

WHEREAS, the DOE considers Solar Photovoltaic (PV) to be cost-effective and environment friendly technology in providing electricity services and other community services to sparsely populated, remote, unserved and dispersed areas;

WHEREAS, there are various projects that have been and currently being implemented using solar PV systems to provide electricity services to sparsely populated, remote, unserved, and dispersed markets that do not give due consideration to economic efficiency, financial prudence, and institutional capacity;

WHEREAS, the DOE has established an alternative program that provides suitable framework and incentives to DI’s to implement innovative service delivery mechanism for rural electrification using solar PV systems in dispersed households and communities, the brief description of which is herein attached as Annex A;

WHEREAS, to ensure the effective implementation of the solar PV projects in an integrated and sustainable manner, there is an imperative need to rationalize the determination of end-user fees and the grant of subsidies to electrification projects using solar PV systems;

NOW, THEREFORE, in consideration of the foregoing premises, the DOE hereby issues the following policies:

Section 1: Scope of Coverage.

This Circular shall apply to DOE, NEA, the Small Power Utilities Group of National Power Corporation (NPC-SPUG) and other governmental entities and DUS as part of the household intensification program.

Section 2: Definition of Terms.

As used in this Circular, the following terms shall have the following meanings:

- (a) “Benchmark Tariff” refers to a tariff set on the basis of the expected costs of an efficient utility rather than the actual costs of any individual DU.
- (b) “Eligible Solar Home Systems” or “SHS” refers to at least 30 Wp capacity of a Solar Home System deemed to represent electrification of a household in accordance with this Circular.
- (c) “Fee-For-Service” refers to a fee the DU charges to the households for the use of SHS for their electric service.
- (d) “Output-Based Aid” refers to a subsidy paid based on performance against defined, measured and audited outputs.
- (e) “Regulated SHS Tariff” refers to a benchmark tariff approved by ERC for the supply of electricity by a DU through an eligible SHS.
- (f) “SHS Customers” refers to households supplied through an eligible SHS.

Section 3. Guiding Principles.

The following shall guide in the implementation of SHS electrification as part of the HEDP:

- (a) Supply to a household from an Eligible SHS shall be considered as electrification for purposes of determining achievement

of the household electrification target under the HEDP.

- (b) DUS shall adopt the use of SHS in areas where SHS is determined as the most economic means of electrification as provided for in their respective Distribution Development Plans (DDPs), and in full consideration of household electrification program of the country.
 - (c) For the First Year of implementing this Circular, the Eligible SHS shall be defined as a system of at least 30 Wp capacity. Thereafter, the capacity of Eligible SHS will be determined by the DOE annually.
 - (d) Areas to be electrified through Eligible SHS shall have been identified in Distribution Utility Development Plans (DDPs) of each DU.
 - (e) Households supplied through Eligible SHS shall be considered to have the same rights and responsibilities as grid-connected customers of DUS as provided for under the Magna Carta for Residential Electricity Consumers promulgated by the Energy Regulatory Commission (ERC), including, the right to become full member-consumers of that EC
 - (f) Ownership of the Eligible SHS shall remain with the DU, which shall have the right to remove the SHS without compensation in the event of non-payment by the household or where a replacement supply of equivalent or better quality is provided.
- (b) In principle, the “Fee-for-Service” tariff, duly approved by the ERC, shall allow the recovery of prudent and efficient costs of the DU in providing electricity service using Eligible SHS.
 - (c) The fees charged by a DU shall take the form of a regulated SHS tariff, duly approved by the ERC, in recognition of the following:
 - i. The SHS customers of DUS are paying a fee for electricity supply and should be treated equally with the grid-connected customers supplied on the same basis;
 - ii. The effective monopoly of the franchised DUS to provide electricity services and supply the SHS customers through eligible SHS; and
 - iii. The need to provide for legal certainty over the basis on which DUS may charge a fee for electricity service by SHS.
 - (d) The regulated SHS tariff will be set on a benchmark basis, based on the costs of a typical DU in providing electricity supply through SHS taking into account the different costs entailed by different topography and distances.
 - (e) The SHS tariff will be established by an application of one or more DUS and, once approved by ERC, shall apply to all DUS conducting electricity supply through this Circular.

Section 4. Fees for Electricity Supply by SHS.

- (a) All DUS providing electricity services through Eligible SHS shall collect based on a “Fee-for-Service,” to be determined by the ERC where the SHS customers shall be billed a monthly tariff in accordance with the electricity service provided.
- (f) DUS will be responsible for the procurement, installation and maintenance of the SHS including replacement of components, while SHS customers will be responsible for the replacement of appliances, such as electric lamps, that are connected to or supplied through the SHS.

Section 5. Subsidies for Electrification by SHS.

- (a) Consistent with the policy set forth in the EPIRA, there shall be no cross-subsidy between SHS customers and other customers served by the DU. However, SHS customers may be considered marginalized or lifeline customers and the distribution tariff of the DU shaft be determined considering SHS customers as customer block under lifeline tariff.
- (b) A capital subsidy covering full or part of the initial procurement and installation costs for eligible SHS will be provided to DUS through an Output-Based Aid Facility to be established for this purpose by DOE.
- (c) For the purpose of this Circular, an output-based subsidy refers to a mechanism where payment of subsidy to the DUS will be based on the actual number and the capacities of SHS installations to households in their franchise areas upon verification by a legitimate auditor to be appointed by the DOE or its representative entity.
- (d) The level of the subsidy shall be determined by DOE on an annual basis and will take account of the availability of funds and affordability of electricity service provided through SHS.

Section 6. Universal Charges.

SHS customers shall be exempted from Universal Charges imposed to grid-connected customers of the franchised DIJs.

Section 7. Provision of Electricity through Alternative Service Providers.

Consistent with Section 59 of the EPIRA-IRR, when a DU considers that it is unable to provide electricity service through SHS on a viable basis at the applicable regulated

tariff, that area shall be opened to alternative service providers also known as Qualified Third Parties (QTP);

- (a) With existing policy of the State to ensure and accelerate total electrification of the country, the selected QTP may be eligible for subsidies, subject to existing rules and regulations governing the provision of electricity services in missionary areas;
- (b) The regulated SHS tariff applicable to the area may be applied as the socially acceptable regulated rate (SARR) for the purposes of establishing the necessary UC-ME subsidy.

Section 8. Other SHS Installations.

- (a) DUS may provide electricity service using a SHS of greater capacity as defined under Section 3(c) of this Circular where a household prefers to be supplied by such a system.
- (b) In such cases, the DU shall be entitled to charge a premium on the regulated SHS tariff reflecting the additional costs of procuring, installing, maintaining and replacing components of such larger systems. This premium shall not be regulated and subjected to approval by ERC.
- (c) Households supplied through such larger systems shall be considered to be SHS customers and to be electrified by an eligible system for the purposes of this Circular.
- (d) Nothing in this Circular shall be considered to constrain the rights of PV suppliers other than DUS to install, sell or otherwise supply electricity through SHS excepting that such supplies will:
 - i. not be subject to the regulated SHS tariff;

- ii. not be eligible for capital subsidies administered by DOE as part of the household electrification program; and
- iii. not be counted for the purposes of assessing achievement of the household electrification target.

Section 9. Responsibilities of ECs.

Participating ECS under the DOE's Pilot PV Mainstreaming Program accredited under the Rural Power Project, shall file whether directly or through PHIL RECA or another representative organization, a petition with ERC for rule-making to establish a regulated SHS tariff within 45 days from the effectivity of this Circular.

Section 10. Repealing Clause.

All pertinent issuances, circulars and memoranda inconsistent with this Circular are hereby amended or repealed accordingly.

Section 11. Separability Clause.

If for any reason, any section or provisions of this Circular is declared unconstitutional or invalid, such parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

Section 12. Effectivity.

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

Issued this 3rd day of July 2014 in Fort Bonifacio, Taguig City, Metro Manila.

(sgd) **CARLOS JERICO L. PETILLA**
Secretary

ANNEX A

MAINSTREAMING SOLAR PV IN DISTRIBUTION UTILITIES USING THE FEE-FOR-SERVICE BUSINESS MODEL

I. INTRODUCTION

As of 30 June 2009, the country's electrification level at the barangay level¹ reached 98.03% having provided access to electricity services to some 41.155 barangays out of 41,980 potential/ listed barangays in the country. In line with the Government's thrust to achieve 100% barangay electrification, the electrification of the remaining 825 unelectrified barangays will have to be completed this year.

With the likely completion of electrification at the barangay level, the Government will soon be embarking upon the achievement of its secondary target, i.e., attainment of 90% household (HH) electrification by 2017. As of 31 May 2009, within the franchise areas of 119 Electric Cooperatives (ECs), 71% of total potential HH have been provided with electricity services. This means that approximately 3.4 million HH have yet to enjoy the benefits of electricity.

Based on the study DOE commissioned in - about 80% of HH in unelectrified barangays have income levels below the poverty threshold. Energy expenditures (lighting or power) account for about 6% of total household expenditures. Kerosene is the predominant lighting fuel of HH in unelectrified barangays.

To achieve 90% HH electrification level, the Government must first address the major issues and concerns in providing electricity in rural and missionary areas.

One of these is the development of viable business models for the off-grid electrification of remote rural households that are too not financially viable to be connected by grid extensions.

This Concept Paper maps out a strategy to increase access to electricity services and provide adequate, efficient and reliable power supply to HHs where grid connection is not a possible or viable option.

2. THE PROPOSED SCHEME

To meet the HH expansion target, there is a need to support and build capacity of the franchised DUs to engage in off-grid electrification. For many rural households in remote locations, grid extensions are prohibitively expensive, and for many of these HH individual solar PV systems are the least-cost electrification solution. Thus, a Pilot Project for Mainstreaming Solar PV in Distribution Utilities using the Fee-for-Service Business Model is now being introduced and promoted by DOE, through its Rural Power Project (RPP) - a collaboration between and among the DOE, World Bank (WB) and the Global Environment Facility (GEF). Distribution utilities (DUIs) may be private investor-owned or electric cooperatives (ECs) or even others.

3. RATIONALE

The major aim of the Pilot Project is to support the attainment of Government's target of 90% HH electrification by 2017 by developing and verifying a viable and sustainable business model for off-grid electrification for remote HH using individual PV systems.

¹ "Barangay Electrification" refers to: (i) for gridable areas, a barangay is considered energized/completed if the distribution line has reached the barangay proper, or at least one public facility or 50% of potential HHS are connected; (ii) for off-grid areas, a barangay is considered energized if at least 20 HHS have availed the services

To provide conventional electricity services to the remaining unelectrified areas will require extending the 240 V AC distribution lines to reach HHs. This solution increases the DU's distribution system losses and entails huge operating costs while only serving a handful of dispersed HHs that have low levels of

consumption, In such situations, the distribution utility can offer alternate supply through individual solar home systems (SHS) to the communities.

Table I below shows the different levels of energy output for different capacities of SHS after allowing for system losses.

Table 1. Typical Daily Energy Output for Different SHS Capacities

SHS Capacity, Wp	Daly Serve Output, Wh	Monthly Service Output, kWh
25	77	2.31
50	154	4.62
75	231	6.93

The loads that can be accommodated will depend on the daily service output of the PV system. The most basic 25 Wp SHS typically supports only lights and possibly a radio. Larger systems support more lights and appliances such as B&W TV, mobile phone charger and radio cassette karaoke. Table 2 shows typical loads that can be supported during a day based on SHS capacity.

Table 2. Typical Appliances and Lights Supported by SHS

SHS Capacity, Wp	Appliances and Lights									Total Wh per day
	Lights, 9W			Radio, 5W		Charger, 5W		B&W TV, 18W		
	Qty	Hrs	Wh	Hrs	Wh	Hrs	Wh	Hrs	Wh	
25	2	3	54	3	15	1	5			74
50	3	3	81	3	15	1	5	3	54	155
75	5	3	135	3	15	1	5	4	72	227

4. BUSINESS MODEL: FEE-FOR-SERVICE

In the Fee-for-Service business model, the DU invests in capital infrastructure, i.e., SHS, which are then installed in unelectrified HH within its franchised areas that are unviable for grid extension. The DU sells electricity (and not the hardware) to the HH at a fixed monthly fee.

The DU maintains the ownership of the hardware and is responsible for installation, maintenance, repair, and replacement of identified PV system components (PV module, battery, controller). The household will be responsible for the household wiring, lights (luminaires) and other 12 V DC loads.

The HH pays a Participation Fee, which is a one-time payment to the DU followed by a fixed Monthly Service Fee. The HH pays as long as the service is provided and sustained. The HH never becomes the owner of the SHS. The Participation Fee paid to the DU is utilized by the DU to procure and install house wiring, lights and switches.

The fees would vary with the level of service provided, (i.e., energy output from the system). The HH has the option to decide on the level of service that suits its consumption requirements

while having the capacity to pay the corresponding monthly fee, based on an agreement with the distribution utility.

As with grid extensions, the full true cost of off-grid electrification with PV technology IS not affordable to most of the unelectrified HHS. A pilot project is being developed with investment and operating subsidies that will ensure that: (i) the DUs receive true full costs for their off-grid PV based services, and (ii) that the PV customers pay affordable retail tariffs.

DEPARTMENT CIRCULAR NO. DC2014-09-0017

AMENDING CERTAIN PROVISIONS OF DEPARTMENT CIRCULAR NO. DC2013-07-0015 OR IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 10531 OTHERWISE KNOWN AS THE NATIONAL ELECTRIFICATION REFORM ACT OF 2013

WHEREAS, Section 16 of Republic Act No. (R-A.) 10531, otherwise known as the “National Electrification Administration (NEA) Reform Act of 2013” or “RA 10531” provides that the Department of Energy (DOE) is tasked to formulate the Implementing Rules and Regulations (IRR);

WHEREAS, Section 6 of RA 10531 provides that NEA is empowered to replace any or all of the members of the Board of Directors and Officers of the electric cooperative and appoint independent board of directors in the Electric Cooperative (EC), as the NEA may deem fit and necessary, to attain the objectives of RA 10531;

WHEREAS, on 29 July 2013, the DOE issued Department Circular No. DC-2013-07-0015 or the “Implementing Rules and Regulations of the Republic Act No. 10531” which took effect on 13 August 2013;

WHEREAS, on 08 January 2014, the DOE promulgated Department Circular

No. DC2014-01-0002, amending certain provisions of Department Circular No. DC2013-07-0015 concerning among others, qualifications and disqualifications of Board of Directors of an EC;

WHEREAS, since the passage of the amendment, the DOE and NEA has received requests for interpretation of some provisions of RA 10531 and its IRR particularly on the qualifications and disqualifications of the Board of Directors of an EC and it was reported that there remained a lack of qualified candidates to run in the election of Board of Directors and therefore may affect the governance and operations of the EC;

WHEREAS, on 21 July 2014, a public consultation with ECs was held on proposed amendments to clarify provisions of the NEA IRR to address the foregoing concerns; and

WHEREAS, under existing laws and jurisprudence, the Implementing Rules and Regulations may be amended in pursuit to

clarify and carry out the objectives of the law;

NOW THEREFORE, pursuant to its authority under the R.A. 10531, the DOE hereby issues, adopts and promulgates the following amendments to Department Circular No. 2013-07-0015:

Section 1. Amendments to the IRR of RA 10531. The following provisions are hereby amended as follows:

- a. Paragraph i. of e) of Section 14 of Rule III is hereby amended to read —

RULE III.
ELECTRIC COOPERATIVES

xxx xxx xxx

Section 14. Qualifications of a Director and Officer.

xxx xxx xxx

e) He or she is a member of the EC in good standing for the last five (5) years immediately preceding the election or appointment and shall continue to be a member in good standing during his or her incumbency;

For purpose of this IRR, a member of good standing shall mean that said member has no unsettled or outstanding obligations to the EC whether personal or through commercial or industrial connections of which he or she is the owner/co-owner three (3) months prior to the time of filing of the certificate of candidacy. Provided, That for incumbent members of the EC Board who will seek re-election, unsettled or outstanding obligation shall be deemed to include power bills, cash advances, disallowances (including

NEA audit findings) and materials and equipment issuances reckoned from the time of filing of certificate of candidacy. (Amendments in bold)

xxx xxx xxx

b. Section 16 of Rule is hereby amended to read -

RULE III.
ELECTRIC COOPERATIVES

xxx xxx xxx

Section 16. Continuing Qualification Requirement. To ensure that the management and operations of the ECS are carried out with due regard to its economic viability, the NEA shall prescribe, pass upon and review the qualifications and disqualifications of individuals appointed or elected as EC director or officer and disqualify those found unfit.

An EC director or officer, in order to remain as such, must continue to possess all the qualifications and none of the disqualifications throughout his/her term or tenure of office. To this end, no EC Director shall be allowed to stay in office in a hold-over capacity if he/she fails to meet all the qualifications or is deemed disqualified under the two (2) preceding sections: Provided, That for the purposes of this section, members of the EC Board shall be deemed to have no unsettled or outstanding obligation including power bills, cash advances, disallowances (including NEA audit findings) and materials and equipment issuances: Provided further, That at any given time during his membership in the EC, he or she must be totally free of any unsettled or outstanding obligations

and/or disallowances with the EC.
(Amendments in bold)

xxx xxx xxx

c. A new section is hereby added as
Section 16-A of Rule III as follows -

RULE III.
ELECTRIC COOPERATIVES

xxx xxx xxx

Section 16-A. Continuity of Board of Directors. The NEA shall direct the holding of elections of ECs for the disqualified board seat/s or instances where there are no qualified candidates within thirty (30) days from the disqualification of the director or from the failure of election.

To ensure the smooth operations of ECs, the NEA may appoint Interim Representatives to the EC Board of Directors to serve in place of any disqualified director. The NEA may likewise appoint Interim Representatives within the district to the EC Board of Directors in instances of failure of election or where there

are no qualified candidate for director after the holding of one regular and one special election: Provided, That Interim Representatives appointed under this section shall hold office for a term of not less than six (6) months but not more than one (1) year or until the election of a qualified director whichever comes first. (Amendments in bold)

xxx xxx xxx

Section 2. Separability Clause. If any provision of this Circular is declared invalid or unconstitutional, the other provisions not affected thereby shall remain valid and subsisting.

Section 3. Effectivity. The amendments in this Circular shall take effect immediately from its publication in at least two newspapers of general circulation and shall remain in effect until otherwise revoked.

Issued in Energy Center, Bonifacio Global City.
Taguig City on 01 September 2014.

(sgd) **CARLOS JERICO L. PETILLA**
Secretary

DEPARTMENT CIRCULAR NO. DC 2014-09-0018

PRESCRIBING THE POLICIES FOR THE IMPLEMENTATION OF THE HOUSEHOLD ELECTRIFICATION PROGRAM AND CREATING THE HOUSEHOLD UNIFIED STRATEGIC ELECTRIFICATION (HOUSE) TEAM FOR THE PURPOSE OF ACHIEVING THE COUNTRY'S TOTAL ELECTRIFICATION GOALS

WHEREAS, Section 3(a) of the Republic Act No. 9136 or the "Electric Power Industry Reform Act of 2001" (EPIRA) states that it is the policy of the State to ensure and accelerate the total electrification of the country while Section 23 of the EPIRA requires all DUS to provide universal service within their franchise areas, over a reasonable time, including unviable areas, as part of their social obligations;

WHEREAS, Republic Act No. 10531, or the National Electrification Administration (NEA) Reform Act of 2013, has declared that it is the policy of the State to promote the sustainable development of the rural areas through rural electrification and further mandates NEA to pursue total electrification of the country through the electric cooperatives (ECs) by way of enhancing distribution development and to ensure their economic and financial viability and operation, among others;

WHEREAS, the Government, through the Philippine Development Plan of 2011-2016, has set the goal of ninety percent (90%) household electrification by 2017 with the ultimate objective of sustainable and inclusive economic growth and poverty reduction and that, the Government believes that the provision of the basic electricity services is essential to spur development and better quality of life for all Filipinos;

WHEREAS, in pursuing household electrification, the Department of Energy (DOE) must also consider other equally important goals of the EPIRA such as security, reliability, and affordability as well as the relevant provisions of the Renewable Energy (RE) Act of 2008 on the greater utilization of RE resources and technologies especially in

off-grid areas, among others;

WHEREAS, the DOE has estimated that the current household electrification level of the country is only around seventy-nine percent (79%) as of December 2013 based on the consolidated reports by the Distribution Utilities (DUs) and the estimated household population using the 2010 Census of Population and Housing, excluding at least five percent (5%) of the households obtaining their electricity from informal or flying connections;

WHEREAS, while the DOE further estimates that at least 4.3 million new household connections must be achieved in the next four years in order to achieve the 90% household electrification goal by 2017, the existing strategies and activities are not sufficient to attain the cited goal;

WHEREAS, considering the limited government funds to support household electrification, the Government must formulate innovative strategies and adopt various technology options in order to ensure the least-cost electrification of remaining unelectrified households in the country, among which is the promotion of greater public-private partnerships to facilitate inflow of private capital; and

WHEREAS, on 17 July 2013, the DOE issued the Development Plan (HEDP) 2013-2017, that laid down the different strategies programs for fast-tracking household electrification both in urban and rural areas of the country.

NOW, THEREFORE, for and in consideration of the foregoing premises, the DOE in the

exercise of its supervisory functions in the implementation of the overall electrification activities in the country, hereby declares the following:

Section 1. Policies and Strategies. In meeting the 90% HH electrification by 2017, the DOE shall vigorously pursue the formulation of policies and implementation of corresponding programs in accordance with existing laws and regulations, to wit:

- a) Provision of Basic Electricity Service as a Social Agenda. It will be a long-term and consistent policy of the Government to ensure that every Filipino family shall have an equal opportunity to access basic electricity services as part of the overall socio-economic development agenda of the Government;
- b) Enforcing the Universal Service Obligation of the Franchised DUs. The Government will implement specific strategies to require all franchised DUs to perform their service obligation in providing universal service to all areas and customers covered by their respective franchise area, both viable and unviable.
- c) Ensuring Security, Reliability, Quality and Affordability of Electricity Services. Pursuing household electrification goal shall also consider other equally important objectives of such as security, reliability, quality and affordability of service to all of its customers. Every electrification project must be properly assessed to consider its potential implications to the entire operations of the DU such as system loss and the high cost of electricity supply in the area.
- d) Preference to Renewable Energy Sources and Technologies Where Applicable. Whenever suitable, the use of commercially-viable renewable energy sources and technologies especially in off-grid and unviable areas shall be the

preferred electrification solution over conventional systems utilizing imported petroleum products.

- e) Sufficient and Well-targeted Provision of Government and Subsidies. The Government shall provide sufficient funds to meet the investment requirements of rural and household electrification projects and activities, including sustainability.
- f) Linking Electrification with Other Development Programs as Government Strategy for Inclusive Growth. To ensure the attainment of the overarching goal of enhancing the quality of life of every Filipino and the promotion of inclusive growth the Government's electrification program whenever possible shall be interlinked and converged with other equally important developmental programs including that of education, rural health services, basic rural infrastructure and job creation, whenever applicable.

Section 2. Definition of Basic Electricity Service. For the purpose of the program, DOE hereby defines basic electricity service (BES) as "the minimum amount of electricity to be provided as part of social services being provided by the Government to every Filipino family in order to promote just and equal opportunity for poverty alleviation and improved quality of life."

A household shall be deemed "electrified" if it has access to basic electricity service on a sustainable basis and at an affordable basis. All DUS and other proponents must meet BES requirements in the design and implementation of their electrification projects and activities, as appropriate.

Section 3. Household Electrification Options and Plans. All DUs and other project proponents may adopt both grid and off-grid electrification options as well as centralized,

mini-grid, and even stand-alone systems pursuing household electrification in their franchise or service areas. Under NEA Reform Act of 2013, DUs must ensure the long-term development of their respective distribution systems for the efficient and least-cost delivery of electricity services to their respective end-users.

Each DU shall develop a long-term total electrification master-plan that ensures sustainable operations of the distribution systems and the provision of electricity to households and other potential end-users. The master-plan must be made consistent with their respective individual Distribution Development Plans as well as other relevant factors such as household population growth, least-cost electrification scheme or option, and sustainable lifeline rate policy for marginal end-users connected to the grid, among others.

The DOE, in coordination with NEA, the National Power Corporation (NPC) and other stakeholders, shall implement a national capacity building program to capacitate all DUs in the formulation of holistic, least-cost and household electrification plans and projects in their respective franchise areas in accordance with the policies and strategies of this Circular.

Section 4. The Household Unified Strategic Electrification (HOUSE) TEAM. The HOUSE Team is hereby established to assist the DOE Secretary in the implementation of all policy measures and strategies as well as the management and monitoring of all programs and activities as embodied under the HEDP with the overall purpose of achieving the policy goal of attaining the 90% HH electrification by 2017 through the integrated and synchronized approach. The HOUSE Team shall also be responsible in recommending new or revised policies and strategies to the DOE Secretary in response to emerging development in the electric power industry and the actual information received

from different program implementers, both at national and local levels.

- a) Composition of the HOUSE Team. The shall be composed of the following officials from key government agencies involved in total electrification namely:

Chair	DOE Undersecretary for Power
Co-Chair	NEA Administrator
Vice-Chair :	DOE Assistant Secretary for Power
Members	Director, DOE- Electric Power Industry Management Bureau (DOE-EPIMB)
	Director, DOE - Energy Policy and Planning Bureau (DOE-EPPB)
	Director, DOE - Renewable Energy Management Bureau (DOE-REMB)
	Director, DOE - Financial Services
	Director, NEA CORPLAN
	Representative, DBM
	Representative, DILG
	Representative, NPC-CAG

As may be directed by the DOE Secretary, the HOUSE Team shall invite additional permanent members and/or resource persons from other relevant agencies such as the Department of Social Welfare and Development (DSWD), the National Economic Development Authority (NEDA), Metro Manila Development Authority, Mindanao Development Authority, and Autonomous Region in Muslim Mindanao, among others. All members of the HOUSE Team should be senior officials with rank not lower than Director III or its equivalent.

The HOUSE Team shall meet at least monthly to perform its duties and responsibilities stated in this Circular.

- b) Responsibilities of the HOUSE Team. The following re the responsibilities of the

HOUSE Team:

- 1) In behalf of the DOE Secretary and the IAC on Electrification, oversee the implementation of total electrification program of the Government towards the attainment of 90% HH electrification by 2017;
- 2) Recommend to the DOE Secretary the appropriate level of BES as defined in Section 3 of this Circular as the basis for determining household electrification level in the country;
- 3) Recommend to the DOE Secretary various policies and strategies in support of the program, as necessary;
- 4) Establish the delineation of roles and responsibilities of all relevant stakeholders in the overall implementation of the household electrification projects and activities;
- 5) Recommend to the DOE Secretary for the approval of plans, programs, projects and activities towards the attainment of the total electrification goals²;
- 6) Ensure the timely implementation of household electrification projects and activities of all the DUs and other project implementers to agreed schedules;
- 7) Develop strategies to ensure adequate and release of funding requirements for both grid and off-grid electrification projects and activities of the Government, including grants and subsidies for the connection of poor households to

electricity service, among others;

- 8) Report to the DOE Secretary the results all household electrification projects and activities, including the status and key milestones of major projects and activities and issues and concerns involving the program that require the immediate action of the DOE Secretary, among others; and,
 - 9) Perform other activities in the exercise of its functions and responsibilities under this Circular
- c) The HOUSE Technical Working Group (HOUSE-TWG). The HOUSE-TWG is hereby established with the following composition:

TWG Head: Director, DOE-EPIMB
TWG Assistant Head : Director, NEA CORP
Members : Representative, DOE-EPPB
Representative, DOE REMB
Representative, DOE
Financial Services
Representative,
Legal Services
Representative, NPC-SPUG
Representative, DBM
Representative, DILG
Representative from Electric
Cooperatives
Representative from PIOUS

Subject to the approval of the HOUSE Team, the TWG may also invite additional representatives from other relevant agencies either as permanent member or as resource person. Unless explicitly specified, all agency representatives stated above must at least have a position level equivalent to Division Chief. It shall meet at least quarterly to perform its duties and responsibilities stated in this Circular.

The HOUSE TWG shall be responsible to provide technical and managerial support to the HOUSE Team by performing the following

² This shall take into account the respective protocols of each concerned government agency in approving and funding projects and activities, such as the DOE Projects Review Committee (DOE-PRC) for all locally-funded and foreign-assisted projects and activities by all concerned DOE line units involve in in rural/household electrification.

functions:

- 1) Review and recommend various policy and regulatory measures and strategies of the household electrification program of the Government and develop specific guidelines for its successful implementation;
- 2) Conduct regular assessment of the implementation of all program components and activities, identify gaps and issues, and recommend the continuation or cessation of certain programs as maybe consistent with law and Government policies;
- 3) Develop specific strategies or measures to ensure the well-targeted; least-cost, and equitable provision of government grants and subsidies to catalyze household electrification in the country;
- 4) Review and recommend revisions and other specific measures to existing policies and regulatory mechanisms related to household electrification in order to improve their effectiveness in supporting the household electrification program of the Government;
- 5) Coordinate, review, integrate, and update household electrification plans, projects and activities of all DUs and other project implementers, as necessary;
- 6) Recommend techno-economic parameters, methodologies and modern tools to enhance the electrification planning activities of DOE, NEA, and all project implementers;
- 7) Identify recommend, and monitor the implementation of various

trainings and other capacity building activities to enhance the capacity of all stakeholders in an aspects of the household electrification program;

- 8) Prepare annual budgetary requirements in implementing the overall household electrification program of the Government and coordinate the same with the Department of Budget and Management and other donor agencies taking into account the respective protocols of the concerned government agencies in approving and funding projects and activities;
 - 9) Identify and harmonize existing financing schemes set by various players implementing projects and activities that directly support the attainment of 90% HH electrification by 2017;
 - 10) Actively monitor the implementation of the programs and projects vis-à-vis the milestones/ targets set and, in this regard, prepare and submit a quarterly monitoring report to the HOUSE Team highlighting the critical problems/ issues that prevent or hinder the timely implementation of programs and projects;
 - 11) Conduct Information, Education and Communication (IEC) strategies and other public awareness activities, promotion of public-private partnership on household electrification project and activities; and,
 - 12) Perform other functions as may be directed by the HOUSE Team.
- d) Technical Secretariat - The Rural Electrification Administration Management Division (REAMD) of DOE-

EPIMB shall provide technical secretariat support to the HOUSE Team and HOUSE-TWG. DOE-EPPB, DOE-REMB, NEA and NPC shall assign dedicated staff as members of the Technical Secretariat as necessary.

Section 5. The HOUSE Electrification Information System (HEIS). The HEIS shall be established within DOE in coordination with the DOE's Information Technology Management Services to consolidate all information on household electrification and to serve as integrated monitoring system for all household electrification projects and activities in the country.

The HOUSE Team shall establish protocols with NEA, DUs, local government units (LGUs), project proponents, and other agencies of the Government in consolidating and processing relevant data for the purposes of operationalizing the HEIS and estimating household electrification levels both at national and local levels, as appropriate.

For this purpose, all DUS and other proponents are hereby required to submit a bi-annual report to, DOE-EPIMB on the status of their household electrification on projects and activities not later than the 15th day of January and 15th day of July for each calendar year until end of 2017. NEA is hereby tasked to consolidate the reports of all the ECS for submission to DOE-EPIMB on the said dates. Likewise, NPC-SPUG shall assist DOE-EPIMB in consolidating reports by proponents located in its small islands and isolated grids. Specifically, the report should contain at least the following information, namely:

- (i) Name of project or activity;
- (ii) Fund source;
- (iii) Area coverage of the project (province and franchise owner)

- (iv) Type of electrification project (on-grid or off-grid);
- (v) Technology or electrification solution used (grid extension, mini-grid/diesel, mini-grid/ renewable, decentralized solar home sys etc.);
- (vi) Specific project location (name of barangay/s), classification (on-grid or off-grid) and corresponding number of potential sitios and/or households to be electrified;
- (vii) Total number of sitios and/or households electrified or served during the semester; and,
- (viii)Planned number of sitios and/ households to be completed in the next semester among others.

Section 6. Repealing Clause. Except insofar as that 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 7. Separability Clause. If for any reason, any section or revisions of this Circular is declared unconstitutional or invalid, such parts not affected shall main in full force and effect.

Section 8. Effectivity. This Circular shall take into effect immediately following its publication in at least two (2) newspapers of general circulation and shall remain in effect until otherwise revoked.

Issued in Bonifacio Global City, Energy Center, Taguig City 29 September 2014.

(sgd) **CARLOS JERICO L. PETILLA**
Secretary

DEPARTMENT CIRCULAR NO. DC2015-04-0002

DIRECTING ALL GENERATION COMPANIES, DISTRIBUTION UTILITIES AND INDEPENDENT POWER PRODUCER ADMINISTRATORS TO SUBMIT TO THE DEPARTMENT OF ENERGY REPORTORIAL REQUIREMENTS AND OTHER PERTINENT DATA AS MAY BE REQUIRED FOR THE FORMULATION OF THE POWER SUPPLY AND DEMAND FORECASTS OF THE POWER DEVELOPMENT PLAN

WHEREAS, Republic Act No. 9135, otherwise known as the “Electric power Industry Reform Act of 2001” (EPIRA) declares as policy of the State, among others, to ensure quality, reliability, security and affordability of the supply of electric power;

WHEREAS, pursuant to Section 37 of the EPIRA, the Department of Energy (DOE) is mandated to supervise the restructuring of the electric power industry as well as among other things, to:

- (a) Formulates policies for the planning and implementation of comprehensive program for the efficient supply and economical use of energy consistent with the approved national economic plan;
- (b) Ensure the reliability, quality, and security of supply of electric power;
- (c) Develop policies and procedures to enable and encourage electric power industry participants to provide adequate capacity to meet demand including reserve requirements;
- (d) Prepare and update annually a Power Development Program (PDP), and integrate the same into the Philippine Energy Plan (PEP). The PDP shall consider and integrate the individual or joint development plans of the transmission, generation and distribution sectors Of the electric power industry which are submitted to the DOE; and
- (e) Exercise such powers, formulates rules and regulations as may be necessary to

implement and attain the Objectives Of the EPIRA.

WHEREAS, the DOE continuously aims to provide reliable and accurate demand forecast reflective of the demand consumption brought about by economic activities in the country and the developments in the power industry such as the implementation of Retail Competition and Open Access (RCOA), Interim Mindanao Electricity Market (IMEM) and Renewable Portfolio Standard (RPS), Demand Aggregation and Supply Auctioning Policy (DASAP), among others;

WHEREAS, there is a need for a prompt and timely submission of the Generation Companies including Embedded Generators, independent Power Producer Administrators and Distribution Utilities of the necessary data relative to their operations for the annual updating of the power statistics and the PDP;

WHEREAS, there is a need to collect, process and analyze regularly the power-related data and monitor closely the operations of the Generation Companies including Embedded Generators, Independent Power Producer Administrators and Distribution Utilities;

NOW, THEREFORE, from the foregoing premises and pursuant to the mandate of the DOE, under the EPIRA, this Circular is hereby promulgated:

SECTION 1. Scope and Application. This Circular shall apply to the following: (a) Generation Companies, (b) Distribution utilities, (c) Independent Power Producer Administrators (IPPA);

SECTION 2. Additional Reportorial Obligations of Generation Companies and Independent Power Producer Administrators. All Generation Companies including Embedded Generators and Independent Power Producer Administrators shall submit to DOE any information as it may deemed require with respect to the preparation of the PDP provided that the DOE shall ensure the confidentiality of proprietary or commercial sensitive information. this purpose, Generation Companies including Embedded Generators and Independent Power Producer Administrators shall have the following responsibilities:

- 2.1 Submit to the DOE through the Electric Power Industry Management Bureau (EPIMB) a Monthly Operations Report by accomplishing the EPIMB_PPDD Form 04-002 (Please refer to Annex A.1 for Coal/Natural Gas/Biomass Power Plants, Annex A.2 for Geothermal Power Plants, Annex A. 3 for Hydro Power Annex 4 for Solar power plants and Annex 5 for Wind Power Plants), fifteen (15) days after the reference period.
- 2.2 However, in the case of unexpected shutdown or derating, incident should be Immediately reported to the DOE indicating a description of the causes of the unexpected shutdown and estimated resumption as prescribed in Department Circular NC. 2010-03-0003 dated February 26, 2010.

SECTION 3. Additional Reportorial Obligations of Distribution Utilities.

- 3.1 Distribution Utilities including Private Investor Owned Utilities, Electric Cooperatives and Local Government Owned Utilities shall submit to the DOE through EPIMB the following reports, fifteen (15) days after the reference period in review:

- 3.1.1 Monthly Operation Report by accomplishing EPIMB PPDD Form 04-001 (please refer to Annex a).
- 3.1.2 Monthly Financial and Statistical Report (MFSR). (Please refer to Annex C).

SECTION 4. Confidentiality. The data to be provided to DOE shall be used strictly for planning and policy purposes and shall not in any way be used for commercial purposes or legality against or to the disadvantage Of the Generation Companies including Embedded Generators, Independent Power producer Administrators, Distribution Utilities and their customers.

SECTION 5. Enforcement and Compliance. The DOE, through the EPIMB, in consultation with the Energy Regulatory Commission, shall formulate and implement enforcement and penalty mechanisms in cases of non-compliance to this Circular by the Generation Companies including Embedded Generators, independent Power Producer Administrators and Distribution Utilities.

SECTION 6. Separability Clause. If for any reason, anv section or provision of this Circular is declared unconstitutional or invalid, such parts not affected shall remain in full force and in effect.

SECTION 7. Effectivity. This Circular shall effect immediately and will remain in effect until otherwise revoked by the DOE.

Done this APR 17 2015 at Energy Center, Bonifacio Global City, Taguig City.

(sgd) **CARLOS JERICO L. PETILLA**
Secretary

Annex A.1a-Coal/NatGas/Biomass

-Power Generation Facility Name-
 -Plant Address-
 -Tel./Fax No:-
 Commissioning Date: _____

MONTHLY OPERATIONS REPORT EPIMB_PPDD Form 04-002 FOR THE (MONTH, YEAR)

Billing Month : *(per month)*
 Period Covered : *(26th of the previous month up to the 25th of the current month)*

PLANT OPERATIONAL DATA	Unit				
	Unit 1	Unit 2	Unit 3	Unit 4	Total
1.0 Rated Capacity, MW					
2.0 Station Use, MWh					
3.0 Average Dependable Capacity MW					
4.0 Gross Generation, KWH					
5.0 Total Station Used, KWH					
6.0 Net Generation, KWH					
7.0 Heat Rate					
6.1 Gross Heat Rate, BTU/KWH					
6.2 Neat Heat Rate,BTU/KWH					
8.0 Operating Hours					
9.0 Forced Outage Hours					
10.0 Planned Outage Hours					
11.0 Maintenance Outage Hours					
12.0 Deactivated Shutdown Hours					
13.0 Forced Outage Rate, %					
14.0 Capacity Factor, %					
15.0 Period Hours for Capacity Factor					
16.0 Availability, hrs					
17.0 Fuel consumption, ltrs					
17.1 Bunker Fuel Oil					
17.1.1 Bunker consumed, liters					
17.1.2 HHV,BTU/lb					
17.1.3 Cost, P/ltr					
17.2 Diesel Fuel Oil					
17.2.1 Diesel consumed, ltrs					
17.2.2 HHV, BTU/lb					
17.2.3 Cost, P/ltrs					
17.3 Coal					
17.3.1 Coal consumed, ton					
17.3.2 HHV,kcal/kg					
17.3.3 Cost,P/ton					
18.0 Total Fuel Expenses, Pesos	-	-	-	-	-

Prepared by : _____
 Position : _____

Approved by : _____
 Position : _____

ANNEX A.1.b – Coal/NatGas/Biomass

-Power Generation Facility Name-
 -Plant Address-
 -Tel./Fax No:-
 Commissioning Date: _____

MONTHLY OPERATIONS REPORT
 EPIMB_PPDD Form 04-002
 FOR THE (MONTH, YEAR)

Billing Month : _____ (per month)
 Period Covered : _____ (26th of the previous month up to the 25th of the current month)

GENERATION & SALES DATA	CURRENT YEAR (20__)			PREVIOUS YEAR	
	PRESENT MONTH (February)	PREVIOUS MONTH (January)	G.R. (%)	February 20__	G.R. (%)
1. Gross Electricity Generation, MWH					
2. Station Service Use, MWH					
3. Net Electricity Generation, MWH					
4. Purchased Electricity if any, MWH					
NPC					
IPPs (Pls Specify)					
5. Total Net Generation & Purchased, MWH					
6. No. of Customers (Pls.Specify)					
Total					
7. ELECTRICITY SALES, MWH					
Utility					
Total					
8. Losses & Unaccounted, MWH					
9. Estimated Unserved Energy, MWH					
10. Minimum Stable Load, MW					
11. Average Load, MW					
12. Maximum Delivered Load, MW					

Prepared by : _____
 Position : _____

Approved by : _____
 Position : _____

-Power Generation Facility Name:
 -Plant Address:
 -Tel /Fax No.:
 Commissioning Date

MONTHLY OPERATIONS REPORT
 EPIMB_PPDD Form 04-002
 FOR THE (MONTH, YEAR)

PLANT OPERATIONAL DATA	MONTH												
	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total
1.0 Rated Capacity, MW													
2.0 Station Use, MWh													
3.0 Average Dependable Capacity MW													
4.0 Gross Generation, KWH													
5.0 Total Station Used, KWH													
6.0 Net Generation, KWH													
7.0 Heat Rate													
6.1 Gross Heat Rate, BTU/KWH													
6.2 Net Heat Rate, BTU/KWH													
8.0 Operating Hours													
9.0 Forced Outage Hours													
10.0 Planned Outage Hours													
11.0 Maintenance Outage Hours													
12.0 Deactivated Shutdown Hours													
13.0 Forced Outage Rate, %													
14.0 Capacity Factor, %													
15.0 Period Hours for Capacity Factor													
16.0 Availability, hrs													
17.0 Fuel consumption, lbs													
17.1 Bunker Fuel Oil													
17.1.1 Bunker consumed, liters													
17.1.2 HHV, BTU/lb													
17.1.3 Cost, \$/hr													
17.2 Diesel Fuel Oil													
17.2.1 Diesel consumed, ltr													
17.2.2 HHV, BTU/lb													
17.2.3 Cost, \$/hr													
17.3 Coal													
17.3.1 Coal consumed, ton													
17.3.2 HHV, kcal/kg													
17.3.3 Cost, \$/ton													
18.0 Total Fuel Expenses, Pctns													

Approved by : _____
 Position : _____

Prepared by : _____
 Position : _____

-Power Generation Facility Name-
 -Plant Address-
 -Tel./Fax No:-
 Commission Year: _____

MONTHLY OPERATIONS REPORT
EPIMB_PPDD Form 04-002
FOR THE (MONTH, YEAR)

Billing Month : *(per month)*
 Period Covered : *(26th of the previous month up to the 25th of the current month)*

PLANT OPERATIONAL DATA	Unit				
	Unit 1	Unit 2	Unit 3	Unit 4	Total
1.0 Name Plate Rating Capacity, MW					
2.0 Station Use, MWh					
3.0 Average Dependable Capacity MW					
4.0 Gross Generation, KWH					
5.0 Total Station Used, KWH					
6.0 Net Generation, KWH					
7.0 Average Steam Rate (kg/kWh)					
8.0 Average Steam Pressure (kg/cm ²)					
9.0 Average Steam Temp. (°C)					
10.0 Steam Consumption (x 1,000,000kg)					
11.0 Operating Hours					
12.0 Forced Outage Hours					
13.0 Planned Outage Hours					
14.0 Maintenance Outage Hours					
15.0 Deactivated Shutdown Hours					
16.0 Forced Outage Rate, %					
17.0 Capacity Factor, %					
18.0 Period Hours for Capacity Factor					
19.0 Availability, hrs					
20.0 Estimated MWh lost due to F.O.					
21.0 Steam Defficiency, MWh					
22.0 Plant Production Cost, Pesos/kWh					
23.0 Total Plant Operating Expenses, Php					

Prepared by : _____
 Position : _____

Approved by : _____
 Position : _____

-Power Generation Facility Name-
 -Plant Address-
 -Tel./Fax No:-
 Commission Year: _____

MONTHLY OPERATIONS REPORT
 EPIMB_PPDD Form 04-002
 FOR THE (MONTH, YEAR)

Billing Month : _____ (per month)
 Period Covered : _____ (26th of the previous month up to the 25th of the current month)

GENERATION & SALES DATA	CURRENT YEAR (20__)			PREVIOUS YEAR	
	PRESENT MONTH (February)	PREVIOUS MONTH (January)	G.R. (%)	February 20__	G.R. (%)
1. Gross Electricity Generation, MWH					
2. Station Service Use, MWII					
3. Net Electricity Generation, MWH					
4. Purchased Electricity if any, MWH					
NPC					
IPPs (Pls Specify)					
5. Total Net Generation & Purchased, MWH					
6. No. of Customers (Pls.Specify)					
Customer/Utility A					
Total					
7. ELECTRICITY SALES, MWH					
Customer/Utility A					
Total					
8. Losses & Unaccounted,MWH					
9. Estimated Unserved Energy, MWH					
10. Minimum Stable Load, MW					
11. Average Load, MW					
12. Maximum Delivered Load, MW					

Prepared by : _____
 Position : _____

Approved by : _____
 Position : _____

-Power Generation Facility Name-
-Plant Address-

MONTHLY OPERATIONS REPORT
EPMB_PPDD Form 04-002
FOR THE (MONTH, YEAR)

PLANT OPERATIONAL DATA	MONTH												
	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total
1.0 Name Plate Rating Capacity, MW													
2.0 Station Use, MWh													
3.0 Average Dependable Capacity MW													
4.0 Gross Generation, KWH													
5.0 Total Station Used, KWH													
6.0 Net Generation, KWH													
7.0 Average Steams Rate (kg/kWh)													
8.0 Average Steam Pressure (kg/cm ²)													
9.0 Average Steam Temp (°C)													
10.0 Steam Consumption (x 1,000,000kg/l)													
11.0 Operating Hours													
12.0 Forced Outage Hours													
13.0 Planned Outage Hours													
14.0 Maintenance Outage Hours													
15.0 Deactivated Shutdown Hours													
16.0 Forced Outage Rate, %													
17.0 Capacity Factor, %													
18.0 Period Hours for Capacity Factor													
19.0 Availability, hrs													
20.0 Estimated MWh lost due to F.O													
21.0 Steam Deficiency, MWh													
22.0 Plant Production Cost, Pesos/kWh													
23.0 Total Plant Operating Expenses, Whp													

Prepared by : _____
Position : _____

Approved by : _____
Position : _____

-Power Generation Facility Name-
 -Plant Address-
 -Tel./Fax No:-
 Commission Year: _____

MONTHLY OPERATIONS REPORT
 EPIMB_PPDD Form 04-002
 FOR THE (MONTH, YEAR)

Billing Period :

(per month)

Period Covered :

(26th of the previous month up to the 25th of the current month)

PLANT OPERATIONAL DATA	Units				
	Unit 1	Unit 2	Unit 3	Unit 4	Total
1.0 Rated Capacity, MW					
2.0 Station Use, MWh					
3.0 Average Dependable Capacity, MW					
4.0 Peak Load, MW					
5.0 Minimum Load, MW					
6.0 Average Load, MW					
7.0 Gross Generation, kWh					
8.0 Total Station Used, kWh					
9.0 Net Generation , kWh					
10.0 Water Consumed, Million Cubic Meter					
11.0 Water Utilization Rate, Cubic Meter/kWh					
12.0 Spilled Energy, MWh					
13.0 Spiled Energy, Million Cubic Meter					
14.0 Reservoir Level and Stored Energy					
14.1 Beginning					
Reservoir Level (Meter)					
Stored Energy (Million Cubic Meter)					
Equivalent (MWh)					
14.1 Ending					
Reservoir Level (Meter)					
Stored Energy (Million Cubic Meter)					
Equivalent (MWh)					
15.0 Inflow, Million Cubic Meter					
16.0 Inflow, MWh					
17.0 Outflow, Million Cubic Meter					
18.0 Operating Hours					
19.0 Plant Outage, Hours					
18.1 Reserved Shutdown					
18.2 Planned Outage					
18.3 Maintence Outage					
18.4 Forced Outage					
18.5 Deactivated Shutdown					
20.0 Forced Outage Rate, %					
21.0 Availability Factor, %					
22.0 Capacity Factor, %					
23.0 Estimated MWh lost due to Forced Outage					
24.0 Plant Production Cost, Pesos/kWh					
25.0 Total Plant Operating Expenses, Php					

Prepared by : _____
 Position : _____

Approved by : _____
 Position : _____

-Power Generation Facility Name-
 -Plant Address-
 -Tel./Fax No:-
 Commission Year: _____

MONTHLY OPERATIONS REPORT
EPIMB_PPDD Form 04-002
FOR THE (MONTH, YEAR)

Billing Period : _____ *(per month)*

Period Covered : _____ *(26th of the previous month up to the 25th of the current month)*

<u>GENERATION & SALES DATA</u>	CURRENT YEAR (20__)			PREVIOUS YEAR	
	PRESENT MONTH (February)	PREVIOUS MONTH (January)	G.R. (%)	February 20__	G.R. (%)
1. Gross Electricity Generation, MWh					
2. Station Service Use, MWh					
3. Net Electricity Generation, MWh					
4. Purchased Electricity if any, MWh					
NPC					
IPPs (Pls Specify)					
5. Total Net Generation & Purchased, MWh					
6. No. of Customers (Pls.Specify)					
6.1 Customer 1					
6.2 Customer 2					
Total					
7. ELECTRICITY SALES, MWh					
7.1 Customer 1					
7.2 Customer 2					
Total					
8. Losses & Unaccounted, MWh					
9. Estimated Unserved Energy, MWh					
10. Minimum Stable Load, MW					
11. Average Load, MW					
12. Maximum Delivered Load, MW					

Prepared by : _____
 Position : _____

Approved by : _____
 Position : _____

-Power Generation Facility Name-
 -Plant Address-
 -Tel/Fax No-
 Commission Year.

MONTHLY OPERATIONS REPORT
 EPTMR_P99DD Form 01-002
 FOR THE (MONTH, YEAR)

PLANT OPERATIONAL DATA	Month												Total	
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec		
1.0 Rated Capacity, MW														
2.0 Station Use, MW														
3.0 Average Dispatchable Capacity, MW														
4.0 Peak Load, MW														
5.0 Minimum Load, MW														
6.0 Average Load, MW														
7.0 Gross Generation, kWh														
8.0 Total Station Used, kWh														
9.0 Net Generation, kWh														
10.0 Water Consumed, Million Cubic Meter														
11.0 Water Utilization Rate, Cubic Meter/kWh														
12.0 Spilled Energy, MWh														
13.0 Spilled Energy, Million Cubic Meter														
14.0 Reservoir Level and Stored Energy														
14.1 Beginning														
Reservoir Level (Meter)														
Stored Energy (Million Cubic Meter)														
Equivalent (MWh)														
14.1 Ending														
Reservoir Level (Meter)														
Stored Energy (Million Cubic Meter)														
Equivalent (MWh)														
15.0 Inflow, Million Cubic Meter														
16.0 Inflow, MW														
17.0 Drawn, Million Cubic Meter														
18.0 Operating Hours														
19.0 Plant Outage, Hours														
19.1 Reserved Shutdown														
19.2 Planned Outage														
19.3 Maintenance Outage														
19.4 Forced Outage														
19.5 Deactivated Shutdown														
20.0 Forced Outage Rate, %														
21.0 Availability Factor, %														
22.0 Capacity Factor, %														
23.0 Estimated MWh lost due to Forced Outage														
24.0 Plant Production Cost, Penn/kWh														
25.0 Total Plant Operating Expenses, Pp														

Prepared by : _____
 Position : _____
 Approved by : _____
 Position : _____

Power Generation Facility Name _____

Location _____

Tel / Fax No: _____

Commissioning Year: _____

MONTHLY OPERATION REPORT

EPIMB_PPDD Form 04-002

FOR THE (MONTH, YEAR)

Billing Month : _____

(per month)

Period Covered : _____

(26th of the previous month up to the 25th of the current month)

GENERATION & SALES DATA	CURRENT YEAR (20__)			PREVIOUS YEAR	
	PRESENT MONTH (___)	PREVIOUS MONTH (___)	G.R. (%)	MM YYYY	G.R. (%)
1. Gross Electricity Generation, MWh					
2. Station Service Use					
3. Net Electricity Generation, MWh					
4. Purchased Electricity if any, MWh					
NPC					
IPPs (Pls Specify)					
5. Total Net Generation & Purchased, MWh					
6. No. of Customers (Pls. Specify)					
Total					
7. ELECTRICITY SALES, MWh					
Utility					
Total					
8. Losses & Unaccounted, MWh					
9. Estimated Unserved Energy, MWh					
10. Minimum Stable Load, MW					
11. Average Load, MW					
12. Maximum Delivered Load, MW					

Prepared by : _____
Position : _____Approved by : _____
Position : _____

Power Generation Facility Name _____

Location _____

Tel / Fax No: _____

Commissioning Year: _____

MONTHLY OPERATION REPORT
EPIMB_PPOD Form 04-002
FOR THE (MONTH, YEAR)

PLANT OPERATIONAL DATA	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
1.0 Nameplate Rating Capacity, MW													
2.0 Station Use, MWh													
3.0 Average Dependable Capacity, MW													
4.0 Gross Generation, kWh													
5.0 Total Station Used, kWh													
6.0 Net Energy Generation, kWh													
7.0 Global Horizontal Irradiation, kWh/m ² /mo.													
8.0 Global Inclined Irradiation, kWh/m ² /mo.													
9.0 Average Ambient Temperature, °C													
10.0 Average PV Temperature, °C													
11.0 Planned Outage Hours													
12.0 Maintenance Outage Hours													
13.0 Deactivated Shutdown Hours													
14.0 Forced Outage Hours													
15.0 Rated Hours													
16.0 Capacity Factor, %													
17.0 Operating Hours													
18.0 Plant Use Factor, %													
19.0 Plant Operating Cost, PhP/kWh													
20.0 Plant Maintenance Cost, PhP/kWh													
21.0 Total O&M Cost, PhP/kWh													

Prepared by: _____
 Position: _____

Approved by: _____
 Position: _____

Power Generation Facility Name _____

Location _____

Tel / Fax No: _____

Commissioning Year: _____

MONTHLY OPERATIONS REPORT

EPIMB_PPDD Form 04-002

FOR THE (MONTH, YEAR)

Billing Month : _____

(per month)

Period Covered : _____

(26th of the previous month up to the 25th of the current month)

GENERATION & SALES DATA	CURRENT YEAR ()			PREVIOUS YEAR	
	PRESENT MONTH ()	PREVIOUS MONTH ()	G.R. (%)	MM YYYY	G.R. (%)
1. Gross Electricity Generation, MWH					
2. Station Service Use, MWH					
3. Net Electricity Generation, MWH					
4. Purchased Electricity if any, MWH					
NPC					
IPPs (Pls Specify)					
5. Total Net Generation & Purchased, MWH					
6. No. of Customers (Pls Specify)					
Total					
7. ELECTRICITY SALES, MWH					
Utility					
Total					
8. Losses & Unaccounted, MWH					
9. Estimated Unserved Energy, MWH					
10. Minimum Stable Load, MW					
11. Average Load, MW					
12. Maximum Delivered Load, MW					

Prepared by : _____

Position : _____

Approved by : _____

Position : _____

Power Generation Facility Name _____
 Location _____
 Tel / Fax No: _____
 Commissioning Year: _____

MONTHLY OPERATIONS REPORT
EPIMB_PP0D Form 04-002
FOR THE (MONTH, YEAR)

PLANT OPERATIONAL DATA	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
1.0 Nameplate Rating Capacity, MW													
2.0 Station Use, MWh													
3.0 Average Dependable Capacity, MW													
4.0 Gross Generation, kWh													
5.0 Total Station Used, kWh													
6.0 Net Generation, kWh													
7.0 Average Wind Speed, m/s													
8.0 Average Air Density, W/m ²													
9.0 Average Ambient Temperature, °C													
10.0 Planned Outage Hours													
11.0 Maintenance Outage Hours													
12.0 Deactivated Shutdown Hours													
13.0 Forced Outage Hours													
14.0 Rated Hours													
15.0 Capacity Factor, %													
16.0 Operating Hours													
17.0 Plant Use Factor, %													
18.0 Plant Operating Cost, PHP/kWh													
19.0 Plant Maintenance Cost, PHP/kWh													
20.0 Total O&M Cost, PHP/kWh													

Prepared by: _____ Approved by: _____
 Position: _____ Position: _____

Annex B

		CURRENT YEAR			PREVIOUS YEAR		YEAR-TO-DATE (No. of Months)		
		PRESENT MONTH (January)	PREVIOUS MONTH (December 2014)	G.R. (%)	January	G.R. (%)	2015	2014	G.R. (%)
1	ELECTRICITY GENERATED, MWH								
2	ELECTRICITY PURCHASED, MWH								
	Wholesale Electricity Spot Market								
	NPC								
	IPPs								
	Embedded Generators								
	Net Metering								
3	ELECTRICITY WHEELED, in MWH								
	FIT								
	Non-FIT (Generator Wheeling)								
	Others (Contestable Wheeling)								
4	TOTAL NET SYSTEM INPUT, in MWH								
5	NO. OF CUSTOMERS								
	Residential								
	Commercial								
	Regulated Retail Sales								
	Contestable Wheeling								
	Industrial								
	Retail Sales								
	Contestable Wheeling								
	Others								
	Public Buildings								
	Street Lights								
	Others								
	Total								

Annex B

	CURRENT YEAR			PREVIOUS YEAR		YEAR-TO-DATE (No. of Months)	
	PRESENT MONTH (January)	PREVIOUS MONTH (December 2014)	G.R. (%)	January	G.R. (%)	2015	2014
6 ELECTRICITY SALES, MWH							
Residential							
Commercial							
Regulated Retail Sales							
Contestable Wheeling							
Industrial							
Regulated Retail Sales							
Contestable Wheeling							
Others							
Public Buildings							
Street Lights							
Others							
Total							
7 REVENUE PER CUSTOMER (pRp)							
Residential							
Commercial							
Regulated Retail Sales							
Contestable Wheeling							
Industrial							
Regulated Retail Sales							
Contestable Wheeling							
Others							
Public Buildings							
Street Lights							
Others							
Total							
8 MAXIMUM LOAD, MW							
9 LOAD FACTOR (%)							
10 COMPANY USE, MWH							

Annex B

	CURRENT YEAR		PREVIOUS YEAR		YEAR-TO-DATE (No. of Months)		
	PRESENT MONTH (January)	PREVIOUS MONTH (December 2014)	January	G.R. (%)	2015	2014	G.R. (%)
11 UNACCOUNTED, MWH							
12 SYSTEM LOSS, (%)							
13 FUEL CONSUMPTION							
Bunker C (Barrels)							
Diesel (Barrels)							
Natural Gas (BCF)							
Coal, MT							
Others (Pls. Specify)							
14 FUEL PRICE (P/LITER)							
Bunker C (Barrels)							
Diesel (Barrels)							
Natural Gas (BCF)							
Coal, MT							
Others (Pls. Specify)							
15 UNSERVED ENERGY, MWH							
Supply Outages							
Line Outages							
Forced							
Planned							
Total							
16 TOTAL NUMBER OF BARANGAYS							
17 TOTAL ENERGIZED BARANGAYS							

Prepared By:
 Position:

Noted By:
 Position:

FINANCIAL AND STATISTICAL REPORT

REC
DATE

(MONTH, YEAR)

Section D : CONSUMER ACCOUNTS RECEIVABLE

I T E M S	Amount	
	For the Month	Year to Date
1. Total Billed (Peso) Net of Adjustment		
2. Consumers Accounts Receivable, Beginning		
3. Total Receivable		
	Current (%)	Amount
		%
4. Total Collection		
a. Residential		
a.1 Regular		
a.2 BAPA		
b. Commercial		
c. Industrial		
d. Irrigation		
e. Public Buildings		
f. Others		
5. Net Receivable		
6. Amount of Receivable Under Litigation		

Section E : ENERGY AND DEMAND DATA

1. KWH Purchased		
2. Kwh from Directly connected customer		
3. Total Kwh Purchased (1+2)		
4. KWH Sold		
4.1 KWH used directly connected customer		
5. KWH Used by the Coop.		
6. Total (4 + 5)		
7. Average Power Rate per KWH		
8. System Loss in KWH (3- 6)		
9. System Loss in %		
10. Average System Rate		
11. Liters of Fuel & Oil Used		
12. Peak Load, KW		Kw
13. System Load Factor		%
14. System Power Factor		%
15. KWH Used by Consumers directly tapped to NPC		

Section F : GENERAL STATISTICS

1. KMs. of Lines Energized		
a. Transmission (89 KV & above)		
b. Distribution - Primary		km
c. Distribution - Sec. & services		km.
2. Total Kms. Energized (a+b+c)		km.
3. Transformer KVA installed, Single Phase		kms.
4. New Services Connected		kva
5. Services Reconnected		
6. Services Disconnected		
7. Total Services in Place		
8. Total No. of Consumers - billed		
9. Average Hour Outages Per Consumer		
a. NPC caused outages (mins/frequency)		
b. REC caused outages		mins.
* Planned outages (mins/frequency)		
* Non-Planned outages (mins/frequency)		
10. Total No. of Employees		
a. Technical (Project Worker- 16)		
b. Non - Technical		
11. Total Payroll - regular/contractual		

Prepared by:

Certified Correct

Audited by:

Approved by:

DEPARTMENT CIRCULAR NO. DC2015-06-0008

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

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 electricity 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;
- (b) Following the restructuring of the electricity sector:

- (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.
- (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 (CSI) 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 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 (CSI) 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:

- (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 (PIOUs);
- (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
- (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 OEP 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. Effectivity. 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. 11 June 2015.

(sgd) **CARLOS JERICO L. PETILLA**
Secretary

DEPARTMENT CIRCULAR NO. DC2015-06-0009

PROVIDING FOR ADDITIONAL GUIDELINES FOR DISTRIBUTION UTILITIES IN COMPLYING WITH THEIR MANDATE TO ENSURE SUPPLY SECURITY

WHEREAS, pursuant to the declared policy of the State under Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001 (EPIRA),” the Department of Energy (DOE) is mandated to ensure reliability, quality and security of electric power;

WHEREAS, on 05 December 2003, the DOE issued Department Circular No. DC003-12-011, entitled “Enjoining All Distribution Utilities to Supply Adequate, Affordable, Quality and Reliable Electricity” reiterating the policy of the State that all Distribution Utilities (DUs) must take cognizance and assume full responsibility to forecast, assure and contract for the supply of electric power in their respective franchise areas to meet their obligations as a DU;

WHEREAS, on 26 February 2010, the DOE issued Department Circular No. DC2010-03-003, entitled “Directing All Power Generation Companies, the Transmission Service Provider, and All DUS to Ensure Adequate and Reliable Electric Power Supply in the Country” directing the DUS to ensure that the power requirements within their franchise areas are adequately covered by supply contracts;

WHEREAS, the Energy Regulatory Commission (ERC) conducted nationwide public consultations on the proposed “Rules Governing the Execution, Review, and Evaluation of Power Supply Agreements (PSAs) Entered into by DUs for the Supply of Electricity to their Captive Market” or the PSA Rules on 18 February 2014 (Davao), 20 February 2014 (Cebu) and 24 February 2014 (Manila);

WHEREAS, on 17 April 2015, the DOE issued Department Circular No. DC2015-

04-002, entitled “ Directing All Generation Companies, DUS and Independent Power Producer Administrators to Submit to the DOE Reportorial Requirements and Other Pertinent Data as may be Required for the Formulation of the Power Supply and Demand Forecasts of the Power Development Plan,” which aims to provide reliable and accurate demand forecast reflective of the actual demand consumption brought about by economic activities in the country and developments in the electric power industry such as the implementation of the Retail Competition and Open Access (RCOA), Interim Mindanao Electricity Market (IMEM), among others;

WHEREAS, the EPIRA provides that all DUS shall have the obligation to supply electricity in the least-cost manner to its Captive Market, subject to the collection of retail rate duty approved by the ERC;

WHEREAS, the DOE recognizes the need to mitigate the significant impact on the general public of delays in the commercial operations of on-going and committed power projects and/or recommissioning and resumption of generation facilities from outages to the overall status of available power supply in the country.

NOW, THEREFORE, for and in consideration of the foregoing premises, the DOE, declares as follows:

Section 1. Policy Statement and Objective. This Circular aims to ensure supply security through the incorporation of standard contractual terms to clearly delineate the responsibilities of the contracting parties in the event of any forced outages or events affecting the delivery of power or delays in

the commercial operations of committed power projects.

Section 2. Scope and Application. This Circular shall apply to Power Supply Agreements (PSAs) entered into by DUS for supply to its Captive Customers within their respective franchise areas after the effectivity of this Circular: Provided however, That for PSAs entered into prior to this Circular, may opt to renegotiate certain provisions of their existing PSAs to suit the standard terms to be prescribed by the ERC.

Section 3. Responsibility of the Distribution Utilities. All DUS shall ensure that PSAs entered into with a Generation Company shall contain a provision for allowances and penalties to clearly define the responsibilities and obligations of the Generation Company in case the delivery of electric supply is not fulfilled due to delays in the commercial operation and/or occurrence of any Forced Outages: Provided, That, provision for the allowances and penalties for delays in the operations and/or any Forced Outages shall be consistent with those to be set by the ERC under the PSA Rules: Provided further, That the penalty in the PSAs may be at par with the cost of replacement power and the annual allowance for all outages shall not exceed the number of days to be determined under the PSA Rules for issuance of the ERC.

Further, to avoid stranded contract quantities, all DUS shall consider in their PSAs, a provision on the automatic reduction of contracted quantities due to possible migration of its Contestable Customers within their franchise area.

Section 4. Monitoring, Enforcement and Compliance. The DOE through the Electric

Power Industry Management Bureau (EPIMB), together with the ERC, shall monitor compliance with this Circular. Towards this end, the DOE-EPIMB is hereby empowered to require the submission of the pertinent documents from DUS to determine the compliance with this Circular for policy purposes.

Section 5. 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 6. 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 7. 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 8. Effectivity. 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 15 June 2015.

(sgd) **CARLOS JERICO L. PETILLA**
Secretary

DEPARTMENT CIRCULAR NO. DC2015-06-0010

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 IRSC 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 FRC 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 FRC.

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 CSI' 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/F 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 nondiscriminatory 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 over contracting;
- (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 EPI RA 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. 19 July 2015.

(sgd) **CARLOS JERICO L. PETILLA**
Secretary

DEPARTMENT CIRCULAR NO. DC2015-06-0011

PRESCRIBING THE INTERIM UNIFORM GUIDELINES AND PROCEDURES FOR THE RECOVERY OF JUST COMPENSATION IN THE EVENT OF RELOCATION BY THE ELECTRIC COOPERATIVES (ECs) OF THEIR DISTRIBUTION AND/OR SUBTRANSMISSION LINES, AS A RESULT OF ANY GOVERNMENT AND/OR NON-GOVERNMENT PROJECT/S

WHEREAS, Republic Act No. 9136 or the “Electric Power Industry Reform Act of 2001 (EPIRA),” declares, among others, as policy of State, to ensure the quality, reliability, security, and affordability of the supply of electric power;

WHEREAS, Section 2 of Republic Act No. 7638 or the “Department of Energy Act of 1992,” as amended by Section 37 of the EPIRA, authorized the Department of Energy (DOE) to exercise supervision and control over all government activities to energy projects and to formulate rules and regulation necessary to implement the objectives of these laws;

WHEREAS, Section 16 of Republic Act No. 10531 or the “National Electrification Administration (NEA) Reform Act of 2013” provides that the DOE is tasked to formulate the rules and regulations;

WHEREAS, Section 9 of Republic Act No.10531 provides that ECS are “to construct, maintain and operate electric transmission and distribution lines along, upon, under and across publicly owned lands and public thoroughfares, including, without limitation, all roads, highways, streets, alleys, bridges, and causeways. In the event of the need of such lands and thoroughfares for the primary purpose of the government, the EC shall be properly compensated;”

WHEREAS, on 29 July 2013, pursuant to the said mandate, the DOE issued Department Circular No. DC-2013-07-0015 or the “Implementing Rules and Regulations of the Republic Act No. 10531 (IRR)” which took effect on 13 August 2013;

WHEREAS, Section 10 Rule 111 of DC2013-07-0015 provides that “the DOE and the Department of Public Works and highways (DPWH) shall, within one hundred eighty (180) days from the effectivity of this IRR, issue implementing rules and regulations to carry out the proper compensation for ECS when sub-transmission and distribution lines, consistent with issuances of the ERC on cost recovery;”

WHEREAS, there are remaining concerns on the implementation and interpretation of the provision on proper compensation for the relocation of distribution and sub-transmission lines due to government and non-government projects in the absence of the joint issuance of the DOE and DPHW;

WHEREAS, since the passage of the amendments, the DOE and NEA have received requests for the Interpretation of some provisions of the NEA Reform Act of 2013 and its IRR including Section 10 (a), Rule III of DC2013-07-0015;

WHEREAS, there is a need for uniform guidelines and procedures the interim, to be followed, to ensure public safety and order in support of sustained community development and progress; and

WHEREAS, under existing laws and jurisprudence, IRRs may be amended in pursuit to clarify and carry out the objectives of the law.

NOW THEREFORE, pursuant to its authority under the Republic Act No. 10531, the DOE hereby issues, adopts and promulgates the foregoing:

Section 1. Title. This Circular shall be known as the “Interim Uniform Guidelines and Procedures for the Recovery of Just Compensation for Relocation.”

Section 2. Scope and Application. This Circular shall apply to all relocations of electric poles and assets of ECS including Right of Way (ROW) issues arising from government or non-government projects.

Section 3. Coordination on Projects. To minimize electric service disruption and ensure maximum safety, all proponents, whether government or private, are hereby encouraged to closely coordinate with the ECS whose electric poles and sub-transmission lines are for relocation including the resolution of ROW issues and concerns on the land and/or property where the new distribution and transmission lines will be erected and transferred.

Towards this end, all proponents, whether government or private, with on-going projects or planning to implement projects that will affect the existing lines of any EC, are required to submit such program of work and schedules of implementation to the EC having jurisdiction over the affected project area within a reasonable period, copy furnished the DOE and NEA.

Section 4. Determination of Relocation Cost. In the determination of relocation costs, the ECS and the proponent of the government or non-government project is encouraged to come up with a collectively agreed valuation, taking into consideration the aggregated benefits of the project to the community: Provided, That in case of disagreement, the following formula is proposed:

$$\text{COST OF RELOCATION} = a + b + c - d$$

Where:

a = Cost of Construction of New Distribution/Transmission Lines in the New Permanent Location

b = Cost of Electric Service Disruption (Revenue Loss, if any)

c = Cost of Right of Way Acquisition

d = Cost to Relocate and Fair Market Value of Usable Materials from the Old/Retired Distribution/ Sub-Transmission Lines (Net of Dismantling and Transportation Cost)

For the purposes of determining the Cost of Construction, the NEA Price Index and Construction Specification Standards for Distribution and/ or Sub-Transmission Lines may be used.

Section 5. Reservation on Relocation. No actual relocation can be implemented until just compensation for the relocation of existing electric poles, including the mode of payment are properly determined and agreed upon by the ECS and the government and the proponent of the non-government project.

Section 6. Reportorial Requirements. The NEA shall issue an advisory to all ECS for the submission of information provided in Section 2 of this Circular to ensure its effective implementation.

Section 7. Non-Retroactivity. This Circular will only apply to projects implemented or for implementation after the effectivity of Republic Act No. 10531.

Section 8. Repealing Clause. All circulars and issuances not with this Circular shall be modified and repealed accordingly.

Section 9. Effectivity and Publication. This Circular shall be effective upon its publication in two (2) newspapers of general circulation and shall remain in effect until revoked.

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

(sgd) **CARLOS JERICO L. PETILLA**
Secretary

DEPARTMENT CIRCULAR NO. DC2016-01-0001

CREATING A POWER TASK FORCE ELECTION 2016 TO ENSURE ADEQUATE AND RELIABLE ELECTRIC POWER SUPPLY BEFORE, DURING, AND AFTER THE MAY 9, 2016 NATIONAL AND LOCAL ELECTIONS

WHEREAS, it is the policy of the State to ensure the reliability, quality and security of supply of electric power;

WHEREAS, the Department of Energy (DOE) is mandated to provide a mechanism for the integration, rationalization, and coordination of the various activities to carry out the energy policy of the State;

WHEREAS, the Commission on Elections (COMELEC), pursuant to the powers vested in it by the Constitution, the Omnibus Election Code, and other related elections laws, has prescribed the rules and procedures to ensure the holding of a free, orderly, honest, peaceful and credible automated national and local elections on 9 May 2016;

WHEREAS, the COMELEC issued Resolution No. 10023 promulgated on 03 December 2015 deputizing the Department of Energy, the National Electrification Administration, the National Grid Corporation of the Philippines, and the Electric Cooperatives in connection with the conduct of the May 9, 2016 national and local elections;

WHEREAS, the DOE, as Standard Operating Procedure issued Department Circular No. DC-2010-02-0002, creating a Power Task Force Election 2010 and Department Circular No. DC2012-12-0011, creating a Power Task Force Election 2013;

WHEREAS, as part of its mandate and in accordance to COMELEC Resolution No. 10023, the DOE deems it necessary to adopt measures to ensure provision of stable and continuous supply of power during the national and local elections starting from May 2, 2016 until the termination or conclusion of

the canvassing of votes and the proclamation of the winning candidates;

NOW THEREFORE, the DOE, in support to the government's aim of holding a successful election, is issuing this Circular to create a Power Task Force Election 2016 to ensure adequate, stable and reliable power supply before, during and after the national and local elections.

Section 1. Composition. The Power Task Force Election 2016 shall be composed of the following, with the organizational structure and reporting flow attached hereto as Annex A:

a. Core Group team

Head : Secretary,
Department of Energy

Members : President, National Grid Corporation of the Philippines (NGCP)

Administrator,
National Electrification Administration (NEA)

President, National Power Corporation (NPC)

President, Power Sector Assets & Liabilities Corporation (PSALM)

President,
National Transmission Corporation (TransCo)

President, Philippine Electricity Market Corporation (PEMC)

President, Manila Electric Power Company (MERALCO)

- b. Supporting Organizations
 - Philippine Independent Power Procedures Association (PIPPA)
 - Philippine Rural Electric Cooperatives Association (PHILRECA)
 - Private Electric Power Operators Association, Inc. (PEPOA)
 - Retail Electricity Suppliers Association (RESA)
 - Philippine Federation of Electric Cooperatives (PHILFECO)
 - Other associations of distribution utilities not explicitly mentioned in this Circular.

All power suppliers and service providers particularly the distribution utilities (DUs) privately-owned, electric cooperatives (ECs) and LGU-owned, and the power generation companies are directed to provide full support and participation to ensure the attainment of the objective of this Circular.

Section 2. General Responsibilities. The members of the Power Task Force on Elections 2016 shall have the following general responsibilities:

1. As head of the Power Task Force Election 2016, the DOE shall be responsible for the following:
 - a) Overall management of the Power Task Force 2016;
 - b) Establishment of a systematic monitoring and reporting scheme that will ensure power interruptions are immediately acted upon by concerned agencies/ organizations;
 - c) Cause the establishment of mitigating measures to minimize, if not prevent, power outages on election day and the critical period prior to and after election;

- d) Provide the general public with fast and accurate information on the status of power supply; and
 - e) Assign focal persons to coordinate with COMELEC.
2. The members shall be responsible for the following:
 - a) Ensuring operation of their respective facilities/ systems and for establishing communications links with Command Center and their Contingency Teams under heightened alert status on 24/7 basis;
 - b) Instituting mitigating measures to preclude abnormal situations in their respective areas of responsibilities;
 - c. Regularly reporting the status of their facilities/ systems/ areas as well as immediately reporting any problem that may affect power supply; and
 - d. Immediate addressing potential or actual problems that may affect power supply.
 3. The members of the Power Task Force Election 2016 shall establish their contingency teams and designate their representatives to support the Sub-Task Force on Power 2016.

Section 3. Specific Responsibilities. In addition to the general responsibilities, each member of the Power Task Force Election 2016 has the following specific responsibilities:

PSALM and NPC

1. Ensure availability of generating units (including those already privatized) to meet demand and required reserves (regulating, spinning and back-up), in close coordination with NGCP;

2. Ensure maximum reservoir level for hydropower plants prior to election day;
 3. Suspend preventive maintenance and testing of generating units one week before and after election day;
 4. Defer scheduled plant maintenance and tests during the critical election period;
 5. Ensure availability of its quick start units, if any;
 6. Secure adequate fuel supplies and maintain reasonable fuel inventories;
 7. Arrange for back-up personnel in power plants and additional maintenance crew to assist in case of emergencies;
 8. Augment security forces in major plant installations;
 9. If necessary, lease-rental of gensets to ensure adequate, stable and reliable power supply;
 10. Ensure cooperation of successor generating companies and independent IPP administrators of NPC plants/IPPs to the Power Task Force Election 2016 directives; and
 11. Ensure availability of PSALM's purchased generating plants or administered IPPs at their dependable capability and assure their continued normal operation.
3. Ensure reliability of emergency diesel generators, station batteries and air compressor systems;
 4. Place off-duty control center and substation personnel on "on-call" basis;
 5. Ensure standby transmission line crew and power system maintenance personnel;
 6. Secure communication hotlines between the DOE and NGC P as well as with Market Operator (MO) and other electric power industry participants;
 7. Provide standby transportation facilities to assist in the immediate inspection of tripped critical transmission lines;
 8. Ensure all Area Control Center (ACC) dispatchers are prepared to implement islanding operation and power restoration;
 9. Strategically deploy Network Protection, Power System Maintenance, District/Branches, SCADA and Telecom personnel;
 10. Check proper function of installed fault clearance system, transient recorders and sequence of event recorders in all substations including all Special Protection Systems;
 11. Update load shedding schedule in each grid to consider priority supply to polling places and local government offices;

TransCo and NGCP

1. Ensure availability of all substation facilities/ transmission lines, to the extent possible, and assure their continued normal operation;
 2. Suspend maintenance and testing works on substation facilities/ transmission lines, one week before and after election day, except in extreme emergency cases;
12. Accelerate completion of corrective works on critical substation/ transmission lines before election day;
 13. The integrity of transmission line structures and clear obstructions, if any;
 14. Inspect connection points of DUs/ECs to the grid,

15. Augment security forces in critical substations/ transmission facilities;
 16. Coordinate with COMELEC, National Disaster Coordination Council (NDCC), Military, Philippine National Police (PNP) and the Regional Peace and Order Council, as necessary;
 17. Ensure availability of tools and materials at satellite offices; and
 18. Assign service vehicles/ drivers to regional and District Command Post.
2. Ensure the adequacy of connection and service entrance facilities of polling places and canvassing centers;
 3. Accelerate completion of corrective/ remedial works on critical distribution lines before election day;
 4. Create special and emergency line crews to undertake the following:
 - (a) Inspect integrity of distribution line structures and clear distribution lines from obstructions;
 - (b) Inspect connection points to polling places for proper breaker and fuse rating;
 - (c) Check electrical installation of polling places for proper breaker and fuse rating;
 - (d) Conduct information dissemination on how to avoid power supply overload/ short-circuits during election; and
 - (e) Respond to emergency cases affecting power supply within the service areas.

NEA

1. Oversee the preparation of the Electric Cooperatives for the 9 May 2016 national and local elections, and ensure the readiness and reliability of the distribution systems;
2. Direct the Electric Cooperatives to ensure the availability of their technical personnel especially during the election day and until the canvassing of votes; and
3. Ensure the full cooperation of the Electric Cooperatives to all activities of the Power Task Force Election 2016.

PEMC

1. Ensure the continuous operation of the Wholesale Electricity Spot Market (WESM); and
 2. In coordination with NGCP-System Operator (SO), ensure availability of all supervisory controls and communication networks and effective management of the power system.
5. Provide logistics support to special and emergency line crews such as:
 - (a) Availability of tools and equipment for all crew Service vehicles and drivers;
 - (b) Adequate supply of members/ line men;
 - (c) Replacement parts, and power line devices and equipment.

DUs

1. Ensure availability of all its substation facilities/ distribution lines, to the extent possible, and assure their continued normal operation;
6. Ensure availability and reliability of embedded generators within their franchise area, if any; and

7. Coordinate with NGCP on the appropriate load shedding to ensure that polling places and local government offices are excluded.

Philippine Independent Power Procedures Association (PIPPA)

Philippine Rural Electric Cooperatives Association (PHILRECA)

Private Electric Power Operators Association, Inc. (PEPOA)

Other Similar Associations/Federation of Electric Power Industry Participants

1. Establish respective satellite centers that will interface with distribution utilities; and
2. Provide support and assistance to distribution utilities to ensure their cooperation to Power Task Force Election 2016 directives.

In addition to the specific responsibilities of the members, the Head of the Power Task Force Election 2016 can delegate to any members other assignments, as necessary.

Annex A provides the Organizational Structure of the Power Task Force Election 2016.

Section 4. Command Post. The Power Task Force Election 2016 shall establish its Main Operations Center at NGCP-Diliman, Quezon City and Satellite Operation Centers at NGCP-

Banilad, Cebu City for Visayas and NGCP-Cagayan de Oro City, for Mindanao. These centers shall be equipped with monitoring facilities and communication link-ups with all electric power industry participants.

To establish communication links with the operations centers, the NPC, PSALM, TransCo, NEA, NGCP and PEMC shall create their contingency teams and designate their representatives to support the Power Task Force Election 2016 on a 24/7 basis. In addition, all DUS and FCS shall also create their own contingency teams and designate their representatives to support the Power Task Force Election 2016 on 24/7 basis.

Section 5. Logistics and Budgetary Requirement. The expenses to be incurred by the members of the Power Task Force Election 2016 in the performance of the responsibilities herein shall be charged to the respective accounts of the concerned agencies/ entities.

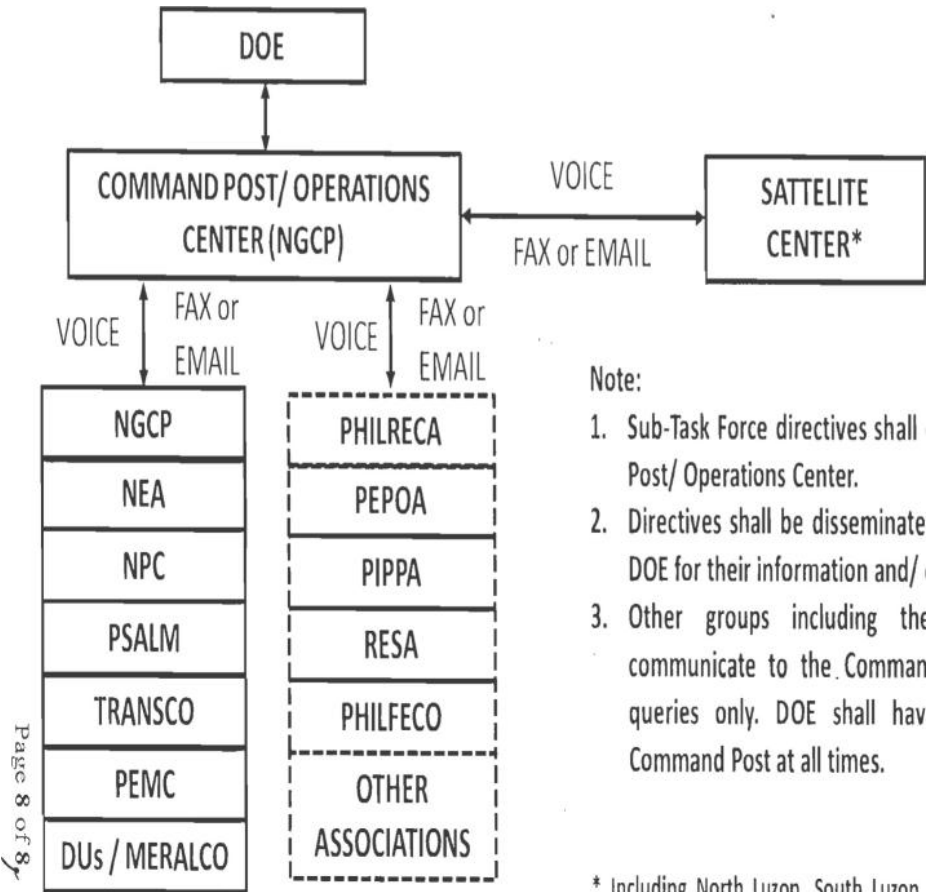
Section 6. Effectivity Period. This Circular shall take effect immediately upon its publication in a newspaper of general circulation.

Issued on Dec. 29, 2015 at Energy Center, Bonjfacio Global City, Taguig City.

(sgd) **ZENAIDA Y. MONSADA**
Secretary

POWER TASK FORCE ELECTION 2016

ORGANIZATIONAL STRUCTURE



Page 8 of 8

DEPARTMENT CIRCULAR NO. DC2016-04-0004

PROVIDING TIMELINES FOR COMPLIANCE WITH THE FULL IMPLEMENTATION OF RETAIL COMPETITION AND OPEN ACCESS 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, upon compliance with the pre-conditions set forth under Section 31 of the EPIRA, the Retail Competition and Open Access (RCOA) shall be mandated in the following manner:

- (a) Initial implementation for electricity end-users with an average demand of one (1) megawatts (MW) and above, for the preceding twelve (12) months;
- (b) Two (2) years after the initial implementation, reduce the threshold to 750 kilowatts (kW) electricity end-users

where at this level, Aggregators shall be allowed to supply electricity to electricity end-users whose aggregated demand within a contiguous area is at least 750 kW; and

- (c) Thereafter, the Energy Regulatory Commission (ERC) shall evaluate the performance of the market, which outcome shall be the basis of the reduction of the threshold level until it reaches the household 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 demand of one (1) MW and above but provided an interim option for Contestable Customers (CCs) to remain with

their franchised Distribution Utilities (DUs) as Captive Customers 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, the DOE issued Department Circular No. DC2015-06-0010 entitled "Providing Policies to Facilitate the Full Implementation of Retail Competition and Open Access in the Philippines Electric Power Industry;

WHEREAS, the DOE takes cognizance of the challenges raised by the Energy Regulatory Commission in adhering to the timelines set forth under DC2015-06-0010 particularly on the simultaneous implementation of mandatory contestability of 750 kW End-users and demand aggregation;

WHEREAS, the DOE also recognized the operational limitations raised by the Philippine Electricity Market Corporation (PEMC) as the Central Registration Body (CRB) in mandating simultaneously the 750 kW contestability and aggregation, to include among others, readiness of metering requirements and the need to prepare and educate the new Contestable Customers; and

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

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

Compliance with Section I of DC201506-0010 shall be no later than 26 December 2016.

Section 2. Contestability of End-users with Average Demand Ranging Below 1 MW to 750 kW. compliance with Section 2 (a) of DC2015-06-0010 shall be voluntary effective 26 June 2016 and mandatory effective 26 June 2017. Similarly, pursuant to EPIRA, the implementation of Section 2 (b) of DC2015-06-0010 is hereby amended to 26 June 2017 thereby allowing retail aggregation.

Section 3. 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 4. 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 5. 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.

(sgd) **ZENAIDA Y. MONSADA**
Secretary

DEPARTMENT CIRCULAR NO. DC2016-06-0010

DECLARING THE REPEAL OF DEPARTMENT ISSUANCES IN SUPPORT OF THE PROJECT REPEAL OF THE NATIONAL COMPETITIVENESS COUNCIL

WHEREAS, the Economic Development Cluster in its 11 March 2016 Meeting approved the National Competitiveness Council's (NCC) "Project Repeal: The Philippine Red Tape Challenge" which is an initiative to clean up regulations by repealing provisions or rules which are no longer necessary;

WHEREAS, the NCC set 13 June 2016 as Repeal Day in compliance with the initiative; **WHEREAS**, the Department of Energy (DOE) supports the initiative and reviewed its existing issuances to determine which can be part of the repeal and achieve the objective of the program;

WHEREAS, the DOE is mandated to provide a mechanism for the integration, rationalization, and coordination of the various activities to carry out the energy policy of the State;

WHEREAS, Article IX-C, Section 2(4) of the 1987 Constitution empowers the Commission on Elections (COMELEC) to deputize, with the concurrence of the President, law enforcement agencies and instrumentalities of the government for the exclusive purpose of ensuring free, orderly, honest, peaceful and credible elections;

WHEREAS, during the 2001, 2010 and 2013 National and Local Elections and October 2013 Barangay Elections, the COMELEC issued Resolution Nos. 3310, 8715, 9598 and 9306, respectively, to ensure a stable and continuous nationwide electric power requirements before, during and after elections.

WHEREAS, in compliance with the foregoing COMELEC Resolutions, the DOE promulgated the following Department Circulars, to wit:

- i) DC2001-04-001 issued on 19 April 2001, entitled "Mandating The National Power Corporation and All Franchised Electric Distribution Utilities To Draw Up Contingency Plans for the May 14, 2001 National and Local Elections";
- ii) DC2010-02-002 issued on 15 February 2010, entitled "Creating a Power Task Force Election 2010 to Ensure Adequate and Reliable Electric Power Supply Before, During and After the May 10, 2010 Automated National and Local Elections";
- iii) DC2012-12-0011 issued on 10 December 2012, entitled "Creating a Power Task Force Election 2013 to Ensure Adequate and Reliable Electric Power Supply Before, During and After the May 13, 2013 National and Local Elections";
- iv) DC2013-05-007 issued on 10 May 2013, entitled "Calling For The Oil Industry's Support To Ensure Sufficient Power Supply, Especially For Mindanao During the May 2013 Elections"; and
- v) DC2013-10-026 issued on 09 October 2013, entitled "Enjoining the Relevant Government Agencies, the National Grid Corporation of the Philippines (NGCP) and Electric Power Industry Participants to Ensure Continuous Power Supply in the Country Before, During and After the 28 October 2013 Barangay Election."

NOW, THEREFORE, premises considered, the DOE hereby declares the following:

Section 1. Repeal. This Circular repeals the listed circulars considering that its purpose

has been accomplished: DC2001-04-001, DC2010-02-002, DC2012-12-0011, DC2013-05007, and DC2013-10-026.

Section 2. Effectivity. This Circular shall take effect immediately.

Issued on at Energy Center, Rizal Drive, Bonifacio Global City, Taguig City.

(sgd) **ZENAIDA Y. MONSADA**
Secretary

DEPARTMENT CIRCULAR NO. DC2017-05-0008

PROVIDING FOR THE POLICIES AND GUIDELINES ON THE CONDUCT OF PERFORMANCE ASSESSMENT AND AUDIT FOR ALL POWER GENERATION, TRANSMISSION AND DISTRIBUTION SYSTEMS AND FACILITIES

WHEREAS, Republic Act No. 9136, otherwise known as “The Electric Power Industry Reform Act of 2001” or “EPIRA” declares, among others, the policy of the State to “ensure the quality reliability, security and affordability of the supply of electric power and 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 37 of the EPIRA, the Department of Energy (DOE) is specifically mandated and authorized among others, to “ensure the reliability, quality and security of supply of electric power and to facilitate and encourage reforms in the structure and operations of distribution utilities for greater efficiency and lower costs”;

WHEREAS, Sections 6 and 22 of the EPIRA expressly declare the generation sector as a business affected with public interest, and the distribution sector as a regulated industry, respectively;

WHEREAS, pursuant to Sections 9 and 21 of the EPIRA, National Transmission Corporation (TransCo) or its Buyer/ Concessionaire is mandated to, among others, provide open and nondiscriminatory access; ensure and maintain the reliability, adequacy, security, stability and integrity of the nationwide electrical grid in accordance with the Philippine Grid Code (PGC) and the Transmission Development Plan (TDP);

WHEREAS, the Energy Regulatory Commission (ERC), in compliance with its mandate under the EPIRA, promulgated the PGC and the Philippine Distribution Code (PDC), prescribing, among others, the technical and financial performance standards that govern the operations of Generation Companies, Transmission Service Provider/Operator and Distribution Utilities, respectively;

WHEREAS, the DOE promulgated Department Circular No. DC2010-03-0003, entitled “Directing All Power Generation Companies, the Transmission Service Provider, and All Distribution Utilities to Ensure Adequate and Reliable Electric Power Supply in the Country, whereby all Generation Companies are mandated to, among others:

- (a) Operate based on its maximum available capacity;
- (b) Submit to the DOE its monthly operational status and fuel inventory reports; and
- (c) Maintain an adequate in-country stock of fuels based on the minimum inventory required by the Circular; and, strictly abide by the PGC.

WHEREAS, Department Circular No. DC2010-03-0003 mandates the TransCo or its Buyer/ Concessionaire to:

- (a) Ensure adequate provision and availability for access of its transmission facilities to all grid users in line with the approved TDP;
- (b) Evaluate all attendant circumstances before approval of deactivation or shutdown of power plants;
- (c) Monitor compliance of Generation Companies to the Grid Operating and Maintenance Program and submit to the DOE any changes thereto;
- (d) Report to the DOE all power interruption incidents and threats to system security and reliability; and
- (e) Institutionalize connection agreements with all grid users and impose all pertinent requirements of the PGC.

WHEREAS, Department Circular No. DC2010-03-0003 mandates the Distribution Utilities to regularly submit to the DOE the following:

- (a) Distribution Development Plan (DDP) to monitor the existing, available, and future supply requirements; and
- (b) Monthly Operations Report (MOR) for the private Distribution Utilities and Monthly Financial and Statistical Report (MFSR) for Electric Cooperatives.

WHEREAS, Department Circular No. DC2010-03-0003 further mandates the Distribution Utilities to ensure (i) full compliance at all times with all the requirements of the PDC; (ii) reporting of significant load interruptions in its franchise area or any threats that may lead to such events; and, (iii) that the power requirements within their franchise areas are adequately covered by supply contracts or purchases from the Wholesale Electricity Spot Market (WESM) at all times;

WHEREAS, the DOE noted the increasing and frequent occurrences of Forced and

Unplanned Outages particularly of large baseload power plants based on the reports of the National Grid Corporation of the Philippines (NGCP) resulting to issuances of Yellow and Red Alert notices, which may lead to supply shortfall and possibly rotating brownouts;

WHEREAS, the DOE, in the exercise of its mandate under Republic Act No. 7638 and EPIRA, to ensure the security, reliability, quality and affordability of the supply of electric power, deems it necessary to institutionalize a regular compliance assessment on all issuances relative to PGC, PDC, terms and conditions on permits and licenses issued to power generation, transmission and distribution sectors;

WHEREAS, on 08 August 2016 and 25 August 2016, the DOE, separately entered into a Memorandum of Agreement with the Institute of Integrated Electrical Engineers of the Philippines, Inc. (IIEE) and the Philippine Society of Mechanical Engineers (PSME), respectively, in which both organizations agreed to provide their expertise, pro bono, to assist the DOE in the conduct of Performance Assessment and Audit of the complete generation, transmission and distribution infrastructure in the country;

WHEREAS, all data and findings from the Task Force created under the Memorandum of Agreement with the IIEE and PSME, shall be included as preliminary input in the conduct of overall performance assessment and audit for all power generation, transmission and distribution sectors;

NOW, THEREFORE, premises considered, the DOE hereby adopts the following policies and guidelines on the conduct of technical and operational audit of all power generation, transmission and distribution systems and facilities in the country:

Section 1. Declaration of Policy and Objectives.

The DOE hereby directs the conduct of overall performance assessment and audit for all power generation, transmission and distribution sectors, hereinafter referred to as the Performance Assessment and Audit for purposes of among others, the following:

- (a) Evaluate the overall performance and efficiency of the power generation, transmission and distribution systems and facilities in the country;
- (b) Conduct of post-review of compliance with the existing laws and regulations, as well as to the terms and conditions Of the various permits and licenses issued to the said facilities and their respective owners and/or proponents, such as but not limited to EPIRA, WE-SM Rules, Retail Rules and Market Manuals, PGC, PDC and Environmental Standards;
- (c) Determine and remove bottlenecks and inefficiencies in the operation of power generation, transmission and distribution systems and facilities that cause the disruptions in the supply of electricity and the volatility of electricity prices in the market;
- (d) Identify effective systems of incentives, and appropriate penalties, to encourage greater efficiencies and improve the performance of generation, transmission and distribution sectors:
- (e) Ensure that the power industry is abreast and responsive to technological advancements;
- (f) Ensure that the power industry is able to fully respond to the requirements of the economic activities and support the economic growth targets set by the Development Budget Coordinating Council (DBCC); and,
- (g) Incorporate best practice and good governance principles that enhance

transparency, fairness and accountability in the operation of the various generation, transmission and distribution systems and facilities in the country.

The Performance Assessment and Audit shall serve as a DOE tool for the assessment of the overall performance of the electric power industry thereby paving the way for policy development that shall be instrumental in the attainment of the secure, reliable and affordable supply of electric power to support the economic growth of the country.

Nothing in this Circular is intended to encroach on the authority of the ERC, the Grid Management Committee (GMC), and the Distribution Management Committee (DMC).
Section 2. Scope of Coverage.

This Circular shall apply to:

- (a) All Generation Companies owning and/or operating Generation Facilities in the main grid and off-grid areas;
- (b) All Transmission Service Provider and System Operator in the main grid and off-grid areas; and,
- (c) All Distribution Utilities in the main grid and off-grid areas.

For this purpose, the aforementioned Electric Power Industry Participants are mandated to ensure compliance with the Performance Assessment and Audit requirements, including but not limited to:

- (a) Provide within the prescribed period the required data, reports, records and other information that are deemed necessary for the successful implementation of the Performance Assessment and Audit activities; Provided, that all members of the Performance Assessment and Audit Teams created pursuant to this Circular shall ensure utmost confidentiality of any information received for the purpose of

this audit;

- (b) Grant coordinated visitation privileges in the form of guided full accessibility/unrestricted access to their facilities to conduct inspection of facilities for the purpose of verifying the authenticity of reports submitted in compliance to standards;
- (c) Allow the conduct of testing, consistent with industry standards and practices, of any or all parts of the facilities; and,
- (d) Assist and provide security of the Performance Assessment and Audit Task Forces in the conduct of inspection.

Section 3. Creation of the Power Generation, Transmission and Distribution Performance Assessment and Audit Task Forces.

To perform the Performance Assessment and Audit, it is hereby created the Performance Assessment and Audit Team on Power Generation Facilities (PAAT-PGF), Performance Assessment and Audit Team on Transmission Service Provider/Operator (PAAT-TSPO) and the Performance Assessment and Audit Team on Distribution System Facilities (PAAT-DSF), as follows:

- (a) Performance Assessment and Audit Team on Power Generation Facilities (PAATPGF), to be composed as follows:

Chairman: DOE Undersecretary or
Assistant Secretary for Power

Members:

- i. National Transmission Corporation (TransCo) Representatives;
- ii. Grid Management Committee (GMC) Representatives (Independent of Electric Power Industry Participants);
- iii. Philippine Electricity Market Corporation (PEMC) Representatives;

- iv. WESM Market Governance Committee Members from Market Surveillance Committee (MSC) and Technical Committee (TC); and
- v. National Electrification Administration (NEA) Representatives.

- (b) Performance Assessment and Audit Team on Transmission Service Provider/Operator (PAAT-TSPO), to be composed as follows:

Chairman: DOE Undersecretary or
Assistant Secretary for Power

Members:

- i. National Transmission Corporation (TransCo) Representatives;
- ii. Grid Management Committee (GMC) Representatives (Independent of Electric Power Industry Participants);
- iii. Distribution Management Committee (DMC) Representatives (Independent of Electric Power Industry Participants);
- iv. Philippine Electricity Market Corporation (PEMC) Representatives;
- v. WESM Market Governance Committee Members from Market Surveillance Committee (MSC), Technical Committee (TC), PEMC Audit Committee (PAC); and
- vi. National Electrification Administration (NEA) Representatives.

- (c) Performance Assessment and Audit Team on Distribution System Facilities (PAATOSF):

Chairman: DOE Undersecretary or
Assistant Secretary for Power

Members

- i. National Electrification Administration (NEA) Representatives;
- ii. Distribution Management Committee Representatives (Independent of Electric Power Industry Participants);
- iii. National Transmission Corporation (TransCo) Representatives; and
- iv. Philippine Electricity Market Corporation (PEMC) Representatives.

Other relevant government agencies and private sector institutions [e.g., ERC, UP-National Engineering Center; IIEE; PSME] may be invited to join the PAAT-PGF; PAAT-DSF and PAAT-TSPO, as deemed necessary to address the effectiveness of the Performance Assessment and Audit.

The Undersecretary or Assistant Secretary for Power, assisted by the Electric Power Industry Management Bureau shall oversee the conduct of the Performance Assessment and Audit and provide guidance and/or direction to the PAAT-PGF, PAAT-TSPO and PAAT-DSF.

To support the operations of the PAAT-PGF, PAAT-TSPO and PAAT-DSF, a Technical Secretariat shall be also headed by the Electric Power Industry Management Bureau, duly supported by the Energy Policy and Planning Bureau, Renewable Energy Management Bureau, Energy Utilization Management Bureau, Legal Services, Administrative Services and Finance Services. For this purpose, the Technical Secretariat shall comprise the following support groups:

- i. Database Management Support Group which shall be responsible for gathering, summarizing and maintaining the data and information needed by the PAAT-PGF, PAAT-TSPO and PAAT-DSF;
- ii. Technical Inspection Support Group which shall be responsible for assisting

the PAATPGF, PAAT-TSPO and PAAT-DSF in the formulation and implementation of the Performance Assessment and Audit Plan, conduct of site inspections and field visits, preparation of status reports and other tasks that the task forces may deem necessary for effectively carrying out the Performance Assessment and Audit activities; and

- iii. Administrative Support Group which shall be responsible for ensuring the provision of administrative support to include arrangements for conduct of meeting and inspections, travel arrangements and logistics and liquidation of expenses, among others.

Section 4. Responsibilities of the Assessment and Audit Teams.

The PAAT-PGF, PAAT-TSPO and PAAT-DSF shall have the following responsibilities:

- (a) Within thirty (30) days from issuance of this Circular, conduct meetings and workshops to define their respective approach and methodology for the conduct of Performance Assessment and Audits and to:
 - i. Determine the priority areas and entities to be studied;
 - ii. Determine the reports/documents and prepare templates needed to validate the performance;
 - iii. Achieve common understanding by all Performance Assessment and Audit Team Members including responsibilities, assignments and accountabilities;
 - iv. Establish the procedures/protocol with Auditees for the conduct of Performance Assessment and Audit and on-site testing and inspection;

- v. Prepare the proposed roll out program, within 90 days upon effectivity of this Circular, in a Performance Assessment and Audit Plan (PAAP) to be approved by the DOE Secretary or the Undersecretary for Power as designated by the DOE Secretary; and
 - vi. Inform the industry participants of the PAAP through posting in the DOE website and through appropriate mediums.
- (b) Implement the PAAP taking into consideration the deadline provided by the DOE Secretary and the resources available for the conduct of the Performance Assessment and Audit;
 - (c) Identify priority systems and facilities for the conduct of Performance Assessment and Audit and recommend as may be necessary, to include on-site testing and inspections;
 - (d) Identify and recommend generation, transmission and distribution systems and facilities that will be prioritized in the conduct of the Performance Assessment and Audit;
 - (e) Engage, if deemed necessary, of Independent Third Party Auditor and/or hiring of technically qualified persons on a contractual basis, to assist in the conduct of the Performance Assessment and Audit;
 - (f) Undertake data gathering and analysis;
 - (g) Coordinate with the Administrative and Finance Support Team on any support or assistance needed which shall include, but not limited to travel arrangements, conduct of meetings with concerned Generation Companies, Transmission Service Provider/Operator or Distribution Utilities and relevant entities, securing

necessary permits, clearances on the conduct on-site inspections and field visits, and procurement production of materials;

- (h) Prepare monthly status report to the DOE Secretary through the Undersecretary for Power, on the progress of the Performance Assessment and Audit identifying actual accomplishments, challenges and barriers that require intervention by the DOE and the recommendations to remedy the same to ensure the success of the Performance Assessment and Audit; and
- (i) identify the gaps and weaknesses in the monitoring and enforcement, and recommend policies, programs and strategies to improve the performance and compliance of the industry participants.

Section 5. Logistics Support.

The PAAT-PGF, PAAT-TSPO and PAAT-DSF shall provide an estimate of the costs to be incurred in the performance of their mandates for approval of the DOE Secretary. Upon the institutionalization of the Performance Assessment and Audit of generation, transmission and distribution systems and facilities, the funding requirements shall be included in the DOE Regular Budget as approved in the General Appropriations Act.

The Performance Assessment and Audit for each of the generation, transmission and distribution systems and facilities shall be conducted at least once every three (3) years, or as may be necessary, as directed by the DOE Secretary.

Section 6. Confidentiality and Ownership of Information and Findings.

All data, information and findings relevant to the conduct of this Performance Assessment and Audit shall be owned and for the exclusive

use of the DOE. The results of Performance Assessment and Audit may be provided by the DOE to the ERC, for purposes of rulemaking and establishment and enhancement of standards.

Pursuant to a non-disclosure agreement, all members of the task forces shall not use, disclose any information, data or findings other than for the purposes as identified under this Circular.

Section 7. Institutionalization of Performance Assessment and Audit.

From the effectivity of this Circular, all Generation Companies, Transmission Service Provider/System Operator and Distribution Utilities shall be subjected to a Performance Assessment and Audit once every three (3) years, or, as may be directed by the DOE.

As may be determined by the DOE, the Performance Assessment and Audit may be conducted by an independent third party and reputable Performance Assessment and Audit firms. For this purpose, the DOE shall develop procedure on the accreditation or engagement of an independent third party auditor.

Section 8. Incentives and Penalties.

To ensure compliance to the provisions of this Circular, the DOE may recommend to the ERC, the imposition of penalties to non-complying Electric Power Industry Participants.

Further, the DOE shall develop an appropriate system of incentives and penalties on the performances of the Electric Power Industry Participants in line with the Performance Assessment and Audit parameters as may be determined on subsequent issuances.

Section 9. Regulatory Support.

The DOE shall coordinate with the ERC on the required regulatory support for the institutionalization of Performance

Assessment and Audit, which include among others, the accreditation of independent third party or testing/inspection firms for the conduct of Performance Assessment and Audit.

A separate policy and regulatory framework shall be developed by the DOE, in consultation with the ERC, for the implementation of operational improvement plan, to be included in but not limited to the Philippine Distribution and Grid Codes, arising from the conduct of the Performance Assessment and Audit to achieve provision of adequate, reliable, secured and reasonably-priced electricity services.

Section 10. 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 11. Effectivity and Publication.

This Department Circular shall be effective immediately upon its publication in two (2) newspapers of general circulation. Copies of this Circular shall be filed with the University of the Philippines Law Center - Office of the National Administrative Register (UPLC-ONAR).

Signed this day of 2017 at DOE, Energy Center, Rizal Drive, Bonifacio Global City, Taguig City, Metro Manila.

(sgd) **ALFONSO G. CUSI**
Secretary

WESM
Related Issuances
2010-2017

WESM

Related Issuances

2010-2017

DEPARTMENT CIRCULAR NO. DC2010-05-0006

TERMINATING THE DEFAULT WHOLESALER SUPPLIER ARRANGEMENT FOR THE PHILIPPINE WHOLESALER ELECTRICITY SPOT MARKET (WESM) AND DECLARING A DISCONNECTION POLICY

WHEREAS, the Department of Energy (the “DOE”) is mandated under Section 30 of Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001” or “EPIRA”, to establish the Wholesale Electricity Spot Market (WESM) that will facilitate a transparent, competitive, and reliable electricity market in the country;

WHEREAS, on 21 June 2006, the DOE issued Department Circular No. 2006-06-008 declaring the launching of the WESM in the Luzon Grid and the terms and conditions for the commencement of the full commercial operations of the WESM;

WHEREAS, at the start of the commercial operation of WESM, not all electric industry participants, particularly the Distribution Utilities (DUs), were able to meet the technical and commercial requirements to directly trade in the WESM;

WHEREAS, on 22 June 2006, the DOE issued Department Circular No. 2006-06-009 designating the National Power Corporation (NPC) and Power Sector Assets and Liabilities Management Corporation (PSALM) as the Default Wholesale Suppliers (DWS) to supply the electric power supply imbalances of customers in the WESM;

WHEREAS, Section 3 of Department Circular No. 2006-06-009 states that the DWS Arrangement shall be implemented for a period not longer than one (1) year from the start of commercial operations of the WESM in Luzon;

WHEREAS, Section 4 of Department Circular No. 2006-06-009 states that the designation of NPC and PSALM as the DWS is an interim measure to ensure the smooth transition from the current supply arrangements to the implementation of the WESM;

WHEREAS, commercial operations of the WESM commenced on 26 June 2006;

WHEREAS, as of 28 April 2010, PSALM has successfully bid out an aggregate rated capacity of 3,318.23 MW which accounts for the 87.82% of the total 3,778.23 MW rated capacity of PSALM/NPC owned generating assets in the Luzon and Visayas grids; also, PSALM has bid out 68.22% or 3,345.75 MW of the total 4,904.55 MW capacity of NPC-IPP contracts in the Luzon and Visayas grids;

WHEREAS, the privatization of the significant portion of NPC generating plants and other power assets of PSALM, since the effectivity of the DWS, has significantly affected the ability of PSALM and NPC to supply the energy

requirements of its customers;

WHEREAS, there is a need to terminate the DWS since NPC and PSALM can no longer economically and effectively perform their duties as the default wholesale supplier;

WHEREAS, the termination of the DWS arrangement will cause distribution utilities (DUs) to have no default supplier of electricity for the imbalances of their contract and shall likewise leave them without any supplier, in case they fail to enter into a supply contract with a generator or other service providers;

WHEREAS, to ensure continuous supply of electricity within its franchise area, a DU is encouraged to enter into a bilateral contract with a generator or other service provider, in a least cost manner, to cover its energy requirements;

WHEREAS, DUS can withdraw electricity from the grid, provided they are WESM Members, either as a Direct or Indirect, pursuant to WESM Rules Section 2.2.4.2, which states that “no person or entity shall be allowed to inject or withdraw electricity from the grid unless that person or entity is a registered member of the WESM”;

WHEREAS, it therefore necessarily follows that DUS who are not WESM members do not have the right to withdraw electricity from the grid and should therefore be disconnected from the grid;

WHEREAS, the Open Access and Transmission Services (OATS) Rules provides that the Transmission Provider shall not be held liable for failure to deliver the services described in Modules B, C, and D of the OATS Rules in case the Transmission Customer fails to comply with its obligations under the OATS Rules, the Grid Code, and the WESM Rules;

NOW THEREFORE, premises considered the DOE hereby declares the following:

Section 1. Termination of the DWS Arrangement. In view of the inability of NPC and PSALM to economically and effectively perform their duties as DWS considering the privatization level to-date, the DWS arrangement provided in DOE Circular No. 2006-06-009 is hereby terminated. Accordingly, NPC and PSALM are thereby relieved from their designation as the DWS. All other rules, resolutions, or circulars issued in relation to the DWS are hereby declared repealed.

In accordance with Section 2 of DOE Circular No. 2006-06-009, the termination of the DWS arrangement shall apply to the grid where WESM is operational.

Section 2. Disconnection Policy.

2.1 Disconnection of Non-WESM Members. Pursuant to Section 2.2.4.2 of the WESM Rules, all persons or entities who fail to register with the WESM within ninety (90) days from the effectivity of this Circular shall be disconnected from the grid. This condition shall initially apply to the Luzon grid where there is WESM operation.

2.2 Other grounds for disconnection, The DOE shall provide other grounds for disconnection of persons or entities in the guidelines as it may deem proper pursuant to the overall intent of the EPIRA.

Pursuant to Section 4.1. below, the DOE shall formulate the necessary guidelines for the disconnection of persons or entities who fail to comply with this Circular, taking into consideration existing laws and procedures.

Section 3. Transition Period. Sections 1 and 2 above are hereby subjected to a transition period of ninety (90) days from the effectivity of this Circular. Within the 90-day period, the following shall take place:

3.1 All DUs, i.e. privately-owned utilities and electric cooperatives, generation

companies, and other entities connected to the grid, are hereby directed to register with the WESM. Failure to comply with this requirement shall result in the disconnection of the concerned entity pursuant to Section 2 of this Circular.

- 3.2 Any DU, i.e. privately-owned utilities and electric cooperatives, which has arrearages with NPC and PSALM at the time of the effectivity of this Circular, shall be allowed to register in the WESM; *Provided*, that such DU shall settle its arrearages or enter into a restructuring agreement with NPC and PSALM within ninety (90) days from the effectivity of this Circular. The failure of any electric power industry participant to comply with this requirement within the prescribed period shall constitute a violation of this Circular and shall result in the disconnection of the participant from the grid. For this purpose, the subsequent settlement or restructuring of the arrearages with NPC and PSALM is hereby considered a condition for the reconnection of the participant.
- 3.3 In the case of private entities, i.e. generation companies, distribution utilities, transmission service providers and other service providers, settlement arrangements of the outstanding obligations, if any, shall be governed by their existing bilateral contracts.

Section 4: Responsibilities of Entities:

- 4.1 Pursuant to the mandate of the DOE under Section 37(p) of the EPIRA to formulate rules and regulations as may be necessary to implement the objectives of the EPIRA and the WESM Rules, the DOE, in coordination with NGCP, TRANSCO, NPC, PSALM, NEA, and PEMC shall provide the guidelines within ninety (90) days from the effectivity of this Circular for the disconnection of persons or entities who fail to comply with this Circular.

- 4.2 In addition, the DOE shall, together with PEMC and NEA, provide the necessary support, including liaison with financial institutions, to the DUs in need in complying with this Circular and the requirements for registration with the WESM.
- 4.3 Pursuant to the EPIRA and the OATS Rules, NGCP is hereby given the authority to disconnect from the grid persons or entities who fail to comply with their obligations under the OATS Rules, the Grid Code, the WESM Rules, and this Circular in accordance with the guidelines to be issued by the DOE in Section 4.1 of this Circular.
- 4.4 PEMC shall continuously monitor and submit regular reports to the DOE on the status of the registration in the WESM.
- 4.5 PSALM and NPC shall provide the DOE all information on DWS arrangements and assist the DOE in the implementation of the termination of the DWS arrangement. PSALM and NPC are likewise required to submit to the DOE a regular monthly report on the restructuring of the outstanding obligations of its customers.
- 4.6 NEA is directed to provide assistance to all electric cooperatives for their registration in the WESM, including compliance with the requirement to settle or restructure their outstanding obligations with NPC and PSALM. It shall, together with the DOE, undertake an information and education campaign for the termination of the DWS arrangement and the implementation of the disconnection policy.
- 4.7 All electric power industry participants are directed to register in the WESM pursuant to WESM Rules 2.2.4.2.

Section 5. Creation of Implementation Review Committee (IRC). An IRC composed

of representatives from DOE, PEMC, PSALM, NPC, TRANSCO, NEA, and NGCP is hereby created. The DOE shall chair the IRC.

- 5.1 The IRC shall be responsible for ensuring the smooth termination of the DWS arrangement and the implementation of the disconnection policy.
- 5.2 The IRC shall formulate the implementing rules and regulations of this Circular.

Section 6. 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 7. Effectivity and Publication. This Circular shall be effective fifteen (15) days from its publication in a newspaper of general circulation. PEMC is hereby directed to publish this Circular in the market information website. This Circular shall remain in effect until otherwise revoked.

Taguig City, Philippines May 6, 2010

Signed

JOSE C. IBAZETA
Acting Secretary

DEPARTMENT CIRCULAR NO. DC2010-06-0007

DIRECTING THE PREPARATIONS FOR THE TRADING OF ANCILLARY SERVICES IN THE PHILIPPINE WHOLESALE ELECTRICITY SPOT MARKET (“WESM”)

WHEREAS, Section 37 of EPIRA Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001” or “EPIRA”, provides the mandate of the Department of Energy (“DOE”) to “ensure the reliability, quality and security of supply of electric power, encourage private sector investments in the electricity sector and promote development of indigenous and renewable energy sources and 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, the DOE is also mandated under Section 30 of the EPIRA to establish the Wholesale Electricity Spot Market (“WESM”) that would facilitate a transparent, competitive, and reliable market for electricity;

WHEREAS, the DOE, jointly with the electric power industry participants, is tasked to formulate the detailed rules for the WESM and, pursuant to this, the DOE upon the joint endorsement of electric power industry participants promulgated the Wholesale Electricity Spot Market Rules (“WESM Rules”) on 28 June 2002 through Department Circular No. DC- 2002-06-003;

WHEREAS, the Philippine Electricity Market Corporation was constituted as the autonomous group market operator of the WESM;

WHEREAS, upon declaration by the DOE through Department Circular No. DC-2006-06 0008, the WESM commenced commercial

operations in Luzon on 26 June 2006;

WHEREAS, the WESM Rules in Section 10.3 provided that, initially, only energy shall be traded upon commencement of the WESM;

WHEREAS, for ancillary services, the WESM Rules Section 10.3.2.3 provides that when applicable and reasonably feasible, the Market Operator of the WESM shall establish a spot market mechanism for competitive spot market trading in the purchase of certain reserve categories and that the DOE shall declare the commencement of the spot market for ancillary services;

WHEREAS, the WESM Price Determination Methodology as approved by the Energy Regulatory Commission in its Decision dated 20 June 2006 in ERC Case No. 2006-007 RC embodies the principle of the co-optimization of reserve and energy in the pricing and scheduling processes of the WESM;

WHEREAS, there is a need to establish the conditions and the roles and responsibilities of concerned agencies and entities in the preparations for the establishment and commencement of the spot market for ancillary services;

NOW, premises considered, the DOE hereby declares as follows -

SECTION 1. Scope and Application. This Circular shall apply to the agencies and entities named in this Circular and to all electric power industry participants.

SECTION 2. Spot Market Mechanism for Ancillary Services. The spot market for ancillary services shall be made an integral

part of the WESM and shall cover the reserve categories as prescribed in the WESM Rules and as may be proposed by the Market Operator in consultation with the System Operator and approved by the Philippine Electricity Market Board in accordance with the WESM Rules. For this purpose, the principle of the co-optimization of reserve and energy as provided for in the WESM Rules and the approved WESM Price Determination Methodology shall always be followed.

SECTION 3. Responsibilities. Pursuant to their respective mandates and functions under the EPIRA and its Implementing Rules and Regulations, the WESM Rules and other relevant laws and issuances, the following agencies and entities are enjoined to extend their full cooperation toward the preparations for the establishment and commencement of the trading of reserves in the WESM (“reserve market” for brevity).

SECTION 3.1. Philippine Electricity Market Corporation (“PEMC”). Pursuant to its mandate as the autonomous group market operator of the WESM, the PEMC shall complete its preparations for the establishment of the reserve market. Its preparatory activities shall include, but shall not be limited to:

- a) Securing regulatory approval of the pricing and cost recovery methodology for reserves, provided that the methodology shall be consistent with the relevant provisions of the WESM Rules and the duly approved WESM Price Determination Methodology;
- b) Ensuring that the WESM Market Management System and other market infrastructure, both hardware, software and necessary interfaces, are in place to support the operations of the trading of reserves in the WESM;
- c) Ensuring readiness of all WESM members and trading participants as well as

WESM service providers by conducting training, stakeholder consultations and other information dissemination activities to fully inform the WESM members and participants of the relevant methodologies and processes for the trading of reserve;

- d) Review the existing WESM Rules, manuals and its internal business processes relevant to the trading of reserve and provision of ancillary services and, if warranted, propose and secure approval for changes to said rules, manuals, and business processes; and
- e) Comply with all directives from the DOE pertaining to the establishment of the reserve market.

SECTION 3.2. National Grid Corporation of the Philippines. The NGCP shall ensure that its performance of its functions and obligations pursuant to its mandate on the provision of ancillary services are in compliance with the EPIRA and its Implementing Rules and Regulations, the WESM Rules, the Philippine Grid Code, the Open Access Transmission Service Rules (“OATS Rules”), and other relevant rules and regulatory issuances. Toward this end, it shall closely coordinate with PEMC and the DOE to ensure that all pre-requisites and conditions for the establishment of the reserve market are complied with and completed in a timely manner.

SECTION 3.3. National Electrification Administration. The NEA shall render appropriate assistance to electric cooperatives (“ECs”) in ensuring their readiness for the commencement of the WESM reserve market. It shall submit regular reports to the DOE on the status of the activities undertaken together with the ECs in performing their responsibilities under this Circular.

SECTION 3.4. WESM Members and Electric Power Industry Participants. All WESM

Members and Trading Participants, as well as non-registered WESM electric power industry participants are hereby directed to undertake their own preparations to ensure their readiness for the commencement of the WESM reserve market. All qualified participants intending to participate in the WESM reserve market as ancillary services providers shall obtain the necessary regulatory approvals as such and shall ensure compliance with the requirements set forth in the WESM Rules and other requirements as may be set by the PEMC and NGCP for the registration and accreditation of ancillary services providers in the WESM.

SECTION 4. Criteria and Conditions for Declaration of Commencement of Spot Market for Ancillary Services. Pursuant to its mandate, the DOE shall determine the feasibility and reasonability of the commencement of the commercial operations of the reserve market in the WESM. Towards this end, it shall establish appropriate criteria for assessment of the readiness of all electric power industry participants to participate in and of the NGCP and PEMC to operate the reserve market. The DOE shall declare commencement of the commercial operations of the reserve market upon its determination that the conditions and criteria it has set have been substantially complied with.

SECTION 5. Reportorial Requirements. For purposes of monitoring compliance with the directives under this Circular, the PEMC, NGCP, NEA, and other relevant agencies shall

be required to submit reports on the progress and status of their preparations and readiness to the DOE from time to time.

SECTION 6. Supervision by the DOE. The DOE shall continue to oversee the development of the WESM which includes, among other things, the trading of reserves. Toward this end, it shall undertake such actions as provided in the EPIRA, its Implementing Rules and Regulations, and the WESM Rules in connection with the establishment of the WESM.

SECTION 7. No amendment or repeal of existing laws. Nothing in this Circular shall be construed as to amend, supplant, or repeal any of the mechanisms or institutions already existing or responsibilities already allocated and provided for under any existing law, rule or contract.

SECTION 8. Effectivity and Publication. This Circular shall be effective immediately upon its publication in two (2) newspapers of general circulation. The PEMC is also hereby directed to publish this Circular in the WESM Market Information Website.

This Circular shall remain in effect until otherwise revoked.

Taguig City, Metro Manila, Philippines, June 23, 2010.

(Sgd) **JOSE C. IBAZETA**
Acting Secretary

DEPARTMENT CIRCULAR NO. DC2010-07-0009

ENJOINING ALL ELECTRIC INDUSTRY STAKEHOLDERS IN THE VISAYAS GRID TO REGISTER AND PARTICIPATE IN THE VISAYAS WESM TRIAL OPERATION PROGRAM (TOP)

WHEREAS, the Department of Energy (the “DOE”) is mandated under Section 30 of Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001” or “EPIRA”, to establish the Wholesale Electricity Spot Market (WESM) that would facilitate a transparent, competitive and reliable market for electricity, and, jointly with the electric power industry participants, to organize the autonomous group market operator and formulate the detailed rules for the WESM;

WHEREAS, the Philippine Electricity Market Corporation (the “PEMC”), a non-stock, non-profit corporation with membership composed of an equitable representation of electricity industry participants and currently chaired by the Secretary of Energy, is the autonomous group market operator (the “AGMO”) as well as governing arm of the WESM. PEMC, as the AGMO, is responsible for the registration of participants and members of the WESM, pursuant to the requirements of Section 30 of the EPIRA and in accordance with the WESM Rules;

WHEREAS, the DOE declared the launch of the commercial operations of the WESM for energy in the Luzon Grid on June 23, 2006 through Department Circular 2006-06-0008 “Declaring the Launching of the Wholesale Electricity Spot Market (WESM) in the Luzon Grid and the Terms and Conditions for the Commencement of the Full Commercial Operations of the WESM”;

WHEREAS, PEMC launched the Trial Operations Program for Visayas as early as October 2005; likewise, PEMC has conducted actual implementation of the dispatch schedule in the Market Management System

(the “MMS”) through the Live Dispatch Operation from January 14 to 24, 2008 to enable Visayas market participants real-time trading exposure and end-to-end testing of all interfaces to the MMS with Supervisory Control And Data Acquisition (SCADA) and Energy Management System (EMS), including WESM procedures and protocols;

WHEREAS, the DOE, jointly with the PEMC Market Operator, conducted a series of Visayas WESM Stakeholders’ readiness meetings with Visayas-based generators, distribution utilities, and electric cooperatives, and with NGCP (System Operator, and Metering Services Group), in Cebu City, last March 10 to 12 and June 18, 2010 where they determined Visayas stakeholders’ issues and concerns on their compliance with Visayas WESM readiness program.

WHEREAS, during the last June 18, 2010 stakeholders’ meeting, the DOE has set June 30, 2010 as the official starting date of Visayas WESM Stakeholders’ registration with PEMC Market Operator;

NOW, THEREFORE, premises considered, the DOE hereby enjoins all electricity industry stakeholders in the Visayas grid to register and to participate in the WESM and to fully comply in the preparation of their respective facilities for the commercial launch of the Visayas WESM, and further declares as follows -

SECTION 1. Scope and Application. This Circular shall apply to all Visayas grid electric power industry stakeholders such as the generation companies, distribution companies, bulk consumers, transmission service providers, and metering service

providers.

SECTION 2. Registration of All Electric Industry Participants. All Visayas electric industry participants are enjoined to register and to participate in the Trial Operation Program (TOP) for the Visayas WESM. Applications for registration are to be submitted to the PEMC at its offices either at (1) 9th Floor Robinsons Equitable Tower, ADB Avenue, Ortigas Center, Pasig City; (2) PEMC Visayas Office, 6th Floor Skyrise Building, IT Park, Lahug Cebu City. Application forms and relevant information may be obtained from PEMC or downloaded from the WESM Information Website at <https://www.wesm.ph>.

SECTION 3. Responsibilities. Pursuant to their respective mandates and functions under the EPIRA and its Implementing Rules and Regulations, the WESM Rules and other relevant laws and issuances, PEMC, NGCP, NEA, and Transco are enjoined to extend their full support and cooperation to ensure full registration and compliance of all Visayas WESM stakeholders; and to prepare the necessary conditions to successfully integrate the Visayas grid with Luzon WESM.

SECTION 4. Reportorial Requirements. For purposes of monitoring compliance with the directives under this Circular, the PEMC, NGCP, NEA, and other relevant agencies shall be required to regularly submit to DOE reports on the progress and status of their

preparations and readiness.

SECTION 5. Supervision by the DOE. The DOE shall oversee the registration and compliance of Visayas stakeholders; and shall undertake appropriate actions as provided for in the EPIRA, its Implementing Rules and Regulations, and the WESM Rules relative to the successful integration of the Visayas grid with Luzon WESM.

SECTION 6. No Amendment or Repeal of Existing Laws. Nothing in this Circular shall be construed as to amend, supplant, or repeal any of the mechanisms or institutions already existing or responsibilities already allocated and provided for under any existing law, rule or contract.

SECTION 7. Effectivity and Publication. This Circular shall be effective immediately upon its publication in two (2) newspapers of general circulation. The PEMC is hereby directed to publish this Circular in the Market Information website.

This Circular shall remain in effect until otherwise revoked.

Taguig, Metro Manila. 30 June 2010.

(Sgd) **JOSE C. IBAZETA**
Acting Secretary

DEPARTMENT CIRCULAR NO. DC2010-08- 0010

PRESCRIBING THE IMPLEMENTING RULES AND PROCEDURES FOR DEPARTMENT CIRCULAR NO. DC2010-05-0006, ENTITLED “TERMINATING THE DEFAULT WHOLESALE SUPPLIER ARRANGEMENT FOR THE PHILIPPINE WHOLESALE ELECTRICITY SPOT MARKET (WESM) AND DECLARING A DISCONNECTION POLICY.”

WHEREAS, on 06 May 2010, after various public consultations and meetings with the relevant government agencies and stakeholders in the electric power industry, the Department of Energy (DOE) issued Circular No. 2010-05-0006, entitled “Terminating the Default Wholesale Supplier Arrangement for the Philippine Wholesale Electricity Spot Market (WESM) and Declaring a Disconnection Policy”;

WHEREAS, the said DOE Circular was published on 12 May 2010 in two newspapers of general circulation and became effective last 27 May 2010;

WHEREAS, the said DOE Circular states that a disconnection policy shall be enforced within ninety (90) days from the effectivity of the DOE Circular for non-WESM members in areas where Wholesale Electricity Spot Market (WESM) is operational, while prescribing other grounds for disconnection of persons or entities pursuant to the overall intent of the EPIRA;

WHEREAS, the same DOE Circular provides that the DOE shall issue the guidelines for the disconnection of persons or entities who fail to comply with the DOE Circular”;

WHEREAS, pursuant to the mandate of the DOE under Section 37 (p) of the EPIRA to formulate rules and regulations as may be necessary to implement the objectives of the EPIRA and the WESM Rules, the DOE, in coordination with the National Grid Corporation of the Philippines (NGCP), National Transmission Corporation (TransCo), National Power Corporation (NPC), Power Sector Assets and

Liabilities Management Corporation (PSALM), National Electrification Administration (NEA), and Philippine Electricity Market Corporation (PEMC), crafted these implementing rules and procedures to implement DOE Circular DC No. 2010-05-0006;

NOW, THEREFORE, premises considered, the DOE hereby adopts the following implementing rules and procedures for the disconnection of persons or entities who fail to comply with the DOE Circular No. DC2010-05-0006, entitled “Terminating the Default Wholesale Supplier Arrangement for the Philippine Wholesale Electricity Spot Market (WESM) and Declaring a Disconnection Policy Section introduction.

1.1 Rationale

The DOE is mandated under the EPIRA to, among others, ensure the reliability, quality and supply of electric power and 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. Likewise, the DOE is mandated 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.

The DOE, after consultations with the different stakeholders in the industry, finds merit in the request of the National Power Corporation (NPC) and the Power Sector

Assets and Liabilities Management (PSALM) Corporation to be relieved of their obligations as Default Wholesale Supplier (DWS) in view of the significant level of privatization of NPC generating assets as well as transfer or management and control of NPC's contracted energy outputs from its independent power producers.

Further, the DOE deems it necessary to establish a disconnection policy to ensure that all electric power industry participants comply with the EPIRA, its IRRs, and all other related rules and regulations with the end goal of encouraging new power generation investments in the country. The disconnection policy likewise intends to minimize if not avoid existing leakages in the electric power systems due to unauthorized withdrawal of electricity as well as unmetered and unbilled consumptions of facilities connected to the grid.

The membership of all the electric power industry participants especially the distribution utilities in the WESM will promote a level playing field in the industry.

1.2 Objectives

This implementing rules and procedures are issued with the following objectives:

- A. To facilitate further development of market discipline with the end view of fostering competition in the power generation and supply businesses;
- B. To establish the grounds, conditions or criteria including the processes and protocols as well as the relevant procedures for disconnecting/reconnecting a person or entity from/to the grid. Towards this end, it is envisioned that the electricity end-users/customers comply with their financial obligations to their supply and service providers in a timely manner;

- C. To establish the authority and responsibilities of each of the concerned person or entity under the EPIRA and the WESM Rules and other related rules and regulations;
- D. To emphasize the need to register with the WESM and understand and comply with the WESM Rules,
- E. To formulate the guidelines for the restructuring of outstanding financial obligations and arrearages with PSALM/NPC; and

Section 2. Definition of Terms.

- 2.1 **“Connection Agreement”** or **“CA”** refers to the agreement between a user and the NSP, which specifies the terms and conditions pertaining to the connection of the User System or Equipment to a new Connection Point in the Grid (or the Distribution System);
- 2.2 **“Department of Energy”** or **“DOE”** refers to the government agency created pursuant to Republic Act No. 7638 whose expanded functions are provided in the EPIRA;
- 2.3 **“Direct WESM Member”** refers to a person or an entity registered with the Market Operator as provided under Clause 2.3. of the WESM Rules;
- 2.4 **“Distribution Code”** refers to a compilation of rules and regulations governing electric utilities in the operation and maintenance of their distribution systems which includes, among others, the standards for service and performance, and defines and establishes the relationship of the distribution systems with the facilities or installations of the parties connected thereto;

- 2.5 **“Distribution Utility”** or **“DU”** refers to any EC, private corporation, government owned utility or existing local government unit which has an exclusive franchise to operate a distribution system in accordance with the EPIRA;
- 2.6 **“Economic Zones”** or **“EZs”** refer to selected areas which are being developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers. An EZ may refer to any of the following: Industrial Estates (IEs), Export Processing Zones (EPZs), Free Trade Zones (FTZs), Information Technology Parks and Tourist/Recreational Centers, such as those managed, administered, or operated by the Bases Conversion Development Authority (BCDA), Cagayan Economic Zone Authority (CEZA), Clark Development Corporation (CDC), Philippine Economic Zone Authority (PEZA), Phividec Industrial Authority (PIA), and Zamboanga City Economic Zone Authority (ZCEZA);
- 2.7 **“Electric Cooperative”** or **“EC”** refers to a DU organized pursuant to Presidential Decree No. 269, as amended, Republic Act 6939, as amended or as otherwise provided in the EPIRA;
- 2.8 **“Electric Power Customer”** or **“EPC”** is a collective term which refers to any EC, Private DU, EZs, large and other customers directly connected to the grid purchasing electric power from the EPS, for the purpose of supplying the end users’ requirements within its franchise area or for its own use;
- 2.9 **“Electric Power Service Provider”** or **“EPSP”** is a collective term which refers to any service providers such as the SO, MSP, NSP and other service providers in the electric power industry;
- 2.10 **“Electric Power Supplier”** or **“EPS”** is a collective term which refers to any Generation Company, IPPA, WA and any person or entity engage in supplying and/or selling electric power;
- 2.11 **“End-User”** refers to any person or entity requiring the supply and deliveyof electricity for its own use;
- 2.12 **“Energy Regulatory Commission”** or **“ERC”** refers to the regulatory agency created under the EPIRA;
- 2.13 **“Generation Company”** refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity;
- 2.14 **“Grid Code”** refers to the set of rules and regulations governing the safe and reliable operation, maintenance and development of the high voltage backbone transmission system and its related facilities;
- 2.15 **“Implementation Review Committee”** or **“IRC”** refers to the committee tasked to formulate the implementing rules and regulations of DOE Circular No. DC201005-0006 and oversee its implementation;
- 2.16 **“Independent Power Producer”** or **“IPP”** refers to an existing power generating entity which is not owned by NIPC/PSALM;
- 2.17 **“Indirect WESM Member”** refers to a person or an entity who wishes to indirectly trade in the spot market through a Direct WESM member;
- 2.18 **“IPP Administrator”** or **“IPPA”** refers to qualified independent entities appointed by PSALM who shall administer, conserve and manage the contracted energy output of NPC IPPs, including the selling of the contracted

energy output of these contracts and offering Ancillary Services, where applicable;

- 2.19 **“Market Operator”** or **“MO”** refers to the entity, currently the Philippine Electricity Market Corporation (PEMC), responsible for the operation of the WESM governed by the Philippine Electricity Market (PEM) Board in accordance with Clause 1.4 of the WESM Rules;
- 2.20 **“Metering Service Agreement”** or **“MSA”** refers to the agreement that defines the responsibilities and obligations of the MSP and the Metered Entity in relation to the provision of metering facilities, equipment and service as provided under the OATS Rules, the Grid Code and the WESM Rules;
- 2.21 **“Metering Service Provider”** or **“MSP”** refers to a person or entity authorized by the ERC to provide metering services and registered with the MO in that capacity in accordance with the Clause 2.36 of the WESM Rules,
- 2.22 **“National Electrification Administration”** or **“NEA”** refers to the government agency created under Presidential Decree No. 269, as amended, and whose additional mandate is further set forth in the EPIRA;
- 2.23 **“National Grid Corporation of the Philippines”** or **“NGCP”** refers to the corporation, by virtue of Republic Act No. 9511, granted a franchise to operate, manage and maintain, and in connection therewith, to engage in the business of conveying or transmitting electricity through high voltage back-bone system of interconnected transmission lines, substations and related facilities, systems operations, and other activities that are necessary to support the safe and reliable operation of a transmission system and to construct, install, finance, manage, improve, expand, operate, maintain, rehabilitate, repair and refurbish the nationwide transmission system of the Republic of the Philippines;
- 2.24 **“National Power Corporation”** or **“NPC”** refers to the government corporation created under Republic Act No. 6395 as amended,
- 2.25 **“National Transmission Corporation”** or **“TransCo”** the corporation organized pursuant to the EPIRA
- 2.26 **“Network Service Provider”** or **“NSP”** refers to a person who engages in the activity of owning, controlling, or operating a transmission or distribution system and who is registered with the MO in that capacity under Clause 2.3.4 of the WESM Rules,
- 2.27 **“Notice of Disconnection”** refers to a notice issued by any EPS, EPSP or the MO, as defined in this Implementing Rules and Procedures, informing any of its EPC of its impending disconnection from the grid or network in accordance with the provisions of its contracts and this Implementing Rules and Procedures;
- 2.28 **“Notice of Reconnection”** refers to a notice issued by any EPS, EPSP or the MO, as defined in this Implementing Rules and Procedures, addressed to NGCP or other NSPs, copy furnished the EPC, authorizing the reconnection of any of its EPC to the grid or network in accordance with the provisions of its contract with the EPC and this Implementing Rules and Procedures,
- 2.29 **“Open Access Transmission Services Rules”** or **“OATS Rules”** refers

to regulation that governs the implementation of the Open Access Transmission Services as approved by the ERC;

- 2.30 **“Power Sector Assets and Liabilities Management Corporation”** or **“PSALM”** refers to the corporation created pursuant to EPIRA Section 49;
- 2.31 **“Power Supply Agreement”** or **“PSA”** refers to the contract for the supply of electricity between the Generation Company, IPPA, WA, and the EPC. It may be in the form of Transition Supply Contract (T SC), Contract for the Supply of Electric Energy (CSEE) or bilateral contract;
- 2.32 **“Restructuring Agreement”** refers to a contract or agreement entered into by PSALM and EPC wherein the latter agrees to pay its arrearages to PSALM through monthly installments inclusive of interest pursuant to Section 3.2 of the DOE Circular No. 2010-05-0006 and in accordance with Section 4.1 (D) of this Implementing Rules and Procedures;
- 2.33 **“System Operator”** or **“SO”** refers to the party responsible for generation dispatch, the provision of ancillary services, and operation and control to ensure safety, power quality, stability, reliability and security of the grid;
- 2.34 **“Transmission Service Agreement”** or **“TSA”** refers to the agreement entered into by the Transmission Provider and user of the facility that specifies the terms and conditions of the transmission service by the Transmission Provider and the availment of such service by the Transmission Customer; also serves as the Connection Agreement;

2.35 **“Wholesale Aggregator”** or **“WA”** refers to a person or entity, engaged in consolidating electric power demand of the DUs and other EPCs, for the purpose of purchasing and reselling electricity on a group basis;

2.36 **“Wholesale Electricity Spot Market”** or **“WESM”** refers to the electricity market established by the DOE in accordance with the EPIRA.

Section 3. Title and Scope.

3.1 Title.

This issuance shall be referred to as the “Implementing Rules and Procedures for DOE Circular No. DC2010-05-0006, entitled “Terminating the Default Wholesale Supplier Arrangement for the Philippine WESM and Declaring a Disconnection Policy.”

3.2 **Termination of the Default Wholesale Supply Arrangement.** The DWS Arrangement is hereby terminated upon the effectivity of this Implementing Rules and Procedures. PEMC, NPC, and PSALM are hereby directed to finalize all the settlement amounts involving the DWS Arrangement within **30 days** after the effectivity of this Implementing Rules and Procedures.

3.3 **Scope of Coverage.** The following shall be governed by Implementing Rules and Procedures:

A. EPCs

1. ECS directly connected to the grid;
2. Private Investor-Owned Utilities (PIOUs) directly connected to the grid;
3. Large and Other Customers directly connected to the grid;
4. WAs; and
5. EZs.

- B. EPS
 - 1. Generation Companies;
 - 2. PSALM/NPC;
 - 3. IPPAs; and
 - 4. Was;

- C. EPSPs and MO
 - 1. The MO, currently PEMC as the AGMO and Independent Market Operator (IMO) upon its appointment by the DOE;
 - 2. NGCP as the SO and MSP;
 - 3. NSP other than the NGCP;
 - 4. Other MSPs; and
 - 5. Other electric power industry stakeholders given special arrangement by the NSP other than the NGCP.

- D. The Visayas and Mindanao stakeholders are exempted, in so far as WESM registration requirements are concerned. Furthermore, PSALM/NPC shall not issue any Notice of Disconnection within the ninety (90) day transition period as prescribed in the DOE Circular No. DC2010-05-0006

IPPS whose generating capacities are contracted with NPC are deemed WESM registered if its generating facilities are registered under any of the PSALM, NPC or the IPPA;

- 2. Suspension and deregistration as a WESM Member under the WESM Rules; and
- 3. In the case of the WA, suspension and deregistration from the WESM may result to the disconnection of its EPC.

All matters regarding the WESM Registration, Suspension and Deregistration shall be governed by the WESM Rules and Section 6 of this Implementing Rules and Procedures.

- B. NGCP and NSPs Other than NGCP.
 - 1. Failure of the EPS or EPC to comply with the required financial or technical obligations with the NGCP in accordance with their existing contracts, such as among others the TSA CA, MSA, and the OATS Rules, Grid Code, and Distribution Code. The NGCP shall furnish the IRC and the MO a copy of the Notice of Disconnection or Notice of Reconnection issued to the EPS or EPC; and
 - 2. In the case of NSPs other than NGCP, failure of the EPS or EPC to satisfy or settle their obligations under their existing contract with the NSP. Such NSP shall furnish the IRC and the MO a copy of the Notice of Disconnection or Notice of Reconnection issued to the EPS or EPC.

- C. Generation Companies, IPPA and WA.

Section 4. Disconnection Process.

4.1 Grounds and Conditions for Disconnection.

The EPS, EPSP or the MO may issue a Notice of Disconnection to an EPC under any of the following circumstances:

- A. MO
 - 1. Failure of the EPC, EPS or EPSP to register in the WESM after the ninety-(90) day transition period in accordance with the registration process under the WESM Rules, the DOE Circular No. DC2010-05-0006 and other DOE issuances.

1. As provided under their existing contracts, failure of the EPC to comply with the required financial and technical obligations to the Generation Company, IPPA or the WA: and
2. Termination/Expiration of the existing contract of an EPC that is an Indirect WESM Member EPC unless such EPC has secured a new supply contract with other Generation Company or has renewed its existing supply contract with the Generation Company or has successfully registered in the WESM as Direct Member.

D. PSALM and NPC

1. Failure of the EPC to secure and enter into a Restructuring Agreement within the required period in accordance with DOE Circular No. 2010-05-0006;
2. Failure of the EPC to comply with its financial obligations (including non-remittance of Universal Charge) with PSALM and NPC as provided under their PSAs or any existing contracts for the supply of electricity and Restructuring Agreement; and
3. Failure of the EPC to secure a Restructuring Agreement and/or fully settle its financial obligations with PSALM and NPC even such EPC is now being assumed and turned over to the NPC successor generation companies or has expired contracts with PSALM and NPC but still continue to draw power from the grid and are still being billed by PSALM and NPC.

For the above-cited EPC with outstanding financial obligations with PSALM and NPC, PSALM shall issue the Notice of Disconnection and shall submit a letter-request to NCGP for the execution of the Notice of Disconnection in accordance with Section 4 of this Implementing Rules and Procedures.

All matters regarding the Restructuring Agreement shall be governed by the PSALM's Restructuring Policy and Section 7 of this Implementing Rules and Procedures.

4.2 Procedures for and Execution of the Request to Disconnect a Person or Entity from the Grid.

The issuance of the Notice of Disconnection by the requesting party shall be the last resort option. Thus, it is encouraged that both the requesting party and the subject person or entity for disconnection have exhausted all remedies available.

The Notice of Disconnection and Letter-Request shall follow the formats provided under Appendix A and Appendix B hereof

- A. Any EPS or EPSP, as the requesting party, shall issue a Notice of Disconnection to the EPC and shall submit a letter-request to NCGP for the execution of the Notice of Disconnection in accordance with Section 4 of this Implementing Rules and Procedures.
- B. The MO, as the requesting party, shall issue a Notice of Disconnection to the EPC, EPS or EPSP and shall submit a letter-request to NCGP for the execution of the Notice of Disconnection in accordance With Section 4 of this Implementing Rules and Procedures.
- C. Prior to issuance of any Notice of Disconnection by the requesting

party and the letter-request to NGCP for the execution of the Notice of Disconnection, the EPS, EPSP, or the MO consistent with the provisions under their respective contracts with the subject person or entity proposed for disconnection. shall endeavor to consider and undertake the following:

1. The Notice of Disconnection is consistent with the DOE Circular No. DC2010-05-0006, the WESM Rules, the OATS Rules and this Implementing Rules and Procedures; and
 2. The Notice of Disconnection is consistent with the existing agreements or valid contract with the EPC sought to be disconnected.
- D. Within five (5) days after the receipt of the Notice of the Disconnection by the EPC and the letter-request for the execution of the Notice of Disconnection, the NGCP shall execute the said Notice of Disconnection and prepare a report to the requesting party and the IRC. The NGCP shall advise the requesting party and the EPC of the schedule of the disconnection. For this purpose, the requesting party shall provide NGCP a copy of the proof of receipt of the Notice of Disconnection immediately after the receipt of the Notice of Disconnection by the EPC.

In case the 5th day falls on a Friday, weekends or a holiday, the disconnection shall be executed on the next working day.

- E. The NGCP shall prepare a report, taking into consideration the impact of such disconnection in the power system.

In case the disconnection cannot be implemented by NGCP within the five (5) day period due to technical reasons, the NGCP shall advise the requesting party prior the end of the five (5) day period, the date on when it can affect the actual disconnection including the specific technical reason/s.

- F. The EPS, EPSP or the MO issuing the Notice of Disconnection and the letter-request shall hold NGCP free and harmless from any kinds of suits that may arise or shall indemnify NGCP from any damages NGCP may have suffered in relation to the issuance of the Notice of Disconnection.
- G. NGCP shall only implement the disconnection after all the procedures and mitigating measures have been exhausted and complied with. This Implementing Rules and Procedures is hereby declared to be a notice to all electric power industry stakeholders of NGCP's authority to undertake disconnection pursuant to their respective contracts and to this Implementing Rules and Procedures.

4.3 Remedial Actions to Stay or Defer the Disconnection.

- A. Conditions and Pre-requisites.

The implementation of the disconnection may be deferred if any of the following conditions are present:

1. Settlement/payment of the outstanding amount due and demanded, consistent with the existing agreements or valid contracts with the EPS, EPSP or the MO within five (5) days prior to the scheduled disconnection

- date. The requesting party shall immediately inform NGCP of the settlement/payment of the outstanding amount due and demanded by the EPC using the pro-forma Request for Disconnection Recall, in Appendix C of this Implementing Rules and Procedures prior to the scheduled disconnection date in order for the NGCP to defer the execution of such disconnection.
2. In the case of PSALM/NPC customers, execution of a Restructuring Agreement within five (5) days prior to the scheduled disconnection date. PSALM/NPC, as the requesting party shall immediately inform NGCP of the execution of a Restructuring Agreement with the EPC using the pro-forma Request for Disconnection Recall in Appendix C prior to the scheduled disconnection date in order for the NGCP to defer the execution of such disconnection.
 3. Recalled Notice of Disconnection by the requesting person or entity as a result of a Special Payment Agreement entered into by the contracting parties five (5) days prior to the scheduled disconnection date. The requesting party shall immediately inform NGCP of the recall using the pro-forma Request for Disconnection Recall in Appendix C prior to the scheduled disconnection date in order for the NGCP to defer the execution of such disconnection,
 4. Proof of non-receipt of the Notice of Disconnection. In such case, the execution of the Notice of Disconnection may be deferred for up to five (5) days from the actual receipt of the Notice of Disconnection; and
 5. In the case of the MO, the subject person or entity have successfully registered with the WESM pursuant to Section 2.2.4.2 of the WESM Rules. The MO, as the requesting party shall immediately inform NGCP of the registration of such person or entity to the WESM using the pro-forma Request for Disconnection Recall in Appendix C prior to the scheduled disconnection date in order for the NGCP to defer the execution of such disconnection.
 6. Private entities may also enter into a Restructuring Agreement, subject to their existing agreements or valid contracts.

Section 5. Reconnection Process.

5.1 Conditions and Requirements for Reconnection.

Reconnection may be effected if such disconnected person or entity has complied with any of the following:

- A. MO
 1. Registration with the WESM in accordance with the registration processes under the WESM Rules;
 2. The suspension and deregistration of a WESM Member has been lifted in accordance with the WESM Rules;
 3. The suspension and deregistration of the WESM Registered Supplier/Aggregator

has been lifted in accordance with the WESM Rules will constitute a reconnection of its customer.

B. NGCP and NSPs other than the NGCP.

1. Upon full payment of the amount due and demanded from the concerned disconnected person or entity to NGCP;
2. If the disconnected person or entity has remedied its non-compliance, with the service contracts such as the TSA, CA. MSA; and the OATS Rules, Grid Code, and Distribution Code in a manner acceptable to the NGCP.

C. Generation Company, IPPA and WA.

1. Upon full payment of the amount due to and demanded by the Generation Company, IPPA or the WA;
2. If such disconnected customer has secured a new supply contract or a renewal of the existing supply contract or has registered with the WESM as Direct Member.

D. PSALM and NPC.

1. If such disconnected customer has secured a Restructuring Agreement in accordance with PSALM's Restructuring Policy and Section 6 of this Implementing Rules and Procedures; and
2. Upon full payment of the amount demanded by PSALM and NPC as provided under their existing contracts and Restructuring Agreement.

In all instances, reconnection of electric service shall be in accordance with the existing agreements between the Generation Companies and their buyers or off-takers and shall be subject to payment of the Reconnection Fee to NGCP and/or Other NSPs by the EPC prior to reconnection.

5.2 Request for Reconnection.

- A. Any EPS, EPSP or MO requesting for a reconnection of person or entity shall submit its Notice of Reconnection and a letter-request to NGCP and IRC for the execution of the Request for Reconnection in Appendix D.
- B. Within two (2) days after the receipt of the Notice of Reconnection, the NGCP shall execute the Notice of Reconnection and prepare a to the requesting party and the IRC.
- C. The NGCP shall prepare a report, taking into consideration the impact of such reconnection in the power system.

In case the reconnection cannot be implemented by NGCP within the two (2) day period due to technical reasons, the NGCP shall advise the requesting party prior the end of the two (2) day period, the date on when it can affect the actual reconnection including the specific technical reason/s. Towards this end, the EPS, EPSP or the MO issuing the Notice of Reconnection shall hold NGCP free and harmless from any kinds of suits that may arise or shall indemnify NGCP from any damages NGCP may have suffered in relation to the issuance of the Notice of Reconnection.

In the case of the disconnected entity which disconnection was issued by multiple requesting parties, the reconnection will only be executed when all the requesting parties have issued a letter-request and Notice of Reconnection.

D. In all instances, a reconnection fee shall be paid by the disconnected EPC to NGCP or other NSPs prior to reconnection.

Section 6. WESM Registration, Suspension and Deregistration Guidelines.

All matters regarding the WESM Registration, Suspension and Deregistration in Section 4.1 (A) of this Implementing Rules and Procedures shall be governed by the WESM Rules and the WESM Registration, Suspension, and Deregistration Guidelines.

Appendix E of this Implementing Rules and Procedures details the provisions for WESM Registration, Suspension and Deregistration.

Section 7. Guidelines in Implementing the Restructuring of Outstanding Financial Obligations and Arrearages with PSALM and NPC.

All matters relating to the implementation of the restructuring of outstanding financial obligations and arrearages between PSALM and the EPCs under Section 4.1(D) of this Implementing Rules and Procedures shall be governed by the PSALM's Restructuring Policy and the Guidelines in the Formulation of the Restructuring Plan.

Appendix F of this Implementing Rules and Procedures details the procedures and guidelines for negotiations and entering into a Restructuring Agreement with PSALM.

Section 8. Separability Clause. If for any reason, any section or provision of this Implementing Rules and Procedures 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 9. Effectivity and Publication. This Implementing Rules and Procedures shall be effective fifteen (15) days from its publication in a newspaper of general circulation. The PEMC is hereby directed to publish this Implementing Rules and Procedures in the market information website.

This Implementing Rules and Procedures shall remain in effect until otherwise revoked.

Taguig City, Philippines, 23 August 2010

(Sgd) **JOSE RENE D. ALMENDRAS**
Secretary

PRO-FORMA

NOTICE OF DISCONNECTION

(Date)

(Name of Authorized Person)

(Designation)

(Name of Entity to be disconnected)

(Address)

Subject: NOTICE OF DISCONNECTION AND FINAL DEMAND FOR
(NAME OF THE PERSON/ENTITY TO BE DISCONNECTED)

Dear _____,

The (Name of the Requesting Party) hereby serves you this notice for failing to (Ground/s for Disconnection) amounting to (Total amount due and demanded, if applicable). In this regard, we advise you to immediately comply/settle the above requirements/amount within five (5) business days from receipt of this notice. Failure to do so shall result to the disconnection of your facility from the transmission/distribution network by the (National Grid Corporation of the Philippines (NGCP)/Name of Network Service Provider) on (Date of Disconnection). shall hold (NGCP/Name of Network Service Provider) free and harmless from any kinds of suits that may arise and shall likewise indemnify (NGCP/Name of Network Service Provider from any damages (NGCP/(Name of Network Service Provider) may have suffered in relation to the issuance of this Notice of Disconnection/Final Demand.

This is without prejudice to the filing of the appropriate action in court to protect our rights and interests.

Your immediate and preferential attention and action is hereby requested.

Very truly yours,

NGCP/Name of Network Service Provider
(Name and Address of the Requesting Party)

 (Name and Address of the Requesting Party)

Received by:

 (Name and Signature of the Recipient/Date of Receipt)

Cf: Implementation Review Committee (IRC) through the Department of Energy-Electric Power Industry Management Bureau (DOE-EPIMB) National Grid Corporation of the Philippines-Operation and Maintenance

(PLEASE DISREGARD THIS NOTICE IF REQUIREMENT/PAYMENT HAS ALREADY BEEN COMPLIED/MADE)

**PRO-FORMA
LETTER-REQUEST FOR DISCONNECTION
Disconnection Request No. (to be filled up by NGCP/NSP)**

(Date)

(Name of Authorized Person)
(Designation) (Name of Network Service Provider)
(Address)

Subject: **REQUEST FOR DISCONNECTION OF (NAME OF THE PERSON/ENTITY TO BE DISCONNECTED)**

Dear _____,

This to inform you that we served the Notice of Disconnection to **(Name of the Person/Entity to be Disconnected)** for failing to **(Ground/s for Disconnection)** amounting to **(Total amount due and demanded, if applicable)**. The Notice of Disconnection was issued on **(Date of Issuance of the Notice of Disconnection)**. In this regard, we request the **(National Grid Corporation of the Philippines (NGCP)/Name of the Network Service Provider)** to disconnect from the transmission/distribution network **(Name of the Person/Entity to be Disconnected)** after five (5) business days from receipt of this request. **(Name of the Requesting Party)** shall hold **(NGCP/Name of Network Service Provider)** free and harmless from any kinds of suits that may arise and shall likewise indemnify **(NGCP/Name of Network Service Provider) from any damages (NGCP/(Name of Network Service Provider) may have suffered in relation to this request for Disconnection.**

This is without prejudice to the filing of the appropriate action in court to protect our rights and interests.

Your immediate and preferential attention and action is hereby requested.

Very truly yours,

(Name and Address of the Requesting Party)

Received by:

(Name and Signature of the Recipient/Date of Receipt)

Implementation Review Committee (IRC) through the Department of Energy -Power Industry Management Bureau (DOE-EPIMB)

National Grid Corporation of the Philippines-Operation and Maintenance

PRO_FORMA
REQUEST FOR DISCONNECTION RECALL
Reference: Disconnection Request No. (to be filled up by NGCP/NSP)

(Date)

(Name of Authorized Person)

(Designation)

(Name of Network Service Provider)

Address:

Subject: **REQUEST TO RECALL THE DISCONNECTION OF (NAME OF THE PERSON/ENTITY TO BE DISCONNECTED)**

Dear _____,

This to inform you that **(Name of the Person/Entity to be Disconnected)** have complied/settled its obligations with **(Name of the Requesting Party)** within the 5 business days prescribed period. In this regard, we request the **(National Grid Corporation of the Philippines (NGCP)/Name of the Network Service Provider)** to recall the disconnection of **(Name of the Person/Entity to be Disconnected)**. **(Name of the Requesting Party)** shall hold **(NGCP/Name of Network Service Provider)** free and harmless from any kinds of suits that may arise and shall likewise indemnify **(NGCP/Name of Network Service Provider)** from any damages **(NGCP/Name of Network Service Provider)** may have suffered in relation to this Request for Disconnection Recall.

This is without prejudice to the filing of the appropriate action in court to protect our rights and interests.

Your immediate and preferential attention and action is hereby requested.

Very truly yours,

(Name and Address of the Requesting Party)

Received by:

(Name and Signature of the Recipient/Date of Receipt)

Cf: **(Person/Entity subject for Disconnection)**

Implementation Review Committee through the Department of Energy-Electric Power Industry Management Bureau

National Grid Corporation of the Philippines-operation and Maintenance

PRO-FORMA

REQUEST FOR RECONNECTION

Reference: Disconnection Request No. (to be filled up by NGCP/NSP)

(Date)

(Name of Authorized Person)

(Designation)

(Name of Network Service Provider)

Address:

Subject: **REQUEST FOR RECONNECTION OF (NAME OF THE PERSON/ENTITY TO BE DISCONNECTED)**

Dear _____:

This to inform you that **(Name of the Person/Entity to be Disconnected)** have complied/settled its obligations with **(Name of the Requesting Party)**. *In this regard*, we request the **(National Grid Corporation of the Philippines (NGCP)/Name of the Network Service Provider)** to reconnect **(Name of the Person/Entity to be Disconnected)** to the transmission/distribution network within 2 days from the receipt of this Request for Reconnection. **(Name of the Requesting Party)** pledges to pay NGCP the reconnection fee at NGCP's designated bank.

(Name of the Requesting Party) shall hold **(NGCP/Name of Network Service Provider)** free and harmless from any kinds of suits that may arise and shall likewise indemnify **(NGCP/Name of Network Service Provider)** from any damages **(NGCP/Name of Network Service Provider)** may have suffered in relation to this Request for Reconnection.

This is without prejudice to the filing of the appropriate action in court to protect our rights and interests.

Your immediate and preferential attention and action is hereby requested

Very truly yours,

(Name and Address of the Requesting Party)

Received by:

(Name and Signature of the Recipient/Date of Receipt)

Cf: **(Person/Entity to be reconnected)**

Implementation Review Committee through the Department of Energy-Electric Power Industry Mangement
Bureau
National Grid Corporation of the Philippines – Operation and Maintenance

WESM REGISTRATION, SUSPENSION, AND DEREGISTRATION GUIDELINES

1. **Eligible Persons or Entities.** Pursuant to Section 30 of Republic Act No. 9136, subject to compliance with membership criteria, all generating companies, distribution utilities, suppliers, bulk consumers/users and other similar entities authorized by the Energy Regulatory Commission shall be eligible to become members of the Wholesale Electricity Spot Market.
 - ii. Is not under external administration as defined in the Corporation Code of the Philippines or under a similar form of administration under any laws applicable to the applicant in any jurisdiction;
 - iii. Is not immune from suit in respect of the obligations under the WESM Rules;
 - iv. is capable of being sued in its own name in a court in the Philippines; and
 - v. Satisfies prudential requirements.
2. **Categories of WESM Member.** Consistent with the foregoing, the Wholesale Electricity Spot Market Rules (WESM Rules) require registration with the Market Operator of the WESM of Trading Participants, Network Service Providers, Ancillary Services Providers, Metering Services Providers and the System Operator.
3. **Mandatory WESM Registration.** No person or entity shall be allowed to inject or withdraw electricity to or from the grid unless that person or entity is a registered member of the WESM, either as a Direct or Indirect WESM Member. A person or entity that shall undertake activities or participate in or in relation to the spot market shall register as a Direct Member while a person or entity that wishes to indirectly trade shall register as an Indirect Member. However, an Indirect Member may only transact through a direct WESM Member.
4. **WESM Membership Criteria and Requirements**
 - a. An applicant for WESM Membership must meet the criteria set forth in the WESM Rules, that such applicant-
 - i. is a resident in, or is permanently established in, the Philippines;
 - b. The Market Operator shall set forth the technical, commercial and legal requirements for registration in the WESM, which are consistent with the relevant provisions of the EPIRA, the WESM Rules and other relevant rules and regulations.
5. **De-registration**
 - a. The Market Operator may de-register a WESM Member for such grounds set forth in the WESM Rules and relevant market manuals, including but not limited to payment default and breach of the WESM Rules which the Market operator determines is no longer capable of being rectified.
 - b. The Market Operator shall de-register a WESM Member following the procedures set forth the de-registration procedures approved by the Philippine Electricity Market Board (PEM Board) pursuant to WESM Rules clause 2.8.3.

- c. A WESM Member that is de-registered shall be allowed to register again only after the lapse of the prespective period and upon compliance with the requirements and procedures set forth in the de-registration procedures approved by the PEM Board.

6. Suspension of WESM Members

- a. The Market Operator may issue a suspension notice to WESM Members based on the following grounds set forth in WESM Rules clause 2.7.1
 - i. Breach of the WESM Rules; and
 - ii. Payment default
- b. The Market Operator shall issue a suspension notice to the erring or defaulting WESM Member following procedures set forth in the WESM Rules and in relevant market manuals.
- c. Upon issuance by the Market Operator of a suspension notice, the WESM Member is suspended from participation in the spot market

unless and until the Market Operator declares the suspension notice to be revoked.

- d. The Market Operator shall publish the suspension notice and the notice of revocation.

7. Obligations and Liabilities Following Suspension or De-Registration

Notwithstanding that a WESM Member has been suspended from trading in or has been de-registered from the WESM, its obligations and liabilities which arose under the WESM Rules prior to the date in which it was suspended or de-registered remain unaffected by the suspension or de-registration.

- 8. Applicability of the WESM Rules and Manuals. The criteria, grounds, guidelines and procedures for registration, de-registration, cessation and suspension of WESM Members are set forth in the WESM Rules and relevant market manuals, which may be amended from time to time. In case of conflict between the foregoing provisions and the WESM Rules, and market manuals, the WESM Rules shall prevail.

GUIDELINES FOR THE FORMULATION OF THE RESTRUCTURING PLAN

Section I. Objective

These guidelines are issued to define the procedures in formulating the restructuring plan on debts/arrearages of customers of NPC and PSALM and the criteria to be considered in the restructuring plan in compliance to DOE Circular No.DC2010-05-006 entitled “Terminating the Default Wholesale Supplier Agreement for the Philippine Wholesale Electricity Spot Market (WESM) and Declaring a Disconnection Policy”.

Section II. Coverage of Restructuring

These guidelines shall be applied to the following customers of NPC and PSALM

1. Distribution Utilities (Private Investor-Owned, Electric Cooperatives, and local government unit-owned);
2. Directly-connected Customers, including those with expired contracts with PSALM and NPC but still continue to draw power from the grid and are still being billed by PSALM and NPC;
3. Economic Zone; and
4. Other duly authorized entities engaged in the distribution of electricity.

Section III. Restructuring Plan

The restructuring plan shall be able to determine the terms and conditions to be applied to include among others, the capacity to pay of the customers of their debts/arrearages with PSALM and NPC and to ensure the timely payment of the restructured debts as well as their current accounts. The Plan should have a corresponding rehabilitation program to improve their financial and operational conditions. This is a one time

restructuring of the debts/arrearages of NPC and PSALM customers as of 30 June 2010.

1. Contents of the Restructuring Plan

The Restructuring Plan to be negotiated with PSALM shall consider the following.

- a) Audited Financial Reports for the past three (3) years
- b) Applicable Restructuring Scheme
- c) Statement of Accounts (SOA);
- d) Projected Financial Statements,
- e) Summary of Annual Collections Report from Distribution Utilities 2005 to present:
- f) Rehabilitation plan that will focus on adopting measures that will result to increase in collection efficiency and reduction of system loss as well as measures to optimize operating costs’ and professionalize management and staff, etc.;
- g) Other documents that will show the capacity pay implementation of the mode of restructuring.

2. Mode and Date of Submission

The customers shall submit to PSALM the documents itemized in Section III not later than the following schedules:

Grid	Items 1(a) to 1(e)	Items 1(f) to 1(g)
Luzon	30 June 2010	15 July 2010
Visayas	15 August 2010	15 Sept. 2010
Mindanao	30 Sept. 2010	31 Oct. 2010

Submission dates may change depending on the decision of PSALM, being the lead responsible agency on restructuring the

debts/arrearages of NPC and PSALM customers.

Section IV. Criteria of the Restructuring Plan/ Program

PSALM, subject to the approval of the PSALM Board, shall be guided and adopt the criteria hereunder to evaluate and approve the restructuring plan submitted by the customers.

1. Prioritization

PSALM shall prioritize the evaluation and approval of the restructuring plan of customers that it has already received. Thereafter, PSALM shall use the following order of prioritization in the evaluation and approval of the restructuring plan of its customer:

- a) By Grid (Luzon, Visayas, Mindanao)
 - Luzon to be completed within the 90-day period set by the DOE DC2010-05-0006
 - Visayas within 180 days
 - Mindanao will depend on PSALM’s assessment of the customers.

b) By Amount of Debts
From lowest to highest

c) By Type of Customers

Within the 90 day period set by DOE DC2010-05-0006, Luzon Indirect Member Distribution Utilities/ Directly Connected Customers/ Economic Zones (without existing contract with NPC/PSALM); the others depending on the assessment of PSALM.

2. Coverage of Accounts to be Restructured
PSALM shall consider the restructuring of the following accounts.

- a) Power
- b) Interests;
- c) Default Wholesale Supply Charges;
- d) VAT collected but not remitted (exclusive of interest);
- e) Universal Charge collected but not remitted; and
- f) Other receivables. Which include but not limited to, utilization fees, and debit charges due to corrected meter reading.

3. Approving Authority

PSALM shall follow this hierarchy in the approval of the restructured debt of its customers.

Restructuring Period	Restructured Amount	
	≤ Php300.0 M	> Php 300.0 M
1 to 24 months	VP-Finance	President
25 to 60 months	President	President
Over 60 months	PSALM Board	PSALM Board

4. Other Considerations

- a) The approval of restructuring does not assume the cancellation of the unreconciled accounts of the customers. All reconciled differences between the restructured amount and the amount per PSALM books will be added to the monthly amortization, divided equally over the remaining restructuring period.
- b) Accounts under litigation with NPC and/or PSALM as of the effectivity of DOE DC 2010-05-006 (May 27, 2010) will not be included in the amount to be restructured. Upon final decision of the court wherein the disputed amount is indeed the accountability of the customer, the amount and corresponding interests will be

added to the monthly amortization, and shall be divided equally over the remaining restructuring period.

- c) Customers with relatively sound financial status will only be allowed a maximum of twenty four (24) months restructuring period regardless of the total collectible amount. A “sound financial status” means a positive cash flow that can cover the total accountability over the restructuring period, a positive statement of operations or the customer have other means to pay the total accountability within twenty four (24) months. This will be assessed by PSALM-Treasury Department (TD) with proper coordination with customer’s management.
- d) For special cases (e.g., customers proposing other payment scheme other than what PSALM is utilizing, having disputed amount with PSALM, etc.) a much detailed review shall be done. PSALM will consider the current situation of the customer and will also be flexible to the restructuring proposal of the customer for as long as the PSALM Management deems it reasonable. Approval for these special cases will be by the PSALM Board.
- e) Reasons beyond the control of the customers, particularly those who have already complied with the requirements/documents for the MOA on Restructuring but evaluation has not yet been completed by PSALM, shall be temporarily exempted from disconnection until such time that the MOA on Restructuring has been executed.

Pursuant to Section 3.2 of DOE Circular No.DC2010-05-006, the customers identified in Section II shall either settle their arrearages or enter into a restructuring agreement with NPC and PSALM within 90 days from the effectivity of the said Circular to avoid disconnection from the grid (effectively the last day will be August 24,2010). However, Section 2 of this Plan provides longer period of time for customers in accordance to prioritization indicated in Section IV(I).

- 1 The Memorandum of Agreement (MOA) to be entered into by and between PSALM and the customer shall contain, but not limited to, the following terms and conditions:

- a) Interest Rates

The restructured account shall be subject to an interest based on the Philippine Dealing System Treasury Fixing (PDSTF) rate plus 2% spread

- b) Payment Duration (based on the capacity to pay both the restructured debt/arrearages and current account)

- c) Indicators or Measures of Customer’s Performance Improvement

For monitoring purpose the customers shall submit the agreed upon performance indicators to PSALM and NEA, every 15th of the month following the applicable month, their monthly report on their rehabilitation program highlighting the improvement in their collection efficiency, system losses, observance of cost cutting measures, professionalization of the management and staff, etc.

- d) Other Conditions

Section V. Memorandum of Agreement on Restructuring

- i) Upon the failure or delay of payment of the restructured amount, the total unpaid restructured amount becomes due and demandable and shall result to disconnection from the grid, subject to the Guidelines on Disconnection Policy pursuant to DOE Circular No.DC2010-05-0006.
 - ii) Customers shall grant PSALM auditorial rights.
 - iii) Restructured account should rank *pari-passu* with other creditors.
 - iv) Customers shall not issue any cash dividend without prior approval from PSALM during the entire restructuring period.
 - v) For customers who are still supplied by PSALM/NPC, no Prompt Payment Discount shall be availed during the restructuring period.
2. The documents listed in Section III (1) shall be submitted as attachments to the MOA. For electric cooperatives (ECs), it should also include NEA-approved annual budget and the restructuring scheme or a supplemental budget if the application is submitted/being applied in the middle of the calendar year.

Section VI. Responsibilities

PSALM shall take the lead, and work jointly with NPC and NEA, in the implementation of the restructuring of debts/arrearages of customers in compliance to DOE DC 2010-05006, to include the preparation of the pro-forma Memorandum of Agreement, list of customer according to the prioritization in this Guidelines and its corresponding timeline for the negotiations with each customer.

PSALM shall seek its Board approval of the Restructuring Policy, consistent with this Restructuring Plan.

Section VII. Timeline for Negotiation (by Customer)

PSALM shall set the timeline for negotiation for its customers with debts/arrearages.

Section VIII. Monitoring and Regular Reporting

After the execution of the MOA on Restructuring, there shall be continuous monitoring of PSALM and regular reporting of the customers of its implementation and compliance to the Rehabilitation Plan and DOE DC2010-05-0006.

In the case of the ECs, PSALM, in coordination with NEA, shall continuously share information on the developments of the power accounts receivables from ECS in settling their restructured debts/arrearages and current accounts.

DEPARTMENT CIRCULAR NO. DC2010-11-0012

DECLARING THE COMMERCIAL OPERATION OF THE WHOLESALE ELECTRICITY SPOT MARKET (WESM) IN THE VISAYAS GRID AND ITS INTEGRATION WITH THE LUZON GRID

WHEREAS, Section 2 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (“EPIRA”), declared as a policy of the State to 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; and to protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power;

WHEREAS, Section 37 of the EPIRA provides that the Department of Energy (“DOE”) is mandated to supervise the restructuring of the electricity industry; formulate rules and regulations as may be necessary to implement the objectives of the EPIRA; and exercise such other powers as may be necessary or incidental to attain the objectives of the EPIRA;

WHEREAS, the DOE is mandated under the EPIRA to establish the Wholesale Electricity Spot Market (“WESM”) that will facilitate a transparent, competitive, and reliable electricity market in the country and to organize and establish the appropriate market design and governance structure of the WESM;

WHEREAS, on 28 June 2002, the DOE promulgated the WESM Rules through Department Circular No. 2002-06-003;

WHEREAS, in accordance with Rule 9 Section 3(b) of the EPIRA-IRR, on 18 November 2003, at the initiative of the DOE, the Philippine Electricity Market Corporation (“PEMC”) was incorporated as a non-stock, non-profit

corporation and thereafter its Board of Directors (“PEM Board”) was constituted with equitable representation from electric power industry participants and chaired by the DOE, to serve as the governing arm of the WESM, which constituted the Autonomous Group Market Operator (“AGMO”) tasked to undertake the preparatory work and initial operation of the WESM;

WHEREAS, the Energy Regulatory Commission (“ERC”) has approved the Price Determination Methodology (“PDM”) for the WESM on 20 June 2006, the Administered Price Determination Methodology (“APDM”) and the Structure and Level of the Market Fees for the WESM on 22 June 2006;

WHEREAS, the Market Dispatch Optimization Model (“MDOM”) has been certified as compliant with the WESM Rules by an independent auditor on 10 December 2005 prior to the commercial operation of the WESM in the Luzon grid and subsequently on 22 July 2010 as a result of the Independent Operational Audit of the Systems and Procedures on Market Operations;

WHEREAS, on 21 June 2006, the DOE issued Circular No. 2006-06-0008 declaring the start of commercial operations of the WESM in the Luzon grid. The said Circular also provides that the commencement of the commercial operation of the WESM in the Visayas grid shall be separately declared by the DOE;

WHEREAS, PEMC has completed the Trial Operations Program (“TOP”) in preparation for the commercial operation of the WESM in the Visayas grid with the Live Dispatch Operation as the final phase of the Program;

NOW, THEREFORE, from the foregoing premises, the DOE hereby declares the following:

Section 1. Commencement of the Commercial Operation of the WESM in the Visayas Grid and its Integration with the Luzon Grid.

The commercial operation of the WESM in the Visayas grid shall commence on 26 December 2010 (hereafter the Commencement Date), subject to the submission of PEMC to the DOE of a certification attesting that all systems and procedures including all interfaces with the participants and service providers necessary for the operation of the WESM in the Visayas grid are in place and pursuant with the requirements set under the WESM Rules. Specifically, the said certification shall attest that the forecasting, scheduling, dispatch, pricing, metering, and settlement processes of the WESM are fully operational in the Visayas grid.

PEMC shall submit the said certification at least five (5) days prior to the WESM Visayas commercial operation Commencement Date. Upon the receipt of the said certification, the DOE shall determine its acceptability and sufficiency and shall confirm the Commencement Date as prescribed in Section 1 of this Circular. In the event that the DOE does not find the certification acceptable, PEMC or the relevant entity should immediately rectify or remedy the deficiency and that the DOE, at its discretion, shall declare or confirm a new commencement date once it is satisfied that the deficiency is already sufficiently rectified.

Section 2. Electric Power Industry Participants Mandatory Registration with the WESM. All electric power industry participants shall register with the WESM, either as Direct or Indirect Member, prior to the Commencement Date prescribed in Section 1 of this Circular:

- 2.1. All persons and/or entities injecting and/or withdrawing electricity to/from the grid namely the generation companies, distribution utilities and other customers are required to register with the WESM pursuant to DOE Circular No. DC2010-08-0010 and WESM Rules Section 2.2.4.2.
- 2.2. Service Providers namely the system operator, network service providers, the ancillary service providers and the metering services providers are required to register with the WESM pursuant to DOE Circular No. DC2010-08-0010 and the WESM Rules.
- 2.3. Applications for registration should be submitted to the PEMC at 6th Floor Skyrise Building Asiatown, IT Park, Lahug, Cebu City or at the 18th Floor Robinsons Equitable Tower, ADB Avenue, Ortigas Center, Pasig City. Application forms and relevant information may be obtained from PEMC Offices or downloaded from the Market Information Website at www.wesm.ph.

Section 3. Obligations of the Generation Companies and Distribution Utilities.

- 3.1 All distribution utilities and other customers shall ensure that their electricity requirements are adequately covered by bilateral power supply contracts.
- 3.2 All generation companies shall ensure the availability of their generating capacities including new additional generating capacities committed with the DOE in accordance with the DOE Circular No. DC2010-03-0003.

Section 4. Supervision by the DOE. The DOE shall continue to oversee the WESM and to undertake such actions as may be necessary to achieve the objectives of the EPIRA and the WESM.

Section 5. Regulatory Support. The ERC is recognized as the agency to whom issues related to the electricity rates and market competition in the commercial operations of the WESM in the Visayas grid shall be submitted for prompt settlement and resolution.

Section 6. Effectivity and Publication. This Circular shall be effective immediately upon

its publication in two (2) newspapers of general circulation. PEMC is hereby directed to publish this Circular in the market information website.

This Circular shall remain in effect until otherwise revoked.

Taguig City, Philippines, Nov. 26, 2010

DEPARTMENT CIRCULAR NO. DC2010-12-0013

CREATING THE SPECIAL BIDS AND AWARDS COMMITTEE (SBAC) FOR THE PROCUREMENT OF THE NEW MARKET MANAGEMENT SYSTEM (MMS) FOR THE PHILIPPINE WHOLESALE ELECTRICITY SPOT MARKET (WESM)

WHEREAS, Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA) mandates the Department of Energy (DOE) to, among others, ensure the reliability, quality and supply of electric power; ensure transparent and reasonable prices of electricity in a regime of free and a fair competition and full public accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market; and 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 30 of EPIRA, the DOE is mandated to establish the Wholesale Electricity Spot Market (WESM) that will facilitate a transparent, competitive, and reliable electricity market in the country and to organize and establish the appropriate market design and governance structure of the WESM;

WHEREAS, in accordance with Rule 9, Section 3(b) of the EPIRA Implementing Rules and Regulations, the Philippine Electricity Market Corporation (PEMC) was incorporated on 18 November 2003 as a non-stock, non-profit corporation, to act as the Autonomous Group

Market Operator (AGMO) tasked to undertake the preparatory work and initial operation of the WESM;

WHEREAS, the PEMC, in the performance of its functions as the AGMO, utilizes the Market Management System (MMS) for the commercial operation of the WESM in Luzon which commenced on 26 June 2006. The MMS is the infrastructure with various hardware, software and interfaces that supports the operations of the WESM. It is the core system that forecasts electricity demand, receives bids and offers from trading participants generates real-time dispatch schedules, and process the settlement of the spot market transactions. It is composed of a full set of applications that runs twenty four hours a day, seven days a week (24x7). It is also connected with the National Grid Corporation of the Philippine (NGCP) System Operator's infrastructure that monitors, controls and optimizes the performance of all generating and transmission facilities;

WHEREAS, the MMS is designed in accordance with the market design contained in the WESM Rules issued by the DOE, jointly with the electric power industry participants;

WHEREAS, the MMS hardware is reaching the end of its economic life and its performance is beginning to deteriorate;

WHEREAS, the reliability of the MMS is crucial to the uninterrupted operation of the WESM and hence a concern of the DOE as current chairman of the Philippine Electricity Market (PEM) Board and as the supervisor of the electric power industry;

WHEREAS, on 15 January 2010, the DOE issued a memorandum creating the Technical Working Group (TWG) on the Market Management System (MMS) Migration and Enhancement Project to conduct study on all matters relating to MMS and implement the MMS migration project;

WHEREAS, as a result of the TWG's assessment, it is necessary to procure a new MMS to ensure the reliability of the WESM operation;

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

Section 1. A Special Bids and Awards Committee, hereinafter referred to as the "MMS-SBAC" is hereby created to supervise the overall activities related to the procurement of the new Market Management System (MMS) for the Philippine WESM.

1.1 Composition. The MMS-SBAC shall be composed of the following:

Chairperson: Undersecretary for Power, DOE

Members : Director-Electric Power Industry Management Bureau, DOE
President, PEMC

1.2 Functions and Authority. The MMS-SBAC shall have the following functions and authority:

- i. Approve the bidding documents, the draft contract and all other necessary documents;
- ii. Approve all communications to bidders and the Board;
- iii. Approve and endorse the evaluation report/result to the Board including recommendation of the most competitive complying bid; and
- iv. Endorse to the Board the award of the contract to the winning bidder.

Section 2. MMS-SBAC Technical Working Group (TWG). To assist the Board and the MMS-SBAC in the performance of its functions and responsibilities, the MMS-SBAC TWG is hereby created:

2.1 **Composition.** The MMS-SBAC TWG shall be composed of the following:

Chairperson :

Assistant Director-Electric Power Industry Management Bureau, DOE

Vice Chairperson:

Head-Information Systems and Technology Group, PEMC

Members :

Head-Trading Operations Group, PEMC

Head-Corporate Planning and Communications Group, PEMC

Head-Market Assessment Group, PEMC

Head-Corporate Services, PEMC

Head-Legal Services, PEMC

Head-Enforcement and Compliance Office, PEMC

2.2 **Functions and Responsibilities.** The MMS-SBAC TWG shall perform the following tasks:

- i. Formulate the action plans and timeline for the procurement of the new MMS;
- ii. Prepare and issue the Request for Proposal (RFP) which includes, among others, the terms of reference (TOR), instructions to bidders/firms and the draft contract;
- iii. Issue invitation to the bidders to submit Technical and Financial proposals;
- iv. Participate in the Preliminary/ Technical Conferences;
- v. Evaluate the Technical and Financial Proposals submitted by bidders;
- vi. Submit evaluation report including recommendation of the most competitive complying bid to MMS-SBAC;
- vii. Assist the MMS-SBAC in the drafting of all other necessary documents;
- viii. Attend meetings as may be required by the MMS-SBAC;
- ix. Identify procurement issues and formulate recommendations to address such issues;
- x. Conduct contract negotiations with the winning bidder; and
- xi. Perform such other tasks as may be directed by the Board and the MMS SBAC.

Section 3. PEM Board Advisory Committee on MMS. A Board Advisory Committee on MMS shall be formed within the PEM Board to assess the items to be discussed related

to the procurement of the new MMS prior to presentation to the PEM Board for policy determination and directions.

Section 4. Technical Secretariat. To facilitate the meetings, reports and information dissemination among the MMS-SBAC and the TWG members, a MMS-SBAC Secretariat shall be formed which shall be composed of the representatives from the DOE and PEMC.

Section 5. Confidentiality. All activities undertaken in the performance of the above functions and responsibilities shall be made with utmost confidentiality and each member of the MMS-SBAC, the TWG and the Secretariat shall ensure that all documents, data and information in connection with the bidding and the actual implementation of the procurement of the new MMS shall not be released, reproduced or made available for other purposes.

Section 6. Tenure. The MMS-SBAC, the TWG and the Secretariat shall continue to undertake its functions until the procurement and its attendant activities have been completed.

Section 7. This Circular supersedes all issuances relating to the Market Management System (MMS) Migration and Enhancement Projects.

Section 8. Effectivity. This Circular shall take effect immediately upon its publication in a newspaper of general circulation. PEMC is hereby directed to publish this Circular in the market information website.

Issued this 22nd day of December, 2010 at Fort Bonifacio, Taguig City, Metro Manila.

This Circular shall remain in effect until otherwise revoked.

DEPARTMENT CIRCULAR NO. DC2012-02-0002

DESIGNATING THE PHILIPPINE ELECTRICITY MARKET CORPORATION (PEMC) AS THE CENTRAL REGISTRATION BODY (CRB)

WHEREAS, Section .37 of Republic Act No. 9136, otherwise known as the Electric power Industry Reform Act of 2001 (EPIRA), provides that Department of Energy [DOE] is mandated to supervise the restructuring of the electric power industry, formulate rules and regulations as may be necessary to implement the objectives of the EPIRA, and exercise such other powers as may be necessary or incidental to attain the objectives of the EPIRA;

WHEREAS, Section 31 the EPIRA provides that Retail Competition and open Access (RCOA) shall be implemented not later than three (3) years upon the effectivity of the EPIRA, subject to the fulfillment Of five (5) pre-conditions;

WHEREAS, through the Energy Regulatory Commission (ERC) Resolution No 10, Series of 2011, dated on June 6, 2011, pursuant Section 31 of the EPIRA and Section 3, Rule 12 of its Implementing Rules and Regulations, the ERC declared fulfillment of the pre-conditions prescribed for the initial implementation of the RCOA;

WHEREAS, Retail Competition is the provision of electricity to a Contestable Market by Suppliers through Open Access, which is defined as the system of allowing any qualified person the use of transmission and/or distribution systems and associated facilities, subject to the payment of transmission and/or distribution retail wheeling rates duly approved by the ERC:

WHEREAS, the RCOA Steering Committee (RCOA SC), created through the DOE Department Circular No. 2011-06-0006 dated-June 17, 2011, recommended policies

to enhance and ensure the readiness of the industry participants in the implementation of the RCOA, to include, the deferment of the RCOA implementation from December 26, 2011 to a later date. and the integration of the RCOA In the Wholesale Electricity Spot Market (WESM);

WHEREAS, by virtue of ERC Order dated October 24, 2011 rendered ERC Case No. 2011-009 RM. the ERC declared the deferment of the implementation of the RCOA in Luzon and Visayas while all rules, systems, preparations and infrastructures required have not been put in place;

WHEREAS, the RCOA SC has recommended that the preparatory activities to commence the RCOA include the establishment and management of the necessary system that will handle customer switching and information exchange among retail participants as well as settlement of transactions;

WHEREAS, the RCOA SC has further recommended the Philippine Electricity Market Corporation (PEMC), a non-stack non-profit corporation incorporated in 2003 to operate and govern the WESM, to perform the functions of the Central Registration Body (CRB), given the expertise it has gained in the operation and governance or the WESM;

NOW, THEREFORE, for and in consideration of the foregoing premises, the DOE, in the exercise of its supervisory functions in the implementation of the EPIRA, hereby declares the following:

Section 1. Designation of the Philippine Electricity Market Corporation as Central Registration Body - The Philippine Electricity

Market Corporation [PEMC) is hereby designated as Central Registration Body (CRB) assigned to undertake the development and management of the required systems and processes and information technology system that shall be capable of handling customer switching and information exchange among retail electricity market participants, as well as the settlement of their transactions in the Wholesale Electricity Spot Market (WESM).

Section 2. Responsibilities of the Philippine Electricity Market Corporation - For the purpose of implementing the functions of the CRB under the Retail Competition and Open Access (RCOA) regime and under the supervision of the DOE, PEMC is hereby directed to undertake the following:

(a.) Review of WESM Rules and Manuals.

PEMC is hereby directed to review and propose such changes to the WESM Rules and Manuals as may be necessary to ensure the seamless integration of the WESM operations and RCOA- Such changes shall cover revisions to the registration, metering, and billing and settlement procedures in the WESM to address the implementation Of the RCOA.

PEMC is likewise enjoined to elevate issues and concerns that may arise in order for the DOE to formulate appropriate policy directions to ensure the efficient implementation of the RCOA.

(b.) Develop market infrastructure, systems, and processes.

PEMC is further directed to undertake the development of the infrastructure that shall be capable of supporting the registration, customer switching and information exchange among the retail electricity market participants, PEMC and other service providers, as well as the settlement of retail electricity market participant transactions in the WESM. Where

necessary, PEMC shall also implement such changes in the infrastructure, systems, and internal processes of the WESM to carry out the changes in the WESM Rules and Manuals. For the purpose of integrating the RCOA into the WESM operations, all WESM Rules and Manuals changes shall be approved by the DOE.

(c.) Conduct training for the electric power industry participants.

PEMC shall ensure the readiness of all WESM members and service providers for the RCOA by conducting trainings, stakeholder consultations, and other information dissemination activities to inform WESM members and service providers on the changes in the WESM operations brought about by the RCOA integration.

(d.) Comply with DOE directives.

PEMC shall comply with the directives of the DOE on the implementation of the RCOA and shall, for this purpose, submit the project implementation plan with cost estimates and timelines and periodic reports as may be required.

(e.) Coordinate with relevant stakeholders and other government agencies.

Where necessary, PEMC shall directly coordinate with relevant stakeholders and other government agencies ensure the smooth preparation for the RCOA. Primarily,

PEMC shall coordinate and inform the ERC on the progress of the integration process for the purpose of ensuring regulatory support, as may be necessary.

(f.) Perform such Other related functions as

may be necessary in the effective and efficient implementation of the RCOA.

Section 3. Regulatory Support

The ERC shall ensure the provision of support in the regulatory requirements and cost

recovery for the integration of the RCOA into the WESM, in accordance with existing laws and procedures.

Section 4. 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 5. Separability Clause

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

Section 6. Effectivity Clause

This Circular shall be effective upon its publication in two (2) newspapers of general circulation. PEMC is hereby directed to publish this Circular in the market Information website.

This Circular shall remain in effect until otherwise revoked.

Done this February 24, 2012, Taguig City, Metro Manila, Philippines

Sgd. **JOSE RENE D. ALMENDRAS**
Secretary

DEPARTMENT CIRCULAR NO. DC2012-05-0005

PRESCRIBING THE GENERAL POLICIES FOR THE IMPLEMENTATION OF THE RETAIL COMPETITION AND OPEN ACCESS

WHEREAS, Section 2 (c) of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), declares that it is the policy of the State “[t]o 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”;

WHEREAS, Section 37 of the EPIRA provides that the Department of Energy (DOE) is mandated to, among others, supervise the restructuring of the electric power industry, formulate rules and regulations as may be necessary to implement the objectives of EPIRA, and exercise such other powers as may be necessary or incidental to attain the objectives of the EPIRA;

WHEREAS, Section 31 of the EPIRA provides that the Retail Competition and Open Access (RCOA) shall be implemented not later than three (3) years upon the effectivity of the EPIRA subject to the fulfilment of the five pre-conditions, to wit:

1. Establishment of the wholesale electricity spot market;
2. Approval of unbundled transmission and distribution wheeling charges;
3. Initial implementation of the cross subsidy removal scheme;
4. Privatization of at least seventy (70%) percent of the total capacity of generating assets of National Power Corporation (NPC) in Luzon and Visayas; and

5. Transfer of the management and control of at least seventy percent (70%) of the total energy output of power plants under contract with NPC to the Independent Power Producer (IPP) Administrators.

WHEREAS, the above preconditions have been fulfilled as certified by the Energy Regulatory Commission (ERC) in ERC Case No. 2011-004-RM dated 06 June 2011;

WHEREAS, Section 31 further provides that upon the initial implementation of RCOA, the ERC shall allow all electricity end-users with a monthly average peak demand of at least one megawatt (1 MW) for the preceding twelve (12) months to be the Contestable Market. Two (2) years thereafter, the threshold level for the Contestable Market shall be reduced to seven hundred fifty kilowatts (750 kW), where at this level, Aggregators shall be allowed to supply electricity to end-users whose aggregate demand within a contiguous area is at least seven hundred fifty kilowatts (750 kW). Subsequently and every year thereafter, the ERC shall evaluate the performance of the market. On the basis of such evaluation, it shall gradually reduce threshold level until it reaches the household demand level;

WHEREAS, all Generating Companies, Distribution Utilities, Suppliers, Bulk Consumers/ end-users and other similar entities authorized by the ERC shall be eligible to become . members of the Wholesale Electricity Spot Market (WESM), subject to the compliance with the membership criteria set forth under the WESM Rules;

WHEREAS, on 17 June 2011, the DOE issued Department Circular No. DC2011-06-0006 entitled, "Creating the Steering Committee Defining the Policies for the Implementation of Retail Competition and Open Access," to ensure that the appropriate conditions for the efficient transition to RCOA implementation are in place;

WHEREAS, one of the functions of the RCOA Steering Committee is to "review existing rules and procedures on RCOA, develop and recommend policies to implement systems and processes needed to govern the transaction therein";

WHEREAS, after several deliberations and a careful study, the RCOA Steering Committee recommended the following policies:

1. to integrate the RCOA in the WESM; and
2. to define specific policies to operationalize the RCOA concepts such as customer empowerment or customer choice, the business of supply of electricity, supplier, supplier of last resort, and membership in the WESM, among others.

NOW, THEREFORE, for and in consideration of the foregoing premises, the DOE, in the exercise of its supervisory functions in the implementation of the EPIRA, hereby declares the following:

Section 1. Declaration of Policy. Consistent with the EPIRA, it is hereby declared that the transition to RCOA should promote genuine competition, greater efficiency, customer choice, and the true cost of electricity.

For this purpose, the power of choice of supplier as envisioned in the EPIRA is hereby provided to Contestable Customers (CCs) subject to the rules and regulations herein discussed as well as to subsequent rules and regulations as may be promulgated by the DOE.

Section 2. Definition of Terms. Unless otherwise provided, the terms used in this circular shall have the same meaning as defined in the EPIRA and its Implementing Rules and Regulations (IRR).

- a) *“Contestable Customer”* refers to the electricity end-user who is a part of the Contestable Market.
- b) *“Contestable Market”* refers to the electricity end-users who have a choice of a supplier of electricity, as may be determined by the ERC in accordance with EPIRA.
- c) *“Captive Market”* refers to the electricity end-users who do not have a choice of a supplier of electricity, as may be determined by the ERC in accordance with EPIRA.
- d) *“Central Registration Body”* refers to the entity assigned to undertake the development and management of the required systems and processes and information technology system that shall be capable of handling customer switching and information exchange among retail electricity market participants, as well as the settlement of their transactions in the WESM. The Philippine Electricity Market Corporation (PEMC) was designated as the Central Registration Body (CRB) through DOE Department Circular No. DC 2012-02-0002 dated 24 February 2012 and ERC Resolution No. 15, Series of 2006.
- e) *“Certificate of Eligibility”* refers to the certificate issued by the ERC to a CC to be recognized as such.
- f) *“Directly Connected Customers”* refer to industrial or bulk electricity end-users, which are directly supplied with electricity by a Generation Company or Power Sector Assets and Management Corporation (PSALM) or NPC through Subtransmission Assets.
- g) *“Last Resort Supply Event”* refers to an event when a supplier of a CC fails to provide electricity for reasons caused by a default of the Supplier, including but not limited to: (i) cessation of its operation; (ii) revocation of its license; (iii) non-payment for transmission and distribution services; and (iv) suspension of its membership in the WESM due to non-compliance to WESM Rules.
- h) *“Open Access Date”* refers to the date determined by the ERC that marks the commencement of the operations of RCOA in the grid/ s specified.
- i) *“Supplier”* refers to any person or entity authorized by the ERC to sell, broker, market or aggregate electricity to the end-users.
- j) *“Structural Unbundling”* refers to the separation of different activities through the creation of separate divisions or departments within a single company or, at the option of any Electric Power Industry Participant, a separation into different juridical entities, with a clear separation of accounts between regulated and non-regulated business activities.
- k) *“Functional Unbundling”* refers to the separation of functions into different components, i.e., separation of the wire from the supply functions of a Distribution Utility or separation of the products from the sale of electricity by a Generation Company.

Section 3. RCOA Integration into the WESM.

Consistent with the definition of Open Access, CCs are hereby allowed the use of the transmission and distribution systems and shall therefore be integrated into the WESM. For this purpose, all CCs shall become members of the WESM as Trading Participant, directly or indirectly, as herein provided.

Section 4. Customer’s Choice. Upon Open Access Date, a CC shall be allowed to choose where to source its electricity. For this purpose, a CC can source from a Generation

Company, a Supplier, an affiliate of a DU which has constituted itself as a Supplier, or the Supply Business of a Distribution Utility (DU) within its franchise area.

4.1. All CCs shall only deal with a supplier of electricity duly licensed by the ERC. This includes DUs that have structurally or functionally unbundled their business into Wire and Supply businesses, duly approved by the ERC.

4.2. The ERC shall certify all eligible CCs at least six (6) months prior to the initial implementation of the RCOA. For this purpose, all DUs are hereby mandated to provide DOE, ERC and PEMC the list of CCs including pertinent information, such as but not limited to load profile for the last twelve (12) months, name of customers, among others.

4.3. The PEMC is hereby directed to register all eligible CCs certified by the ERC within three (3) months prior to Open Access Date.

Section 5. Supplier of Electricity. All Suppliers duly licensed by the ERC shall register with the PEMC as a WESM direct member Trading Participant. Further, all Suppliers shall provide PEMC with its offer of terms and conditions to the CCs for publication in the PEMC website.

Section 6. Supply Contract. For the initial implementation of the RCOA, Supply Contracts entered into by CCs shall have a minimum term of one (1) year following the WESM billing cycle.

The CCs shall provide the PEMC, the ERC and the DOE copies of the Supply Contracts for reference in the development of rules, guidelines and policies necessary for the effective implementation of RCOA.

Section 7. Directly Connected Customers.

7.1. From the effectivity of this Circular, existing Directly Connected Customers (DCCs) must register as a Customer, either as a Direct or Indirect Trading Participant in the WESM.

7.2. Upon expiration of the Power Supply Contracts, all DCCs that meet the demand threshold shall be treated as CCs and shall be subject to all the rules and regulations on RCOA.

7.3. In case a DCC does not qualify as a CC, it may seek for ERC's approval to be considered as a CC.

Section 8. Embedded Generation.

8.1. All embedded generators shall register with PEMC as non-scheduled Generation Company.

8.2. Subject to the most beneficial arrangement, the policy for embedded generation shall be developed by the DOE in coordination with relevant stakeholders.

Section 9. Metering.

9.1. Except for the DCCs connected to the system operated by NGCP, the DU shall be the Metering Service Provider (MSP) and owner of all billing and the associated metering equipment prior to the implementation of competitive metering services.

9.2. The metering requirement for the CC shall be compliant with the WESM metering standards.

Section 10. Supplier of Last Resort. The franchised DU shall act as the Supplier of Last Resort (SOLR) in instances of Last Resort Supply Event. To cover the requirement of the Last Resort Supply Event, the DU-SOLR shall source electricity to be supplied to the CC

through WESM or any available supply in the market.

Section 11. Disconnection. In consultation with the various stakeholders, the Disconnection Policy promulgated by the DOE shall be reviewed and amended to reflect the necessary changes considering the integration of RCOA to WESM. The policy shall apply the concept of cross-default disconnection to all DUs, Suppliers and CCs.

Section 12. Customer Switching. CCs shall only be allowed to switch to another supplier every six (6) months from the implementation of the RCOA or upon the entry of the CC into RCOA and shall be made only at the end of the billing period.

Formal Advise/Notification to PEMC of the CCs' intent to exercise the switching shall be done at least one (1) month prior to switching.

Section 13. Protection for Captive Customers.

13.1. Consistent with its mandate under the EPIRA, DUs shall secure Supply Contracts in the least cost manner for its Captive Customers.

13.2. DU may continue to provide electricity services to CCs within its franchise area as a local Supplier, a separate entity.

Section 14. Billing and Settlement for Contestable Customers. As far as practicable, a single billing policy shall be adopted with the Supplier as the billing entity in charge of issuing the bills to the CC which reflects all applicable charges. Single billing policy is adopted to minimize impact to current billing

arrangements and avoid possible double charging and multiple layers of attendant administrative costs.

Section 15. Regulatory Support on RCOA Policies. The ERC shall ensure the provision of support in the regulatory requirements consistent with the policies set forth under this Circular and in accordance with existing laws and procedures.

Section 16. Responsibilities of Philippine Electricity Market Corporation. In accordance with the policies set forth in this Circular, the PEMC shall perform its responsibilities and obligations under DC 2012-02-0002 designating it as the CRB.

Section 17. 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 18. Separability Clause. If for any reason, any section or provisions of this Circular is declared unconstitutional or invalid, such parts not affected shall remain in full force and effect.

Section 19. Effectivity. This Circular shall take into effect immediately following its publication in at least two (2) newspapers of general circulation and shall remain in effect until otherwise revoked.

Issued this 9th day of May 2012 in Fort Bonifacio, Taguig City, Metro Manila.

DEPARTMENT CIRCULAR NO. DC2012-06-0007

DIRECTING THE NATIONAL ELECTRIFICATION ADMINISTRATION TO DEVELOP A MECHANISM FOR ENSURING THE ADEQUACY OF AND COMPLIANCE BY THE ELECTRIC COOPERATIVES WITH THE PRESCRIBED PRUDENTIAL REQUIREMENTS IN THE WHOLESALE ELECTRICITY SPOT MARKET AND SPEARHEAD THE COLLECTIVE PETITION THEREOF FOR THE APPROVAL OF THE ENERGY REGULATORY COMMISSION

WHEREAS, it is the policy of the state to 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;

WHEREAS, Section 37 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), provides that the Department of Energy (DOE) is mandated to supervise the restructuring of the electric power industry, formulate rules and regulations as may be necessary to Implement the objectives Of the EPIRA, and exercise such other powers as may be necessary or incidental to attain the objectives of the EPIRA;

WHEREAS, pursuant to Section 30 of the EPIRA, the DOE, jointly with the electric power industry participants, established the Wholesale Electricity Spot Market (WESM) and formulated the detailed WESM Rules;

WHEREAS, under Clause 3.15 of the WESM Rules, members are required to comply with the minimum Prudential Requirements (PR)¹ to ensure the credibility and viability Of the WESM operation by providing a level of comfort that WESM Trading Participants have adequate cover to meet their obligations in the WESM, shall result to suspension and de-registration;

WHEREAS, Department Circular No. 2010-08-0010 provides that suspension and de-registration of the WESM member is a ground

for disconnection from the grid;

WHEREAS, the DOE notes the increasing number and frequency Of Electric Cooperatives (ECS) that are receiving Margin Calls² from the Philippine Electricity Market Corporation (PEMC) due to their below the minimum level PRs;

WHEREAS, based on consultations with PEMC, it is evident that most ECS are encountering financial difficulties in maintaining the amount that complies with their respective PR in the WESM thereby exposing the ECs particularly the electricity end-users on a possible disconnection of electricity services;

WHEREAS, to cover the required PRs, the DOE deems it necessary for ECS to be afforded the opportunity to obtain adequate funds that is not currently recognized in the current tariff structure of the ECs, subject to the review and approval of the Energy Regulatory Commission (ERC);

WHEREAS, under 58 Of the EPIRA the National Electrification Administration (NEA) is expressly mandated among others, to undertake the Following:

- a. Develop and implement programs to prepare ECS in operating and completing under the deregulated electricity market, specifically in an environment of open access and retail wheeling;
- b. Strengthen the technical and financial capability Of the ECs; and

- c. Review and upgrade the regulatory policies with the view to enhancing the viability Of the ECs as electric utilities.

NOW, THEREFORE for and in consideration of the foregoing premises, the DOE consistent with its supervisory functions in the implementation of the EPIRA hereby promulgates the following:

Section 1. Scope. This Circular shall only apply to ECS located in Luzon and Visayas where WESM Operates. However, NEA may include proposed regulatory changes to ECs in Mindanao to strengthen their technical and financial capability.

Section 2. Mandate of National Electrification Administration (NEA). Consistent with its mandate under the EPIRA, NEA is hereby directed to immediately develop a roll out plan that Will assist the ECs in meeting their respective PR in the WESM. Specifically, NEA is hereby directed to:

- a. Review the current regulatory policies applied to the ECs and recommend within ninety (90) days from the issuance of this Circular the proposed mechanism to ensure that the ECS shall be able to generate funds to adequately cover the WESM-prescribed minimum PR; and
- b. Provide guidance to ECs in the preparation of the appropriate consolidated filing or petition for the approval of the ERC, the proposed amendment in the current rate methodology for the ECs, taking into consideration the objective of providing the ECs to obtain adequate cover to post the required PRs in the WESM.

Section 3. Responsibilities of Electric Cooperatives. All ECs are hereby directed to:

- a. Fully cooperate with the NEA by providing timely data and information necessary in the conduct of the study;

- b. Expedite completion of all documentary requirements in the filing of the petition to ERC;

- c. Fully comply with the WESM Rules particularly in maintaining the required PRs;

- d. Conduct extensive public consultation and consumer education campaign on the latest developments in the EC operations; and

- e. Perform other tasks that maybe required in pursuance of this Circular.

Section 4. Responsibilities of the Philippine Electricity Market Corporation (PEMC). In pursuit of its role of ensuring the credibility of the WESM, PEMC is hereby directed to undertake the following:

- a. Review the WESM Rules and recommend amendments where necessary to support the directives issued to NEA;
- b. Submit a monthly report to the DOE on the compliance with PR and issuances of Margin Call notices to WESM Trading Participants; and
- c. Identify and implement necessary improvements in the billing and settlement systems to ensure timely provision of information to WESM members, DOE and ERC.

Section 5. Regulatory Support. The ERC shall ensure the provision of support in the regulatory requirements consistent with the policies set forth under this Circular and in accordance with existing laws and procedures.

Section 6. 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 7. Separability Clause. If for any reason, any section or provisions of this Circular is declared unconstitutional Or invalid. Such parts not affected shall remain in full force and effect.

Section 8. Effectivity. This Circular shall take into effect immediately following its publication in at least two (2) newspapers of

general circulation and shall remain in effect until otherwise revoked.

Issued on JUNE 28 2012 in Fort Bonifacio, Taguig City, Metro Manila.

(Sgd) **JOSE RENE D. ALMENDRAS**
Secretary

DEPARTMENT CIRCULAR NO. DC2012-11-0010

PROVIDING FOR ADDITIONAL GUIDELINES AND IMPLEMENTING POLICIES FOR RETAIL COMPETITION AND OPEN ACCESS AND AMENDING DEPARTMENT CIRCULAR NO. (DC) 2012-05-0005 ENTITLED "PRESCRIBING THE GENERAL POLICIES FOR THE IMPLEMENTATION OF THE RETAIL COMPETITION AND OPEN ACCESS"

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

- (a.) supervise the restructuring of the electric power industry
- (b.) formulate 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, on 06 June 2011, the Energy Regulatory Commission (ERC) certified the fulfillment of the five (5) pre-conditions for the implementation of the Retail Competition and Open Access (RCOA):

- (a.) **Establishment of the Wholesale Electricity Spot Market (WESM).** The WESM started its commercial operation

in Luzon on 26 June 2006, while Visayas Grid was integrated in the VVESM on 26 December 2010;

- (b.) **Approval of unbundled transmission and distribution wheeling charges.** The ERC approved the unbundled rates of the National Power Corporation (NPC) on 26 March 2002, which includes the transmission tariffs of the National Transmission Corporation (TRANSCO) and the NPC generation tariffs. Likewise, the ERC has rendered its decisions on the various applications unbundling of distribution wheeling charges of distribution utilities;
- (c.) **Initial implementation of the cross subsidy removal scheme.** The ERC approved the removal of inter-class cross-subsidies simultaneously with the unbundling of rates application filed by NPC and Distribution Utilities (DUs). Since 2002, the NPC and TRANSCO have completely removed the inter-and intra-grid cross subsidies in their tariffs, while

almost all of DUs have completed their cross-subsidy removal process;

(d.) **Privatization of at least seventy (70%) percent of the total capacity of generating assets of NPC in Luzon and Visayas.** Pursuant to its mandate, the Power Sector Assets and Liabilities Management Corporation (PSALM) has privatized a total of nineteen (19) power plants of power plants of different fuel resources in Luzon and Visayas with a total capacity of 3,222 megawatts (MW), equivalent to 79.56 percent (79.56%) of the total generating capacity of NPC in Luzon and Visayas, thereby breaching the 70 percent (70%) condition for RCOA;

(e.) **Transfer of the management and control of at least seventy percent (70%) of the total energy output of power plants under contract with NPC to the IPP Administrators.** PSALM has successfully bid out 3,345.75 MW of NPC-contracted energy outputs with equivalent proceeds of US\$3,228.00 Million. This is equivalent to 76.85 percent (76.85%) of the total NPC-IPP contracted energy output in Luzon and Visayas.

WHEREAS, on 17 June 2011, the DOE issued Department Circular (DC) No. DC2011-06-0006 entitled, "Creating the Steering Committee Defining the Policies for the Implementation of Retail Competition and Open Access," which tasks include among others:

- (a.) provide the transition framework for the RCOA implementation; and
- (b.) synchronize the preparatory actions towards ensuring the sufficiency of existing rules, infrastructures, and other institutional requirements necessary to achieve the goals of EPIRA;

WHEREAS, the RCOA Steering Committee (RCOA-SC) and its Technical Working Groups

(TWG) conducted a series of meetings and consultations with electric power industry stakeholders as well as government agencies for the purpose of identifying the attendant issues and challenges that each sector of the industry are facing or may encounter, including assessment of the readiness of the systems and processes to warrant the effective implementation of RCOA;

WHEREAS, after series of meetings of the RCOA-SC and its TWG resolved to endorse to the DOE the following:

- a. defer the Open Access Date to 26 December 2012;
- b. integrate the RCOA in the WESM;
- c. appoint the Philippine Electricity Market Corporation (PEMC) as the Central Registration Body (CRB);
- d. define specific policies to operationalize the RCOA concepts such as customer empowerment or customer choice, the business of supply of electricity, Supplier, and Supplier of Last Resort (SOLR), and membership in the WESM, among others;

WHEREAS, on 24 February 2012, Department Circular No. 2012-02-0002 appointed PEMC as CRB;

WHEREAS, the DOE as part of its continuing effort to align the policies and regulations that have been put in place, and in consultation with the stakeholders and the ERC issued on 09 May 2012, DC2012-05-0005, entitled "Prescribing the General Policies for the Implementation of Retail Competition and Open Access";

WHEREAS, the DOE jointly with the RCOA-SC and the ERC, conducted another round of public consultations and focused group discussions with the stakeholders, with the end view of developing the implementing rules and regulations for the implementation of RCOA, and in order to provide all stakeholders sufficient time to RCOA regime:

Date	Venue	Participants
18 July 2012	DOE Headquarters	Manila Electric Company (MERALCO) and Visayan Electric Company (VECO)
19 July 2012	DOE Headquarters	Batangas II Electric Cooperative, Inc. (BATELEC II), Cebu I Electric Cooperative, Inc. (CEBECO I), Cebu II Electric Cooperative, Inc. (CEBECO II) and the Philippine Rural Electric Cooperatives Association (PHILRECA)
31 July 2012	Water Hotel, Lahug, Cebu City	Contestable Customers, Generation Companies, and Distribution Utilities in the Visayas Grid
16 August 2012	Holiday Inn Clark, Pampanga	Contestable Customers, Generation Companies, and Distribution Utilities in the Luzon Grid
23 August 2012	DOE Headquarters	Government Entities duly Certified Contestable Customers by ERC
03 September 2012	DOE Headquarters	Retail Electricity Suppliers Association (RESA) and Suppliers
04 September 2012	Legend Hotel, Mandaluyong City	Contestable Customer
05 September 2012	PEZA, Roxas Boulevard, Pasay City	PEZA Economic Zone Locators
05 September 2012	Legend Hotel, Mandaluyong City	Directly Connected Customers

WHEREAS, as a result of the series of public consultations and focused group discussions, the DOE jointly with the ERC, the PEMC and the RCOA-SC, resolved to introduce additional policies and guidelines and provide amendments to the DC2012-05-0005;

NOW, THEREFORE, for and in consideration of the foregoing, the DOE hereby issues, adopts and promulgates the following additional guidelines and implementing policies for the implementation of RCOA, providing additional policies and amending certain provisions of the DC2012-05-0005:

Section 1. Declaration of Policy. Consistent with the declared policy of the State under Section 2 of EPIRA, this Circular reiterates the following policies as to their relevance to the

RCOA implementation:

- a. To ensure the quality, reliability, security and affordability of the supply of electric power;
- b. To ensure fair and non-discriminatory treatment of public and private sector entities in the process of restructuring the electric power industry;
- c. To assure socially and environmentally compatible energy sources and infrastructure;
- d. To 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, promote consumer choice and enhance the competitiveness of Philippine products in the global market;
- e. To protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power; and
- f. To encourage the efficient use of energy and other modalities of Demand Side Management (DSM).

Section 2. Objectives. This Circular is issued with the following objectives:

- a. To ensure smooth transition to RCOA regime through provision of transparent and reasonable rules and procedures for all sectors of the electric power industry;
- b. To foster competition in the power generation and supply businesses, while empowering electricity end-users;

- c. To clearly define the respective responsibilities of each person or entity in so far as implementation of RCOA is concerned;
- d. To ensure that RCOA shall not result to diminution of service which includes transparency in electricity fees and charges; and
- e. To ensure protection of electricity end-users particularly those who have no power to choose their electricity suppliers.

Section 3. Coverage. This Circular shall govern the framework for the RCOA, including the responsibilities of Electric Power Industry Participants and governmental authorities, such as, but not limited to: the DOE, ERC, PEMC, National Electrification Administration (NEA), National Grid Corporation of the Philippines (NGCP), and DUs.

Section 4. Amendments to Section 2 of DC2012-05-0005.

4.1. The following definitions in Section 2 of DC2012-05-0005 are hereby amended, as follows:

f) **“Directly Connected Customers”** refer to industrial or bulk electricity end-users, which are directly supplied with electricity by a Generation Company or Power Sector Assets and Management Corporation (PSALM) or NPC pursuant to Republic Act No. 6395 as amended by Presidential Decree No. 395;

g) **“Last Resort Supply Event”** refers to an event when a supplier of a Contestable Customer has defaulted its obligations or fails to provide electricity based on the following reasons: (i) cessation of its operation; (ii) revocation of its license; (iii) non-payment of transmission and

distribution services; (iv) suspension of its membership in the WESM due to non-compliance to WESM Rules and retail market rules to be promulgated consistent with this Circular; and (v) such other grounds that may be specified by the ERC;

4.2 A new definition is hereby added to Section 2 of Department Circular No. DC2012-05-0005, as follows:

l) **“Local Supplier”** refers to the non-regulated supply business of a Distribution Utility (DU) catering to the Contestable Customers within its franchise area, duly authorized by the ERC. This shall also include the Philippine Economic Zone Authority (PEZA) and the PEZA-accredited Utility Ecozone Enterprises in the public and private Economic Zones (EZs), respectively.

4.3 All other terms defined under DC2012-05-0005, and other related rules and regulations shall have the same meaning in so far as they are not inconsistent with this Circular.

Section 5. Responsibilities of Energy Agencies and Stakeholders. Consistent with EPIRA and EPIRA-IRR, the following energy agencies and stakeholders shall have the following responsibilities in so far as the RCOA implementation is concerned:

- (a) The ERC. In the exercise of its mandate to promote competition, encourage market development, ensure customer Choice and penalize abuse of market power in the restructured electricity industry, the ERC shall perform the following regulatory functions in relation to RCOA:
 - (i) Declare Open Access Date;
 - (ii) Establish and approve a methodology for setting transmission and

distribution wheeling rates for the use of the transmission and distribution system, and for setting retail rates for the Captive Market of a DU;

- (iii) Prescribe qualifications and evaluate applications for supply of electricity to the Contestable Market, and for this purpose, issue license to suppliers, metering service providers, and other service providers as may be necessary for the implementation of RCOA;
- (iv) Upon the initial implementation of RCOA specify the Contestable Market through the issuance of Certificate of Contestability to electricity end-users with an average twelve months peak demand of one (1) megawatt and above;
- (v) Evaluate the performance of the market and based on its evaluation, gradually reduce the threshold level for the Contestable Market until it reaches the household demand level;
- (vi) Determine the appropriate mechanism to mitigate the impact of migration of Contestable Customers in the operation of the DU and its Captive Market;
- (vii) Ensure customer choice and promote competition, encourage market development, and discourage/ penalize abuse of market power, cartelization and any anti-competitive or discriminatory behavior, in order to further the intent of the EPIRA and protect the public interest; an
- (viii) Provision of regulatory support on the recoveries of needed

investments to support the efficient and effective implementation of RCOA.

- (b) **PEMC.** As the designated CRB, PEMC shall perform its mandate pursuant to DC2012-02-0002 issued on 24 February 2012.
- (c) **National Grid Corporation of the Philippines (NGCP).** As the Concessionaire of the National Transmission Company, NGCP shall, among others:
 - (i) Abide by the methodology approved by the ERC for setting transmission wheeling rates upon the implementation of RCOA;
 - (ii) As the System Operator, provide open and non-discriminatory access to its transmission system to all electricity users; and
 - (iii) Ensure reliability and adequacy of transmission system to cater to the RCOA requirements.
- (d) **National Electrification Administration (NEA).** In pursuit of its additional mandates under Section 58 of EPIRA and Rule 3, Section 3 of EPIRA-IRR, the NEA shall undertake among others the following:
 - (i) Prepare Electronic Cooperatives (ECs) for the RCOA regime and provide the technical, financial and institutional support and assistance necessary in ensuring that the ECs are able to complete and perform their mandates under a competitive environment;
 - (ii) Assist the ECs in educating their respective member-consumers about the implementation of RCOA and its impact on electricity end-users; and

- (iii) Develop mitigating measure to address any impact on the operations and viability of the ECs resulting from the possible migration of Contestable Customers to their Suppliers.

(e) **Distribution Utilities (DUS).**

- (i) Provide open and non-discriminatory access to its distribution system to all electricity end-users, including suppliers
- (ii) Ensure reliability and adequacy of distribution system to cater the RCOA requirements;
- (iii) Ensure least-cost supply to electricity end-users as well as transparency in the rates and charges applied to both regulated and competitive services;
- (iv) Perform the role as the default Metering Service Provider (MSP) and ensure compliance with the WESM Rules and Retail Rules to be promulgated by the DOE pursuant to RCOA;
- (v) Ensure provision of pertinent information necessary for Contestable Customers' transition to RCOA to include, among others, load profile data which shall be provided to Contestable Customers, forty five (45) days prior to Open Access Date to assist them in negotiating for supply contracts with various Suppliers;
- (vi) Continuously review and update respective Distribution Development Plan (DDP) and prepare for the investments necessary to adequately respond to the RCOA requirements;
- (vii) Notify ERC of its intent to recover stranded contract costs submitting thereto an estimate of such

obligations, including the present value thereof and such other supporting data as may be required by the ERC; and

- (viii) Conduct regular Information and Education Campaign to all electricity end-users particularly the Captive Customers on the RCOA and its impact to the end-users.

Section 6. Transition to RCOA Implementation and Timelines. To ensure smooth implementation of RCOA and to prepare all stakeholders, it is hereby prescribed that a Transition Period of six (6) months shall be observed, from the Open Access Date as declared by the ERC.

During the Transition Period, the following activities, among others, shall take place.

- (a) The DU shall continue to serve Contestable Customers in their respective franchise area;
- (b) Contestable Customers shall start with or continue to negotiate and enter into supply contracts with Suppliers; provided, however, that such supply contract shall only take effect at the end of the Transition Period i.e., the day that immediately follows the end of the sixth month from the Open Access Date;
- (c) The ERC shall continue to evaluate and issue Certificate of Contestability to all eligible Contestable Customers;
- (d) The ERC shall identify DUs that will act as the SOLR services in areas where the franchised DUs were deemed not capable to perform their roles as the default SOLRs;
- (e) The CRB shall begin the registration of Contestable Customers and Suppliers as well as conduct of trainings to the RCOA participants;

- (f) The CRB shall conduct trial operations including mock settlements; and
- (g) The DOE shall spearhead the development and conduct of a comprehensive Information and Education Campaign to all stakeholders on the RCOA and its implementation.

After the Transition Period prescribed herein and pursuant to the Transitory Rules to be promulgated by the ERC, the full commercial operation of the RCOA, hereinafter referred to as the “Full RCOA Commercial Operation Date” shall take effect.

Section 7. Mandatory Contestability and Customer Choice. Consistent with the EPIRA, the RCOA should promote genuine competition, greater efficiency, customer choice, and the true cost of electricity. For this purpose, the power of choice is conferred to Contestable Customers subject to the rules and regulations prescribed herein as well as to subsequent issuances by the DOE.

Accordingly, all Contestable Customers shall be allowed to choose where to source its supply of electricity. For this purpose, any Contestable Customer may source its electricity supply requirements from a Supplier duly licensed by ERC, a Local Supplier duly authorized by ERC to perform such, or through the WESM. In the latter case, the Contestable Customer shall be responsible to manage its registration and compliance with the WESM Rules and Manuals, and managing its own risks as well.

As a general policy, a Contestable Customer can have one Supplier of electricity per Metering Point. Thus, any Contestable Customer may have several contracted Suppliers based on the number of its Metering Points. However, should a Contestable Customer opt to enter into a multiple supply contracts even with only single

Metering Point, it shall be allowed, provided arrangements shall be consistent with the Circular and the Retail Rules to be promulgated by the DOE, and FRC rules and regulations.

Section 8. Supply Contract and Customer Switching. After the Transition Period and during the initial year of the Full RCOA Commercial Operation Date, all Contestable Customers shall have supply contracts with a minimum term of one (1) year with a Supplier. Notwithstanding, Contestable Customers shall be allowed to switch to a new supplier six (6) months after the Full RCOA Commercial Operation Date, provided, further that any or all outstanding obligations of either party to the other party is fully settled.

One (1) year after the Full RCOA Commercial Operation Date, the Contestable Customers and Suppliers shall have the flexibility on the duration of their supply contracts and shall undertake switching in accordance with the Retail Rules to be promulgated by the DOE and consistent with the manual of procedures adopted by the CRB.

In such case, the switching shall take effect at the beginning of the WESM billing month, while formal advice notification to the CRB of the Contestable Customer’s intent to exercise the switching shall be done at least one (1) month prior to switching date.

The Suppliers shall provide the DOE, ERC and CRB with copies of their supply contracts for purposes of monitoring, policy development, formulation of necessary rules, and guidelines for the effective implementation of RCOA.

Further, for purposes of assisting the Contestable Customers in supply contracting, forty five (45) days prior to the Open Access Date, Suppliers shall submit to the CRB for posting in its website, contracting parameters, to include its general offer terms and conditions such as indicative average contract price offers and scope of services offered.

Section 9. Directly Connected Customers.

Existing Directly Connected Customers, regardless of their average peak demand for the last twelve (12) months from the effective date of this Circular, shall register with PEMC, either as a Direct or Indirect Customer Trading Participant in the WESM. Existing supply contracts between Directly-Connected Customers and the Generators prior to Open Access Date shall not be affected by reason of the implementation of RCOA and as such shall there be diminution of services.

All Directly-Connected Customers shall therefore be considered Contestable Customers and shall secure Certificate of Contestability from the ERC. Any Directly-Connected Customer, in ensuring its supply requirements, may secure additional energy requirements from a Supplier duly licensed by the ERC, to supplement its current contract with a power generator. As such, a Directly Connected Customer may have supply contract with a power generator registered in the WESM, and a Supplier of electricity.

Section 10. Role of Embedded Generation.

The PEMC shall register embedded generators in accordance with the WESM Rules and relevant market manuals. Subject to the most beneficial arrangement, the policy for embedded generation shall be developed by the DOE in coordination with relevant stakeholders, as part of the government's effort to make any supply available in the grid. Towards this end, the DOE shall endeavor to develop policies and programs that will encourage Demand Response in coordination with the ERC and industry stakeholders.

Section 11. Supplier of Last Resort (SOLR).

In the event that the Supplier is not able to perform its obligations to its Contestable Customers consistent with this Circular, the franchised DU shall act as the SOLR in the Last Resort Supply Event as defined in this Circular. However, should the franchised DU is deemed not capable to perform the SOLR service, the ERC, prior to the Full RCOA Commercial

Operation Date, shall designate another DU which will perform the SOLR function for the affected Contestable Customers. The SOLR may source electricity to be supplied to the Contestable Customers through the WESM or any available source of energy supply. The SOLR shall be allowed to recover their costs attributable to its SOLR services.

Notwithstanding, the ERC shall design a mechanism to prevent the occurrence of a Last Resort Supply Event, which may include, among others, adequate due diligence on the technical and financial capability, and other parameters used in the issuance of Supplier License. The CRB, on the other hand, shall issue timely notification of Suppliers' compliance with the prudential requirement pursuant to the WESM Rules.

Section 12. Government Entities as Contestable Customers.

In cognizance of government entities that are considered as Contestable Customers, the DOE in coordination with the Government Procurement Policy Board (GPPB) and the Department of Budget and Management (DBM) shall issue supplementary rules on the procurement of electricity supply under the RCOA regime. Prior to Open Access Date, the DOE, DBM and GPPB shall issue a step-by-step procedure that will serve as guide for government entities Considered as Contestable Customers.

As a general rule, all Government Entities that are either Contestable Customers or Directly Connected Customers shall comply with the requirements of EPIRA and EPIRA-IRR.

Section 13. 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 14. 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 15. Effectivity. This Circular shall take effect fifteen (15) days following its publication in at least two (2) newspapers of general circulation.

Issued on Novevember 28, 2012 in Energy Center, Bonifacio Global City, Taguig City.

CARLOS JERICO L. PETILLA
Secretary

DEPARTMENT CIRCULAR NO. DC2013-01-0001

DIRECTING THE PHILIPPINE ELECTRICITY MARKET CORPORATION TO DEVELOP AND IMPLEMENT AN INTERIM MINDANAO ELECTRICITY MARKET (IMEM) AS A MEASURE TO IMMEDIATELY ADDRESS THE POWER SUPPLY SITUATION IN MINDANAO

WHEREAS, pursuant to the declared policy of the State under Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), the Department of Energy (DOE) is mandated to ensure the reliability, quality and security of supply of electric power;

WHEREAS, the Mindanao grid has been experiencing power supply situation, which at times result to rotating brownouts in some areas due to generation capacity deficiencies to meet the energy and ancillary services requirement;

WHEREAS, the DOE issued Department Circular No. 2010-10-0011 on 12 October 2010 and Department Circular No. 2012-03-0004 on 19 March 2012, enjoining all electric power industry participants to rationalize and maximize the available power generation capacities in the Mindanao grid to address the power situation Mindanao;

WHEREAS, as a follow up to the Mindanao Power Summit held on 13 April 2012, a series of focused group discussions, consultations and meetings with relevant electric power industry participants in Mindanao and concerned energy agencies, were spearheaded by the DOE and jointly with the

attached agencies and Philippine Electricity Market Corporation (PEMC) to implement and operationalize the identified measures to address the Mindanao power supply situation;

WHEREAS, the DOE recognizes the urgent need to develop and implement a roadmap to deliver the sustainable solutions to the Mindanao power situation taking into consideration the current and future power supply and demand situation and the socio-economic, environmental and peace and order factors, among others;

WHEREAS, all stakeholders in Mindanao including the concerned government agencies, business groups and Local Government Units are enjoined to participate and cooperate in the implementation of the roadmap that contains the solutions to the electric power concerns in Mindanao;

WHEREAS, there is a need to establish a venue for transparent and efficient utilization of all available capacities particularly during periods wherein the contracted supply capacities of the load customers such as the distribution utilities and industrial customers are not enough to meet their demand, and at the same time reflecting

the true cost of electric power to encourage dispatch and utilization of existing available power generating facilities and/ or to attract the entry of new generating capacities in Mindanao;

WHEREAS, the PEMC, a non-stock, non-profit corporation, which was established in 2003, has been operating the wholesale electricity spot market in Luzon since June 2006 and in the Visayas since December 2010, is deemed competent to develop a market design specific to Mindanao;

NOW THEREFORE, premises considered, the DOE, hereby directs the Philippine Electricity Market Corporation (PEMC) to develop and implement an interim electricity market design for Mindanao, to be referred to as the “Interim Mindanao Electricity Market (IMEM).”

Section 1. Scope and Application. This Circular shall apply to all agencies and entities named herein and all electric power industry participants in Mindanao, including generation companies, distribution utilities - private investor-owned utilities, Electric , Cooperatives and other customers.

Section 2. General Principles of the Proposed Interim Mindanao Electricity Market. The Interim Mindanao Electricity Market (IMEM) shall have the following salient features:

- (a) A day-ahead market wherein market participants submit their nominations a day before the actual delivery or curtailment of energy;
- (b) All generation capacities, directly connected customers and distribution customers shall be part of a mandatory program that aims to address only the deficiency of supply in the grid;
- (c) Provides for energy efficiency incentives meant to contribute to the supply in the grid;

- (d) Provides real time imbalance correction through the use of a merit order table provided by the IMEM operator;
- (e) Provides a Merit Order Table having the same principles of the merit order table used in the Luzon and the Visayas grids;
- (f) A settlement based on a uniform pricing framework settled at the market clearing price with which the total cost shall be allocated among the IMEM participants; and
- (g) Provides for a governance framework to ensure free and fair competition and public accountability.

For this purpose, PEMC is hereby directed to provide the DOE within two (2) months from the issuance of this Circular, the IMEM Implementing Rules and timelines in accordance with the abovementioned features for the consideration and approval of the DOE.

Pending the approval of the IMEM Implementing Rules, PEMC is hereby authorized to file the necessary application with the Energy Regulatory Commission (ERC) to secure the necessary funding to fulfill its mandate subject to a cost recovery methodology to be subsequently submitted to the ERC for approval.

Section 3. Responsibilities. Pursuant to their respective mandates and functions under the EPIRA and its Implementing Rules and Regulations, the Philippine Grid Code (PGC), the Philippine Distribution Code (PDC) and other relevant laws, rules, and issuances, the following are enjoined to extend their full cooperation and action:

- (a) **National Grid Corporation of the Philippines (NGCP).** The NGCP is hereby directed to perform its obligations of ensuring and maintaining the reliability, adequacy, security, stability and integrity

of the nationwide electricity grid in accordance with the performance standards for the operations and maintenance of the grid, as set forth in the Philippine Grid Code, while at the same time taking into consideration the current and future power supply and demand situation of Mindanao;

(b) **National Transmission Corporation (TransCo).** TransCo shall provide the necessary technical support to DOE and PEMC to assess the power situation and to ensure compliance of NGCP to the responsibilities indicated herein;

(c) **Power Sector Assets and Liabilities Management Corporation (PSALM) and National Power Corporation (NPC).** PSALM and NPC, having control of about 74.19% of the total power generating capacities in Mindanao, shall endeavor to sustain if not improve the generation capabilities of its power plants and to continue to fully utilize all available capacities of all power plants in the region.

In this regard, PSALM shall provide appropriate financial support on the operation and maintenance of its power plants operated by NPC, and obligations under the IPP contracted capacities, subject to existing P\$ALM and NPC arrangements. Meanwhile, NPC shall ensure efficient operation of the said power plants;

(d) **National Electrification Administration (NEA).** Consistent with its statutory

obligations, NEA is directed to assess the current financial and technical capability of Mindanao ECs and provide all the necessary assistance to them to prepare for the eventual implementation of IMEM particularly their roles and mandates; and

(e) **Electric Power Industry Participants.** All electric power industry participants are hereby enjoined to provide full cooperation in this undertaking to ensure that the objectives set out in this Circular are attained.

Section 4. Regulatory Support. The DOE and the ERC shall closely coordinate in order that any application filed in relation to this program shall be expeditiously acted upon.

Section 5. Policy Support and Development. The DOE, shall issue the necessary policies to support the efficient implementation of the IMEM and to undertake IEC activities in order to properly carry out and achieve the objectives of this Circular.

Section 6. No Amendment or Repeal of Existing Laws. Nothing in this Circular shall be construed as to amend, supplant, or repeal any of the mechanisms or institutions already existing or responsibilities already allocated and provided for under any existing law, rule or contract.

Section 7. Effectivity. This Circular shall take effect immediately and will remain in effect until otherwise revoked by the DOE.

Issued on January 09, 2013 at Energy Center, Bonifacio Global City, Taguig City.

DEPARTMENT CIRCULAR NO. DC2013-05-0006

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 Customer’s 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, 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 their contracted CCs, 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 the 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 an anti-competitive behavior. For this purpose, the above participants are prohibited from exercising abuse of market power and engaging in any anti-competitive behavior.
- b) For Suppliers and Local Suppliers
 - i. Submit pertinent information for the monitoring and evaluation of the progress of RCOA implementation, including but not limited to, supply portfolio, list of CCs, contract levels and duration, price ranges and other documentary requirements as may be required by DOE, ERC, and PEMC.
 - ii. Conduct business in a fair and transparent manner by providing the CCs the reasons for any refusal to provide retail supply services. This shall be done in writing by the WCO or the duly designated focal person identified under Section 1(a)(i) hereof. A declaration of insufficient capacity shall not be considered a valid reason for refusal to provide retail electricity services unless the DOE certifies that the Supplier or Local Supplier concerned is deemed no longer capable, at the time of such declaration was made, to serve the current and any additional requirements of the CCs;

- iii. Engage in negotiations with CCs to ensure customer choice and protection; and
 - iv. Provide the CCs pertinent and truthful information including but not limited to contact details, coverage of the services offered, duration of the RSC, the manner by which the prices are determined and the actual or price ranges in the Philippine Peso per kWh. Such information shall likewise be submitted to the DOE and published in their respective websites.
- c) For Distribution Utilities
- i. Provide services and perform its obligations in a non-discriminative manner over its franchise area.
 - ii. Submit quarterly report to the DOE on the development of contestability within its franchise area.
 - iii. Submit quarterly report, detailing among others, the segregated sales to Captive and CCs within each franchise area, and activities undertaken as the default Suppliers of Last Resort (SOLR).

For purposes of uniformity and guidance in the submission of compliance reports, refer to “Annex B” of this Circular.

Section 2. Additional Responsibilities of the Philippine Electricity Market Corporation. In addition to its responsibilities provided for under DOE Circular No. 2012-02-0002 and in pursuit of its role as Central Registration Body, the PEMC shall undertake the following, but not limited to:

- a) Monitor and submit a monthly report to the DOE and the ERC detailing the registration status including a list of Suppliers with their counterparty CCs.

- b) Submit Issues Paper to the DOE on a quarterly basis, to include among others, proposed policy actions necessary to enhance implementation of a truly competitive and efficient integrated wholesale and retail supply.
- c) Undertake a training program for the focal persons identified in Section 1(a)(i) above.

Section 3. Regulatory Intervention. As mandated under Section 43 (k) and 45 of the EPIRA, the ERC shall enforce all policies and determine regulatory actions necessary to facilitate provision of a competitive electricity industry environment and to mitigate any potential abuse of market power and anti-competitive behavior between and among market participants, including but not limited to, any contingency measures to ensure sufficient protection of the Captive and CCs.

Section 4. Compliance Monitoring. To ensure that all the information requirements and all other reportorial requirements prescribed in this Circular is complied with, the DOE, through the Electric Power Industry Management Bureau (EPIMB), shall submit quarterly report to the DOE Secretary, copy furnish the ERC Chairperson for proper courses of action on the needed policies and regulatory actions including any remedial or punitive or disciplinary actions for non-compliances of any electric power industry participant.

Section 5. Penalty Clause. Failure of any Generation Company, Supplier or Local Supplier to comply with their obligations set forth in this Circular shall 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 6. 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 7. Separability Clause. If for any reason, any section or provision of this Circular is declared unconstitutional or invalid, such parts not affected shall remain in full force and effect.

Section 8. Effectivity. This Circular shall take effect fifteen (15) days following its publication in at least two (2) newspapers of general circulation and shall remain in effect until otherwise revoked

Issued this May 06, 2013 in Energy Center, Rizal Drive, Bonifacio Global City, Taguig City.

CARLOS JERICHO L. PETILLA
Secretary

POWER GENERATION COMPANIES' COMPLIANCE FORM
Pursuant to DOE Circular No. DC 2013-05-0006, dated 06 May 2013

Reportorial Requirements for Power Generation Companies on RCOA Implementation

Note: To be accomplished by a duly authorized focal person and/or designated WESM Compliance Officer

Name of Power Generation Company					
Contact Person					
Position/Designation					
Office Address					
COC No.:					
Telephone No.:		Fax No:	Email Address:		
Name of Power Plant/s:			Location/s:		
Resource Type:1			Capacity (MW):		
Name of Customers	Contracted Demand (MW)	Contracted Energy (MWH)	Contract Price (P/kWh)	Contract Duration	
RES					
DU					
LRES					
DCC					
.....					

(continue on separate sheet if necessary)

1 Coal, Hydro, Natural Gas, Geothermal, Oil-Based (please specify fuel)

Instructions:

Submission must be done on a per power plant basis (1 Form, 1 Power Plant). Please submit in hard and soft copies to:

THE OFFICE OF THE DIRECTOR
Electric Power Industry Management Bureau
Department of Energy
Energy Center, Rizal Drive, Bonifacio Global City
Taguig City, Philippines
Tel./Fax No. 632-840-1773
Email to: mycaps@doe.gov.ph; jexconde@gmail.com;
ningski_baltazar@yahoo.com; rcoapower@gmail.com; sec@doe.gov.ph

Accomplished by: _____
Name and Signature

Designation

SUPLIERS' AND LOCAL SUPPLIERS' COMPLIANCE FORM
Pursuant to DOE Circular No. DC 2013-05-0006, dated 06 May 2013

**Reportorial Requirements for Suppliers and Local Electricity Suppliers on
RCOA Implementation**

Note: To be accomplished by a duly authorized focal person and/or designated WESM Compliance Officer

Part I. Company Profile							
Name of RES/LRES							
Contact Person							
Position/Designation							
Office Address							
License/Certificate No.							
Telephone No.:		Fax No:			Email Address:		
Part II. Supply Portfolio							
Supply Portfolio	Resource Type ¹	Contracted Capacity (MW)	Contracted Energy (MWH)	Contract (P/kWh)	Price	Contract Duration	Generator is Affiliated to the RES/LRES (Yes/No)
1. Generator -A							
2. Generator - B							
3. Generator - C							
4. Generator -D							
5. Generator - E							
.....							
Total							
(continue on separate sheet if necessary)							
Part III. Capacity Allocation for Contestable Customers							
Contestable Customers	Capacity (MW)	Energy (MWH)	Contract (P/kWh)	Price	Contract Duration		
1. CC ₁							
2.							
3.							
4.							
5. CC _n							
Total							
(continue on separate sheet if necessary)							
Value Added Services Offered to CCs:							
1.							
2.							
3.							

¹ Coal, Hydro, Natural Gas, Geothermal, Oil-Based (please specify fuel)

Please submit in hard and soft copies to:

THE OFFICE OF THE DIRECTOR

Electric Power Industry Management Bureau

Department of Energy

Energy Center, Rizal Drive, Bonifacio Global City

Taguig City, Philippines

Tel./Fax No. 632-840-1773

Email to: mycaps@doe.gov.ph; ixconde@gmail.com;

ningski_baltazar@yahoo.com; rcoapower@gmail.com; sec@doe.gov.ph

Accomplished by:

Name and Signature

Designation

ANNEX B

DISTRIBUTION UTILITIES' COMPLIANCE FORM

Pursuant to DOE Circular No. DC 2013-05-0006, dated 06 May 2013

Reportorial Requirements for Distribution Utilities on RCOA Implementation

Note: To be accomplished by a duly authorized focal person and/or designated WESM Compliance Officer

Part I. Company Profile							
Name of Distribution Utility							
Contact Person							
Position/Designation							
Office Address							
Telephone No.:		Fax No:		Email Address:			
Registered with PEMC as Metering Service Provider (MSP)? Please tick box. YES <input type="checkbox"/> NO <input type="checkbox"/>							
Part II. Supply Portfolio							
Supply Portfolio	Resource Type:	Contracted Capacity (MW)	Contracted Energy (MWH)	Contract Price (P/kWh)	Contract Duration	Generator is Affiliated to the DU. (Yes/No)	
1. Generator -1							
2. Generator -2							
3. Generator -3							
4. Generator -4							
5. Generator -5							
.....						
Total							
(continue on separate sheet if necessary)							
Part III. Capacity Allocation for Customers							
Captive Customers	Capacity (MW)		Energy (MWH)		Contract Price (P/kWh)		
Residential							
Commercial							
Industrial							
Public Buildings							
Streetlights							
Others							
.....							
Total							
(continue on separate sheet if necessary)							
Is there any ERC-designated Supplier of Last Resort (SOLR) for your Franchise Area? (YES/NO)							
If YES, please identify: _____							

☐ Coal, Hydro, Natural Gas, Geothermal, Oil-Based (please specify fuel)

Please submit in hard and soft copies to:

THE OFFICE OF THE DIRECTOR
 Electric Power Industry Management Bureau
 Department of Energy
 Energy Center, Rizal Drive, Bonifacio Global City
 Taguig City, Philippines
 Tel./Fax No. 632-840-1773
 Email to: mycaps@doe.gov.ph; iexconde@gmail.com;
ningski_baltazar@yahoo.com; rcoapower@gmail.com; sec@doe.gov.ph

Accomplished by: _____
 Name and Signature

 Designation

DEPARTMENT CIRCULAR NO. DC2013-05-0008

PROMULGATING THE INTERIM MINDANAO ELECTRICITY MARKET (IMEM) IMPLEMENTING RULES

WHEREAS, Section 2 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), declares as a policy of the state to ensure the quality, reliability, security, and affordability of the supply of electric power;

WHEREAS, Republic Act No. 7638 or the “Department of Energy Act of 1992”, as amended by Section 37 of the EPIRA, authorized DOE to exercise supervision and control over all government activities relative to energy projects and to formulate rules and regulations necessary to implement the objectives of these laws;

WHEREAS, Section 37 (i) of the EPIRA mandates the DOE to “[d]evelop 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, the Mindanao grid has been experiencing rotating brownouts due to generation capacity deficiencies to meet the energy and ancillary services requirement, ranging from 150 MW to 300 MW in 2012;

WHEREAS, after the conduct of the Mindanao Power Summit last April 2012 and a series of focused group discussions, consultations and meetings with relevant electric power industry participants in Mindanao and concerned energy agencies, the DOE came up with a roadmap to sustainable solutions to the Mindanao power situation taking into consideration the current and future power supply and demand situation and the socio-economic, environmental and peace and order factors, among others;

WHEREAS, as part of the roadmap, a market for the transparent and efficient utilization of available capacities shall be established to encourage participation of existing power generating facilities and interruptible loads, and entry of new generating capacities in Mindanao;

WHEREAS, on 9 January 2013, DOE issued Department Circular No. DC 2013-01-0001 entitled, “Directing the Philippine Electricity Market Corporation to Develop and Implement an Interim Mindanao Electricity Market (IMEM) as a Measure to Immediately Address the Power Supply Situation in Mindanao”;

WHEREAS, pursuant to DOE Department Circular No. DC2013-01-0001, PEMC submitted to the DOE the draft IMEM Implementing Rules last 25 March 2013;

WHEREAS, the draft IMEM Implementing Rules was posted on the DOE website for comments on 25 March 2013 and was subjected to public consultation on 3, 10, and 12 April 2013 in Zamboanga, Cagayan de Oro, and Davao City respectively;

WHEREAS, the DOE also closely coordinated with PEMC and the National Grid Corporation of the Philippines (NGCP) to ensure a smooth implementation of the IMEM;

WHEREAS, during the public consultation, the DOE received no major objections to the establishment of an interim electricity market in Mindanao;

NOW THEREFORE, premises considered, the DOE hereby adopts the attached IMEM Implementing Rules and further states:

Section 1. Scope. The IMEM Implementing Rules shall apply to all Electric Power Industry Participants in Mindanao. For this purpose, an Electric Power Industry Participant refers to any person or entity engaged in the generation, transmission, or distribution of electricity in Mindanao.

Section 2. Declaration of Policy. All Electric Power Industry Participants in Mindanao are hereby enjoined to participate in the IMEM in the most judicious and efficient manner bearing in mind the higher goal of supporting the economic growth of the Mindanao grid through the provision of a safe and reliable supply of electric power pending the entry of new capacities in 2015. For this purpose, all acts detrimental to the attainment of this goal including but not limited to the commission of anti-competitive behavior that will defeat the purpose of IMEM shall be dealt with accordingly by the appropriate government agency. All entities in Section 3 tasked to implement the IMEM are enjoined to perform their responsibilities in the most diligent manner.

Section 3. Responsibilities. In addition to their responsibilities under existing laws, the following are enjoined to extend their full cooperation and action for the smooth implementation of the IMEM.

- (a) Philippine Electricity Market Corporation (PEMC). PEMC is hereby overall designated as the IMEM Operator responsible for the implementation of the IMEM in Mindanao.
- (b) National Grid Corporation of the Philippines (NGCP). Consistent with the directive under DOE Department Circular No. 2013-01-0001, the NGCP shall perform its obligation of ensuring and maintaining the reliability, adequacy, security, stability and integrity of the nationwide electricity grid in accordance with the performance standards for the operations and maintenance of the

grid, as set forth in the Philippine Grid Code, while at the same time taking into consideration the current and future power supply and demand situation of Mindanao. The NGCP shall perform the obligations provided in the attached IMEM Implementing Rules and shall constantly coordinate with the IMEM Operator for the purpose.

- (c) National Transmission Corporation (TransCo). As the owner of the national grid, TransCo shall provide the necessary technical support to DOE and PEMC to assess the power situation and to ensure the compliance of NGCP to the responsibilities indicated herein.
- (d) Power Sector Assets and Liabilities Management Corporation (PSALM) and National Power Corporation (NPC). Consistent with the directive under DOE Department Circular No. 2013-01-0001, PSALM and NPC shall continue to fully utilize all available capacities of all power plants in the Mindanao region.

PSALM shall provide appropriate financial support to the NPC-owned power plants and obligations under the IPP contracted capacities, subject to existing PSALM and NPC arrangements. Meanwhile, NPC shall ensure efficient operation of the NPC-owned power plants.

- (e) National Electrification Administration (NEA). NEA is directed to assist in ensuring the financial and technical capability of Mindanao Electric Cooperatives (ECs) in the implementation of the IMEM, including but not limited to, by:
 - a. Guaranteeing the transactions of the ECs in the IMEM pursuant to Section 5 of Republic Act 10531 or otherwise known as "National Electrification Administration Reform Act of 2013"

- b. Providing capacity building programs to Mindanao ECs on forecasting, contracting and all other aspects of their operations
 - c. Ensuring that ECs comply with the requirements of the IMEM Operator for their active participation in the IMEM.
- (f) All Mindanao Distribution Utilities, Grid-Connected End-Users and Generating Facilities. All Mindanao Distribution Utilities, Grid-Connected End-Users and Generating Facilities (other than self-generating facilities) are hereby mandated to comply with the requirements of the IMEM Operator.

Section 4. Full Accounting of Supply. To ensure transparency and maximization of available supply in Mindanao, all registered Generating Facilities are hereby mandated to fully account all of their capacities in the IMEM.

Section 5. Authority to file the Price Determination Methodology. To implement

the TMEM, PEMC is hereby authorized to file with the ERC the price determination methodology developed in accordance with the IMEM Implementing Rules.

Section 6. Policy and Regulatory Support and Coordination. Pursuant to their respective mandates under the EPIRA, the DOE and the ERC shall closely coordinate in order that any policy or regulatory issue arising from the operation of the IMEM shall be jointly resolved by the DOE and ERC in consultation with the IMEM Operator.

Section 7. No amendment or repeal of existing laws. Nothing in this Circular shall be construed as to amend, supplant, or repeal any of the mechanisms or institutions already existing or responsibilities already allocated and provided for under any existing law, rule or contract.

Section 8. Effectivity. This Circular shall take effect fifteen (15) days after publication in two (2) newspapers of general circulation.

Done this May 24, 2013, Energy Center, Rizal Drive, Bonifacio Global City, Taguig City.

IMEM

Interim Mindanao Electricity Market Implementing Rules

Chapter I

Introduction

1.1 OVERVIEW

1.1.1 About the Interim Mindanao Electricity Market Rules

1.1.1.1 This document shall be known as the *Interim Mindanao Electricity Market Rules* (“*IMEM Rules*”) and also as the *IMEM Implementing Rules*.

1.1.1.2 The *IMEM Rules* establish the basic rules, requirements and procedures that govern the operation of the *Interim Mindanao Electricity Market* (“*IMEM*”). In particular, the *IMEM Rules* seek to:

- (a) Facilitate the efficient operation of the *IMEM*;
- (b) Specify the terms and conditions to which entities may be authorized to participate in the *IMEM*;
- (c) Specify the authority and governance framework for the *IMEM*;
- (d) Provide for adequate sanctions in cases of

breaches of the *IMEM Rules*; and

- (e) Provide a timely and cost-effective framework for resolution of disputes among *IMEM Members*, the *Mindanao System Operator* and the *IMEM Operator*.

1.1.1.3 The *IMEM Rules* were formulated in consultation with electric power industry participants;

1.1.1.4 The *IMEM Rules* shall be interpreted in accordance with the provisions of Chapter 9, with the objectives of the *EPIRA*, and with other provisions of law.

1.1.1.5 In the *IMEM Rules*, words and phrases that are capitalized and italicized are defined in Chapter 10.

1.1.2 The Regulatory Framework

1.1.2.1 The *Department of Energy* (“*DOE*”) is mandated under Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (“*EPIRA*”), to exercise

supervision and control over all government activities relative to energy projects to attain the goals provided for in Republic Act No. 7638, as amended, otherwise known as the Department of Energy Act of 1992. It is likewise mandated to formulate rules and regulations as may be necessary to implement the objectives set forth in Republic Act No. 7638.

1.1.2.2 The *Energy Regulatory Commission ("ERC")* is the independent, quasi-judicial body created under *EPIRA* with the mandate to promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry. Under *EPIRA*, the *ERC* is mandated to act on applications for cost recovery and return on demand-side management projects, as well as to establish and enforce a methodology for setting transmission and distribution wheeling and retail rates for the captive market of a distribution utility, taking into account all relevant considerations, including the efficiency or inefficiency of regulated entities. In addition, it also has the specific mandate to monitor the activities in the generation and supply

of electric power industry with the end view of promoting free market competition and ensuring that the allocation or pass through of bulk purchase cost by distributors is transparent and non-discriminatory.

1.1.2.3 Pursuant to their other respective functions and authorities, the *DOE* approves, and promulgates the *IMEM Rules* and *IMEM Manuals*, and any amendments of the same, while the *ERC* approves the *IMEM Price Determination Methodology* and the *IMEM Cost Recovery Mechanism*.

1.1.2.4 Any policy or regulatory issue arising from the operation of the *IMEM* shall be jointly resolved by the *DOE* and *ERC* in consultation with the *IMEM Operator*.

1.1.3 Description of the IMEM

1.1.3.1 The *IMEM* is an interim wholesale electricity market for the trading of electricity in the *Mindanao Power System*.

1.1.3.2 Registration in the *IMEM* is mandatory for all generation capacities within the *Mindanao Power System*, all *Mindanao Distribution Utilities* and all *End-Users* that are directly connected to the *Mindanao Grid*.

1.1.3.3 The *IMEM* allows for the participation of *End-Users* willing to curtail their consumption of electricity from the *Mindanao Power System* in the provision of supply.

1.1.3.4 The *IMEM* is based on a binding day-ahead market.

1.1.3.5 The *IMEM* provides real-time imbalance correction through the use of a merit order table.

1.1.3.6 The *IMEM* is an energy-only market and does not include the procurement of *Ancillary Services*.

1.1.3.7 The *IMEM* is a single-price market and does not account for network losses and congestion in its determination of the *IMEM Day-Ahead Price*.

1.1.4 Objectives of the *IMEM*

The objectives of the *IMEM* (collectively the “*IMEM Objectives*”) are:

1.1.4.1 To facilitate the transparent and efficient utilization of all available capacities in Mindanao in order to minimize the perennial power shortages in the region;

1.1.4.2 To reflect the true cost of electric power in order to attract investment in new generating capacities in Mindanao; and

1.1.4.3 To ensure free and fair competition and public accountability.

1.2 *IMEM OPERATOR AND MINDANAO SYSTEM OPERATOR*

1.2.1 The *IMEM Operator*

1.2.1.1 The *IMEM* will be administered and conducted by the *IMEM Operator*.

1.2.1.2 The *IMEM Operator* shall, generally and non-restrictively:

(a) Administer the operation of the *IMEM* in accordance with the *IMEM Rules*;

(b) Allocate resources to enable it to operate and administer the *IMEM* on a non-profit basis;

(c) Carry out the development, improvement and maintenance of systems, processes and procedures to be used in the operation of the *IMEM*.

(d) Administer the registration, suspension and de-registration of *IMEM Members*;

(e) Maintain and publish an up-to-date register of all *IMEM Members*;

(f) Determine the Day-Ahead Schedule of

each *IMEM* Resource in accordance with the *IMEM Rules*;

- (g) Determine the *IMEM Merit Order Table* for use by the *Mindanao System Operator* in correcting real-time imbalances;
- (h) Coordinate with the *Mindanao System Operator* in the implementation of the *Day - Ahead Schedule* of all *IMEM Resources* and the *IMEM Merit Order Table* to help ensure the reliability of the *Mindanao Power System* if necessary;
- (i) Conduct transaction billing and settlement procedures;
- (j) Publish and make available to the *IMEM Trading Participants* relevant information on the *Day-Ahead Schedules, Day-Ahead IMEM Schedules* and *IMEM Prices* in accordance with 5.6.4.4 of the *IMEM Rules*;
- (k) Monitor and report on trading activities in the *IMEM*; and
- (l) Comply with each of the requirements and obligations imposed on it under the *IMEM Rules* and other applicable laws or

regulations.

1.2.1.3 In exercising its discretions and performing its obligations under the *IMEM Rules*, the *IMEM Operator* shall:

- (a) Act in accordance with any standard of performance provided for by any statute, regulation or authorization condition to which the *IMEM Operator* is subject;
- (b) Act in a reasonable, ethical and prudent manner;
- (c) Act in good faith;
- (d) Take into consideration, act consistently with, and use its reasonable endeavours to contribute towards the achievement of the *IMEM Objectives*; and
- (e) Ensure an audit trail of documentation that is fully adequate to substantiate and reconstruct all relevant actions performed.

1.2.2 The *Mindanao System Operator*

1.2.2.1 The *Mindanao System Operator* shall implement the *Day-Ahead Schedule* produced by the *IMEM Operator*.

1.2.2.2 The *Mindanao System Operator* shall, generally and non-restrictively:

- (a) Be responsible for and operate the *Mindanao Grid* in accordance with the *IMEM Rules*, the *Grid Code* and any instruction issued by the *IMEM Operator*, the *DOE* or the *ERC* in accordance with the *IMEM Rules* and *IMEM Manuals*, *EPIRA* and other relevant laws or issuances;
- (b) Prepare generation requirement forecasts in accordance with Chapter 3 of the *IMEM Rules*;
- (c) Provide all necessary information that will allow the *IMEM Operator* to determine the *Day-Ahead Schedule* of all *IMEM Resources* in accordance with the *IMEM Rules*;
- (d) Issue dispatch instructions for all *IMEM Resources* in the *Mindanao Power System* and shall implement the *IMEM Merit Order Table* submitted by the *IMEM Operator*;
- (e) Continuously monitor the *Mindanao Power System* to ensure compliance by *IMEM*

Generators to *In-Day Dispatch Instructions*;

- (f) Monitor all *IMEM Generators* within the *Mindanao Power System* as regards to their *Available Capacity* and technical ability to comply with *In-Day Dispatch Instructions*;
- (g) Assist the *IMEM Operator* in enabling it to perform its obligations under the *IMEM Rules*;
- (h) Contribute towards the development, improvement and maintenance of procedures, processes or systems, and assist with any aspect of the operation of the *IMEM*, in coordination with the *IMEM Operator*; and
- (i) Comply with each of the requirements and obligations imposed on it under the *IMEM Rules*, *Grid Code*, and other applicable laws or regulations.

1.2.2.3 In exercising its discretions and performing its obligations under the *IMEM Rules*, the *Mindanao System Operator* shall:

- (a) Act in accordance with any standard of performance provided for by any

statute, regulation or authorization condition to which the *Mindanao System Operator* is subject;

- (b) Act in a reasonable, ethical and prudent manner;
- (c) Act in good faith;
- (d) Take into consideration, act consistently with and use its reasonable endeavours to contribute towards the achievement of the *IMEM Objectives*; and
- (e) Ensure an audit trail of documentation that is fully adequate to substantiate and reconstruct all relevant actions performed.

1.3 MARKET FEES

1.3.1 Basis for Market Fees

- 1.3.1.1 The cost of administering and operating the *IMEM* shall be recovered by the *IMEM Operator* through a charge imposed on *IMEM Trading Participants* and/or *IMEM transactions*.
- 1.3.1.2 To the extent practicable, the structure of *Market Fees* shall be transparent.
- 1.3.1.3 To the extent practicable, *Market Fees* shall consider the budgeted revenue requirements for the

IMEM Operator and the *IGC*.

1.3.1.4 To the extent practicable, the structure and level of *Market Fees* should not favour or discriminate against a category or categories of *IMEM Members*.

1.3.1.5 The components of *Market Fees* shall take into consideration all costs necessary for the *IMEM Operator* to perform their functions under the *IMEM Rules*.

1.3.2 Preparation and Publication of Structure and Level of Market Fees

1.3.2.1 The *IMEM Operator* shall develop the structure and level of *Market Fees*.

1.3.2.2 Upon the approval of the *IGC*, the *IMEM Operator* shall file the proposed structure and level of *Market Fees* with the *ERC* for approval.

1.3.2.3 Upon the approval of the *ERC*, the *IMEM Operator* shall publish the structure and level of *Market Fees* and the methods used in determining the structure.

1.4 GOVERNANCE OF THE IMEM

1.4.1 Definition and Responsibilities

1.4.1.1 *IMEM* governance is the process by which decisions are made and implemented within the *IMEM* to ensure

attainment of the *IMEM Objectives*.

1.4.1.2 The ultimate governance of the *IMEM* is the responsibility of the *PEM Board*. The majority of governance functions will be carried out by the *IMEM Governance Committee ("IGC")*, provided further that the functions and responsibilities of the *IGC* and the *PEM Board* under the *IMEM Rules* shall be assumed by the *Independent Market Operator* as defined under the *EPIRA* and its implementing rules, once the *Independent Market Operator* is established.

1.4.2 Composition of the *IMEM Governance Committee*

1.4.2.1 The *IGC* shall be made up of five (5) voting members and one (1) non-voting member, consisting of:

- (a) One representative from the *IMEM Operator*;
- (b) One representative from the *DOE*;
- (c) Three (3) members independent of the Philippine electric power industry and the Philippine Government, provided that members of the academe from public schools and universities shall not be considered part

of the Philippine Government for purposes of this Clause 1.4.2.1; and

- (d) One representative from the *Mindanao System Operator*, who is the non-voting member.

1.4.2.2 The members of the *IGC* shall be appointed by the *DOE* in accordance with the required composition of the *IGC* as set out in Clause 1.4.2.1, having regard to the expertise necessary for the *IGC* to carry out its functions.

1.4.2.3 The *DOE* shall designate one *IGC* member as *IGC* Chairperson.

1.4.3 Voting and Quorum of the *IMEM Governance Committee*

1.4.3.1 A majority of the total number of members shall constitute a quorum for the transaction of business of the *IGC*.

1.4.3.2 Except as provided in Clause 1.4.3.3, every decision of at least a majority of votes of members present at any meeting shall be valid as an *IGC* act. If voting is equal, the *IGC* Chairperson has a casting vote.

1.4.3.3 The *IGC* may likewise pass resolutions through referendum, provided that the same is passed with the written assent of a majority of all voting

members of the *IGC*.

1.4.4 Activities of the IMEM Governance Committee

1.4.4.1 The *IGC* shall, generally and non-restrictively:

- (a) Oversee and monitor the activities of the *IMEM Operator* and the *Mindanao System Operator* with regard to *IMEM* processes to ensure that they fulfil their responsibilities under the *IMEM Rules*;
- (b) Establish working groups to perform the tasks set out in Clause 1.4.4.4;
- (c) Oversee and monitor the activities of the working groups established under Clause 1.4.4.1 (b) to ensure that they fulfil their responsibilities under the *IMEM Rules*;
- (d) Oversee and monitor the activities of *IMEM Members* to ascertain and determine compliance or non-compliance with the *IMEM Rules*;
- (e) Pursuant to its oversight and monitoring functions over the *IMEM*, require any *IMEM Member* or the

Mindanao System Operator to submit information as may be necessary to fulfil its mandate;

- (f) Refer any suspected incidents of non-compliance with the *IMEM Rules* to the *Enforcement and Compliance Officer* for investigation under Section 8.1.2;
- (g) Impose penalties or exempt the imposition of the same for breaches of the *IMEM Rules* or *IMEM Manuals* based on the investigation findings and recommendations of the *Enforcement and Compliance Officer* in accordance with Section 8.2; and
- (h) Issue resolutions or advisories on any matter related to the *IMEM*.

1.4.4.2 The *IGC* shall perform the functions set out in Clause 1.4.4.1 under the oversight of the *PEM Board*, regularly reporting to the *PEM Board* in all matters and abiding by all legal and valid directions issued to them by the *PEM Board*.

1.4.4.3 In exercising its discretions and performing its obligations under the *IMEM Rules*, the *IGC* shall:

- (a) Act in accordance with any standard of performance provided for by any statute, regulation or authorization condition to which the IGC is subject;
 - (b) Act in a reasonable, ethical and prudent manner;
 - (c) Act in good faith;
 - (d) Take into consideration, act consistently with and use its reasonable endeavours to contribute towards the achievement of the *IMEM Objectives*; and
 - (e) Ensure an audit trail of documentation that is fully adequate to substantiate and reconstruct all relevant actions performed.
- (c) Report to the *IGC* on the activities of *IMEM Members* in the *IMEM*, and matters concerning the operation of the *IMEM* generally;
 - (d) Report to the *IGC* on apparent or suspected incidents of anti-competitive behaviour by any *IMEM Member*;
 - (e) Report to the *IGC* on any matter of a technical nature which causes or appears to cause unintended or distortionary effects to the operation of the *IMEM*; and
 - (f) Propose, assess and prepare for *DOE* approval any changes to these *IMEM Rules*.

1.4.4.4 The IGC may appoint appropriate persons to form working groups to:

- (a) Monitor activities conducted by *IMEM Members* in the *IMEM*;
- (b) Monitor technical matters relating to the operation of the *IMEM*;

1.4.4.5 The *PEM Board*, *IGC* or their respective members shall not be liable for any damage or loss suffered by any *IMEM Member*, or any other entity or person, save if the same was due to bad faith, manifest partiality or gross negligence.

1.5 TRANSITION TO THE WHOLESALE ELECTRICITY SPOT MARKET

The *DOE*, in consultation with the stakeholders, shall determine the timeline for the transition from the *IMEM* into the *Wholesale Electricity Spot Market*.

Chapter II

Membership and Registration

2.1 PARTICIPATION IN THE IMEM

2.1.1 Mandatory Participants

2.1.1.1 *Mindanao Distribution Utilities and Grid-Connected End-Users* shall be registered in the IMEM by the IMEM Operator as IMEM Customers under Section 2.2.2.

2.1.1.2 Entities with *Generating Plants*, other than *Self-Generating Facilities*, within the *Mindanao Power System*, shall be registered in the IMEM by the IMEM Operator under one of the IMEM *Generator* categories specified in Section 2.2.1.

2.1.2 Voluntary Participants

2.1.2.1 *Self-Generating Facilities* within the *Mindanao Power System* may register in the IMEM as an IMEM *Embedded Generator* if it satisfies the qualifications in Clause 2.3.2.2.

2.1.2.2 An *End-User* or group of *End-Users* may register in the IMEM as an IMEM *Load Curtailment Resource* if it satisfies the qualifications in Clause 2.3.2.3.

2.1.3 Registration of IMEM Members

2.1.3.1 Facilities and entities identified in Section 2.1.1 shall be registered by the IMEM Operator under the categories listed under Section 2.2.

2.1.3.2 Facilities and entities identified in Section 2.1.2 may register with the IMEM Operator under the categories listed under Section 2.2.

2.1.3.3 Participation in the IMEM, including trading and provision of services, is restricted to entities that are registered as IMEM Members, provided that such registration has not ceased.

2.1.3.4 If a person or entity undertakes activities in two or more of the categories listed under Section 2.2 and registration in each of those categories does not violate any provision of the EPIRA, that person or entity shall register or be registered, as the case may be, in each of those categories in accordance with the procedures in Section 2.5.

2.1.3.5 The *IMEM Operator* shall maintain and publish an updated list of registered *IMEM Members* indicating the categories in which they are registered and their membership status, as well as the status of pending applications in accordance with the provisions of 5.6.4.4.

shall also register as a *Grid-Connected End- User*.

2.2 IMEM MEMBER CATEGORIES

2.2.1 IMEM Resources

IMEM Resources are facilities capable of providing generation to or curtailing load from the *Mindanao Power System* and are as follows:

- (a) *IMEM Grid Generators*;
- (b) *IMEM Embedded Generators*;
or
- (c) *IMEM Load Curtailment Resources*.

2.2.2 IMEM Customers

2.2.2.1 *IMEM Customers* are entities that source electric power directly from the *Mindanao Grid* and are as follows:

- (a) *M i n d a n a o Distribution Utilities*;
or
- (b) *Grid-Connected End-Users*.

2.2.2.2 For clarity, facilities that source electric power directly from the *Mindanao Grid* and intend to act as an *IMEM Load Curtailment Resource*

2.2.3 IMEM Service Providers

IMEM Service Providers are entities that provide technical services required for operating the *IMEM* and are as follows:

- (a) *IMEM Network Service Providers*; and
- (b) *IMEM Metering Services Providers*.

2.3 QUALIFICATIONS OF IMEM MEMBERS

2.3.1 General Qualifications

To qualify as an *IMEM Member*, a person or entity must:

- (a) Have facilities connected to or within the *Mindanao Power System*;
- (b) Exhibit that its facilities are compliant with the technical and legal requirements in these *IMEM Rules*, the *Grid Code*, and the *Distribution Code*.
- (c) Be a resident in, or is permanently established in, the Philippines;
- (d) Not be under liquidation, receivership or corporate rehabilitation under Republic Act No. 10142 otherwise known as the Financial Rehabilitation and Insolvency Act of 2010, or under a similar form of administration under any laws applicable to that person or entity in any jurisdiction;

- (e) Not be immune from suit with respect to the obligations of an *IMEM Member* under these *IMEM Rules*;
- (f) Be capable of being sued in its own name in any judicial, quasi-judicial or administrative body in the Philippines;
- (g) Satisfy the *Prudential Security Requirements*, as may be applicable; and
- (h) Be qualified to register or be registered under one (1) or more *IMEM Member* categories.

average peak demand of not less than one (1) MW over the preceding twelve (12) months.

2.3.2.4 By default, the *Offer Type* of all *IMEM Resources* is *Standard Offer Type*. However, the *IMEM Operator* shall assign, upon provision of proof, the *Offer Type* of an *IMEM Load Curtailment Resource* whose mode of curtailment does not allow partial curtailment to be an *All-or-Nothing Offer Type* for use in the process described in Section 3.3.

2.3.2 Qualifications of IMEM Resources

2.3.2.1 An *IMEM Grid Generator* must meet the following requirements:

- (a) Have a total rated capacity of not less than one (1) MW; and
- (b) Be capable of synchronizing with the *Mindanao Grid*.

2.3.2.2 An *IMEM Embedded Generator* must meet the following requirements:

- (a) Have a total rated capacity of not less than one (1) MW; and
- (b) Be capable of synchronizing with the system it is directly connected to.

2.3.2.3 An *IMEM Load Curtailment Resource* must have had a daily

2.3.2.5 By default, all *IMEM Resources* are available for upwards and downwards in-day dispatch.

However, an *IMEM Resource* may apply to the *IMEM Operator* not to be available for either upwards or downwards in-day dispatch if its facilities or mode of supply does not allow for practicable in-day dispatch.

2.3.3 Qualifications of IMEM Customers

2.3.3.1 An *Electric Cooperative*, private corporation, government-owned utility, or existing local government unit that has an exclusive franchise to operate a *Mindanao Distribution System* in accordance with its franchise and the *EPIRA* shall be registered as a

Mindanao Distribution Utility.

2.3.3.2 A person or entity directly connected to the *Mindanao Grid* requiring the supply and delivery of electricity for its own use shall be registered as a *Grid-Connected End-User*.

2.3.4 Qualifications of IMEM Service Providers

2.3.4.1 A person or entity who engages in the activity of owning, controlling, or operating a transmission or distribution system with at least one (1) *IMEM Trading Participant* directly connected to it shall be registered as an *IMEM Network Service Provider*.

2.3.4.2 A person or entity performing metering services for an *IMEM Trading Participant* shall be registered as an *IMEM Metering Services Provider*.

2.4 RESPONSIBILITIES OF IMEM MEMBERS

2.4.1 General Responsibilities

Each *IMEM Member*:

(a) Shall perform all its rights, duties and obligations under the *IMEM Rules*, and other relevant issuances, decisions and resolutions of the *DOE* and *ERC*, in good faith and with the degree of care and to the standard expected of a prudent public utility, *End-*

User or generator;

(b) Shall at all times comply with and maintain all consents, permissions and licenses required to be obtained and maintained to participate in the *IMEM* for each category in which it is duly registered under;

(c) Shall maintain and satisfy its *Prudential Security Requirements* as may be applicable;

(d) Shall promptly pay all fees, charges and other payments arising under the *IMEM Rules* as they become due;

(e) Shall ensure that, any information or data it is required to submit to the *IMEM Operator, Mindanao System Operator* or any other entity or to maintain, as required by virtue of being an *IMEM Member*, shall, to the best of its knowledge and belief, be true, valid, correct, complete and accurate at the time it is given and, while it is maintained and where appropriate, it shall keep the *IMEM Operator* informed of errors or omissions in and corrections or updates to any information or data which it has submitted to the *IMEM Operator, the Mindanao System Operator* or any other entity under the *IMEM Rules*;

(f) Shall ensure that any information or data it is required to submit to the *IMEM Operator, Mindanao System Operator, or any*

person as required under the *IMEM Rules* will be submitted in a timely manner to enable the *IMEM Operator*, *Mindanao System Operator* or such other person to perform their obligations and functions arising under the *IMEM Rules*; and

- (g) Shall co-operate with and provide all reasonable assistance to the *IMEM Operator* on request for the purposes of the *IMEM Operator* performing its functions and obligations under the *IMEM Rules*.

2.4.2 Additional Responsibilities of IMEM Resources

In addition to the responsibilities in Section 2.4.1, an *IMEM Resource* shall be responsible for:

- (a) Dispatching its facilities according to their *Day-Ahead Schedule* generated by the *IMEM Operator*;
- (b) Informing the *IMEM Operator* and *Mindanao System Operator* immediately of any event that would result or have resulted in its non-compliance with their *Day-Ahead Schedule* generated by the *IMEM Operator*; and
- (c) Reporting immediately the mitigating measures it has implemented to minimize its non-compliance in case of an event resulting to its non-compliance with its *Day-Ahead Schedule*.

2.4.3 Additional Responsibilities of IMEM Service Providers

2.4.3.1 In addition to the responsibilities in Section 2.4.1, an *IMEM Network Service Provider* shall be responsible for:

- (a) Relaying *In-Day Dispatch Instructions* from the *Mindanao System Operator* to *IMEM Load Curtailment Resources* directly connected to its system;
- (b) Where practical, monitoring the compliance of *IMEM Resources* directly connected to its system to their *Day-Ahead Schedule* generated by the *IMEM Operator* and the *In-Day Dispatch Instructions* from the *Mindanao System Operator*; and
- (c) Reporting to the *DOE*, the *ERC*, and the *IMEM Operator* any system constraints resulting to the non-compliance of an *IMEM Resource* directly connected to its system to its *Day-Ahead Schedule* or *In-Day Dispatch Instruction*.

2.4.3.2 In addition to the responsibilities in Section 2.4.1, an *IMEM Metering Services Provider* shall be

responsible for:

- (a) Collecting and retrieving *Metering Data* from the *Metering Installations of IMEM Trading Participants* it is responsible for;
- (b) Submitting settlement-ready *Metering Data* to the *IMEM Operator* in accordance with these *IMEM Rules*; and
- (c) Reporting to the *DOE*, the *ERC*, and the *IMEM Operator* any *Metering Installation* that is not in accordance with the required *Metering Installation* standards under Section 4.3.2 of these *IMEM Rules*.

technical information to be submitted which are necessary for the *IMEM Operator* to administer the *IMEM*. The entities shall undertake all endeavours to comply fully with the requirements of the *IMEM Operator*.

- 2.5.1.2 If the *IMEM Member* registered under Clause 2.5.1.1 does not provide the requested information or such other supplemental information or documentation within fifteen (15) *Business Days* after being informed of the same pursuant to Clause 2.5.1.1, the *IMEM Operator* may treat the *IMEM Member* as suspended in accordance with Clause 2.6.2.1.

2.5 APPLICATION AND REGISTRATION

2.5.1 Registration Process for Mandatory Participants

- 2.5.1.1 Entities described in Section 2.1.1 that meet the qualifications under Section 2.3 shall be registered by the *IMEM Operator* through the formal entry of their membership in the list of *IMEM Members* published by the *IMEM Operator* in accordance with Clause 2.1.3.5. The *IMEM Operator* shall inform such entities of the documentation and

2.5.2 Registration Process for Voluntary Participants

- 2.5.2.1 Entities described in Section 2.1.2 that meet the qualifications under Section 2.3 may register in the *IMEM* through the submission of the application form, the registration fee if applicable, and other documents and requirements which the *IMEM Operator* shall determine as necessary.
- 2.5.2.2 The *IMEM Operator* shall assess the application submitted and may require additional documentation or information from the applicant which it

considers reasonably necessary to aid the assessment of the application.

2.5.2.3 The *IMEM Operator* shall advise the applicant of any further information requirements within five (5) *Business Days* of receiving the application.

2.5.2.4 If an applicant does not provide the requested information within fifteen (15) *Business Days* of the request under Clause 2.5.2.2, the *IMEM Operator* may treat the application as being withdrawn.

2.5.2.5 If the *IMEM Operator* determines, after assessment, that the applicant meets all the qualifications and requirements, the *IMEM Operator* shall approve the application within fifteen (15) *Business Days* of receipt of all requirements from the applicant. The applicant shall be notified of the approval in writing. The date of effectivity of the registration shall be stated in the notice.

2.5.2.6 If the *IMEM Operator* determines, after assessment, that the applicant does not meet the qualifications and requirements, the *IMEM Operator* shall disapprove the application and provide written notice

to the applicant, stating the reasons for the disapproval. The *IMEM Operator* shall provide a copy of the notice to both the *DOE* and *ERC* within five (5) *Business Days* of issuance to the applicant.

2.5.3 Registration Manual

The *IMEM Operator* shall maintain and publish an *IMEM Manual*, which shall set out the requirements, and procedures that will guide the *IMEM Members* and applicants in the registration process in the *IMEM*.

2.6 CESSATION, SUSPENSION, DISCONNECTION AND DEREGISTRATION

2.6.1 Cessation of Registration

2.6.1.1 An entity that ceases its operations related to any *IMEM Member* category for which it is registered shall send written notice to the *IMEM Operator* to cease its registration under that category.

2.6.1.2 A facility may choose to stop acting as an *IMEM Load Curtailment Resource* by providing written notice to the *IMEM Operator* to cease its registration under that category.

2.6.1.3 Such notice sent to the *IMEM Operator* under Clauses 2.6.1.1 or 2.6.1.2 shall include:

(a) The date upon which it wishes to cease to

be registered, which date should not be less than thirty (30) *business days* from the *IMEM Operator's* receipt of the said notice; and

- (b) The category or categories in which the *IMEM Member* no longer wishes to be registered.

2.6.1.4 On said effective date, the entity shall be deregistered in accordance with Section 2.6.3.

2.6.2 Suspension and Disconnection

2.6.2.1 An *IMEM Member* may be suspended from the *IMEM* for the following grounds:

- (a) Breaches of any provision of the *IMEM Rules* or *IMEM Manuals* as determined by the *Enforcement and Compliance Officer* in accordance with Section 8.1;
- (b) Default in payment or any grounds provided in Clauses 5.6.3.8 and 5.6.4.4 ;
- (c) Disconnection of *IMEM Member* from the *Mindanao Grid* or the *Mindanao Distribution Utility*; or

- (d) Failure to maintain or satisfy the requirements under the *IMEM Rules* or *IMEM Manuals*.

2.6.2.2 A suspended *IMEM Resource* shall not receive any payment from the *IMEM* for all *IMEM Intervals* for which the suspension is in effect. Moreover, *Offered Capacities* from the suspended *IMEM Resource* shall not be considered in the determination of the *Day-Ahead IMEM Schedules* and *IMEM Day-Ahead Price* for all *IMEM Intervals* for which the suspension is in effect.

2.6.2.3 A suspended *IMEM Customer* shall be considered to have zero (0) *IMEM Demand* on all *IMEM Intervals* for which the suspension is in effect.

2.6.2.4 A suspended *IMEM Trading Participant* shall still be required to perform its obligations under these *IMEM Rules* including, but not limited to, the submission of information regarding contracts and demand.

2.6.2.5 A suspended *IMEM Member* shall continue to be liable for any financial obligations incurred during and prior to its suspension or disconnection provided under Clause 2.6.2.8.

- 2.6.2.6 When the *IMEM Operator* determines that any of the grounds for suspension under Clause 2.6.2.1 has occurred, the *IMEM Operator* shall provide written notice to the *IMEM Member* of its suspension, stating the reasons thereof and the effective date and hour of the suspension. A copy of which shall be furnished to the *DOE*, the *ERC* and the *IGC*.
- 2.6.2.7 Immediately after a *Suspension Notice* is issued by the *IMEM Operator* under these *IMEM Rules*, the *IMEM Operator* shall publish the *Suspension Notice* in the *Market Information Website*.
- 2.6.2.8 After serving a *Suspension Notice* in accordance with Clause 2.6.2.6, the *IMEM Operator* may send a written request for disconnection to the *Mindanao System Operator* for the disconnection of the *Mindanao Grid-connected IMEM Member*, together with a copy of the *Suspension Notice* provided under Clause 2.6.2.7. A copy of the written request shall be furnished to the *DOE*.
- 2.6.2.9 When a disconnection request is made under Cause 2.6.2.8, the *Mindanao System Operator* shall thereafter disconnect the suspended *IMEM Member* within five (5) *Business Days* from receipt of the request.
- 2.6.2.10 If the grounds for suspension have been remedied or rectified, the *IMEM Operator* shall lift the suspension by providing written notice to the suspended member indicating the date and hour it will take effect, and, if applicable, send a written request to the *Mindanao System Operator* to reconnect the suspended *IMEM Member*.
- 2.6.2.11 If within the five- (5) day period prior to disconnection under Clause 2.6.2.9, the *IMEM Member* has remedied the grounds for suspension, the *IMEM Operator* shall lift the *Suspension Notice* and send written notification to *Mindanao System Operator* of the same.
- 2.6.2.12 When a reconnection request made under Cause 2.6.2.10, the *Mindanao System Operator* shall thereafter reconnect the suspended *IMEM Member* on the specified effective date or as soon as possible thereafter.
- 2.6.2.13 If a suspension is revoked, the *IMEM Operator* shall publish the revocation notice in the *Market Information Website*.

2.6.3 Deregistration

2.6.3.1 The *IMEM Operator* shall deregister an *IMEM Member* if:

- (a) The *IMEM Member* has provided a notice of cessation of registration under Section 2.6.1; or
- (b) The *IMEM Member* has been suspended and disconnected under Section 2.6.2, the suspension has not been lifted and the **IMEM Member** has not been reconnected within sixty (60) days from

its disconnection.

2.6.3.2 Any *IMEM Member* that is deregistered shall no longer be allowed to participate in the *IMEM* in the category from which they were deregistered, provided however that such entity shall continue to be liable for any obligations incurred prior to its suspension or disconnection.

2.6.3.3 An *IMEM Member* that is deregistered may only be allowed to re-register upon remedying the grounds for its deregistration from the *IMEM Member* category.

Chapter III

Market Operation

3.1 IMEM INTERVALS AND TIMETABLE

Ahead Network Report. *Distribution Information Report.*

3.1.1 Intervals and Trading Intervals

3.1.1.1 The *IMEM* shall operate on the basis of one hour *IMEM Intervals*, ending on the hour.

3.1.1.2 *IMEM Intervals* in which a non-zero *IMEM Demand* is determined shall be designated as *IMEM Trading Intervals*.

3.1.1.3 In addition, *IMEM Intervals* in which any *In-Day Dispatch Instruction* is issued to an *IMEM Resource* in relation to capacity covered in its *Offered Capacity* shall also be designated as *IMEM Trading Intervals*.

3.1.2 Timetable for Operation of the IMEM

3.1.2.1 Each day by 0900H, each *IMEM Customer* shall submit to the *Mindanao System Operator* their *Week-Ahead Customer Demand Forecast*.

3.1.2.2 Each day by 0900H, each *Mindanao Distribution Utility* shall submit to the *Mindanao System Operator* their *Week-*

3.1.2.3 Each day by 1000H, the *Mindanao System Operator* shall prepare the *Week-Ahead Generation Requirement Forecast* based on the submissions in Clauses 3.1.2.1 and 3.1.2.2 and submit the same to the *IMEM Operator*.

3.1.2.4 Each day by 1000H, the *Mindanao System Operator* shall submit the *Week-Ahead Power System Information Report* to the *IMEM Operator*.

3.1.2.5 Each day by 1030H, the *IMEM Operator* shall publish the *Week-Ahead System Generation Requirement Forecast* and the *Week-Ahead Power System Information Report* in the *Market Information Website*.

3.1.2.6 Each day by 1100H, each *IMEM Generator* shall submit to the *Mindanao System Operator* their *Week-Ahead Generator Contract Allocation*.

- 3.1.2.7 Each day by 1200H, the *Mindanao System Operator* shall submit to the *IMEM Operator* the *Week-Ahead Contract Allocations Report*.
- 3.1.2.8 Each day by 1200H, the *Mindanao System Operator* shall submit to each *IMEM Customer* their *Week-Ahead Contract Allocation*.
- 3.1.2.9 Each day by 1300H, each *IMEM Customer* shall submit to the *Mindanao System Operator* and to the *IMEM Operator* their *Week-Ahead Customer IMEM Demand*.
- 3.1.2.10 Each day by 1330H, the *IMEM Operator* shall prepare and publish the *Week-Ahead IMEM Demand Report*.
- 3.1.2.11 Each day by 1330H, the *IMEM Operator* shall transmit the *Expected Demands* calculated under Clause 3.2.8.1 to each *Embedded IMEM Load Curtailment Resource*.
- 3.1.2.12 Each day by 1500H, the *IMEM Operator* shall cease receiving *IMEM Offers* from *IMEM Resources* for each *IMEM Interval* in the following day.
- 3.1.2.13 Each day by 1600H, the *IMEM Operator* shall publish the *IMEM Day-Ahead Price* for each *IMEM Trading Interval* in the following day in the *Market Information Website*.
- 3.1.2.14 Each day by 1600H, the *IMEM Operator* shall transmit the *IMEM Merit Order Table* and *IMEM Day-Ahead Schedule* of all *IMEM Resources* for each *IMEM Interval* to the *Mindanao System Operator* in the following day.
- 3.1.2.15 Each day by 1600H, the *IMEM Operator* shall transmit to each *IMEM Resource* its *Day-Ahead Schedule* for each *IMEM Interval* in the following day.
- 3.1.2.16 Each day by 1600H, the *IMEM Operator* shall transmit to each *Mindanao Distribution Utility* that has *IMEM Resources* directly connected to its *Mindanao Distribution System* the *Day-Ahead Schedules* of those *IMEM Resources*.
- 3.1.2.17 The *Mindanao System Operator* may issue *In-Day Dispatch Instructions* to *IMEM Resources* in accordance with Section 3.5.1.
- 3.1.2.18 The *IMEM Operator* shall publish the *Day-Ahead Schedules* and *Day-Ahead IMEM Schedules* for each *IMEM Trading Interval* in the *Market Information Website* two (2) *Business Days* after the publication

of the *IMEM Day-Ahead Price*.

3.2 SYSTEM INFORMATION AND DETERMINATION OF IMEM DEMAND

3.2.1 The Week-Ahead Customer Demand Forecasts

3.2.1.1 The *Week-Ahead Customer Demand Forecast* shall include the *Customer Demand Forecast* of the *IMEM Customer* for each *IMEM Interval* in the seven-day period commencing immediately after 2400H on the day of submission.

3.2.1.2 The *Customer Demand Forecast* shall be an estimate of the instantaneous demand at the end of each *IMEM Interval*.

3.2.1.3 The *Customer Demand Forecast* shall be made as at the *IMEM Customer's Connection Point*.

3.2.1.4 The *Customer Demand Forecast* shall not take into account any supply from embedded generation, or reduced load from either voluntary or involuntary load curtailment; they shall be calculated on the basis of zero contribution from these sources.

3.2.1.5 For clarity, Clause 3.2.1.4 means that the *Customer Demand Forecast* are not estimates of what the *IMEM Customer's* off-take will actually be, but

of what would be its off-take if all demand within its system were to be met without curtailment and with all energy sourced from the *Mindanao Grid*.

3.2.1.6 The *Customer Demand Forecast* shall not take into account any reduction from *Interruptible Load Programs (ILP)*, however the *Expected ILP Reduction* for each *IMEM Interval* shall be submitted as a separate item in the *Week-Ahead Customer Demand Forecast*.

3.2.1.7 The *Customer Demand Forecast* shall not take into account any outages or limitations of equipment within the *Mindanao Grid*.

3.2.1.8 The *Customer Demand Forecast* shall take into account any known outages or limitations of equipment within the *IMEM Customer's* network or facility.

3.2.1.9 The *Customer Demand Forecast* shall be in megawatts (MW) expressed to a precision of one decimal place (0.1MW, or 100kW).

3.2.1.10 The *Customer Demand Forecast* shall take into account the forecast weather conditions.

3.2.1.11 The *Customer Demand Forecast* shall take into account any known events, holidays or other

situations that are likely to impact demand.

3.2.1.12 *IMEM Customers* shall undertake all reasonable endeavours to achieve the highest possible accuracy of the *Customer Demand Forecast* and shall adopt a target of being within three percent ($\pm 3\%$) of the actual demand.

3.2.1.13 The *Week-Ahead Customer Demand Forecast* shall include a description of any abnormal conditions for which the *IMEM Customer* adjusted its *Customer Demand Forecast*, including but not limited to those conditions described in this Section 3.2.1.

3.2.2 The Week-Ahead Generation Requirement Forecast

3.2.2.1 The *Week-Ahead Generation Requirement Forecast* shall include all of the information specified in Section 3.2.1 for each *IMEM Customer*.

3.2.2.2 The *Week-Ahead Generation Requirement Forecast* shall also include an estimate of total generation required to meet the demand from the *Mindanao Power System* for each *IMEM Interval* in the seven-day period based on the information specified in Section 3.2.1 commencing immediately after 2400H

of the day of publication.

3.2.2.3 At all times, the valid generation requirement forecast for an *IMEM Interval* shall be that in the most recently published *Week-Ahead Generation Requirement Forecast* which includes that *IMEM Interval*.

3.2.3 The Week-Ahead Distribution Network Information Reports

3.2.3.1 The *Week-Ahead Distribution Network Information Reports* submitted by each *Mindanao Distribution Utility* to the *Mindanao System Operator* shall include:

- (a) Information on any planned outage of *Distribution Network* equipment for the following seven (7) days;
- (b) Information on any forced outages of *Distribution Network* equipment during the previous day; and
- (c) Any other distribution network information requested by the *IMEM Operator* or the *Mindanao System Operator*.

3.2.3.2 *Mindanao Distribution Utilities* shall undertake all reasonable endeavours to ensure the completeness

and accuracy of the *Week-Ahead Distribution Network Information Reports*.

3.2.4 The Week-Ahead Power System Information Report

3.2.4.1 The *Week-Ahead Power System Information Report* submitted by the *Mindanao System Operator* to the *IMEM Operator* shall include:

- (a) Information on any planned outage of *Mindanao Grid* equipment for the following seven (7) days;
- (b) Information on any forced outages of *Mindanao Grid* equipment during the previous day; and
- (c) Any other *Mindanao Grid* information requested by the *IMEM Operator*.

3.2.4.2 The *Week-Ahead Power System Information Report* submitted by the *Mindanao System Operator* to the *IMEM Operator* shall also include all *Week-Ahead Distribution Network Information Reports* submitted by other *IMEM Network Service Providers* to the *Mindanao System Operator* on the same day.

3.2.4.3 The *Mindanao System Operator* shall

undertake all reasonable endeavours to ensure the completeness and accuracy of the *Week-Ahead Power System Information Report*.

3.2.5 The Week-Ahead Generator Contract Allocations

3.2.5.1 The *Week-Ahead Generator Contract Allocations* submitted by each *IMEM Generator* shall include the *Ex-Ante Contract Allocation* to each *IMEM Customer* for each *IMEM Interval* in the seven-day period commencing immediately after 2400H on the day of submission.

3.2.5.2 The *Ex-Ante Contract Allocations* shall be in megawatts (MW) expressed to a precision of one decimal place (0.1MW, or 100kW).

3.2.5.3 The *Ex-Ante Contract Allocations* shall be specified as an instantaneous megawatt quantity at the end of the *IMEM Interval*.

3.2.5.4 To incorporate the impact of losses in the *Mindanao Grid*, the *Ex-Ante Contract Allocations* shall be specified as both:

- (a) The megawatt capacity of the *IMEM Generator* reserved for supplying the contracted energy; and

(b) The megawatt off-take quantity at the *IMEM Customer's Connection Point* that is intended to be covered by the contracted energy.

3.2.5.5 The sum of the *Ex-Ante Contract Allocations*, plus the *Expected ILP Reduction*, of each *IMEM Customer* in an *IMEM Interval* shall not exceed the *Customer Demand Forecast* of that *IMEM Customer*.

3.2.5.6 *IMEM Generators* shall undertake all reasonable endeavours to ensure the *Ex-Ante Contract Allocation* to each *IMEM Customer* is amenable to that *IMEM Customer*.

3.2.6 The Week-Ahead Contract Allocations Report

3.2.6.1 The *Week-Ahead Generator Contract Allocations Report* shall include all of the information provided under Section 3.2.5 as well as the following for each *IMEM Interval*:

(a) The total *Ex-Ante Contract Allocation* for each *IMEM Generator*;

(b) The total *Ex-Ante Contract Allocation* for each *IMEM Customer*;

(c) Details of any alteration of *Ex-Ante Contract Allocation* performed by the *Mindanao System Operator* in accordance with Clause 3.2.6.3 which includes, but is not limited to, the reason for the alteration and the unaltered *Ex-Ante Contract Allocation*;

(d) The *Expected ILP Reduction* for each *IMEM Customer*; and

(e) The *Uncontracted Demand* for each *IMEM Customer*.

3.2.6.2 If only one of the quantities in Clause 3.2.5.4 is specified, the *Mindanao System Operator* shall calculate the missing quantity based on:

(a) Losses of two percent (2%) if the *IMEM Generator* is an *IMEM Embedded Generator* located in the *IMEM Customer's Distribution Network*, and

(b) Losses of four and thirty-five hundredths of a percent (4.35%) or any such transmission loss cap approved by the *ERC*.

3.2.6.3 The *Mindanao System Operator* shall, if necessary and in consultation with the

relevant *IMEM Generator*, alter the *Ex-Ante Contract Allocations* in order to create a feasible security-constrained generation schedule.

3.2.6.4 The contract data shall be in megawatts (MW) expressed to a precision of one decimal place (0.1MW, or 100kW).

3.2.6.5 The contract data shall be specified as an instantaneous megawatt quantity available for withdrawal at any time in the *IMEM Interval*.

3.2.6.6 For *IMEM Generators*, the total *Ex-Ante Contract Allocation* shall be the capacity of the *IMEM Generator* reserved for supplying contracted energy.

3.2.6.7 For *IMEM Customers*, the total *Ex-Ante Contract Allocation* shall be the total off-take quantity at the *IMEM Customer's Connection Point* that is covered by contracts.

3.2.6.8 At all times, the valid *Ex-Ante Contract Allocations* for an *IMEM Interval* shall be that in the most recently submitted *Week-Ahead Contract Allocations Report* that include that *IMEM Interval*.

3.2.7 The Week-Ahead Customer IMEM Demand

3.2.7.1 For each *IMEM Interval*, each *IMEM Customer* shall, based on its *Customer Demand Forecast*, total *Ex-Ante Contract Allocations* and *Expected ILP Reduction*, determine the quantity they intend to purchase from the *IMEM* and submit the same to the *IMEM Operator* as its *Customer IMEM Demand*.

3.2.7.2 The *Customer IMEM Demand* declared by an *IMEM Customer* shall not exceed the *Customer Demand Forecast* less the total *Ex-Ante Contract Allocations* and *Expected ILP Reduction* for that *IMEM Customer*.

3.2.8 The Expected Demand of Load Curtailment Resources

3.2.8.1 The *Expected Demand* for an *Embedded IMEM Load Curtailment Resource* is the instantaneous MW forecasted to be consumed at the end of an *IMEM Interval* as calculated by the *IMEM Operator* in accordance with the relevant *IMEM Manual*.

3.2.8.2 The *Expected Demand* for an *IMEM Load Curtailment Resource* which is also an *IMEM Customer*, or *Grid IMEM Load Curtailment Resource*, is the total *Ex-Ante Contract Allocation* for that *IMEM Customer* plus its *Customer IMEM Demand*.

3.2.9 The Week-Ahead IMEM Demand Report

3.2.9.1 The *Week-Ahead IMEM Demand Report* shall include the following information for each *IMEM Interval* in the seven-day period commencing immediately after 2400H on the day of publication:

- (a) The total generation required to meet demand, as per Clause 3.2.2.2;
- (b) Total system demand covered by *Ex-Ante Contract Allocations*; and
- (c) The total *IMEM Demand*.

3.2.9.2 The total *IMEM Demand* shall be the sum of the *Customer IMEM Demand* quantities submitted for that *IMEM Interval*.

3.2.9.3 The quantities shall be in megawatts (MW) expressed to a precision of one decimal place (0.1MW, or 100kW).

3.2.9.4 The *IMEM Operator* shall undertake all reasonable endeavours to ensure accuracy in the calculation of the reported quantities.

3.2.9.5 At all times, the valid *IMEM Demand* for an *IMEM Interval* shall be that in the most recently published *Week-Ahead*

IMEM Demand Report which includes that *IMEM Interval*.

3.3 SUBMISSION AND VALIDATION OF IMEM OFFERS

3.3.1 Form of Offers

3.3.1.1 A valid *IMEM Offer* for an *IMEM Resource* in an *IMEM Interval* shall consist of the following information:

- (a) The *Offer Type*;
- (b) The *Contracted Capacity*, if applicable;
- (c) The *Unavailable Capacity*, if any, including a reason for the unavailability;
- (d) The *Offered Capacity*; and
- (e) The *Offer Price*.

3.3.1.2 An *IMEM Offer* with an *All-Or-Nothing Offer Type*, assigned to the *IMEM Resource* in accordance with Clause 2.3.2.4, will be scheduled in full or not at all.

3.3.1.3 The *Contracted Capacity* shall equal the sum of the all the *Ex-Ante Contract Allocations*, if any, made to that *IMEM Resource* under Section 3.2.5.

3.3.1.4 The *Unavailable Capacity* is applicable only to *IMEM Generators* and must be accompanied by

- a justifiable reason for being unavailable.
- 3.3.1.5 The *Offered Capacity* shall be a single megawatt amount, not split out into blocks.
- 3.3.1.6 For *IMEM Generators*, the *Offered Capacity* shall be equal to the *Registered Capacity* less the *Contracted Capacity* less the *Unavailable Capacity*.
- 3.3.1.7 For *IMEM Load Curtailment Resources*, the *Offered Capacity* shall be no more than the *Expected Demand* of that *IMEM Resource* in the relevant *IMEM Interval*.
- 3.3.1.8 The *Offered Capacity*, *Contracted Capacity* and *Unavailable Capacity* shall be in megawatts (MW) expressed to a precision of one decimal place (0.1MW, or 100kW).
- 3.3.1.9 The *Offer Price* shall be in Philippine Pesos per megawatt-hour (PhP/MWh) and shall be made in whole Philippine Pesos per megawatt-hour.
- 3.3.1.10 The *Offer Price* shall not be greater than any limit that may be agreed upon by the *DOE*, the *ERC*, and the *IMEM Operator*.
- IMEM Interval* of each day of the week.
- 3.3.2.2 Each *IMEM Load Curtailment Resource* may submit a *Standing IMEM Offer* for each *IMEM Interval* of each day of the week.
- 3.3.2.3 Each *Standing IMEM Offer* shall specify the day of the week and *IMEM Interval* to which it applies.
- 3.3.2.4 Each *Standing IMEM Offer* shall include all of the information specified in Clause 3.3.1.1. If any of this information changes, the *IMEM Resource* shall address this either by submitting a revised *Standing IMEM Offer* or by submitting a *Regular IMEM Offer* for each *IMEM Interval* in which the information differs from its current valid *Standing IMEM Offer*.
- 3.3.2.5 A *Standing IMEM Offer* may be revised by the relevant *IMEM Resource* at any time.
- 3.3.2.6 A *Standing IMEM Offer* which is revised under Clause 3.3.2.5 may specify a date that it will become effective, in which case it shall become effective at 1500H on the specified date; provided that the effective date specified is at least one (1) day after the date on which the revised *Standing IMEM Offer* is submitted.

3.3.2 Standing Offers

- 3.3.2.1 Each *IMEM Generator* shall submit a *Standing IMEM Offer* for each

3.3.2.7 A *Standing IMEM Offer* which does not specify an effective date:

- (a) Shall, if submitted before 1500H, take effect at 1500H on the day of submission;
- (b) Shall, if submitted at or after 1500H, take effect at 1500H on the day following submission; and
- (c) Shall not affect any *Day-Ahead IMEM Schedule* which has already been published, or whose preparation has already been initiated at the time when the revised offer is accepted.

3.3.2.8 A *Standing IMEM Offer* shall remain in effect until such time as it is revised under Clause 3.3.2.5, or until the *IMEM Resource* is deregistered from the *IMEM*.

3.3.3 Submission of Offers

3.3.3.1 When submitting a *Regular IMEM Offer* or *Standing IMEM Offer* for a specified *IMEM Interval*, the *IMEM Resource* shall provide to the *IMEM Operator* the information required under Section 3.3.1 in accordance with the electronic communication procedures in Section 6.1.2.

3.3.3.2 A *Regular IMEM Offer* for an *IMEM Interval* submitted after the deadline of submission of *Regular IMEM Offers* for that *IMEM Interval* specified in Clause 3.1.2.12 will be rejected by the *IMEM Operator* and the latest valid *Regular IMEM Offer* or the *Standing IMEM Offer* shall apply.

3.3.3.3 The *IMEM Operator* shall, upon receipt of a valid *IMEM Offer* from an *IMEM Resource*, issue an electronic confirmation of receipt immediately.

3.3.3.4 If an *IMEM Resource* does not receive confirmation of receipt under Clause 3.3.3.2 from the *IMEM Operator* within a period of thirty (30) minutes, the *IMEM Resource* shall contact the *IMEM Operator* to determine whether or not the offer was received.

3.3.4 Validation of Offers

3.3.4.1 To be valid, *IMEM Offers* shall be submitted by the relevant *IMEM Resource*:

- (a) Prior to any relevant deadline;
- (b) Inclusive of the information specified in, and consistent with the requirements of Section 3.3.1; and

(c) Consistent with registered technical capabilities of the *IMEM Resource*.

3.3.4.2 The *IMEM Operator*, upon receipt of a valid *IMEM Offer* from an *IMEM Resource*, shall verify whether the *IMEM Offer* is valid in accordance with Clause 3.3.4.1 and shall issue an electronic notification to the *IMEM Resource* indicating its validity within a period of thirty (30) minutes.

3.3.4.3 The *IMEM Operator* shall, if an *IMEM Offer* is determined not to be valid, include in the electronic notification sent under Clause 3.3.4.2 the reason or reasons that the *IMEM Offer* is not valid so that the *IMEM Resource* may correct and resubmit the *IMEM Offer*.

3.4 SCHEDULING AND PRICING

3.4.1 Day-Ahead IMEM Schedules

3.4.1.1 For each *IMEM Interval*, the *IMEM Operator* shall determine the *Day-Ahead IMEM Schedule* of each *IMEM Resource* in accordance with the *IMEM Schedule Optimization Model* generally described in Section 3.4.3 and in detail in the *IMEM Price Determination Methodology* approved by the *ERC*.

3.4.1.2 If there is insufficient capacity across all *IMEM Offers* to meet the *IMEM Demand*, the *IMEM Operator* shall fully schedule all *IMEM Offers* and declare an *Insufficient Supply Condition* in accordance with Section 3.6.1.

3.4.2 Day-Ahead Schedules

3.4.2.1 For each *IMEM Interval*, the *IMEM Operator* shall determine the *Day-Ahead Schedule* of all *IMEM Resources* at the end of that *IMEM Interval*.

3.4.2.2 The *Day-Ahead Schedule* of an *IMEM Generator* in an *IMEM Interval* shall be its *Day-Ahead IMEM Schedule* determined in accordance with Section 3.4.1 plus its total *Ex-Ante Contract Allocation* for that *IMEM Interval*.

3.4.2.3 The *Day-Ahead Schedule* of an *IMEM Load Curtailment Resource* in an *IMEM Interval* shall be equal to its *Day-Ahead IMEM Schedule* determined in accordance with Section 3.4.1 for that *IMEM Interval*.

3.4.3 IMEM Schedule Optimization Model

3.4.3.1 The *IMEM Schedule Optimization Model* determines the *Day-Ahead IMEM Schedule* of each *IMEM Resource* for an *IMEM Interval*.

3.4.3.2 The objective of the *IMEM Schedule Optimization Model* shall be to minimize the total cost of purchasing energy from *IMEM Offers* in order to meet the *IMEM Demand*.

3.4.3.3 In formulating the *IMEM Schedule Optimization Model*, the *IMEM Operator* shall ensure that the determination of the *Day-Ahead IMEM Schedule* of *IMEM Resources* is made subject to:

- (a) *C o n s t r a i n t s* representing the *Offered Capacities* of *IMEM Resources*;
- (b) *C o n s t r a i n t s* representing the *Offer Type* of *IMEM Resources*; and
- (c) An energy balance equation ensuring that the *IMEM Demand* will be met.

3.4.3.4 In the case of *IMEM Offers* with equal *Offer Prices*, the *IMEM Schedule Optimization Model* shall prioritize the *IMEM Offers* of *IMEM Generators* over the *IMEM Offers* of *IMEM Load Curtailment Resources*. For *IMEM Offers* of *IMEM Resources* in the same *IMEM Resource* sub-category with equal *Offer Prices*, they shall be scheduled based on a *Random Daily Priority*, which is

generated and assigned to all *IMEM Resources* on a daily basis.

3.4.4 IMEM Day-Ahead Price

3.4.4.1 The *IMEM Day-Ahead Price* for an *IMEM Trading Interval* shall correspond to the highest *Offer Price* fully or partially scheduled by the *IMEM Schedule Optimization Model* for that *IMEM Trading Interval*.

3.4.4.2 The *IMEM Day-Ahead Price* is the price that applies to the settlement of *IMEM Resources* in accordance with Chapter 5 of these *IMEM Rules*.

3.4.5 IMEM Merit Order Table

3.4.5.1 For each *IMEM Interval*, the *IMEM Operator* shall construct the *IMEM Merit Order Table*, which shall consist of, but is not limited to:

- (a) The *IMEM Offers* submitted for that *IMEM Interval* ranked in order of *Offer Price*; and
- (b) the total *Ex-Ante Contract Allocation* of each *IMEM Generator*.

3.4.5.2 The *IMEM Merit Order Table* shall include columns identifying the following for each *IMEM Offer*:

- (a) The *IMEM Resource*;
 - (b) The *Offer Type*;
 - (c) Whether or not the *Offered Capacity* can be used for *Upward Dispatch*; and
 - (d) Whether or not the *Offered Capacity* can be used for *Downward Dispatch*.
- which is generated and assigned to all *IMEM Resources* on a daily basis.

3.4.6 Implementation of the Day-Ahead Schedules

- 3.4.5.3 The *IMEM Merit Order Table* shall also include a column specifying the *Cumulative Offered Capacity* that is the sum of all *Offered Capacities* and *Ex-Ante Contract Allocations* below that point.
- 3.4.5.4 The *IMEM Merit Order Table* shall also include columns indicating whether the *IMEM Offer* has, in accordance with Section 3.4.1, been scheduled and the megawatt quantity that has been scheduled from that *IMEM Offer*.
- 3.4.5.5 In the case of *IMEM Offers* with equal *Offer Prices*, the *IMEM Offers* of *IMEM Generators* shall be prioritized over the *IMEM Offers* of *IMEM Load Curtailment Resources*. For *IMEM Offers* of *IMEM Resources* in the same *IMEM Resource* sub-category with equal *Offer Prices*, they shall be ordered based on a *Random Daily Priority*,
- 3.4.6.1 Each day, all *IMEM Resources* shall review their *Day-Ahead Schedule* determined by the *IMEM Operator* for the following day.
- 3.4.6.2 If an *IMEM Resource* has a non-zero *Day-Ahead Schedule* for any *IMEM Interval* in the following day, it shall take all necessary actions to prepare for meeting its *Day-Ahead Schedule* in each *IMEM Interval*.
- 3.4.6.3 In each *IMEM Interval* that an *IMEM Resource* has a non-zero *Day-Ahead Schedule*, it shall use reasonable endeavours to achieve a linear ramp rate over the *IMEM Interval* to reach its *Day-Ahead Schedule* at the end of the *IMEM Interval*.
- 3.4.6.4 If an *IMEM Resource* is not technically capable of maintaining a linear ramp rate over the *IMEM Trading Interval*, it shall endeavour to inject or withdraw a quantity of energy consistent with the quantity that would have been injected or withdrawn if a linear ramp rate had been maintained.

3.4.6.5 If for any reason an *IMEM Resource* foresees that it will not be able to meet its *Day-Ahead Schedule* by the end of an *IMEM Interval*, it shall inform the *Mindanao System Operator* immediately.

(b) A *Downward Dispatch Instruction* to reduce supply below the *IMEM Resource's Day-Ahead IMEM Schedule*.

3.5 IN-DAY DISPATCH OF IMEM RESOURCES

3.5.1 In-Day Dispatch Instructions

3.5.1.1 Up until one (1) hour prior to the start of each *IMEM Interval*, the *Mindanao System Operator* shall issue *In-Day Dispatch Instructions* to *IMEM Resources* to meet any changes in system requirements in accordance with this Section 3.5.

3.5.1.2 In issuing *In-Day Dispatch Instructions*, the *Mindanao System Operator* shall follow the *IMEM Merit Order Table* received from the *IMEM Operator* while taking into account the *Offer Type* and ability to provide in-day dispatch of the facilities established in accordance with Clauses 2.3.2.4 and 2.3.2.5, respectively.

3.5.1.3 *In-Day Dispatch Instructions* shall be either:

(a) An *Upward Dispatch Instruction* to provide additional supply in excess of the *IMEM Resource's Day-Ahead IMEM Schedule*; or

3.5.1.4 An *In-Day Dispatch Instruction* shall specify the gross instantaneous MW value to be provided by the *IMEM Resource* at the end of the relevant *IMEM Interval* (the "*Dispatch Target*").

3.5.1.5 For clarity, an *Upward Dispatch Instruction* to an *IMEM Load Curtailment Resource* is an instruction to curtail load more than its *Day-Ahead IMEM Schedule*, and a *Downward Dispatch Instruction* to an *IMEM Load Curtailment Resource* is an instruction to not curtail load in its *Day-Ahead IMEM Schedule*.

3.5.1.6 *In-Day Dispatch Instructions* may be issued for any *IMEM Interval* for which the *Mindanao System Operator* has received an *IMEM Merit Order Table*, including *IMEM Intervals* that are not *IMEM Trading Intervals* and so do not have an *IMEM Demand*.

3.5.2 In-Day Dispatch in Exceptional Circumstances

3.5.2.1 *In-Day Dispatch Instructions* are not intended to be used for services that would

normally be provided through contracted *Ancillary Services*, however, in exceptional circumstances when it is necessary for the secure and reliable operation of the *Mindanao Power System*, the *Mindanao System Operator* may, in accordance with the relevant *IMEM Manual*, depart from the provisions of Section 3.5.1 by:

- (a) Issuing an *In-Day Dispatch Instruction* that deviates from the order specified in the *IMEM Merit Order Table*; or by
- (b) Issuing an *In-Day Dispatch Instruction* after the deadline set in Clause 3.5.1.1, including within the *IMEM Interval* for which the *In-Day Dispatch Instruction* applies.

3.5.2.2 The *Mindanao System Operator*, in consultation with the *IMEM Operator* shall maintain and publish an *IMEM Manual* setting forth the grounds and procedures for departing from the provisions of Section 3.5.1.

3.5.2.3 For each *In-Day Dispatch Instruction* issued under Clause 3.5.2.1, the *Mindanao System Operator* shall estimate the quantity, in MWh, that the *IMEM Resource*

was expected to supply during that *IMEM Interval* if it had fully complied with the *In-Day Dispatch Instruction*.

3.5.2.4 For each *In-Day Dispatch Instruction* issued under Clause 3.5.2.1, the *Mindanao System Operator* shall submit a brief report providing its reasons for departing from the provisions of Sections 3.5.1 to the effected *IMEM Resources*, the *IMEM Operator*, the *DOE* and the *ERC*.

3.5.2.5 If a situation requires departure from the provisions of Section 3.5.1 that will impact the dispatch and operation of a significant number of *IMEM Resources*, the *Mindanao System Operator* may, rather than operate under the provisions of this Section 3.5.2, opt to operate under the provisions of Chapter 7 of these *IMEM Rules* by declaring an *IMEM Emergency*.

3.5.3 Implementation of In-Day Dispatch Instructions

3.5.3.1 If an *IMEM Resource* is issued an *In-Day Dispatch instruction* by the *Mindanao System Operator*, it shall take all necessary actions to prepare for implementing the instruction in the specified *IMEM Interval*.

3.5.3.2 In each *IMEM Interval* that an *IMEM Resource* has been issued an *In-Day Dispatch Instruction*, it shall use reasonable endeavours to achieve a linear ramp rate over the *IMEM Interval* to reach the *Dispatch Target* at the end of the *IMEM Interval*.

3.5.3.3 If an *IMEM Resource* is not technically capable of maintaining a linear ramp rate over the *IMEM Interval*, it shall endeavour to inject or withdraw a quantity of energy consistent with the quantity that would have been injected or withdrawn if a linear ramp rate had been maintained.

3.5.3.4 If for any reason an *IMEM Resource* is unable to meet the *Dispatch Target* by the end of the specified *IMEM Interval*, it shall inform the *Mindanao System Operator* immediately.

3.5.4 Forced Outages

3.5.4.1 If an *IMEM Resource* suffers a *Forced Outage* which reduces its available capacity, it shall, as soon as possible, make a *Forced Outage Declaration* to the *Mindanao System Operator*, including a statement of the updated available capacity for that *IMEM Resource* excluding any capacity affected by the *Forced Outage*.

3.5.4.2 Upon receipt of a *Forced Outage Declaration*, the *Mindanao System Operator* shall not issue any further *In-Day Dispatch Instructions* to the affected *IMEM Resource* for any *IMEM Interval* for which the *Forced Outage* impacts the *IMEM Resource's* capability to meet its *Day-Ahead Schedule*.

3.5.5 Recording and Reporting on In-Day Dispatch Events

3.5.5.1 The *Mindanao System Operator* shall keep a log that includes, at a minimum, all *In-Day Dispatch Instructions* issued to *IMEM Resources* within the preceding six (6) months.

3.5.5.2 Each day by 1500H, the *Mindanao System Operator* shall submit a report to the *IMEM Operator* and the *DOE* which includes the following:

- (a) *In-Day Dispatch Instructions* that it issued on the preceding day;
- (b) Energy estimates computed in accordance with Clause 3.5.2.3;
- (c) *Actual Loadings* for each *IMEM Generator* at the end of each *IMEM Interval* on the preceding day; and

(d) *Forced Outage Declarations* made by *IMEM Resources* for each *IMEM Trading Intervals* in the *Billing Period*.

3.6 IMEM TRADING INTERVALS WITH INSUFFICIENT SUPPLY

3.6.1 Insufficient Supply Condition

3.6.1.1 In any *IMEM Trading Interval* for which the total *Offered Capacity* of all *IMEM Offers* is insufficient to meet the *IMEM Demand* in that *IMEM Trading Interval*, the *IMEM Trading Interval* shall be declared by the *IMEM Operator* as having an *Insufficient Supply Condition*.

3.6.1.2 For clarity, in an *IMEM Trading Interval* with *Insufficient Supply Condition*, the *IMEM Day-Ahead Price* shall still be determined in accordance with Clause 3.4.4.1.

3.6.2 Load-To-Maintain

3.6.2.1 In any *IMEM Trading Interval* for which an *Insufficient Supply Condition* has been declared, the *IMEM*

Operator shall calculate a *Load-To-Maintain (LTM)* level for each *IMEM Customer*, which it shall submit to the *Mindanao System Operator* together with the *Day-Ahead Schedule* and *Day-Ahead IMEM Schedule* of all *IMEM Resources*.

3.6.2.2 The *Load-To-Maintain* values shall be in megawatts (MW) expressed to a precision of one decimal place (0.1MW, or 100kW).

3.6.2.3 If an *IMEM Customer's* nominated *Customer IMEM Demand* is zero (0) then its *Load-To-Maintain* shall equal its total *Ex-Ante Contract Allocation*.

3.6.2.4 The *IMEM Operator* shall calculate each *IMEM Customer's Load-To-Maintain* by distributing the total *Offered Capacity* of all *IMEM Offers* across all *IMEM Customers* on a pro-rata basis based on their *Customer IMEM Demand* and adding the same to the total *Ex-Ante Contract Allocation* of each *IMEM Customer*.

Chapter IV

Metering

4.1 METERING SERVICES

4.1.1 Provision of Metering Services

4.1.1.1 *Metering Services* for a facility of an *IMEM Trading Participant* that is directly connected to the *Mindanao Grid* will be provided by the *National Grid Corporation of the Philippines*.

4.1.1.2 *Metering Services* for a facility of an *IMEM Trading Participant* directly connected to a *Mindanao Distribution System* will be provided by the *Mindanao Distribution Utility* that owns that *Mindanao Distribution System*.

4.1.2 Registration of IMEM Metering Services Providers

An entity identified to provide *Metering Services* in accordance with Section 4.1.1 shall be registered in the *IMEM* as an *IMEM Metering Services Provider* in accordance with Chapter 2 of these *IMEM Rules*.

4.2 OBLIGATIONS RELATED TO METERING SERVICES

4.2.1 IMEM Metering Services Providers

4.2.1.1 *IMEM Metering Services Providers* shall be

responsible for ensuring that registered *Metering Installations* directly connected to their system are compliant with the provisions of this Chapter 4 and the relevant *IMEM Manual*.

4.2.1.2 *IMEM Metering Services Providers* shall be responsible for the retrieval, collection and validation of *Metering Data* from the *Metering Installations* they are responsible for.

4.2.1.3 *IMEM Metering Services Providers* shall be responsible for supplying settlement-ready *Metering Data* to the *IMEM Operator* and, in case of *Metering Data* error, shall be responsible for the substitution of the affected *Metering Data* in accordance with this Chapter 4.

4.2.1.4 *IMEM Metering Services Providers* shall not make, cause or allow any alteration to the original stored data in a *Metering Installation*; and shall use reasonable endeavours to ensure that no other person or entity does the same.

4.2.2 IMEM Operator

4.2.2.1 The *IMEM Operator* shall be responsible for ensuring that facilities of *IMEM Trading Participants* have valid *Metering Data* for all *IMEM Trading Intervals* for the purposes of billing and settlement.

4.2.2.2 The *IMEM Operator* shall maintain and publish an *IMEM Manual* that:

- (a) Describes the class and accuracy requirements of *Metering Installations*;
- (b) Defines the procedures that *IMEM Metering Services Providers* and the *IMEM Operator* must undertake to validate, estimate, correct or substitute erroneous *Metering Data*;
- (c) Defines the information that must be contained in the *Metering Services Provider Database* of the *IMEM Metering Services Provider* and the *Metering Database* of the *IMEM Operator*; and
- (d) Other relevant procedures to implement the provisions of this Chapter 4.

4.3 METERING INSTALLATIONS

4.3.1 Registration of Metering Installations

4.3.1.1 A *Metering Installation* located at the *Connection Point* of a facility of an *IMEM Trading Participant* to its *IMEM Network Service Provider* shall be registered with the *IMEM Operator* by the *IMEM Metering Services Provider* responsible for the *Metering Installation* in accordance with the relevant *IMEM Manual*.

4.3.1.2 The *IMEM Operator* shall deregister *Metering Installations* from the *IMEM* in accordance with the grounds and procedures in the relevant *IMEM Manual*.

4.3.2 Metering Installation Requirements

4.3.2.1 A registered *Metering Installation* shall comply in all respects with the requirements of the *Grid Code* for facilities directly connected to the *Mindanao Grid* or the *Distribution Code* for facilities directly connected to a *Mindanao Distribution System* and the relevant *IMEM Manual* being implemented by the *IMEM Operator*.

4.3.2.2 A registered *Metering Installation* shall:

- (a) Be accurate in

- accordance with this Chapter 4, the *Grid Code*, the *Distribution Code* and relevant *IMEM Manual*;
- (b) Contain a device which has a visible or an equivalently accessible display of *Metering Data* and which allows *Metering Data* to be accessed and read at the same time by portable computer or other equipment of a type or specification reasonably acceptable to all entities who are entitled to have access to that *Metering Data*;
 - (c) Have electronic data recording facilities such that all *Metering Data* can be measured and recorded in all *IMEM Intervals*;
 - (d) Where bi-directional active energy flows occur, be capable of separately registering and recording flows in each direction;
 - (e) Have a *Meter* having an internal data logger capable of storing the *Metering Data* for at least sixty (60) days and have a back-up storage facility enabling *Metering Data* to be stored for at least forty-eight (48) hours in the event of external power failure;
 - (f) Have an active energy meter, and, if required in accordance with the *Grid Code* or *Distribution Code*, a reactive energy meter having an internal data logger;
 - (g) Have protection from unauthorized interference, both intentional and inadvertent, by having a secure housing for metering equipment or have the security at its *Metering Point* be adequate to protect against such interference; and
 - (h) Have protection of its *Metering Data* from local or remote electronic access or manipulation of data by having suitable security electronic access controls.

4.3.3 Use of Meters

4.3.3.1 A registered *Metering Installation* shall be used by the *IMEM Operator* as the primary source of *Metering Data* for the settlement of the transactions of *IMEM Trading Participants*.

4.3.3.2 Notwithstanding any other provision of this Chapter 4, the *IMEM Operator* will not be liable to any

person or entity in respect of any inaccuracies, discrepancies or other defects in *Metering Data*, including *Metering Data* which is stored in the *Metering Database*; provided that these do not arise from the gross negligence or wilful misconduct of the *IMEM Operator*.

4.3.3.3 Where a *Metering Installation* is used for purposes in addition to the provision of *Metering Data* to the *IMEM Operator* then:

- (a) That use shall not be inconsistent with, or cause any *IMEM Member* to breach any requirements of these *IMEM Rules*, the *Grid Code* and *Distribution Code* or any applicable laws; and
- (b) The *IMEM Metering Services Provider* shall coordinate the entities that use the *Metering Installation* for such other purposes to ensure compliance with this Clause 4.3.3.3.

4.3.4 Performance of Metering Installations

4.3.4.1 *IMEM Metering Services Providers* shall ensure that *Metering Data* being transmitted to the *IMEM Operator* are:

- (a) Within the applicable accuracy parameters described in the *Grid Code*, the *Distribution Code* and relevant *IMEM Manual*; and
- (b) Within the time required for settlement and at a level of availability of at least ninety-nine per cent (99%) per annum or as otherwise agreed between the *IMEM Operator* and the *IMEM Metering Services Provider*.

4.3.4.2 If a *Metering Installation* malfunctions or a defect occurs, the *IMEM Metering Services Provider* shall ensure that repairs shall be made as soon as practicable and, in any event, within two (2) days from the occurrence of the defect or malfunction unless otherwise extended by the *IMEM Operator* upon request of the *IMEM Metering Services Provider*.

4.3.4.3 An *IMEM Member* who becomes aware of a *Metering Installation* malfunction or other defect shall advise the *IMEM Metering Services Provider* and the *IMEM Operator* immediately after it was detected.

4.3.5 Meter Time

4.3.5.1 The *IMEM Metering Services Provider* shall ensure that all *Metering Installations* and data logger clocks are referenced to *Philippine Standard Time*.

4.3.5.2 The time of the *Meters* shall be set within an accuracy of plus or minus one second of *Philippine Standard Time*.

4.4 METERING DATA

4.4.1 Data Transfer and Collection

4.4.1.1 The *IMEM Metering Services Provider* shall retrieve the *Metering Data* from the *Meter* and transmit the same to the *IMEM Operator* within the period set out in the relevant *IMEM Manual*.

4.4.1.2 The *IMEM Metering Services Provider* must be capable of sending *Metering Data* in the required format to the *IMEM Operator*.

4.4.1.3 The *IMEM Metering Services Provider* shall, at its own cost, ensure that *Metering Data* derived from a *Metering Installation* for which it is responsible for shows the time and date at which it is recorded and is in accordance with the requirements of the *IMEM Operator* as provided in the relevant *IMEM Manual*.

4.4.2 Metering Services Provider Database

4.4.2.1 The *IMEM Metering Services Provider* shall create, maintain and administer a *Metering Services Provider Database*.

4.4.2.2 The *IMEM Metering Services Provider* shall ensure that each associated *IMEM Trading Participant* as well as the *IMEM Operator* is given access to the information in its *Metering Services Provider Database* at all reasonable times and:

- (a) In the case of data sixteen (16) months old or less, within seven (7) *Business Days* of receiving written notice from the person or entity seeking access; and
- (b) In the case of data more than sixteen (16) months old, within thirty (30) *Business Days* of receiving written notice from the person or entity seeking access.

4.4.2.3 The *IMEM Metering Services Provider* shall ensure that its *Metering Services Provider Database* contains the information specified in the relevant *IMEM Manual*.

4.4.3 Metering Database

4.4.3.1 The *IMEM Operator* shall create, maintain and administer a *Metering Database*, which shall include a metering register containing information for each *Metering Installation* registered with the *IMEM Operator* and should be consistent with the *Metering Installation* registration data of the *IMEM Metering Services Provider*.

4.4.3.2 The *Metering Database* shall include *Metering Data* and data substituted in accordance with Section 4.4.5 of this Chapter 4 and all calculations made for settlement purposes.

4.4.3.3 Data shall be stored in the *Metering Database*:

- (a) For sixteen (16) months in accessible format; and
- (b) For ten (10) years in archive.

4.4.4 Rights of Access to Metering Data

4.4.4.1 The only entities entitled to have either direct or remote access to *Metering Data* on a read-only basis from the *Metering Database* in relation to a *Metering Installation* are:

- (a) Any *IMEM Member* with respect to the *Metering Data* in relation to a *Metering Installation* registered to it;

- (b) Any *IMEM Generator* who is a contract counterparty to an *IMEM Customer* to whom the *Metering Data* in relation to the registered *Metering Installation* relates;

- (c) The *IMEM Metering Services Provider* who is responsible for the *Metering Installation*;

- (d) The *IMEM Operator* and its authorized agents;

- (e) The *DOE*; and

- (f) The *ERC*.

4.4.4.2 *Metering Data* identifiable to an *IMEM Member* shall be treated by the *IMEM Operator* as confidential and shall be subject to the provisions of 5.6.4.4 of the *IMEM Rules*.

4.4.5 Validation and Substitution of Metering Data

4.4.5.1 *IMEM Metering Services Providers* shall perform validation of the *Metering Data* of *Metering Installations* it is responsible for in accordance with the relevant *IMEM Manual*.

4.4.5.2 In case of *Metering Data* error, the *IMEM Metering Services Provider* shall:

- (a) Perform estimation in order to derive corrected *Metering*

Data in accordance with the procedures set out in relevant *IMEM Manual*;

- (b) Present the corrected or substituted *Metering Data* to the *IMEM Operator* and the affected *IMEM Trading Participant* within two (2) *Business Days* from the detection of the error; and
- (c) Perform the obligations set out in this Clause 4.4.5.2 notwithstanding any *Dispute* raised by the affected *IMEM Trading Participant*.

4.4.5.3 The *IMEM Operator* shall perform final validation of the *Metering Data* submitted by the *IMEM Metering Services Providers* in accordance with the relevant *IMEM Manual*.

4.4.5.4 In case of *Metering Data* error, the *IMEM Operator* shall notify the *IMEM Metering Services Provider* that submitted the erroneous *Metering Data* of the error. The *IMEM Metering Services Provider* shall address the *Metering Data* error in accordance with Clause 4.4.5.2. If corrected *Metering Data* has not been submitted to the *IMEM Operator* two (2) days prior to the

transmittal of *Metered Quantity* data to *IMEM Trading Participants*, the *IMEM Operator* shall estimate and substitute *Metering Data* in accordance with the relevant *IMEM Manual*. If the above date does not fall on a *Business Day*, the due date shall be the next *Business Day*.

4.4.5.5 If an *IMEM Metering Services Provider* provides corrected *Metering Data* to the *IMEM Operator* within one (1) year after the issuance of the *Final Settlement Statement* for the *Billing Period* where the *IMEM Trading Interval* of the corrected *Metering Data* belongs to, the *IMEM Operator* shall include in the *Settlement Statements* of affected *IMEM Trading Participants* for the next *Billing Period* the adjustments that resulted from the use of the corrected *Metering Data*.

4.4.5.6 In case of *Dispute* with respect to the substitution implemented by the *IMEM Metering Services Provider* under Clause 4.4.5.2, the *IMEM Metering Services Provider* shall issue a certification on the corrected or substituted *Metering Data*, which shall be submitted to the *IMEM Operator* and the affected *IMEM Trading Participant*.

Chapter V

Settlement and Billing

5.1 SETTLEMENT TIMETABLE

5.1.1 Frequency of Settlement and Billing

5.1.1.1 The *IMEM Operator* shall calculate *Settlement Quantities* and *Settlement Amounts* for each *IMEM Resource* and each *IMEM Customer* in each *IMEM Trading Interval*.

5.1.1.2 Calculation of *Settlement Quantities* and *Settlement Amounts* and billing of *IMEM Members* shall be performed monthly for the preceding Billing Period, which shall be a one month period starting on the 26th day of a calendar month and ending on the 25th day of the following month.

5.1.2 Timetable for Settlement and Billing

5.1.2.1 Within five (5) days from the end of the *Billing Period*, the *IMEM Operator* shall make available to each *IMEM Trading Participant* the *Metered Quantities* and *IMEM Adjusted Metered Quantities* of that *IMEM Trading Participant* for all *IMEM Intervals* in that *Billing Period*.

5.1.2.2 Subject to Section 5.2.2, *IMEM Generators* who hold contracts with *IMEM Customers* shall, in consultation with their contract counterparties, declare to the *IMEM Operator Ex-Post Contract Quantities* for each contract counterparty in each *IMEM Trading Interval* no later than three (3) days after *Metered Quantities* and *IMEM Adjusted Metered Quantities* for that *IMEM Trading Interval* are made available by the *IMEM Operator*.

5.1.2.3 No later than the 7th day of the calendar month, the *IMEM Operator* shall issue a *Preliminary Settlement Statement* to each *IMEM Trading Participant* in accordance with Section 5.5.1.

5.1.2.4 No later than the 15th day of the calendar month, the *IMEM Operator* shall issue a *Final Settlement Statement* to each *IMEM Trading Participant* in accordance with Section 5.5.2.

5.1.2.5 *IMEM Trading Participants* shall pay the *IMEM Operator* and the *IMEM*

Operator shall pay *IMEM Trading Participants* in accordance with Section 5.5.4.

5.1.2.6 The *IMEM Operator* shall maintain and publish an *IMEM Manual* that defines:

- (a) The procedures which the *IMEM Operator* and *IMEM Trading Participants* must follow in relation to settlement, billing, collections and payment;
- (b) The methods and processes used by the *IMEM Operator* for calculating its net exposure to *IMEM Trading Participants* and enforcement measures to maintain compliance with the requirements of Section 5.6; and
- (c) Any other relevant procedures required to implement the provisions of this Chapter 4.

5.2 SETTLEMENT QUANTITIES

5.2.1 Metered Quantities

5.2.1.1 In each *IMEM Trading Interval*, the *IMEM Operator* shall determine the *Metered Quantity* for each *IMEM Resource* and each *IMEM Customer*.

5.2.1.2 The *Metered Quantity* for an *IMEM Customer* which is not an *IMEM Load Curtailment Resource* is the net quantity of energy withdrawn from the *Mindanao Grid* by that *IMEM Customer* during an *IMEM Trading Interval* as measured in the *Metering Data*, where net withdrawal is a negative number.

5.2.1.3 The *Metered Quantity* for an *IMEM Load Curtailment Resource* is the net quantity of energy sent out into or withdrawn from the *Mindanao Grid* or a *Distribution Network* by that *IMEM Load Curtailment Resource* during an *IMEM Trading Interval* as measured in the *Metering Data*, where net injection is a positive number and net withdrawal is a negative number.

5.2.1.4 The *Metered Quantity* for an *IMEM Generator* is the net quantity of energy sent out into the *Mindanao Grid* or a *Distribution Network* by an *IMEM Generator* during an *IMEM Interval* as measured in the *Metering Data*, where net injection is a positive number.

5.2.2 Ex-Post Contract Quantities

5.2.2.1 An *IMEM Generator* shall declare, for each *IMEM Trading Interval*, the *Ex-Post Contract Quantities*

of the *IMEM Customers* which are its contract counterparties as both:

- (a) The MWh output of the *IMEM Generator* allocated for supplying the contracted energy, expressed as a positive number; and
- (b) The MWh energy withdrawal at the *IMEM Customer's Connection Point* that is covered by the contracted energy, expressed as a negative number.

5.2.2.2 The difference between the absolute values of the quantities declared under Clauses 5.2.2.1(a) and 5.2.2.1(b) shall accurately reflect the losses between the *Connection Point* of the *IMEM Generator* and the *Connection Point* in the *Mindanao Grid* of the *IMEM Customer*.

5.2.2.3 Subject to Clause 5.2.2.4, the absolute values of the quantities declared for a *Grid IMEM Load Curtailment Resource* and was scheduled in the relevant *IMEM Trading Interval*, shall equal the *Ex-Ante Contract Allocations* declared for that *Grid IMEM Load Curtailment Resource* as an *IMEM Customer* under Section 3.2.5.

5.2.2.4 If the *Metered Quantity*

of an *IMEM Generator* declaring *Ex-Post Quantities* to *IMEM Customers* who are also *IMEM Load Curtailment Resources*, is less than the sum of its *Ex-Ante Contract Allocations* declared under Section 3.2.5 or, if altered, under Section 3.2.6 then the absolute value of the quantities declared for its *IMEM Customers* who are also *IMEM Load Curtailment Resources* shall not be less than its *Ex-Ante Contract Allocation* to each *IMEM Load Curtailment Resource* multiplied by the ratio of its *Metered Quantity* and the sum of its *Ex-Ante Contract Allocations* declared under Section 3.2.5 or, if altered, under Section 3.2.6.

5.2.2.5 The quantity declared under Clause 5.2.2.1(a) shall always be greater than the absolute value of the quantity declared under Clause 5.2.2.1(b), except where the *IMEM Customer* is also the *IMEM Network Service Provider* for the *IMEM Generator's Connection Point*.

5.2.2.6 The sum of all *Ex-Post Contract Quantities* declared under Clause 5.2.2.1(a) by an *IMEM Generator* for each *IMEM Trading Interval* shall be no more than the *Metered Quantity* of that *IMEM Generator* in that *IMEM Trading Interval*.

5.2.2.7 Subject to Clause 5.2.2.3, the sum of all *Ex-Post Contract Quantities* declared under Clause 5.2.2.1(b) to an *IMEM Customer* for each *IMEM Trading Interval* shall be no less than the *IMEM Adjusted Metered Quantity* of that *IMEM Customer* in that *IMEM Trading Interval*.

5.2.3 Scheduled and Dispatched Quantities

5.2.3.1 The *IMEM Operator* shall determine the *Scheduled Quantity* for each *IMEM Resource* as the average of its *Day-Ahead Schedules* at the beginning and end of the relevant *IMEM Trading Interval*.

5.2.3.2 The *IMEM Operator* shall determine the *Dispatched Quantity* for each *IMEM Resource* as the average of the most recent *Day-Ahead Schedules* or *Dispatch Targets*, whichever is applicable, applying to that *IMEM Resource* at the beginning and end of the *IMEM Trading Interval*.

5.2.3.3 For the purposes of calculating the *Scheduled Quantity* or *Dispatched Quantity* under this Section 5.2.3, if the previous *IMEM Interval* was not an *IMEM Trading Interval* then the *Day-Ahead Schedule* at the beginning of the *IMEM Trading Interval* shall be

taken as:

- (a) For an *IMEM Generator*, the *Actual Loading* at the beginning of the *IMEM Trading Interval*; and
- (b) For an *IMEM Load Curtailment Resource*, zero.

5.2.3.4 For an *IMEM Resource* issued with an *In-Day Dispatch Instruction* under Clause 3.5.2.1, the *IMEM Operator* shall use the quantity estimated by the *Mindanao System Operator* for that *IMEM Resources* for that *IMEM Interval* in accordance with Clause 3.5.3.2 as the *Dispatched Quantity* of that *IMEM Resource* for the *IMEM Interval*.

5.2.4 Expected Demand Quantity

5.2.4.1 Subject to Clause 5.2.4.2, the *Expected Demand* of an *IMEM Customer* is the total *Ex-Ante Contract Allocation* for that *IMEM Customer* plus its *Customer IMEM Demand*.

5.2.4.2 In any *IMEM Trading Interval* for which an *Insufficient Supply Condition* has been declared, the *Expected Demand* for an *IMEM Customer* is the *Load-to-Maintain* for that *IMEM Customer* determined in accordance with Section 3.6.2.

5.2.4.3 The *Expected Demand Quantity* of an *IMEM Customer* or *IMEM Load Curtailment Resource* shall be determined as the average of its *Expected Demands* at the beginning and end of the *IMEM Trading Interval*, expressed as a negative number.

5.2.5 Variation Tolerance

5.2.5.1 For each *IMEM Trading Interval*, the *IMEM Operator* shall calculate a *Variation Tolerance* for each *IMEM Resource* and *IMEM Customer*.

5.2.5.2 The *IMEM Operator* shall determine the *Variation Tolerance* as:

(a) For an *IMEM Generator* and *IMEM Load Curtailment Resource*, three percent (3%) of its *Dispatched Quantity*; or

(b) For an *IMEM Customer*, three percent (3%) of its *Expected Demand Quantity*, expressed as a positive number.

5.2.5.3 For clarity, if an *IMEM Load Curtailment Resource* has no *Day-Ahead IMEM Schedule* and has not received an *In-Day Dispatch Instruction* then its *Variation Tolerance* shall be computed in accordance with Clause

5.2.5.2(b). In addition, if an *IMEM Load Curtailment Resource* has a *Day-Ahead IMEM Schedule* but receives an *In-Day Dispatch Instruction* not to curtail then its *Variation Tolerance* shall also be computed in accordance with Clause 5.2.5.2(b).

5.2.6 Trading Quantities of IMEM Customers

5.2.6.1 The *IMEM Operator* shall determine the *IMEM Trading Quantity* of each *IMEM Customer* which is not an *IMEM Load Curtailment Resource* as its *IMEM Adjusted Metered Quantity* less its *Ex-Post Contract Quantity*.

5.2.6.2 The *IMEM Adjusted Metered Quantity* of an *IMEM Customer* is determined as its *Metered Quantity* less:

(a) The *Metered Quantities* of all *IMEM Embedded Generators* for which the *IMEM Customer* is the *IMEM Network Service Provider*; and

(b) The differences between the *Metered Quantity* and the *Expected Demand Quantity* of all *IMEM Load Curtailment Resources* which have *Day-Ahead Schedules* or *In-Day Dispatch Instructions* in that *IMEM Trading*

Interval and for which the *IMEM Customer* is the *IMEM Network Service Provider*.

(b) Its *Expected Demand Quantity* less its *IMEM Adjusted Metered Quantity* less its *Variation Tolerance*.

5.2.6.3 The *Ex-Post Contract Quantity* of an *IMEM Customer*, which is not an *IMEM Load Curtailment Resource*, is determined as the sum of all *Ex-Post Contract Quantities* declared by *IMEM Generators* for that *IMEM Customer* in accordance with Section 5.2.1.

5.2.7 Variation Quantities of IMEM Customers

5.2.7.1 For each *IMEM Customer*, the *IMEM Operator* shall determine the *Upwards Customer Variation Quantity* or *Downwards Customer Variation Quantity*.

5.2.7.2 The *Upwards Customer Variation Quantity* of an *IMEM Customer* is determined as the greater of:

- (a) Zero; and
- (b) Its *IMEM Adjusted Metered Quantity* less its *Expected Demand Quantity* less its *Variation Tolerance*.

5.2.7.3 The *Downwards Customer Variation Quantity* of an *IMEM Customer* is determined as the greater of:

- (a) Zero; and

5.2.8 Trading Quantities of IMEM Load Curtailment Resources

5.2.8.1 The *IMEM Operator* shall determine the *IMEM Trading Quantity* of each *IMEM Load Curtailment Resource* in each *IMEM Trading Interval*.

5.2.8.2 For a *Grid IMEM Load Curtailment Resource* that has a *Day-Ahead Schedule* or an *In-Day Dispatch Instruction* for the relevant *IMEM Trading Interval*, its *IMEM Trading Quantity* for that *IMEM Trading Interval* is determined as its *Metered Quantity* less the sum of all *Ex-Post Contract Quantities* declared for that *IMEM Customer* in that *IMEM Trading Interval* under Clause 5.2.2.1(b).

5.2.8.3 For a *Grid IMEM Load Curtailment Resource* that does not have a *Day-Ahead Schedule* or an *In-Day Dispatch Instruction* for the relevant *IMEM Trading Interval*, its *IMEM Trading Quantity* shall be determined in accordance with Section 5.2.6. For clarity, the *IMEM Trading Participant* shall not be treated as an *IMEM Load Curtailment Resource* but as an *IMEM Customer* for that *IMEM Trading*

Interval in the absence of a *Day-Ahead Schedule* or an *In-Day Dispatch Instruction*.

5.2.8.4 For an *IMEM Load Curtailment Resource* which is not also an *IMEM Customer*, or *Embedded IMEM Load Curtailment Resource*, and has a *Day-Ahead Schedule* or an *In-Day Dispatch Instruction* for that *IMEM Trading Interval*, its *IMEM Trading Quantity* is determined as its *Metered Quantity* less its *Expected Demand Quantity*.

5.2.8.5 For an *Embedded IMEM Load Curtailment Resource* that does not have a *Day-Ahead Schedule* or an *In-Day Dispatch Instruction* for that *IMEM Trading Interval*, its *IMEM Trading Quantity* shall be zero.

5.2.9 Variation Quantities of IMEM Load Curtailment Resources

5.2.9.1 The *IMEM Operator* shall determine the *Upwards Dispatched Quantity* or *Downwards Dispatched Quantity* of each *IMEM Load Curtailment Resource* with an *In-Day Dispatch Instruction* in each *IMEM Trading Interval*.

5.2.9.2 The **IMEM Operator** shall determine the *Upwards Resource Variation Quantity* or *Downwards Resource Variation Quantity* of each *IMEM Load Curtailment*

Resource with a *Day-Ahead Schedule* or an *In-Day Dispatch Instruction* in each *IMEM Trading Interval*.

5.2.9.3 For a *Grid IMEM Load Curtailment Resource* that does not have a *Day-Ahead Schedule* or an *In-Day Dispatch Instruction* for the relevant *IMEM Trading Interval*, its variation quantities shall be determined in accordance with Section 5.2.7. For clarity, the *IMEM Trading Participant* shall not be treated as an *IMEM Load Curtailment Resource* but as an *IMEM Customer* for that *IMEM Trading Interval* in the absence of a *Day-Ahead Schedule* or an *In-Day Dispatch Instruction*.

5.2.9.4 The *Upwards Dispatched Quantity* of an *IMEM Load Curtailment Resource* is determined as the greater of:

- (a) Zero; and
- (b) The lesser of its *Dispatched Quantity* and the difference of its *Metered Quantity* and its *Expected Demand Quantity*, less its *Scheduled Quantity* less its *Variation Tolerance*.

5.2.9.5 The *Downwards Dispatched Quantity* of an *IMEM Load Curtailment Resource* is determined as

the greater of:

- (a) Zero; and
- (b) Its *Scheduled Quantity* less the greater of its *Dispatched Quantity* and the difference of its *Metered Quantity* and its *Expected Demand Quantity*, less its *Variation Tolerance*.

5.2.9.6 The *Upwards Resource Variation Quantity* of an *IMEM Load Curtailment Resource* is determined as the greater of:

- (a) Zero; and
- (b) Its *Metered Quantity* less its *Dispatched Quantity* less its *Expected Demand Quantity* less its *Variation Tolerance*.

5.2.9.7 The *Downwards Resource Variation Quantity* of an *IMEM Load Curtailment Resource* is determined as the greater of:

- (a) Zero; and
- (b) Its *Expected Demand Quantity* plus its *Dispatched Quantity* less its *Metered Quantity* less its *Variation Tolerance*.

5.2.10 Trading Quantities of IMEM Generators

The *IMEM Operator* shall determine the *IMEM*

Trading Quantity of each *IMEM Generator* in each *IMEM Trading Interval* as the *Metered Quantity* less the sum of all *Ex-Post Contract Quantities* declared by the *IMEM Generator* for that *IMEM Trading Interval* in accordance with Clause 5.2.2.1(a).

5.2.11 Variation Quantities of IMEM Generators

5.2.11.1 The *IMEM Operator* shall determine the *Upwards Dispatched Quantity* or *Downwards Dispatched Quantity* of each *IMEM Generator* with an *In-Day Dispatch Instruction* in each *IMEM Trading Interval*.

5.2.11.2 The *IMEM Operator* shall determine the *Upwards Resource Variation Quantity* or *Downwards Resource Variation Quantity* of each *IMEM Generator* with a *Day-Ahead Schedule* or an *In-Day Dispatch Instruction* in each *IMEM Trading Interval*.

5.2.11.3 The *Upwards Dispatched Quantity* of an *IMEM Generator* is determined as the greater of:

- (a) Zero; and
- (b) The lesser of its *Dispatched Quantity* and its *Metered Quantity*, less its *Scheduled Quantity*

less its *Variation Tolerance*.

5.2.11.4 The *Downwards Dispatched Quantity* of an *IMEM Generator* is determined as the greater of:

- (a) Zero; and
- (b) Its *Scheduled Quantity* less the greater of its *Dispatched Quantity* and its *Metered Quantity*, less its *Variation Tolerance*.

5.2.11.5 The *Upwards Resource Variation Quantity* of an *IMEM Generator* is determined as the greater of:

- (a) Zero; and
- (b) Its *Metered Quantity* less its *Dispatched Quantity* less its *Variation Tolerance*.

5.2.11.6 The *Downwards Resource Variation Quantity* of an *IMEM Generator* is determined as the greater of:

- (a) Zero; and
- (b) Its *Dispatched Quantity* less its *Metered Quantity* less its *Variation Tolerance*.

5.3 SETTLEMENT PRICE AND ADJUSTMENT RATES

5.3.1 Settlement Price

5.3.1.1 The price used for settlement purposes shall be the *IMEM Day-Ahead Price* for an *IMEM Trading Interval* determined under Section 3.4.4 for that *IMEM Trading Interval*.

5.3.1.2 For *IMEM Trading Intervals* where no *IMEM Day-Ahead Price* was determined under Section 3.4.4, as can occur if *In-Day Dispatch* is required, the *IMEM Day-Ahead Price* shall be zero.

5.3.2 Settlement Adjustment Rates for Variation Quantities

5.3.2.1 For *IMEM Trading Participants* for which variation quantities have been determined in accordance with Sections 5.2.7, 5.2.9 and 5.2.11, the *IMEM Operator* shall determine the applicable premium or penalty rate, for settlement purposes, by multiplying the *IMEM Base Variation Price* for the relevant *IMEM Trading Interval* with the corresponding adjustment factor as set out in this Section 5.3.2.

5.3.2.2 The *IMEM Base Variation Price* for an *IMEM Trading Interval* shall be the *IMEM Day-Ahead Price* for that *IMEM Trading Interval*, except that if no *IMEM Day-Ahead Price* was determined in accordance with Section 3.4.4, it shall be the average *Day-Ahead IMEM Price* over all

IMEM Trading Intervals in the thirty (30) days prior to the relevant *IMEM Trading Interval*.

5.3.2.3 The *Upwards In-Day Dispatch Premium Rate* and *Downwards In-Day Dispatch Premium Rate* are ten percent (10%) of the *IMEM Base Variation Price* for the relevant *IMEM Trading Interval*, with the subsequent *Upwards Dispatch Premium Amount* and *Downwards Compensation Amount* calculated as a positive number.

5.3.2.4 The *Upwards Resource Variation Penalty Rate* and *Downwards Resource Variation Penalty Rate* are one-hundred percent (100%) of the *IMEM Base Variation Price* for the relevant *IMEM Trading Interval*, with the subsequent *Upwards or Downwards Resource Variation Penalty Amount* calculated as a negative number.

5.4 SETTLEMENT AMOUNTS

5.4.1 Trading Interval Supply Amounts of IMEM Resources

5.4.1.1 The *IMEM Operator* shall determine the *Resource Supply Amount* of each *IMEM Resource* in each *IMEM Trading Interval* as the sum of its *Resource Energy Settlement Amount*, its *Upwards Dispatch Compensation*

Amount and its *Downwards Dispatch Compensation Amount* determined in accordance with Clause 5.4.1.2, Clause 5.4.1.4 and Clause 5.4.1.5 of these *IMEM Rules*.

5.4.1.2 The *Resource Energy Settlement Amount* of an *IMEM Resource* in an *IMEM Trading Interval* is determined as the sum of:

(a) The *Resource Energy Amount*, which is the product of the *IMEM Day-Ahead Price* and its *IMEM Trading Quantity*;

(b) The *Upwards Resource Variation Penalty Amount*, which is the product of the *Upwards Variation Penalty Rate* and the *Upwards Resource Variation Quantity*, expressed as a negative number;

(c) Subject to Clause 5.4.1.3, the *Downwards Resource Variation Penalty Amount*, which is the product of the *Downwards Variation Penalty Rate* and the *Downwards Resource Variation Quantity*, expressed as a negative number; and

(d) If its *Upwards Resource Variation Penalty Amount* or *Downwards Resource*

Variation Penalty Amount is non-zero, the lesser of the absolute value of its *Upwards Resource Variation Penalty Amount* or *Downwards Resource Variation Penalty Amount* and its *Resource Dispatch Compensation Recovery Amount*.

5.4.1.3 The *Downwards Resource Variation Penalty Amount* of an **IMEM Resource** for an *IMEM Trading Interval* where a *Forced Outage Declaration* from the *IMEM Resource* for that *IMEM Trading Interval* was reported by the *Mindanao System Operator* under Clause 3.5.5.2 shall be zero (0).

5.4.1.4 The *Upwards Dispatch Compensation Amount* of an *IMEM Resource* is determined as the sum of:

- (a) Its *Upwards Dispatch Premium Amount*, which is the product of the *Upwards In-Day Dispatch Premium Rate* and its *Upwards Dispatched Quantity*; and
- (b) Its *Upwards Dispatch Cost Recovery Amount*, which shall be calculated for each *IMEM Resource* with an *In-Day Dispatch Instruction* and an *Offer Price* exceeding

the *IMEM Day-Ahead Price* and is the product of its *Upward Dispatched Quantity* plus its *Variation Tolerance*, and the difference between its *Offer Price* and the *IMEM Day-Ahead Price*.

5.4.1.5 The *Downwards Dispatch Compensation Amount* of an *IMEM Resource* is determined as the product of the *Downwards In-Day Dispatch Premium Rate* and its *Downwards Dispatched Quantity*.

5.4.1.6 For each *IMEM Resource* that has a non-zero *Dispatch Compensation Amount* in an *IMEM Trading Interval*, the *IMEM Operator* shall, based on the report of the *Mindanao System Operator* provided under Clause 3.5.5.2, determine whether the *In-Day Dispatch Instruction* that resulted in the *Dispatch Compensation Amount* was issued under Section 3.5.1 or under Section 3.5.2 and shall associate the *Dispatch Compensation Amount* accordingly for the purpose of calculating the *Dispatch Compensation Recovery Rates* under Section 5.4.3.

5.4.2 Trading Interval Amounts of IMEM Customers

5.4.2.1 The *IMEM Operator* shall

determine the *Customer Supply Amount* for each *IMEM Customer* in each *IMEM Trading Interval* as the product of the *IMEM Customer Energy Price* and the *IMEM Trading Quantity*, provided that the *Customer Supply Amount* shall be zero (0) for any *IMEM Customer* for which the *IMEM Trading Quantity* is greater than zero (0).

5.4.2.2 The *IMEM Customer Energy Price* is determined as the ratio of:

- (a) The total *Resource Energy Settlement Amounts* of all *IMEM Resources*; and
- (b) The total *IMEM Trading Quantities* of all *IMEM Customers* with negative *IMEM Trading Quantities*.

5.4.2.3 In an *IMEM Trading Interval* in which *Resource Energy Settlement Amounts* are calculated for *IMEM Resources*, but there are no *IMEM Customers* with negative *IMEM Trading Quantities*, the total *Resource Energy Settlement Amounts* for that *IMEM Trading Interval* shall be designated as the *Unrecovered Resource Energy Settlement Amount* for that *IMEM Trading Interval*, and shall be recovered from *Settlement Amounts* in proportion to each *IMEM*

Customer's share of the total *IMEM consumption* for the *Billing Period*.

5.4.3 Trading Interval Dispatch Compensation Recovery Rates

5.4.3.1 The *Upwards Dispatch Compensation Recovery Rate* associated with *In-Day Dispatch Instructions* issued under Section 3.5.1 is determined as the ratio of:

- (a) The total *Upwards Dispatch Compensation Amounts* associated with *In-Day Dispatch Instructions* issued under Section 3.5.1 of all *IMEM Resources*; and
- (b) The total *Downwards Resource Variation Quantities* and *Downwards Customer Variation Quantities* of all *IMEM Resources* and *IMEM Customers*.

5.4.3.3 In an *IMEM Trading Interval* in which either:

- (a) *Upwards Dispatch Compensation Amounts* associated with *In-Day Dispatch Instructions* issued under Section 3.5.1 are calculated for *IMEM Resources* but there are no *IMEM Customers* with *Downwards Customer Variation Quantities* or *IMEM Resources*

with *Downwards Resource Variation Quantities*; or

- (b) *Downwards Dispatch Compensation Amounts* associated with *In-Day Dispatch Instructions* issued under Section 3.5.1 are calculated for *IMEM Resources* but there are no *IMEM Customers* with *Upwards Customer Variation Quantities* or *IMEM Resources* with *Upwards Resource Variation Quantities*;

The *IMEM Operator* shall recalculate, with no *Variation Tolerance*, the *Upwards* or *Downwards* (whichever is applicable) *Customer* and *Resource Variation Quantities* for all *IMEM Resources* and *IMEM Customers*, and use the recalculated quantities when determining *Upwards* and *Downwards Dispatch Compensation Recovery Rates* associated with *In-Day Dispatch Instructions* issued under Section 3.5.1 as set out in this Section 5.4.3, and the *Resource* and *Customer Dispatch Compensation Recovery Amounts* associated with *In-Day Dispatch Instructions* issued under Section 3.5.1 for each *IMEM Resource* and *IMEM Customer* as set out in Section 5.4.4.

5.4.3.4 The *Dispatch Compensation Recovery Rate* associated with *In-Day Dispatch Instructions* issued under Section 3.5.2 is determined as the ratio of:

- (a) The sum of the *Upwards Dispatch Compensation Amounts* and *Downwards Dispatch Compensation Amounts* associated with *In-Day Dispatch Instructions* issued under Section 3.5.2 of all *IMEM Resources*; and
- (b) The total *IMEM Adjusted Metered Quantities* of all *IMEM Customers*.

5.4.4 Trading Interval Dispatch Compensation Recovery Amounts

5.4.4.1 The *IMEM Operator* shall determine the *Resource Dispatch Compensation Recovery Amount* for each *IMEM Resource* in each *IMEM Trading Interval* as the sum of:

- (a) The product of the *Downwards Dispatch Compensation Recovery Rate* associated with *In-Day Dispatch Instructions* issued under Section 3.5.1 and its *Upwards Resource Variation Quantity*; and

(b) The product of the *Upwards Dispatch Compensation Recovery Rate* associated with *In- Day Dispatch Instructions* issued under Section 3.5.1 and its *Downwards Resource Variation Quantity*.

In-Day Dispatch Instructions issued under Section 3.5.2 and its *IMEM Adjusted Metered Quantity*.

5.4.4.2 The *IMEM Operator* shall determine the *Customer Dispatch Compensation Recovery Amount* for each *IMEM Customer* in each *IMEM Trading Interval* as the sum of:

(a) The product of the *Downwards Dispatch Compensation Recovery Rate* associated with *In-Day Dispatch Instructions* issued under Section 3.5.1 and its *Upwards Customer Variation Quantity*;

(b) The product of the *Upwards Dispatch Compensation Recovery Rate* associated with *In- Day Dispatch Instructions* issued under Section 3.5.1 and its *Downwards Customer Variation Quantity*; and

(c) The product of the *Dispatch Compensation Recovery Rate* associated with

5.4.5 Total Trading Interval Amounts

5.4.5.1 The *IMEM Operator* shall determine the *Customer Interval Settlement Amount* for each *IMEM Customer* in each *IMEM Trading Interval* as its *Customer Supply Amount* less its *Customer Dispatch Compensation Recovery Amount*.

5.4.5.2 The *IMEM Operator* shall determine the *Resource Interval Settlement Amount* for each *IMEM Resource* in each *IMEM Trading Interval* as its *Resource Supply Amount* less its *Resource Dispatch Compensation Recovery Amount*.

5.4.6 Billing Period Settlement Amounts

The *IMEM Operator* shall determine the *Settlement Amount* for each *IMEM Trading Participant* in each *Billing Period* as the sum of all *Resource Interval Settlement Amounts* and *Customer Interval Settlement Amounts* in the *Billing Period*, less:

(a) Any Market Fees; and

(b) Any allocation of Unrecovered Resource Energy Settlement Amounts.

5.5 BILLING AND PAYMENT

5.5.1 Preliminary Settlement Statements

5.5.1.1 A Preliminary Settlement Statement:

- (a) Shall set out the settlement calculations for an *IMEM Trading Participant* and the *Settlement Amount* payable by or to that *IMEM Trading Participant* for the relevant *Billing Period*;
- (b) Shall include supporting data for all amounts payable sufficient to enable each *IMEM Trading Participant* to audit the calculation of the amount payable by or to that *IMEM Trading Participant* ; and
- (c) Is issued for purposes of audit and review by the *IMEM Trading Participant*, and is not binding for invoicing, collection and payment purposes.

5.5.1.2 If an *IMEM Trading Participant* determines that there is an error or discrepancy in the *Preliminary Settlement Statement*, it shall notify the *IMEM Operator* of the error or discrepancy.

5.5.1.3 If notified by an *IMEM Trading Participant* under Clause 5.5.1.2, the *IMEM*

Operator shall review the calculations used to produce the *Preliminary Settlement Statement* to verify the errors or discrepancies reported.

5.5.1.4 If the *IMEM Operator* determines that there is an error or discrepancy in any *Preliminary Settlement Statement* that has already been issued, it shall ensure that the correction is reflected in the relevant *Final Settlement Statement*, provided that corrections requiring the input of an external party are received by the *IMEM Operator* at least two (2) *Business Days* before the deadline of the issuance of the *Final Settlement Statements*. If the *IMEM Operator* receives notice of an error, discrepancy or correction of an earlier identified error after their relevant deadlines, the correction will be reflected as an adjustment in the settlement statements of the succeeding *Billing Period*.

5.5.2 Final Settlement Statements

5.5.2.1 A Final Settlement Statement:

- (a) Shall set out the settlement calculations for an *IMEM Trading Participant* and the *Settlement Amount* payable by or to

that *IMEM Trading Participant* for the relevant *Billing Period*;

- (b) Shall include supporting data for all amounts payable sufficient to enable each *IMEM Trading Participant* to audit the calculation of the amount payable by or to that *IMEM Trading Participant* ; and
- (c) Shall be the basis for invoicing, collection and payment, and is binding for those purposes.

5.5.2.2 Subject to Clause 5.5.2.3, if the *IMEM Operator* determines that there is an error or discrepancy in any *Final Settlement Statement* that has already been issued, it shall ensure that the correction is reflected in the next *Final Settlement Statement* to be issued to that *IMEM Trading Participant*.

5.5.2.3 Subject to Clause 4.4.5.5, if the error or discrepancy in Clause 5.5.2.2 requires input data from an external party, then the relevant responsible party shall submit the correct data within two (2) *Business Days* of the issuance of the *Final Settlement Statement* in which the adjustment is to be included. Otherwise,

the correction shall be reflected in the *Final Settlement Statement* for the following *Billing Period*.

5.5.3 Disputes on Settlement Statements

5.5.3.1 If an *IMEM Trading Participant* determines that there is an error in a *Final Settlement Statement* or its supporting data, and, despite notice to the *IMEM Operator*, the same has not been corrected in accordance with Clause 5.5.2.2 or Clause 5.5.2.3, an *IMEM Trading Participant* may lodge a *Dispute* with the *IMEM Operator* in respect of any amount stated in the *Final Settlement Statement* or its supporting data.

5.5.3.2 Disputes lodged under Clause 5.5.3.1 must be lodged within twelve (12) calendar months of the date of issuance of the relevant *Final Settlement Statement*.

5.5.3.3 *IMEM Trading Participants* and the *IMEM Operator* shall settle settlement *Disputes* in accordance with Section 8.3.

5.5.4 Payments

5.5.4.1 The *IMEM Trading Participants* are responsible to pay the *Settlement Amounts* to the *IMEM Operator* and

the same shall be paid by the *IMEM Operator* to the *IMEM Trading Participants* to whom payments are due.

5.5.4.2 Where the *Settlement Amount* for an *IMEM Trading Participant* is a negative amount, the *IMEM Trading Participant* shall pay that amount to the *IMEM Operator*.

5.5.4.3 Where the *Settlement Amount* for an *IMEM Trading Participant* is a positive amount, the *IMEM Operator* shall pay that amount to the *IMEM Trading Participant*.

5.5.4.4 Each *IMEM Trading Participant* shall pay to the *IMEM Operator* all amounts due under a *Final Settlement Statement* for a *Billing Period* in cleared funds, no later than 1500H of the twenty-fifth day of the month following the end of the *Billing Period*, without need of prior demand, whether or not the *IMEM Trading Participant* disputes the amount payable.

5.5.4.5 Subject to Section 5.5.5, the *IMEM Operator* shall pay to each *IMEM Trading Participant* all amounts payable under a *Final Settlement Statement* not later than 1500H on the third *Business Day* after the date specified in Clause 5.5.4.4.

5.5.4.6 If any of the stated due dates in this Section 5.5.4 do not fall on a *Business Day*, the due date shall be the next *Business Day*.

5.5.5 Default

5.5.5.1 A *Default* event occurs when the amounts collected by the *IMEM Operator* under Clause 5.5.4.4, including all amounts drawn from the prudential security, is insufficient to pay for the aggregate settlement amounts due.

5.5.5.2 When a *Default* event occurs, the *IMEM Operator* shall:

- (a) Collect the total amount of *Market Fees* due for the *Billing Period* from the amounts collected; and
- (b) Pay each *IMEM Trading Participant* from the remaining amounts collected in the proportion that the amount due to them for the *Billing Period* bears to the total amount due to all *IMEM Trading Participants* for that *Billing Period*; and
- (c) Pay the remainder of the monies due to affected *IMEM Trading Participants* not later than 1500H on the third

Business Day after the collection of the shortfall from the defaulting *IMEM Trading Participant*.

be prioritized over the principal amount of the outstanding obligation in the distribution of payment.

5.5.5.3 *IMEM Operator* shall issue a *Notice of Default* to the defaulting *IMEM Trading Participant* within one (1) *Business Day* of the *Default* event occurring. The *Notice of Default* shall specify the total amount due including the default interest calculated under Clause 5.5.6.5. The defaulting *IMEM Trading Participant* shall pay the total amount specified in the *Notice of Default* in cleared funds no later than one (1) *Business Day* after the receipt of the *Notice of Default* to avoid further default interest charges.

5.5.5.4 If the defaulting *IMEM Trading Participant* fails to pay the total amount specified in the *Notice of Default* by the deadline specified in Clause 5.5.5.3, the *IMEM Operator* shall issue a *Suspension Notice* as soon as practicable.

5.5.5.5 The *IMEM Operator* shall not be liable for any delays in the remittances to *IMEM Trading Participants* due to shortfall or delay in the payments from the defaulting *IMEM Trading Participants*.

5.5.5.6 The amount of the default interest shall

5.5.6 *Conditions of Payment*

5.5.6.1 All payments under Section 5.5.4 shall be made in cleared funds on or before the due date.

5.5.6.2 The *IMEM Operator* shall ensure that an electronic funds transfer facility is provided and made available for all *IMEM Trading Participants* for the purposes of facilitating collection and payment of the *Settlement Amounts* due for all *IMEM Transactions*.

5.5.6.3 Unless otherwise authorized by the *IMEM Operator*, all *IMEM Trading Participants* shall use the electronic funds transfer facility provided by the *IMEM Operator* under Clause 5.5.6.2 for the settlement of *IMEM transactions* and the payment of *Market Fees*.

5.5.6.4 All relevant bank charges shall be to the account of the *IMEM Trading Participant*.

5.5.6.5 If an *IMEM Trading Participant* fails to pay in full the amount due by the stated due date, the *IMEM Trading Participant* shall be charged default interest on the unpaid amount at

the rate equivalent to the prevailing lending rate published by the *Bangko Sentral ng Pilipinas* (BSP) plus 300 basis points or a fixed rate of 8% per annum whichever is higher for each day of delay until fully paid. Where no interest rate is published or made available for a particular day, the most recent interest rate published or made available shall be used. The default interest shall be reckoned from the first day such amount is due and payable, up to and including the date on which payment is made, with interest computed based on a 360- day year.

5.5.6.6 *IMEM Trading Participants* shall promptly pay all obligations whether or not the amounts payable are the subject of a *Dispute*.

5.5.6.7 When the *IMEM Operator* believes that the *IMEM* participant is incapable to comply with the requirements under this Section 5.5 or the requirements of Section 5.6, the *IMEM Operator* may exercise its right to immediately demand payment for the settlement amounts, even prior to the deadline of payment by the *IMEM* participant under Clause 5.5.4.4.

5.6 PRUDENTIAL SECURITY

5.6.1 Overview

5.6.1.1 *Prudential Security Requirements* are imposed to ensure the effective operation of the *IMEM* by providing a level of comfort that *IMEM Trading Participants* will meet their obligations to make payments as required under the *IMEM Rules*.

5.6.1.2 Subject to Clause 5.6.1.3, an *IMEM Trading Participant* shall provide and maintain a prudential security complying with the requirements of this Section 5.6.

5.6.1.3 The *IMEM Operator* may exempt an *IMEM Trading Participant* from the requirement to provide a prudential security under Clause 5.6.1.1, if the *IMEM Operator* believes that:

- (a) It is likely that the amount payable by the *IMEM Operator* to that *IMEM Trading Participant* under the *IMEM Rules* will consistently exceed the amount payable to the *IMEM Operator* by that *IMEM Trading Participant* under the *IMEM Rules* in respect of that *Billing Period*; or
- (b) It is unlikely that the *IMEM Trading Participant* will be required to pay any amounts to the *IMEM*

Operator.

5.6.1.4 If, under Clause 5.6.1.3, the *IMEM Operator* has exempted an *IMEM Trading Participant* from the requirement to provide a prudential security under Clause 5.6.1.1, then the *IMEM Operator* may vary or cancel the exemption at any time by giving written notice of the variation or cancellation of the exemption to the *IMEM Trading Participant*.

5.6.2 Amount and Form of Prudential Security

5.6.2.1 Subject to Clause 5.6.1.3, each *Pending IMEM Member* and *Mandatory Participant* shall provide its expected *Average Exposure* to the *IMEM Operator* in respect of the previous six (6) *Billing Periods*, or such other information in accordance with the relevant *IMEM Manual*, which shall be the basis of the *Prudential Security Requirements* of the *IMEM Trading Participant* or *Pending IMEM Member*.

5.6.2.2 The *IMEM Operator* shall provide written confirmation of acceptance of the submission in Clause 5.6.2.1 to the *IMEM Trading Participant* or *Pending IMEM Member*. For *Pending IMEM Members*, the submission

is a prerequisite to be registered as an *IMEM Member*.

5.6.2.3 The *IMEM Operator* may review and change its determination of an *IMEM Trading Participant's Average Exposure* at any time, provided that any change to an *IMEM Trading Participant's Average Exposure* will apply no earlier than thirty (30) days from the date that the *IMEM Operator* notifies the *IMEM Trading Participant* of the change.

5.6.2.4 Each *IMEM Trading Participant* shall ensure that at all times the aggregate undrawn and unclaimed amounts of current and valid prudential security held by the *IMEM Operator* in respect of that *IMEM Trading Participant* is not less than that *IMEM Trading Participant's Average Exposure*.

5.6.2.5 The prudential security provided by an *IMEM Trading Participant* under this Section 5.6 shall be in cash.

5.6.3 Exposure Monitoring and Margin Calls

5.6.3.1 Regularly, the *IMEM Operator* shall monitor its *Actual Exposure* to each *IMEM Trading Participant* in respect of previous *Billing Periods* under the *IMEM Rules*.

- 5.6.3.2 Before the end of each calendar year, the *IMEM Operator* shall review the *Average Exposure* of the *IMEM Trading Participant*. If the *IMEM Operator* reasonably considers that the amount of prudential security being maintained by any *IMEM Trading Participant* has become inadequate or exceeds the *Average Exposure*, considering the level of its transactions in the *IMEM*, it shall notify the *IMEM Trading Participant* of the discrepancy and shall require to post an additional prudential security in the event that amount of security is inadequate.
- 5.6.3.3 The *IMEM Trading Participant* shall post the additional amount of prudential security determined under Clause 5.6.3.2 no later than the date required by the *IMEM Operator*.
- 5.6.3.4 If the amount of the prudential security maintained by an *IMEM Trading Participant* has exceeded the *Average Exposure* in six (6) consecutive *Billing Periods*, the *IMEM Trading Participant* may opt to refund the excess amount from the *IMEM Operator*; provided that no default incident occurred during same period.
- 5.6.3.5 If, at any time, the *IMEM Operator's Actual Exposure* to an *IMEM Trading Participant* exceeds the amount of the prudential security maintained by that *IMEM Trading Participant*, the *IMEM Operator* shall make a *Margin Call* by giving notice to the *IMEM Trading Participant*. The *IMEM Trading Participant* must satisfy the *Margin Call* within the period determined under Clause 5.6.3.7 by providing additional prudential security sufficient to the required amount or prepaying the amount of payable sufficient to reduce the *Actual Exposure*.
- 5.6.3.6 The prepayment under Clause 5.6.3.5 shall be applied to the settlement amount in the closest *Billing Period* until fully consumed.
- 5.6.3.7 The *IMEM Trading Participant* shall satisfy the *Margin Call* under Clause 5.6.3.5 not later than the end of banking hours on the third *Business Day* to occur after receipt of the *Margin Call*.
- 5.6.3.8 If an *IMEM Trading Participant* fails to satisfy a *Margin Call* under Clause 5.6.3.7, or fails to provide adequate prudential security under Clause 5.6.3.3, then the *IMEM Operator* shall give the *IMEM Trading Participant* a *Suspension Notice*.

5.6.3.9 If, even without a *Margin Call*, the *IMEM Trading Participant* becomes aware that its prudential security has deteriorated and its aggregate value has become less than its *Average Exposure*, it shall immediately replace or replenish the same to the required amount.

5.6.4 Drawdown of Prudential Security

5.6.4.1 In the event that an *IMEM Trading Participant* fails to pay its obligations by the due date, the *IMEM Operator* may immediately draw on the prudential security provided by the *IMEM Trading Participant*, without need of prior consent.

5.6.4.2 If the *IMEM Operator* draws down on the prudential security provided by an *IMEM*

Trading Participant, the *IMEM Operator* shall notify the *IMEM Trading Participant* of the date and amount of the drawdown within one (1) Business Day after the drawdown.

5.6.4.3 The *IMEM Trading Participant* shall replenish its prudential security by the amount specified in the drawdown notice not later than the end of banking hours on the second *Business Day* after the *IMEM Operator* notified them under Clause 5.6.4.2.

5.6.4.4 If an *IMEM Trading Participant* fails to replenish its prudential security deposit under Clause 5.6.4.3 then the *IMEM Operator* shall give the *IMEM Trading Participant* a *Suspension Notice*.

Chapter VI

Market Information

6.1 MARKET INFORMATION

6.1.1 Provision of Information

6.1.1.1 The *IMEM Operator* shall:

- (a) Disseminate information which it acquires pursuant to the *IMEM Operator's* functions in accordance with its rights, powers and obligations in a manner which promotes ease of entry into and the orderly operation of the *IMEM*; and
- (b) Protect such information from any use or access contrary to the provisions of the *IMEM Rules*.

6.1.1.2 Pursuant to Clause 6.1.1.1, the *IMEM Operator* shall specifically perform the following:

- (a) Maintain, adhere to and publish an *IMEM Manual* to disseminate and protect information;
- (b) Maintain and publish a data catalogue, listing each type of market information and

document produced or exchanged in accordance with the *IMEM Rules*, and setting out the timing and frequency of publication or transfer for each type of information and document; and

- (c) Maintain and publish electronic communication procedures under which information shall be exchanged between the *IMEM Operator*, the *Mindanao System Operator* and *IMEM Members*, as set out in Section 6.1.2.

6.1.1.3 The *IMEM Operator*, the *Mindanao System Operator* and *IMEM Members* shall publish and transfer market information in accordance with the procedures and timetable described in Clause 6.1.1.2.

6.1.1.4 In addition to any specific obligation of the *IMEM Operator* under the *IMEM Rules* to provide information, the *IMEM Operator* shall, upon request, make available

to *IMEM Members* any information concerning the operation of the *IMEM* provided that said information is not confidential or commercially sensitive. The *IMEM Operator* may charge a fee reflecting the cost of providing such information.

6.1.1.5 The *IMEM Operator* shall make available to the *ERC* all pertinent information which would help the latter effectively perform its regulatory function.

6.1.1.6 The *IMEM Operator* shall make available to the *DOE* all pertinent information which would help the latter effectively perform its energy policy-making function.

6.1.1.7 The *IMEM Operator* shall provide the *ERC* and *DOE* all necessary facilities to effectively monitor the operation of the *IMEM*, in real-time and for review purposes.

6.1.1.8 The *IMEM Operator* shall retain all information provided to it under the *IMEM Rules* for at least five (5) years in a form it deems appropriate for reasonable access as may be required by the *ERC* or the *DOE*.

6.1.2 Electronic Information Exchange

6.1.2.1 Where these *IMEM Rules* specify, require or

otherwise contemplate the regular and frequent transfer of information between any of the *IMEM Operator*, the *Mindanao System Operator* and *IMEM Members*, such transfer shall be provided by means of an electronic communication system unless the *IMEM Rules* specify otherwise.

6.1.2.2 Information transferred by means of an electronic communication system shall be in accordance with the templates included in the said electronic communication system and the electronic communication procedures published under Clause 6.1.1.2 (c).

6.1.2.3 As far as practicable, the *IMEM Operator* shall incorporate a binding acknowledgment receipt in its electronic communication systems which would establish the time the pertinent information is actually received.

6.1.3 Market Information Website

6.1.3.1 The *IMEM Operator* shall regularly maintain a *Market Information Website* in which it will publish information for access by *IMEM Members* or for the general public.

6.1.3.2 Information is deemed to be published by the *IMEM Operator* when the

information is posted on the *Market Information Website* and made available to the general public.

6.1.3.3 The *IMEM Operator* shall publish information on the *IMEM Demand* and *IMEM Prices* on the *Market Information Website*.

6.1.3.4 The *IMEM Operator* shall maintain and publish a list of all *IMEM Members* that identifies:

- (a) Current, former and suspended *IMEM Members*;
- (b) Categories of *IMEM Members*; and
- (c) Dates of registration, de-registration and change of status.

6.1.3.5 The *IMEM Operator* shall provide hard copies of any information published under this Section 6.1.3 upon request and reimbursement of cost to produce the same. The *IMEM Operator* may further evaluate the necessity of reimbursement of cost from the requesting entity.

the confidentiality status for each type of market information and document produced or exchanged in accordance with the *IMEM Rules*.

6.2.1.2 All *IMEM Members*, the *IMEM Operator* and the *Mindanao System Operator*:

(a) Shall not disclose confidential information to any person or entity except as permitted by the *IMEM Rules*;

(b) Shall only use or reproduce confidential information for the purpose for which it was disclosed or for a purpose consistent with the *IMEM Rules*;

(c) Shall only allow access to confidential information to those persons for whom access is necessary;

(d) Shall use all reasonable endeavours to prevent unauthorized access to confidential information which is in its possession or control; and

(e) Shall ensure that any person or entity to whom it discloses confidential information observes the provisions of this

6.2 CONFIDENTIALITY OF INFORMATION

6.2.1 Confidentiality

6.2.1.1 The *IMEM Operator* shall maintain and publish a record of

Section 6.2 in relation to that information.

6.2.2 Exceptions

6.2.2.1 This Section 6.2 does not prevent the disclosure of information (confidential or otherwise) by any persons or entities:

- (a) If the relevant information is at that time generally and publicly available other than as a result of a breach of this Section 6.2; or
- (b) With the written consent of the person or persons who provided the relevant information under the *IMEM Rules*; or
- (c) To the *ERC, DOE, NEA, MinDA* or any other government authority having jurisdiction over an *IMEM Member*, pursuant to the *IMEM Rules* or otherwise; or
- (d) By or on behalf of an *IMEM Member* or the *IMEM Operator* for the purposes of or in connection with:
 - (i) Complying with the *IMEM Rules*, or advising an *IMEM Member* or the *IMEM Operator* in relation to the *IMEM Rules*; or

- (ii) Legal proceedings, arbitration, expert determination or other dispute resolution mechanisms relating to the *IMEM*, or advising an entity in relation thereto; or

- (iii) Financing arrangements, investment or a disposal of assets;

Provided that the person receiving the information undertakes in writing not to further disclose that information to any other person; or

- (e) For the purposes of:
 - (i) The operation, security and planning of the *Mindanao Power System* in accordance with the *Grid Code*; or
 - (ii) Protecting the safety of personnel or equipment; or
 - (iii) Complying with any instrument (including any contractual instrument or understanding governing the relationship

between the parties);

6.2.2.2 Any entity who receives information disclosed in accordance with Clause 6.2.2.1:

- (a) Shall not disclose the information to any person, except as provided by the *IMEM Rules*; and
- (b) Shall only use the information for the purposes for which it was disclosed under Clause 6.2.2.1.

6.2.2.3 In the case of a disclosure under Clause 6.2.2.1(c), the disclosing party shall take appropriate precautions to ensure that the recipient keeps the information confidential in accordance with the provisions of this Section 6.2 and only uses the information for the purposes for which it was disclosed.

6.2.3 Indemnity and Survival

6.2.3.1 Each *IMEM Member* indemnifies the *IMEM Operator* against any claim, action, damage, loss, liability, expense or outgoing which the *IMEM Operator* pays, suffers, incurs or is liable for in respect of any breach of this Section 6.2 by that *IMEM Member* or any officer, agent or employee of that *IMEM Member*, provided that no *IMEM Member* shall be liable for any of the foregoing to the extent they arise from the gross negligence or wilful misconduct of the *IMEM Operator*.

6.2.3.2 Notwithstanding any other provision of the *IMEM Rules*, a person shall continue to comply with this Section 6.2 after that person has ceased to be an *IMEM Member*.

Chapter VII

System Security and Market Suspension

7.1 MARKET SUSPENSION

7.1.1 Market Suspension and Intervention

7.1.1.1 The *ERC* may declare the operation of the *IMEM* to be suspended in any situation which competent governmental authorities declare to be a local, national, or international emergency, and which will render the *IMEM* ineffective.

7.1.1.2 The *IMEM Operator* and the *Mindanao System Operator* may intervene in the operation of the *IMEM* for any *IMEM Interval* for which:

- (a) The *Mindanao System Operator* has declared an *IMEM Emergency* under Clause 7.2.1.1 or Clause 7.3.2.1; or
- (b) The *IMEM Operator* has notified a *Force Majeure Event* under Clause 7.4.2.2.

7.1.1.3 Regardless of whether the beginning or end of an *IMEM Emergency* or *Force Majeure Event* is declared or notified before, at, or after the actual beginning or end of the event, the

IMEM Operator and the *Mindanao System Operator* may declare an *IMEM Intervention* in any *IMEM Interval* to which the *IMEM Emergency* or *Force Majeure Event* applies.

7.1.1.4 In the event of market suspension *IMEM Members* and *Pending IMEM Members* shall follow all directions of the *ERC*. If the *ERC* makes no specific direction, *IMEM Members* and *Pending IMEM Members* shall follow the same protocols as are in place for *IMEM Intervention*.

7.1.1.5 In the event of an *IMEM Intervention*:

- (a) The *Mindanao System Operator* shall be responsible for giving directions to and coordinating the actions of *IMEM Network Service Providers*;

- (b) *IMEM Network Service Providers* are responsible for giving directions to and coordinating the actions of *IMEM Trading Participants* directly connected to

their system; and

- (c) The *Mindanao System Operator* and the *IMEM Operator* shall coordinate their actions to restore normal operation of the *Mindanao Power System* and the *IMEM*.

7.1.1.6 *IMEM Trading Participants* acknowledge that:

- (a) The operation of the *Mindanao Power System* involves risks to public safety and property and therefore accepts that the provisions of this Chapter 7 are appropriate and reasonable;
- (b) Their business interests will be subordinate to the need for the *IMEM Operator* and *Mindanao System Operator* to implement emergency procedures in accordance with Section 7.2.1 and to make declarations and issue emergency directions under Section 7.2.2 in an emergency; and
- (c) Subject to (a), the *Mindanao System Operator* shall issue emergency directions, and shall report such action to the *IMEM Operator*.

7.1.1.7 Nothing in this Chapter 7 shall limit the ability of the *Mindanao System Operator* or *IMEM Operator* to take any action or procedure under this Chapter 7 which either the *Mindanao System Operator* or the *IMEM Operator* considers in their absolute discretion to be necessary to protect persons, property, or the environment.

7.1.1.8 Notwithstanding any other provision contained in these *IMEM Rules*, the *DOE* or the *ERC* may investigate or require explanations regarding any market suspension or *IMEM Intervention*.

7.1.2 Exemption from Liability due to Market Suspension and Intervention

7.1.2.1 In the event of market suspension or *IMEM Intervention*, any action of the *IMEM Operator*, the *Mindanao System Operator* or an *IMEM Trading Participant* in compliance with the emergency procedures provided in this Chapter 7 shall not constitute a breach of the *IMEM Rules*, except in the case of an act committed in bad faith or gross negligence.

7.1.2.2 Neither the *IMEM Operator*, nor the *Mindanao System Operator*, nor any *IMEM Network Service Provider*

shall be liable for any loss incurred by an *IMEM Trading Participant* as a result of any action taken by the *Mindanao System Operator* or *IMEM Operator* under this Chapter 7.

7.1.3 Declaration of Market Suspension and Intervention

7.1.3.1 When the *ERC* declares the suspension of the *IMEM*, the *ERC* shall notify the *IMEM Operator* as soon as possible.

7.1.3.2 When the *IMEM Operator* is notified that the *IMEM* has been suspended, the *IMEM Operator* shall notify *IMEM Members* and *Pending IMEM Members* as soon as possible.

7.1.3.3 The *IMEM* is deemed suspended at the start of the *IMEM Interval* in which the *ERC* advises the *IMEM Operator* that the *IMEM* is suspended.

7.1.3.4 Following a declaration by the *ERC* under Clause 7.1.1.1, the *IMEM* is to remain suspended until the *ERC* notifies the *IMEM Operator* that *IMEM* operations may resume.

7.1.3.5 When the *IMEM Operator* is notified that *IMEM* operations may resume, the *IMEM Operator* shall promptly notify *IMEM Members* and *Pending IMEM Members* of the resumption, and of the

IMEM Interval in which *IMEM* operations will resume.

7.1.3.6 The *IMEM* is deemed to resume at the start of the *IMEM Interval* which the *IMEM Operator* has notified to *IMEM Members* and *Pending IMEM Members*.

7.1.3.7 Notwithstanding the suspension, the *Mindanao System Operator* may issue directions in the event of an *IMEM Emergency* to *IMEM Members* and *Pending IMEM Members*.

7.1.3.8 When the *IMEM Operator* determines that it needs to intervene in the operation of the *IMEM*, it shall notify the *Mindanao System Operator* and *IMEM Trading Participants* as soon as possible.

7.1.4 Effect of Market Suspension and Intervention

7.1.4.1 During an *IMEM Interval* in which the *IMEM* is suspended, the *IMEM Rules* will continue to apply with such modifications as the *IMEM Operator* reasonably determines to be necessary, taking into consideration the circumstances and conditions giving rise to the suspension.

7.1.4.2 Notwithstanding the suspension, the *IMEM Operator* may declare any *IMEM Interval* in which

the *IMEM* is suspended to be an *IMEM Trading Interval*, in accordance with the relevant *IMEM Manual*.

7.1.4.3 In the event of *IMEM Intervention*, the *IMEM Rules* will continue to apply, and all *IMEM* processes shall remain in place, except that the *Mindanao System Operator* is not required to consider the *IMEM Merit Order Table* when issuing *In-Day Dispatch Instructions* for *IMEM Trading Intervals* affected by the *IMEM Intervention*.

7.1.4.4 During any *IMEM Trading Interval* in which the *IMEM* is suspended, or in which *IMEM Intervention* has occurred, the *IMEM Operator* shall determine the *Settlement Quantities* and *Settlement Amounts* in accordance with Chapter 5 of these *IMEM Rules*.

7.1.4.5 If the *IMEM Operator* reasonably believes that, due to the circumstances of the market suspension or *IMEM Intervention*, it is inappropriate to apply the pricing and settlement provisions of the *IMEM Rules* to a particular *IMEM Trading Interval*, the *IMEM Operator* shall determine appropriate alternate mechanisms for pricing and settlement in those *IMEM Trading Intervals*, and shall seek

approval of same from the *IGC* and the *ERC*.

7.1.4.6 If the *IMEM Operator* is seeking approval to apply alternate pricing and settlement mechanisms for an *IMEM Trading Interval*, and the alternate pricing and settlement mechanisms have not been approved in time to allow the *IMEM Operator* to meet the settlement timetable for the affected *Billing Period*, the *IMEM Operator* shall issue *Settlement Statements* for the affected *Billing Period* excluding any amounts for the affected *IMEM Trading Interval*.

7.1.5 Market Suspension Reports

7.1.5.1 Within ten (10) Business Days following a declaration of market suspension under Clause 7.1.1.1, the *IMEM Operator* shall prepare a market suspension report.

7.1.5.2 The *Mindanao System Operator* shall submit to the *IMEM Operator* an assessment of the impact of the market suspension to the *Mindanao Grid* within seven (7) *Business Days* following a declaration of market suspension under Clause 7.1.1.1.

7.1.5.3 The market suspension report prepared by the *IMEM Operator* shall include:

- (a) The grounds for suspension;
- (b) The duration of suspension;
- (c) The actions taken to address the events that led to suspension;
- (d) An assessment of the impact of the market suspension to the *IMEM*; and
- (e) The assessment of the impact of the market suspension to the *Mindanao Grid* submitted by the *Mindanao System Operator* in accordance with Clause 7.1.5.2.

7.1.5.4 A copy of the market suspension report shall be provided to the *IGC*, the *ERC*, and the *DOE* upon completion of the report.

7.1.5.5 A copy of the market suspension report shall be provided to *IMEM Members* and other interested persons on request.

7.1.5.6 When requested, the *IMEM Operator* shall provide the *DOE* any other report regarding the market suspension as early as practicable.

7.1.6 Intervention Reports

7.1.6.1 Within ten (10) *Business Days* following any

IMEM Intervention under Clause 7.1.1.2, the *IMEM Operator* shall prepare an *IMEM Intervention* report.

7.1.6.2 The *Mindanao System Operator* shall submit to the *IMEM Operator* an assessment of the impact of the *IMEM Intervention* to the *Mindanao Grid* within seven (7) *Business Days* following a declaration of an *IMEM Intervention* under Clause 7.1.1.2.

7.1.6.3 The *IMEM Intervention* report prepared by the *IMEM Operator* shall include:

- (a) The grounds for *IMEM Intervention*;
- (b) The duration of *IMEM Intervention*;
- (c) The actions taken to address the events that led to *IMEM Intervention*;
- (d) An assessment of the impact of the *IMEM Intervention* to the *IMEM*; and
- (e) The assessment of the impact of the *IMEM Intervention* to the *Mindanao Grid* submitted by the *Mindanao System Operator* in accordance with Clause 7.1.6.2.

7.1.6.4 A copy of the *IMEM Intervention* report shall

be provided to the *IGC*, the *ERC*, and the *DOE* upon completion of the report.

7.1.6.5 A copy of the *IMEM Intervention* report shall be provided to *IMEM Members* and other interested persons on request.

7.1.6.6 When requested, the *IMEM Operator* shall provide the *DOE* any other report regarding the market intervention as early as practicable.

7.2 EMERGENCIES

7.2.1 Declaration of Emergencies

7.2.1.1 The *Mindanao System Operator* may declare an *IMEM Emergency* when it determines the existence of a situation which:

- (a) Has an adverse material effect on electricity supply, or which poses as a significant threat to system security in accordance with Clause 7.3.2.1; and
- (b) The *Mindanao System Operator* cannot address without significant departure from either the *Day-Ahead IMEM Schedules* of the *IMEM Resources* or the *IMEM Merit Order Table* as further described in

the relevant *IMEM Manual*.

7.2.1.2 An *IMEM Emergency* may include:

- (a) A *Mindanao Power System* disturbance due to an outage in the *Mindanao Power System*;
- (b) A significant environmental phenomenon, including weather, storms or fires which are likely to or are significantly affecting the *Mindanao Power System*;
- (c) *Material* damage to the *Mindanao Power System*; and
- (d) Any other situation in which the *Day-Ahead IMEM Schedules* of *IMEM Resources* or *IMEM Merit Order Table* cannot be implemented.

7.2.1.3 An *IMEM Member* shall notify the *Mindanao System Operator* as soon as practicable of:

- (a) Any event or situation which, in the reasonable opinion of the *IMEM Member* is of a kind described in Clause 7.2.1.2; and
- (b) Any action taken by the *IMEM Member* under its safety

procedures or otherwise in response to that event or situation.

7.2.2 Actions in an IMEM Emergency

7.2.2.1 When an *IMEM Emergency* arises, the *Mindanao System Operator* shall:

- (a) Notify the *IMEM Operator* immediately;
- (b) Notify the *ERC* and the *DOE* as soon as reasonably practicable;
- (c) Notify the *IMEM Operator* and *IMEM Members*, as soon as reasonably practicable, of the commencement, nature, extent and expected duration of the *IMEM Emergency* and the way in which the *Mindanao System Operator* reasonably anticipates it will act in response to the *IMEM Emergency*; and
- (d) Notify the *IMEM Operator*, the *ERC*, the *DOE*, and *IMEM Members* of any material changes in the nature, extent and expected duration of an *IMEM Emergency*.

7.2.2.2 During an *IMEM Emergency* the *Mindanao System Operator* shall:

- (a) Identify the impact of the *IMEM Emergency* on system security in terms of the capability of generating units, transmission systems or distribution systems;
- (b) Identify and implement the actions required to end the *IMEM Emergency* and restore the *Mindanao Power System* to a satisfactory operating state;
- (c) In coordination with the *IMEM Operator*, issue emergency directions to *IMEM Members* as it reasonably considers necessary according to the emergency procedures, which may include, but need not be limited to, directions to:
 - (i) Switch off, or re-route, energy delivery from an *IMEM Generator*;
 - (ii) Call equipment into service;
 - (iii) Take equipment out of service;
 - (iv) Commence operation or maintain, increase or reduce active or reactive power output;

- (v) Curtail, shut down or otherwise vary operation or output;
 - (vi) Shed or restore load; and
 - (vii) Subject to Clause 7.3.2.5, perform or refrain from performing any other act or thing necessary for reasons of public safety or the security of the power system or undue injury to the environment;
- (d) Implement any load shedding in a manner consistent with the system security and reliability guidelines; and
- (e) To the extent possible, determine a rotating outage plan, and rotate any load shedding requirements.
- 7.2.2.3 For the avoidance of doubt, emergency directions issued by the *Mindanao System Operator* are deemed to be *IMEM Intervention* in the *IMEM*.
- 7.2.2.4 During an *IMEM Emergency*, each *IMEM Member* shall, subject to Clause 7.2.2.5:
- (a) Comply with this Chapter 7, safety procedures, and the emergency procedures applicable to the *IMEM Member* in the circumstances;
 - (b) Cooperate with the *IMEM Operator* and the *Mindanao System Operator* to enable the *Mindanao System Operator* to implement the emergency procedures;
 - (c) Promptly comply with any emergency direction given by the *Mindanao System Operator*, including emergency directions requiring the disconnection of equipment from a transmission system or distribution system for reliability purposes, unless the *IMEM Member* reasonably believes that an emergency direction poses a real and substantial risk of damage to its equipment, to the safety of its employees or the public, or of undue injury to the environment;
 - (d) Notify the *Mindanao System Operator* if it intends not to follow the emergency direction for any of the reasons described in Clause 7.2.2.3(c); and

- (e) Comply with the emergency direction to the fullest extent possible without causing the harms described in Clause 7.2.2.3(c).

7.2.2.5 Where there is conflict between these *IMEM Rules* and:

- (a) The requirements of an *IMEM Member's* safety procedures;
- (b) The emergency procedures applicable to the *IMEM Member* in the relevant circumstances;
- (c) Any procedures developed by the *Mindanao System Operator*, or
- (d) An emergency direction given by the *Mindanao System Operator*.
- (e) The *Mindanao System Operator* shall decide which of those requirements or part of those requirements is to prevail and advise the relevant *IMEM Trading Participants* accordingly.

threat to system security, the *Mindanao System Operator* shall immediately notify the *IMEM Trading Participants* and the *IMEM Operator*, including:

- (a) The nature and details of the threat;
- (b) The regions of the *Mindanao Power System* in which the threat to system security is likely to be located;
- (c) The general magnitude of the threat to system security;
- (d) An estimate of the likely duration thereof;
- (e) The likely shortfall in supply; and
- (f) The timeframe in which the *Mindanao System Operator* will likely need to declare an *IMEM Emergency* if the threat to system security does not subside.

7.3.1.2 If the *Mindanao System Operator* provides the notice with details of a significant threat to system security to *IMEM Trading Participants*, in accordance with Clause 7.3.1.1, the *Mindanao System Operator* may issue instructions

7.3 SYSTEM SECURITY THREATS

7.3.1 Notice of System Security Threat

7.3.1.1 Upon determination of the existence or the likely possibility of a significant

requiring each *IMEM Trading Participant* to provide best estimates of:

- (a) An *IMEM Generator's* plant availability to either increase or decrease generation; and
- (b) An *IMEM Customer's* ability to either increase or decrease load.

7.3.1.3 An *IMEM Trading Participant* shall provide information required in accordance with Clause 7.3.1.2 as soon as practicable and such provision does not breach Section 6.2.

7.3.1.4 The *Mindanao System Operator* shall treat all information provided to it by an *IMEM Trading Participant* under Clause 7.3.1.3 as confidential information and may only use that information for the following purposes:

- (a) Making a decision on whether to declare an *IMEM Emergency*;
- (b) Maintaining or re-establishing system security by issuing emergency directions under Clause 7.2.2.2(c); and
- (c) Regulatory reporting.

7.3.1.5 The *Mindanao System Operator* shall inform

IMEM Trading Participants and the *IMEM Operator* immediately when it reasonably considers that the significant threat to system security has been averted.

7.3.2 Response to System Security Threat

7.3.2.1 If the *Mindanao System Operator* has identified a significant threat to system security and it does not reasonably consider that sufficient time exists for the threat to subside without resulting in an *IMEM Emergency*, then the *Mindanao System Operator* shall declare an *IMEM Emergency* for the future *IMEM Intervals* which the threat to system security is projected to affect.

7.3.2.2 If the *Mindanao System Operator* has identified a significant threat to system security and reasonably considers that sufficient time exists for the threat to subside without resulting in an *IMEM Emergency*, the *Mindanao System Operator* shall:

- (a) Facilitate a market response to overcome the threat to system security; and
- (b) Advise the *IMEM Operator* and those *IMEM Trading Participants* who the

Mindanao System Operator considers would be required to take action or cease taking action if the threat to system security is not resolved without resulting in an *IMEM Emergency* of the likely nature of the actions it would be required to take or cease taking if an *IMEM Emergency* were declared.

7.3.2.3 The *IMEM Operator* may invite *IMEM Trading Participants* to revise or re-offer their physical capabilities submitted in accordance with Section 3.3 in respect of the relevant *IMEM Trading Intervals*.

7.3.2.4 For the avoidance of doubt, actions taken under this Section 7.3.2 do not constitute *IMEM Intervention* in the *IMEM*. *IMEM Intervention* can only occur after the *Mindanao System Operator* has declared an *IMEM Emergency*.

7.3.2.5 The *Mindanao System Operator* shall act in accordance with the *Grid Code* and *Distribution Code* at all times.

7.4 FORCE MAJEURE

7.4.1 Definition of Force Majeure Event

7.4.1.1 A *Force Majeure Event* is an event that:

- (a) Is not within the reasonable control, directly or indirectly, of the *IMEM Operator*, *Mindanao System Operator* and *IMEM Trading Participants*;
- (b) Cannot be prevented or removed, despite the exercise of reasonable diligence;
- (c) Has resulted in a reduction in the normal capacity of part or all of the *Mindanao Grid* during that *IMEM Interval*; and
- (d) Is likely to materially affect the operation of the *IMEM* or materially threaten system security.

7.4.1.2 The following are considered a *Force Majeure Event*:

- (a) Failure of communication facilities that makes it difficult for *IMEM Trading Participants* to submit their *IMEM Offers*; or for the *IMEM Operator* to receive *IMEM Offers* from *IMEM Trading Participants* or to transmit *IMEM Merit Order Tables* to the *Mindanao System Operator*;

- (b) Failure of *IMEM* systems, whether due to software or hardware failure, that makes the *IMEM Operator* unable to receive *IMEM Offers* or system information necessary and indispensable for the *IMEM*, or to generate feasible market results according to the *IMEM* timetable.
- (c) Any other event, circumstance or occurrence in nature of, or similar in effect to any of the foregoing.

7.4.2 Obligations of the *IMEM Operator* and *IMEM Trading Participants*

7.4.2.1 An *IMEM Trading Participant* shall notify the *IMEM Operator* of the

occurrence of any *Force Majeure Event*, as soon as reasonably possible.

7.4.2.2 The *IMEM Operator* shall notify all *IMEM Trading Participants* of the nature of the *Force Majeure Event* and the extent to which the *Force Majeure Event* affects the operation of the *IMEM* as soon as reasonably possible.

7.4.2.3 *IMEM Trading Participants* shall use all reasonable endeavours to:

- (a) Ensure that they do not exacerbate a *Force Majeure Event*; and
- (b) Mitigate the occurrence and effects of a *Force Majeure Event*.

Chapter VIII

Compliance, Audit and Dispute Resolution

8.1 COMPLIANCE

8.1.1 Enforcement and Compliance Officer

The *Enforcement and Compliance Officer* appointed pursuant to the *WESM Rules* shall be designated to investigate apparent or suspected non-compliance with the *IMEM Rules*.

8.1.2 Investigation of IMEM Members

8.1.2.1 If the *IMEM Operator* or *Mindanao System Operator* has reasonable grounds to believe that an *IMEM Member* is in breach or may commit breach of the *IMEM Rules*, the *IMEM Operator* or *Mindanao System Operator* shall notify the *IGC* of the suspected breach as soon as possible.

8.1.2.2 The *IGC* shall thereafter direct the *Enforcement and Compliance Officer* to investigate the alleged breach.

8.1.2.3 The *Enforcement and Compliance Officer* shall issue a written notice to the *IMEM Member* specifying the nature of the offense and require the *IMEM Member* to explain the alleged

offense with supporting documents within fifteen (15) Business Days from receipt of the notice. A copy of the notice shall be furnished to the *IGC* and the *ERC*.

8.1.2.4 The *Enforcement and Compliance Officer* may request for any additional information from the *IMEM Member* or any other party, as may be necessary to complete its investigation. Failure to provide such information within a reasonable time shall constitute a breach without need for further investigation and shall be subject to an applicable penalty. Failure of the party subject of the investigation to provide material information within a reasonable time shall render the party prima facie liable for the offense subject of the investigation.

8.1.2.5 In the conduct of its investigation, the *Enforcement and Compliance Officer* may request for conferences or visits to the *IMEM Member's* facilities and shall be allowed entry after due notice.

- 8.1.2.6 The *Enforcement and Compliance Officer* shall develop an investigation procedure for the guidance of the *IMEM Members* and shall publish the same on the *Market Information Website*.
- 8.1.2.7 Upon the conclusion of its investigation, the *Enforcement and Compliance Officer* shall submit to the *IGC* a report on its findings on whether or not a breach of the *IMEM Rules* was committed.
- 8.1.2.8 Upon receipt of the investigation report, the *IGC* shall review the findings of the *Enforcement and Compliance Officer* and act on the investigation report, either approving or disapproving the report or returning the same to the *Enforcement and Compliance Officer* for further investigation. If the *IGC* confirms that there is a breach of the *IMEM Rules*, it shall impose the appropriate sanctions as set out in Section 8.1.3 of these *IMEM Rules*.
- 8.1.2.9 As soon as practicable, the *IMEM Operator* shall provide the *DOE* a report summarizing the final decision of the *IGC* on the investigation report pursuant to Clause 8.1.2.8.

8.1.3 Sanctions

In case of a finding of breach, the *IGC* may impose financial or non-

financial penalties, or both. Non-financial penalties shall include issuance of warning or reprimand, suspension from participation in the *IMEM* or deregistration from the *IMEM*. The financial penalty shall be in the amount of PhP 10,000.00 for every breach committed. If a financial penalty is imposed, the *IMEM Operator* shall be authorized to deduct the financial penalty from any amounts payable to the *IMEM Member* in the *IMEM*.

- 8.1.4 Reporting of *IMEM Operator* and *Mindanao System Operator Breaches* If any *IMEM Member* has reasonable grounds to believe that the *IMEM Operator* or the *Mindanao System Operator* is in breach of the *IMEM Rules*, the *IMEM Member* shall notify the *DOE* and the *ERC* of the breach.

8.2 AUDIT

8.2.1 Testing of Market Software

8.2.1.1 The *IMEM Operator* shall ensure that any software used in relation to scheduling, billing and settlement shall be certified as correctly implementing the numerical calculations in the *IMEM Rules* by an independent reviewer appointed by the *PEM Board*.

8.2.1.2 The *IMEM Operator* shall publish software certificates provided by the independent reviewer on the *Market Information Website*.

- 8.2.2 Audit of the *IMEM Operator*, *Mindanao System Operator* and

Metering Services Providers

8.2.2.1 The *DOE* may require an independent third-party audit as often as may be necessary of the operations and processes related to the *IMEM* of the *IMEM Operator*, *Mindanao System Operator* or *Metering Services Provider* to be shouldered at the expense of the auditee.

8.2.2.2 The terms of reference of the independent audit shall be prepared by the *DOE* in consultation with the *ERC*, the *IMEM Operator*, the auditee and such other entities that the *DOE* may determine as necessary.

8.2.2.3 A copy of the report shall be provided to the *DOE*, *ERC*, the *IMEM Operator* and the auditee.

8.2.2.4 A summary report of non-confidential findings shall be published on the *Market Information Website*.

8.2.3 Audit of IMEM Trading Participants

8.2.3.1 The *DOE* may require an independent third-party audit no more than annually, of the market activities of any *IMEM Trading Participant*.

8.2.3.2 The terms of reference of the independent audit shall be prepared by the *IMEM Operator* in consultation with the *ERC*, the *DOE*, the auditee, and

such other entities that the *IMEM Operator* may determine as necessary.

8.2.3.3 Copies of the audit report shall be provided to the *DOE*, the *ERC*, the *IMEM Operator* and the auditee.

8.2.3.4 A summary report of non-confidential findings shall be published on the *Market Information Website*.

8.3 DISPUTE RESOLUTION

8.3.1 Application and Guiding Principles

Pursuant to the *EPIRA*, the *ERC* has original and exclusive jurisdiction over all cases contesting rates, fees, fines and penalties imposed by the *ERC* in the exercise of its powers, functions and responsibilities under the *EPIRA* and over all cases involving disputes between and among participants or players in the energy sector. This includes such cases pertaining to the *IMEM* and *IMEM Members*.

8.3.2 Dispute Resolution Process

The *IMEM Operator* shall prepare and endorse to the *DOE* for approval an alternative dispute resolution mechanism for use by *IMEM Members* and the *IMEM Operator* in the resolution of Disputes.

8.3.3 Dispute Resolution Administrator

The *Dispute Resolution Administrator* appointed pursuant to the *WESM Rules* shall be designated to facilitate the resolution of *Disputes* between or among the parties pursuant to the dispute resolution mechanism under Section 8.3.2.

Chapter IX

Interpretation and Applicability

9.1 INTERPRETATION OF THE IMEM RULES

9.1.1 Format Conventions

In the IMEM Rules, unless the context otherwise requires:

9.1.1.1 Headings are for convenience only and do not affect the interpretation of the *IMEM Rules*;

9.1.1.2 Words importing the singular include the plural and vice versa;

9.1.1.3 Words importing a gender include any gender;

9.1.1.4 Where italicized and capitalized, a word or phrase has the definition given to that word or phrase in Chapter 10; and

9.1.1.5 Other parts of speech and grammatical forms of a word or phrase defined in the *IMEM Rules* have a corresponding meaning.

9.1.2 Expressions and References

9.1.2.1 An expression importing a natural person includes any legal entity, company, partnership, joint venture, association, corporation or other body corporate and any government

authority;

9.1.2.2 A reference to anything (including, but not limited to, any right) includes a part of that thing;

9.1.2.3 A reference to a Clause, paragraph, part, annexure, exhibit or schedule is a reference to a Clause and paragraph and part of, and an annexure, exhibit and schedule to the *IMEM Rules* and a reference to the *IMEM Rules* includes any annexure, exhibit and schedule;

9.1.2.4 A reference to a statute, rule, regulation, proclamation, order, or circular includes all statutes, rules, regulations, proclamations, orders or circulars, consolidating or replacing it, and a reference to a statute includes all rules, regulations, proclamations, orders, or circulars issued under that statute;

9.1.2.5 A reference to the *IMEM Rules* or to a document or a provision of a document includes an amendment or supplement to, or replacement of, the *IMEM Rules* or that document

or that provision of that document;

9.1.2.6 A reference to a person includes that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assignees;

9.1.2.7 A reference to a body other than an *IMEM Member* or the *IMEM Operator* (including, without limitation, an institute, association or authority), whether statutory or not: (1) Which ceases to exist; or (2) Whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions; and

9.1.2.8 A reference in the context of any provision of the *IMEM Rules* to a "representative" of any person is a reference to any director, officer or employee of that person or any agent, consultant or contractor appointed or engaged by that person for purposes connected with the subject matter of the relevant provision of the *IMEM Rules*.

9.1.3 Times and Dates

9.1.3.1 A reference in the *IMEM Rules* to a calendar day (such as 1 January) or a

day of the week (such as Sunday) is to the 24-hour period which begins right after 2400H of the previous day and until 2400H of that day.

9.1.3.2 A reference in the *IMEM Rules* to a week is to the period right after 2400H of the previous day of the first day specified or implied until 2400H of the seventh day following.

9.1.3.3 A reference in the *IMEM Rules* to a month (or a number of months) or a calendar month is to the period from 2400H of the previous day of a day in one month until 2400H of the previous day of the same day of the month which follows (or follows by the relevant number of months), or if there is no such day in that month, 2400H hours of the previous day of the first day of the next following month.

9.1.3.4 A reference in the *IMEM Rules* to a year is to the period from right after 2400H of the previous day of a day in one year until 2400H hours of the previous day of the same day (or where the day in the first year was 29 February, on 1 March) in the following year, and a reference to a calendar year (such as 1997) is to be construed accordingly.

9.1.3.5 A reference in the *IMEM Rules* to a time of day is to Philippine Standard Time and abbreviated as *PST*.

9.1.3.6 A reference in the *IMEM Rules* to a period of time which dates from a given day, or the day of an act or event, is to be calculated exclusive of that day.

9.1.3.7 A reference in the *IMEM Rules* to a period of time which commences on a given day, or the day of an act or event, is to be calculated inclusive of that day.

9.1.3.8 Where under any provision of the *IMEM Rules* a person is required to provide any information by a certain date or time, the relevant provision is to be taken to include a requirement that that the relevant information shall be given as soon as possible and no later than the date or time given.

9.1.4 Notices

9.1.4.1 A notice is properly given under the *IMEM Rules* to a person if:

- (a) It is personally served;
- (b) A letter containing the notice is sent by courier to the person at an address (if any) supplied by the person to the sender for service of notices or, where the person

is an *IMEM* member, an address shown for that person in the register of *IMEM Members* maintained by the *IMEM Operator*, or, where the addressee is the *IMEM Operator*, the registered office of the *IMEM Operator*;

- (c) It is sent to the person by facsimile or electronic mail to a number or reference which corresponds with the address referred to in Clause 9.1.4.1(b) or which is supplied by the person to the *IMEM Operator* for service of notices and, if sent by electronic mail, the person sending the notice also sends a copy of the notice by letter or facsimile to the person on the same day; or
- (d) The person actually receives the notice by any other means.

9.1.4.2 A notice is treated as being given to a person by the sender:

- (a) Where sent by courier mail to an address in the central business district of a region in the Philippines, on the second *Business Day* after the day on which it is posted;

- (b) Where sent by courier in accordance with Clause 9.1.4.1(b) to any other address, on the third *Business Day* after the day on which it is posted;
- (c) Where sent by facsimile in accordance with Clause 9.1.4.1(c) and a complete and correct transmission report is received:
 - (i) Where the notice is of the type in relation to which the addressee is obliged under the *IMEM Rules* to monitor the receipt by facsimile outside of, as well as during, business hours, on the day of transmission; and
 - (ii) In all other cases, on the day of transmission if a *Business Day* or, if the transmission is on a day which is not a *Business Day* or is after 1600H (addressee's time), at 0900H on the following *Business Day*;
- (d) Where sent by electronic mail in accordance with Clause 9.1.4.1(c):
 - (i) Where the notice is of a type in relation to which the addressee is obliged under the *IMEM Rules* to monitor receipt by electronic mail outside of, as well as during, business hours, on the day when the notice is recorded as having been received at the electronic mail destination; and
 - (ii) In all other cases, on the day when the notice is recorded as having been first received at the electronic mail destination, if a *Business Day* or if that time is after 1600H (addressee's time), or the day is not a *Business Day*, at 0900H on the following *Business Day*; or
- (e) In any other case, when the person actually receives the notice.

9.1.4.3 Any notice to or by a person under the *IMEM Rules*:

- (a) Shall be in legible writing and in English; and

(b) Where the sender is a company, shall be signed by a responsible employee or officer thereof or under the corporate or official seal of the sender (except where the notice is sent by electronic mail).

9.1.4.4 Where a specified period (including, without limitation, a particular number of days) is provided, for purposes of calculating the number of days indicated in the period, the first day shall be excluded while the last day is included in said computation.

9.2 APPLICABILITY OF THE IMEM RULES

9.2.1 Scope of Application

By their participation in the *IMEM*, the *IMEM Operator*, the *Mindanao System Operator*, *IMEM Service Providers* and *IMEM Trading Participants* bind themselves to comply with:

- (a) These *IMEM Rules*, and all other rules, regulations, issuances, decisions, resolutions that may be issued by the *DOE* or *ERC* relevant to the operations of the *IMEM*; and
- (b) Guidelines and procedures set by the *IMEM Operator* and the *Mindanao System Operator* in the course of the operation of the *IMEM*.

9.2.2 Rights and Obligations

9.2.2.1 Unless otherwise expressly permitted by the *IMEM Rules*, an *IMEM Member* shall not assign or transfer and shall not purport to assign or transfer any of its rights or obligations under the *IMEM Rules*.

9.2.2.2 An entity does not waive its rights, powers and discretions under the *IMEM Rules* by:

- (a) Failing to exercise its rights;
- (b) Only exercising part of its rights; or
- (c) Delaying the exercise of its rights.

9.2.3 Severability

Each part or all of a provision of the *IMEM Rules*:

- (a) Will be construed so as to be valid and enforceable to the greatest extent possible; and
- (b) May be so construed (or deleted if necessary) regardless of the effect which that may have on the provision in question or any other provision or the *IMEM Rules* as a whole.

Chapter X

Glossary

Actual Loading: The instantaneous MW injection of an IMEM Generator at a specific point in time, which may be either a SCADA measurement, or the *Mindanao System Operator's* estimate of the actual loading of that IMEM Generator.

Actual Exposure: The total unpaid *Settlement Amounts* of an *IMEM Trading Participant* relating to past *Billing Periods*.

All-Or-Nothing Offer Type: The Offer Type that applies to an IMEM Offer where the capacity cannot be partially dispatched but must be dispatched in either full or not at all. This will apply, for example, to *IMEM Load Curtailment Resources* that curtail load by disconnecting from the *Mindanao Power System*.

Ancillary Services: Those services which are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the transmission system in accordance with good utility practice, the *Grid Code* and the *Distribution Code*.

Average Exposure: The average of the total Settlement Amount of an *IMEM Trading Participant* during the previous six (6) Billing Periods.

Billing Period: The period defined in Clause 5.1.1.2.

Business Days: A day (excluding Saturdays and Sundays) on which banks and financial institutions are open in the city or municipality where the principal offices of the IMEM Operator are located.

Confidential Information: Information which is or has been provided to, or by, an *IMEM Trading Participant* or the *IMEM Operator* under, or in connection with, the *IMEM Rules* and is stated under the *IMEM Rules* to be, or is classified by the *IMEM Operator* as, confidential information or is otherwise confidential or commercially sensitive information or information which is derived from any such information.

Connection Point: The agreed point of supply established between an IMEM Network Service Provider and an IMEM Trading Participant.

Contracted Capacity: Forms part of an IMEM Offer and is the total MW capacity of the IMEM Resource that is covered by Ex-Ante Contract Allocations.

Customer Dispatch Compensation Recovery Amount: The Settlement Amount defined in Clause 5.4.4.2, which is the amount payable by an IMEM Customer in recovery of In-Day Dispatch compensation.

Customer IMEM Demand: The portion of an IMEM Customer's forecast instantaneous MW demand that the *IMEM Customer* intends to source from the IMEM in a given *IMEM Interval*.

Customer Interval Settlement Amount: The Settlement Amount defined in Clause 5.4.5.1 which is the total compensation due to or payment due from an *IMEM Customer* in respect of an *IMEM Trading Interval*.

Customer Supply Amount: The Settlement Amount defined in Clause 5.4.2.1 which is the

payment in due from that IMEM Customer for net withdrawal from the IMEM in an *IMEM Trading Interval*.

Day-Ahead Schedule: The total instantaneous MW supply that an *IMEM Resource* is to supply within the *Mindanao Power System* at the end of a particular *IMEM Interval*.

Day-Ahead IMEM Schedule: The instantaneous MW supply that an *IMEM Resource* is to supply from its *IMEM Offer* at the end of a particular *IMEM Interval*.

Dispatch Compensation Amounts: The total compensation due to an *IMEM Resource* for providing either an upwards or downwards *In-Day Dispatch* outside its *Variation Tolerance* in an *IMEM Trading Interval*.

Dispatch Compensation Recovery Rate: The rate that *IMEM Resources* and *IMEM Customers* will be charged to recover the *Dispatch Compensation Amounts* paid to *IMEM Resources*.

Dispatch Target: The value defined in Clause 3.5.1.4.

Dispatched Quantity: The *Settlement Quantity* defined in Clause 5.2.3.2 or Clause 5.2.3.4, which is the expected energy curtailment or injection of an *IMEM Resource* in an *IMEM Trading Interval* if it operated in accordance with the *Day Ahead Schedule* and *In-Day Dispatch Instructions*, whichever is applicable.

Dispute: Any dispute arising between or among the *IMEM Operator*, the *Mindanao System Operator* and the *IMEM Members* arising under or in connection with or in relation to the application of any of the provision of the *IMEM Rules* or *IMEM Manuals*, the interpretation of any of the provisions of the *IMEM Rules* or *IMEM Manuals*, any obligation to settle payment under the *IMEM Rules* or *IMEM Manuals*, or any dispute relating to or in connection

with a transaction in the *IMEM*, provided, that the same shall not involve breach of the *IMEM Rules* or *IMEM Manuals* or such other regulatory policy.

Dispute Resolution Administrator: The person tasked to facilitate the resolution of *Disputes* pursuant to Section 8.3.3.

Distribution Code: Refers to the *Philippine Distribution Code*, which is the set of rules, requirements, procedures, and standards governing *Distribution Utilities* and users in the operation, maintenance, and development of their distribution systems. It also defines and establishes the relationship of the distribution systems with the facilities or installations of the parties connected thereto.

Distribution Network: A system of cables which provide for the transfer of electric power within the *Distribution Utility's* franchise area.

Distribution Utility: An *Electric Cooperative*, private corporation, government-owned utility, or existing local government unit, that has an exclusive franchise to operate a distribution system in accordance with its franchise and the *EPIRA*.

DOE: See Department of Energy.

Downward Dispatch Instruction: An instruction issued by the *Mindanao System Operator* to an *IMEM Resource* directing it to reduce its supply from that which it was directed to provide in the *Day-Ahead IMEM Schedule*.

Downwards Customer Variation Quantity: The *Settlement Quantity* defined in Clause 5.2.7.3 which is the quantity for which an *IMEM Customer* will contribute to the recovery of *Upwards Dispatch Compensation* in an *IMEM Trading Interval* in respect of downwards variation outside its *Variation Tolerance* from its *Expected Demand Quantity*.

Downwards Dispatch Compensation Amount: The *Settlement Amount* defined in Clause 5.4.1.5 which is the total compensation due to an *IMEM Resource* for providing downwards *In-Day Dispatch* outside its *Variation Tolerance* in an *IMEM Trading Interval*.

Downwards Dispatch Compensation Recovery Rate: The rate defined in Clause 5.4.3.2, which is the rate that *IMEM Resources* and *IMEM Customers* will be charged for each MWh of *Upwards Resource* or *Customer Variation Quantity* to recover the *Downwards Dispatch Compensation Amounts* paid to *IMEM Resources*.

Downwards Dispatched Quantity: The *Settlement Quantity* defined in Clause 5.2.9.5 for *IMEM Load Curtailment Resources* and Clause 5.2.11.4 for *IMEM Generators*, which is the quantity for which the *IMEM Resource* will be compensated for downwards *In-Day Dispatch* outside its *Variation Tolerance* in an *IMEM Trading Interval*.

Downwards In-Day Dispatch Premium Rate: The rate defined in Clause 5.3.2.3 which is the rate that will be paid to *IMEM Resources* as recompense for each MWh outside its *Variation Tolerance* of downwards *In-Day Dispatch*.

Downwards Resource Variation Penalty Rate: The rate defined in Clause 5.3.2.4 which is the rate that *IMEM Resources* will pay as penalty for each MWh of downwards variation outside its *Variation Tolerance* from *Dispatched Quantity*.

Downwards Resource Variation Penalty Amount: The *Settlement Amount* defined in Clause 5.4.1.2(c) which is the penalty payable by an *IMEM Resource* for downwards variation outside its *Variation Tolerance* from *Dispatched Quantity* in an *IMEM Trading Interval*.

Downwards Resource Variation Quantity: The *Settlement Quantity* defined in Clause 5.2.9.7 for *IMEM Load Curtailment Resources* and Clause 5.2.11.6 for *IMEM Generators*, which is the quantity for which the *IMEM Resource* will be penalized for downwards variation outside its *Variation Tolerance* from *Dispatched Quantity* in an *IMEM Trading Interval*.

Electric Cooperative: A cooperative or corporation authorized to provide electric services pursuant to Presidential Decree No. 269, as amended, and Republic Act No. 6938 within the framework of the national rural electrification plan.

Embedded IMEM Load Curtailment Resource: An *End-User* or group of *End-Users* that is capable of reducing or curtailing its power consumption from a *Mindanao Distribution System* or *User System* and is registered as member of the *IMEM* under Chapter 2. Also, an *IMEM Load Curtailment Resource* which is not an *IMEM Customer*.

End-Users: Any person or entity requiring the supply and delivery of electricity for its own use.

Energy Regulatory Commission: The independent, quasi-judicial regulatory body created under the *EPIRA*.

Enforcement and Compliance Officer: A person tasked to perform compliance and enforcement functions pursuant to Section 8.1.

EPIRA: Refers to Republic Act No. 9136 also known as the “*Electric Power Industry Reform Act of 2001*”.

ERC: See Energy Regulatory Commission.

Ex-Ante Contract Allocations: An instantaneous MW quantity allocated in advance to an *IMEM Generator* or an *IMEM Customer* to indicate the portion of

its capacity or demand (respectively) that is covered by a bilateral contract between the two. In each case, it is specified at the *Connection Point* of the *IMEM Generator* and the *IMEM Customer*.

Expected Demand: The value determined in accordance with Section 3.2.8 for *IMEM Load Curtailment Resources* and Section 5.2.4 for *IMEM Customers*, which is the instantaneous MW amount which that *IMEM Customer* or *IMEM Load Curtailment Resource* is forecast to consume at the end of an *IMEM Interval*, expressed as a positive number.

Expected Demand Quantity: The Settlement Quantity defined in Clause 5.2.4.3 which is the estimated energy consumption of an *IMEM Load Curtailment Resource* or an *IMEM Customer* in an *IMEM Trading Interval* if it was not scheduled or dispatched to curtail energy, expressed as a negative number.

Expected ILP Reduction: The quantity of electricity in MWh expected to be curtailed by a *Mindanao Distribution Utility* due to the participation of its customer in the *Interruptible Load Program* of the *ERC* as governed by *ERC Resolution No. 08, Series of 2010* dated 10 March 2010.

Ex-Post Contract Quantity: The quantity of electricity in MWh sold by one party to another, outside the *IMEM*, in an *IMEM Trading Interval* declared in accordance with Section 5.2.2.

Final Settlement Statement: The statement setting out the *IMEM* transactions of an *IMEM Generator* in a *Billing Period*, issued by the *IMEM Operator* under Clause 5.1.2.4, and containing the information set out in Clause 5.5.2.1.

Force Majeure Event: An event or situation described under Section 7.4.1.

Forced Outage: A full or partial unplanned unavailability of an *IMEM Resource*, as defined in the *Grid Code*.

Forced Outage Declaration: A notification sent to the *Mindanao System Operator* by an *IMEM Resource* when a *Forced Outage* occurs.

Generating Plant: A facility, consisting of one or more *Generating Units* connected at a common *Connection Point*, where electric energy is produced from some other form of energy by means of a suitable apparatus.

Generating Unit: A single machine generating electricity and all the related equipment essential to its functioning as a single entity.

Grid Code: Refers to the *Philippine Grid Code*, which is the set of rules and regulations governing the safe and reliable operation, maintenance and development of the high-voltage backbone transmission system and its related facilities, pursuant to the *EPIRA*.

Grid IMEM Load Curtailment Resource: An *End-User* or group of *End-Users* that is capable of reducing or curtailing its power consumption the *Mindanao Grid* and is registered as member of the *IMEM* under Chapter 2. Also, an *IMEM Load Curtailment Resource* which is an *IMEM Customer*.

Grid-Connected End-User: An *End-User* that is directly connected to the *Mindanao Grid*

IGC: See *IMEM Governance Committee*

IMEM: See *Interim Mindanao Electricity Market*.

IMEM Adjusted Metered Quantity: The *Settlement Quantity* defined in Clause 5.2.6.2 for *IMEM Customers* in respect of an *IMEM Trading Interval*.

IMEM Base Variation Price: The price in *Pesos* defined in Clause 5.3.2.2, which is the base price for the calculation of dispatch premiums and variation penalties for *IMEM Resources*.

IMEM Cost Recovery Mechanism: Refers to the mechanism for recovering the costs

incurred in establishing the *IMEM* as approved by the *ERC*.

IMEM Customer: A person who engages in the activity of purchasing electricity supplied through the *Mindanao Grid* and registers with the *IMEM Operator* in that capacity under Chapter 2.

IMEM Customer Energy Price: The price in defined in Clause 5.4.2.2 which is the price at which *IMEM Customers* will pay for any purchases from the *IMEM* in an *IMEM Trading Interval*.

IMEM Day-Ahead Price: The price that is the basis for standard payments to *IMEM Resources* for supply during an *IMEM Trading Interval*, as set the preceding day in accordance with Section 3.4.4.

IMEM Demand: The instantaneous *MW* demand to be met by supply from *IMEM Resources* in an *IMEM Interval*. The *IMEM Demand* is the sum of all *Customer IMEM Demands*.

IMEM Embedded Generator: A *Generating Plant* that is indirectly connected to the *Mindanao Grid* through the *Distribution Utilities'* lines or industrial generation facilities that are synchronized with the *Mindanao Grid* and is registered with the *IMEM Operator* in that capacity under Chapter 2.

IMEM Emergency: An event or situation described under Section 7.2.1.

IMEM Generator: *IMEM Grid Generator* or *IMEM Embedded Generator*.

IMEM Governance Committee: The committee whose composition, duties and obligations are defined under Section 1.4.

IMEM Grid Generator: A *Generating Plant* that is directly connected to the *Mindanao Grid* and registers with the *IMEM Operator* in that capacity under Chapter 2.

IMEM Interval: Any hour, ending on the hour, during the time the *IMEM* is in effect.

IMEM Intervention: The act of intervening in the operation of the *IMEM* by the *Mindanao System Operator* in case of an *IMEM Emergency* or by the *IMEM Operator* during the occurrence of a *Force Majeure Event* as defined under Chapter 7.

IMEM Intervention Report: The reports submitted by each of the *IMEM Operator* and the *Mindanao System Operator* pursuant to Section 7.1.6.

IMEM Load Curtailment Resource: An *End-User* or group of *End-Users* that is capable of reducing or curtailing its power consumption and is registered as member of the *IMEM* under Chapter 2.

IMEM Manual: A manual of specific procedures, systems or protocols for the implementation of the *IMEM Rules* promulgated by the *DOE*.

IMEM Member: A person who is registered with the *IMEM Operator* in accordance with Chapter 2.

IMEM Merit Order Table: The table of ranked *IMEM Offers* with associated information that is constructed by the *IMEM Operator* under Section 3.4.5 for use by the *Mindanao System Operator* in managing in-day dispatch of *IMEM Resources*.

IMEM Metering Services Provider: A person or entity authorized by the *ERC* to provide metering services and registered with the *IMEM Operator* in that capacity in accordance with Chapter 2.

IMEM Network Service Provider: A person who engages in the activity of owning, controlling, or operating a transmission or distribution system and who is registered with the *IMEM Operator* that capacity under Chapter 2.

IMEM Objectives: Refers to the objectives set forth in Section 1.1.4.

IMEM Offer: A Regular *IMEM Offer* or a *Standing IMEM Offer*. An *IMEM Offer* has the form specified in Section 3.3.1.

IMEM Operator: Refers to *Philippine Electricity Market Corporation*, the entity designated in accordance with *DOE Department Circular DC No. 2013-01-0001* to implement the *IMEM*.

IMEM Price Determination Methodology: Refers to the methodology for setting the prices in the *IMEM* as approved by the *ERC*.

IMEM Prices: Prices set by the *IMEM Operator* in relation to the sale and purchase of energy in the *IMEM*, including the *IMEM Day-Ahead Price*, the *IMEM Base Variation Price*, the *IMEM Customer Energy Price*, and such other prices as may be required for an *IMEM Intervention* or an *IMEM Suspension*.

IMEM Resource: An *IMEM Generator* or an *IMEM Load Curtailment Resource*.

IMEM Rules: See *Interim Mindanao Electricity Market Rules*.

IMEM Schedule Optimization Model: A mathematical optimization process that schedules *IMEM Offers*.

IMEM Service Provider: *IMEM Metering Services Provider* or an *IMEM Network Service Provider*.

IMEM Trading Intervals: An *IMEM Interval* for which any capacity offered into the *IMEM* is utilized either through having a *Day-Ahead IMEM Schedule* or via *In-Day Dispatch Instructions*.

IMEM Trading Participant: An *IMEM Resource* or an *IMEM Customer*.

IMEM Trading Quantity: The *Settlement Quantity* defined in Section 5.2.10 for *IMEM*

Generators, Section 5.2.8 for *IMEM Load Curtailment Resources*, and Clause 5.2.6 for *IMEM Customers* in respect of an *IMEM Trading Interval*.

In-Day Dispatch Instruction: A *Downward Dispatch Instruction* or an *Upward Dispatch Instruction*.

Independent Market Operator (“IMO”): Refers to the person or entity financially and technically capable, with proven experience of not less than two (2) years as a leading independent market operator of similar or large size electricity market endorsed jointly by the *DOE* and electric power industry participants to assume the functions, assets and liabilities of the *Autonomous Group Market Operator* pursuant to Section 30 of the *EPIRA*.

Insufficient Supply Condition: As defined for an *IMEM Trading Interval* in Clause 3.6.1, the condition where there is not enough generation to meet the forecast demand in Mindanao.

Interim Mindanao Electricity Market Rules: The electricity market developed and implemented by the *PEMC* in accordance with *DOE Department Circular No. DC2013-01-0001*.

Load-To-Maintain: The MW quantity, set under Section 3.6.2, that an *IMEM Customer* is required to limit its off-take from the *Mindanao Grid* to.

Mandatory Participants: Refers to entities described in Section 2.1.1 that meet the qualifications under Section 2.3.

Margin Call: An amount specified by the *IMEM Operator* to be paid by an *IMEM Trading Participant* in accordance with Clause 5.6.3.5 to make up for any anticipated shortfall between the security provided by that *IMEM Trading Participant* and the *IMEM Operator’s* exposure in respect of that *IMEM Trading Participant*.

Market Fees: The charges imposed on *IMEM Members* by the *IMEM Operator* to cover the cost of administering and operating the *IMEM*, as approved by the *ERC*.

Market Information Website: A facility to be established by the *IMEM Operator* on the electronic communication system on which it may publish information which is then available to and may be accessed by *IMEM Members*.

Meter: A device, which measures and records the consumption or production of electricity.
Metered Quantity: Net quantity of energy injected or withdrawn from the transmission network, or distribution network, by an *IMEM Trading Participant* during an *IMEM Trading Interval* as measured in the *Metering Data*, where net injection is a positive number and a net withdrawal is a negative number

Metering Data: The data obtained or derived from a *Metering Installation*.

Metering Database: The database kept by the *IMEM Operator* pursuant to Clause 4.4.3.

Metering Installation: The *Meter* and associated equipment and installations installed or to be installed for the collection of *Metering Data* required for settlement purposes.

Metering Point: The point of physical connection of the device measuring the current in the power conductor.

Metering Services: A service for the provision of metering facilities, meter reading, and *Metering Data* validation and estimation.

Metering Services Provider: A person or entity authorized by the *ERC* to provide *Metering Services*.

Metering Services Provider Database: The database kept by *IMEM Metering Services Providers* pursuant to Clause 4.4.2.

MinDA: The *Mindanao Development Authority* created under Republic Act. No. 9996.

Mindanao Distribution System: The system of wires and associated facilities connected to the transmission system operated by the *Mindanao System Operator* belonging to a franchised *Distribution Utility*, extending between the delivery points on the transmission or sub-transmission system, or generator connection and the point of connection to the premises of the *End-User*.

Mindanao Distribution Utilities: An *Electric Cooperative*, private corporation, government-owned utility, or existing local government unit which has an exclusive franchise to operate a *Mindanao Distribution System* in accordance with its franchise and the *EPIRA* and is registered as such under the provisions in Chapter 2.

Mindanao Grid: Refers to the high-voltage backbone system of interconnected transmission lines, substations and related facilities in Mindanao.

Mindanao Power System: The integrated system of transmission, distribution network and generating plant for the supply of electricity in Mindanao.

Mindanao System Operator: The party identified as the system operator pursuant to the *Grid Code*, who has responsibility for generation dispatch, the provision of *Ancillary Services*, and operation and control to ensure safety, power quality, stability, reliability and security of the *Mindanao Grid*.

National Grid Corporation of the Philippines: Refers to the corporation awarded the concession to assume the power transmission functions of the *National Transmission Corporation* pursuant to the *EPIRA* and was granted the franchise by *Congress* through *Republic Act No. 9511*.

NEA: The *National Electrification Administration*, the entity established by *Presidential Decree No. 269* as amended by *Presidential Decree No. 1645*.

Offer Price: The price in *Pesos* per MWh at which an *IMEM Resource* is offering its *Offered Capacity* in an *IMEM Offer* for an *IMEM Interval*.

Offer Type: The type of *IMEM Offer* being made, which is either a *Standard Offer Type* or an *All-Or-Nothing Offer Type*.

Offered Capacity: The *MW* capacity that is offered by an *IMEM Resource* in its *IMEM Offer*.

PEM Board: The group of directors serving from time to time on the board that is responsible for governing the *Wholesale Electricity Spot Market*.

Pending IMEM Member: A person who is not yet registered with the *IMEM Operator* in accordance with Chapter 2 but has submitted initial requirements for registration to the *IMEM Operator*.

Philippine Electricity Market Corporation: See *IMEM Operator*.

Philippine Standard Time: The standard for the second of time in the *Philippines* kept and maintained by the *Philippine Atmospheric Geophysical and Astronomical Services Administration* (PAGASA).

Preliminary Settlement Statement: The statement setting out the *IMEM* transactions of an *IMEM Trading Participant* in a *Billing Period*, issued by the *IMEM Operator* under Clause 5.1.2.3, and containing the information set out in Clause 5.5.1.

Prudential Security Requirements: The requirements imposed on an *IMEM Trading Participant* to provide and maintain a security in accordance with Section 5.6.

Random Daily Priority: A random number that is generated each day and assigned to each *IMEM Resource* in order to set the ranking in the *IMEM Merit Order Table* in the case where its *IMEM Offer* has an *Offer Price* that is identical to that of one or more *IMEM Offers* from other *IMEM Resources* in a particular *IMEM Interval*.

Registered Capacity: The *MW* capacity set for an *IMEM Resource* at the time of registration. For *IMEM Generators*, in most cases it will equal the capacity specified in its *Certificate of Compliance* (COC) issued by the *ERC*.

Regular IMEM Offer: An offer submitted by an *IMEM Resource* to sell electrical energy through the *IMEM* in a particular *IMEM Interval*.

Resource Dispatch Compensation Recovery Amount: The *Settlement Amount* defined in Clause 5.4.4.1 which is the amount payable by an *IMEM Customer* in recovery of *In-Day Dispatch* compensation.

Resource Energy Amount: The *Settlement Amount* defined in Clause 5.4.1.2(a) for an *IMEM Resource*, which is the compensation due to that *IMEM Resource* for net supply to the *IMEM* in an *IMEM Trading Interval*.

Resource Energy Settlement Amount: The *Settlement Amount* defined in Clause 5.4.1.2 which is the compensation due to an *IMEM Resource* for energy supply in an *IMEM Trading Interval*, after any applicable variation penalties have been applied, but before any applicable dispatch compensation amounts or dispatch compensation recovery amounts. *Resource Interval Settlement Amount:* The *Settlement Amount* defined in Clause 5.4.5.2 which is the total compensation due to or payment due from an *IMEM Resource* in an *IMEM Trading Interval*.

Resource Supply Amount: The *Settlement Amount* defined in Clause 5.4.1.1 which is the compensation due to an *IMEM Resource* for

energy supply in an *IMEM Trading Interval*, before any applicable dispatch compensation recovery amounts have been applied.

Scheduled Quantity: The *Settlement Quantity* defined in Clause 5.2.3.1 for *IMEM Resources*, which is the expected energy curtailment or injection of an *IMEM Resource* in an *IMEM Trading Interval* if it operated in accordance with the *Day-Ahead Schedule*.

Self-Generation Facility: A power generation facility owned and constructed by an *End-User* for such *End-User's* own consumption or internal use.

Settlement Amount: A *Philippine Peso* amount used in *IMEM* settlement to determine the monies owing from or payable to *IMEM Trading Participants*.

Settlement Quantity: A MWh quantity applicable to an *IMEM Trading Participant*, used in *IMEM* settlement to determine the monies owing from or payable to *IMEM Trading Participants*.

Settlement Statement: A *Preliminary Settlement Statement* or a *Final Settlement Statement*.

Standard Offer Type: The *Offer Type* that applies to an *IMEM Offer* where the capacity can be partially dispatched. This will apply to most *IMEM Resources*, including all *IMEM Generators*.

Standing IMEM Offer: An *IMEM Offer* submitted by an *IMEM Resource* to sell electrical energy through the *IMEM* in a given hour of the day and day of the week. It will always apply in that hour of any week unless it has been overridden by a *Regular IMEM Offer* specific to a particular *IMEM Interval*.

Suspension Notice: A notice issued by the *IMEM Operator* in accordance with Clause 2.6.2.6.

Unavailable Capacity: Forms part of an *IMEM Offer* and is the total MW capacity of the *IMEM Resource* that is unavailable to be included in the *Contracted Capacity* or the *Offered Capacity* due to *Forced Outage*, maintenance, or other reason provided by the *IMEM Resource* and accepted by the *IMEM Operator*.

Uncontracted Demand: The portion of an *IMEM Customer's* forecast instantaneous MW demand in a particular *IMEM Interval* that is not covered by *Ex-Ante Contract Allocations*.

Unrecovered Resource Energy Settlement Amount: The Settlement Amount defined in Clause 5.4.2.3 which is the amount due to *IMEM Resources* for energy supply in an *IMEM Trading Interval* that cannot be allocated to *IMEM Customers* in that *IMEM Trading Interval*.

Upward Dispatch Instruction: An instruction issued by the *Mindanao System Operator* to an *IMEM Resource* directing it to increase its supply from that which it was directed to provide in the *Day-Ahead IMEM Schedule*.

Upwards Customer Variation Quantity: The *Settlement Quantity* defined in Clause 5.2.7.2 which is the quantity for which an *IMEM Customer* will contribute to the recovery of *Downwards Dispatch Compensation* in an *IMEM Trading Interval* in respect of upwards variation outside its *Variation Tolerance* from its *Expected Demand Quantity*.

Upwards Dispatch Cost Recovery Amount: The Settlement Amount defined in Clause 5.4.1.4(b) which represents the additional cost of generation by an *IMEM Resource* providing upwards *In-Day Dispatch* outside its *Variation Tolerance* in an *IMEM Trading Interval*.

Upwards Dispatch Premium Amount: The Settlement Amount defined in Clause 5.4.1.4(a) which is the compensation due to an *IMEM Resource* for providing upwards *In-*

Day Dispatch outside its *Variation Tolerance* in an *IMEM Trading Interval*, over and above the additional costs of generation.

Upwards Dispatch Compensation Recovery Rate: The rate defined in Clause 5.4.3.1, which is the rate that *IMEM Resources* and *IMEM Customers* will be charged for each MWh of *Downwards Resource* or *Customer Variation Quantity* to recover the *Upwards Dispatch Compensation Amounts* paid to *IMEM Resources*.

Upwards Dispatch Compensation Amount: The Settlement Amount defined in Clause 5.4.1.4, which is the total compensation due to an *IMEM Resource* for providing upwards *In-Day Dispatch* outside its *Variation Tolerance* in an *IMEM Trading Interval*.

Upwards Dispatched Quantity: The *Settlement Quantity* defined in Clause 5.2.9.4 for *IMEM Load Curtailment Resources* and Clause 5.2.11.3 for *IMEM Generators*, which is the quantity for which the *IMEM Resource* will be compensated for upwards *In-Day Dispatch* outside its *Variation Tolerance* in an *IMEM Trading Interval*.

Upwards In-Day Dispatch Premium Rate: The rate defined in Clause 5.3.2.3 which is the rate that will be paid to *IMEM Resources* as recompense for each MWh of upwards *In-Day Dispatch*.

Upwards Resource Variation Penalty Rate: The factor defined in Clause 5.3.2.4 which is the rate that *IMEM Resources* will pay as penalty for each MWh of upwards variation outside its *Variation Tolerance* from its *Dispatched Quantity*.

Upwards Resource Variation Penalty Amount: The Settlement Amount defined in Clause 5.4.1.2(b) which is the penalty payable by an *IMEM Resource* for upwards variation outside its *Variation Tolerance* from its *Dispatched Quantity* in an *IMEM Trading Interval*.

Upwards Resource Variation Quantity: The *Settlement Quantity* defined in Clause 5.2.9.6 for *IMEM Load Curtailment Resources* and Clause 5.2.11.5 for *IMEM Generators*, which is the quantity for which the *IMEM Resource* will be penalized for upwards variation outside its *Variation Tolerance* from its *Dispatched Quantity* in an *IMEM Trading Interval*.

User System: Refers to a system owned or operated by a person or entity that uses the *Mindanao Grid*.

Variation Tolerance: The *Settlement Quantity* defined in Clause 5.2.5.2, which is the quantity by which (a) An *IMEM Resource* may deviate from its *Dispatched Quantity* in an *IMEM Trading Interval* without incurring financial penalties (b) An *IMEM Customer* may deviate from its *Expected Demand Quantity* in an *IMEM Trading Interval* without incurring financial penalties and (c) An *IMEM Resource* may be dispatched up or down from its *Scheduled Quantity* without receiving *In-Day Dispatch* premiums.

Voluntary Participants: Refers to entities described in Section 2.1.2 that meet the qualifications under Section 2.3.

Week-Ahead Contract Allocations Report: The report summarizing *Week-Ahead Generator Contract Allocations*, provided by the *Mindanao System Operator* to the *IMEM Operator* in accordance with Section 3.2.6.

Week-Ahead Customer Demand Forecast: The demand forecast for the following seven days provided by an *IMEM Customer* in accordance with Section 3.2.1.

Week-Ahead Customer IMEM Demand: The specification of *IMEM Demand* for the following seven days provided by an *IMEM Customer* in accordance with Section 3.2.7.

Week-Ahead Distribution Network Information Report: The report on outages and conditions for the following seven days in

the *Distribution Network* of an *IMEM Network Service Provider*, provided in accordance with Section 3.2.3.

Week-Ahead Generation Requirement

Forecast: The report on generation requirement for the following seven (7) days, provided by the *Mindanao System Operator* in accordance with Section 3.2.2.

Week-Ahead Generator Contract

Allocations: The specification of Ex-Ante *Contract Allocations* for the following seven days provided by an *IMEM Generator* in accordance with Section 3.2.5.

Week-Ahead IMEM Demand Report: The report on *IMEM Demand* for the following

seven days, provided by the *IMEM Operator* in accordance with Section 3.2.9.

Week-Ahead Power System Information

Report: The report on outages and conditions for the following seven (7) days in the *Mindanao Power System*, provided by the *Mindanao System Operator* in accordance with Section 3.2.4.

WESM Rules: The detailed rules that govern the administration and operation of the *Wholesale Electricity Spot Market*.

Wholesale Electricity Spot Market: The electricity market established by the *DOE* in accordance with Section 30 of the *EPIRA*.

DEPARTMENT CIRCULAR NO. DC2013-07-0013

PROVIDING SUPPLEMENTAL POLICIES TO EMPOWER THE CONTESTABLE CUSTOMERS UNDER THE REGIME OF RETAIL COMPETITION AND OPEN ACCESS AND ENSURE GREATER COMPETITION IN THE GENERATION AND SUPPLY SECTORS OF 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” (or EPIRA), declared the Policy of the State to, among others things to:

- (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; and
- (c) Protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power.

WHEREAS, the Department of Energy (DOE) is mandated, 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, in compliance with its mandate under the EPIRA and to ensure that the implementation of Retail Competition and Open Access (RCOA) will redound to better

electricity services at reasonable price, brought about by the competition introduced in the supply sector, the DOE promulgated policies and attendant guidelines through the following:

- (a) Department Circular No. DC2012-05-0005, issued on 09 May 2012, which prescribes the general policies for the implementation of RCOA;
- (b) Department Circular No. DC2012-11-0010, issued on 28 November 2012, which provides for additional guidelines and implementing policies for RCOA and amending certain provisions of Department Circular No. DC2012-05-0005; and
- (c) Department Circular No. DC2013-05-0006, issued 06 May 2013, which enjoins electric power industry participants to ensure an effective and successful transition towards implementation of RCOA through transparency, good governance and greater competition in the generation and supply sectors.

WHEREAS, the DOE recognizes the issues and concerns raised by significant number of Contestable Customers (CCs) on the difficulties to get clear and firm offers for Retail Supply Contracts (RSCs) with the Retail Electricity Suppliers (RES);

WHEREAS, during the conduct of Information a.ml Education Campaigns (IECs), the CCs relayed that most RES have preference over larger loads with higher load factors, and the offers, if there is any, are higher than existing rates, and if competitive with existing rates, CCs are tied with long-term contracts and stringent pre-termination provisions;

WHEREAS, despite the nineteen (19) RES duly licensed and eight (8) Local RES duly authorized by the Energy Regulatory Commission (ERC), the RCOA is being perceived to be a Suppliers' market making the CO, confined to the limited offers and terms or no offer nr all, which is contrary to the Customer Empowerment espoused under EPIRA;

WHEREAS, the DOE deems it necessary to issue supplemental policies to empower the CCs and promote greater competition in the generation and supply sectors in order to achieve the objectives of RCOA;

NOW, THEREFORE, for am.I in consideration of the foregoing premises, the IX)E, in pursuit of its supervisory functions vested to it by the EPIRA, hereby provides the following policies:

Section 1. Customer Choice. Consistent with the objectives of EPIRA and its Implementing Rules and Regulations (EPIRA-IRR), and other applicable rules and regulations, a CC may source its electricity supply requirements from ERC-licenced RES; ERC-authorized Local RES; and, on its option, directly through the wholesale Electricity Spot Market (WESM). Furthermore, a CC shall be allowed to enter into a Retail Supply Contract (RSC) with a prospective Generation Company; provided, that the Generation Company is issued a Certificate of Compliance (COC) by the ERC and successfully registered as a Trading Participant in the WESM; and provided, further, that before the effective date of the RSC, the Generating Company shall have secured a Supplier's license from the ERC.

Section 2. Supply Contract and Customer Switching. Regardless of the contract period of the RSC entered into by a CC and its RFS, such RSC shall provide "Customer Switching" provision whereby the CC shall be allowed to terminate its RSC with its incumbent RES should there be a competitive supply contract package that is more responsive to the needs of the CC. The incumbent RES shall have the right to retain the RSC provided that it can match the superior offer to the CC.

Notwithstanding and consistent with Section 8 of DOE -Circular No. DC2012-11-0010, the initial switch of a CC to its new Supplier shall only be allowed six (6) months after the full RCOA Conuncrcial Operation Date. The actual switching shall be based on a considerable period of time as may be determined by the RES and the CC, but should not exceed the applicable notification requirement by the CRB, as provided in the same DOE Circular.

Towards this end, the ERC shall provide the necessary guidelines in determining competitiveness of an RSC. The competitiveness of a supply contract package may include determination on among other things, price, quality of power, and value added services.

Section 3. Transparency of Electricity Rates under RCOA Regime. A CC which has no choice due to absence of acceptable offer from RES or Local RES shall continue to remain with its franchised DU or current service provider, and shall be charged based on its existing rates until it is able to secure an RSC. In such event, the CC may switch to its new Supplier, subject to notification requirements to the Central Registration Body (CRB) and its incumbent RES.

For the purpose of customer empowerment, transparency and competitiveness, the power bill of the CC that shall continue to be served by its franchised DU shall have two sets of power bill. These are: (i) its current power bill; and (ii) a new set of power bill, further unbundled and grouped according to competitive and regulated charges of the franchised DU, duly approved by the ERC. For illustration purposes, the second or the other power bill of the CC shall reflect the following: (i) generation and relevant supply charges; (ii) regulated charges such as transmission and distribution wheeling charges; and (iii) other pass through charges such as government taxes and subsidies. The intent of the second power bill is to prepare the CCs to understand and be familiarized as to how its power bill will transition from its current state to the

competitive billing system.

As regards the billing of a RES to CC, the ERC shall ensure that there are no double charges particularly on the approved administrative charges due to the DU to compensate its administrative expenses in contracting for the supply of electricity to serve its captive customers prior to the RCOA implementation. The transmission and distribution wheeling rates, including pass-through charges shall be publicly disclosed and posted in the DOE, ERC and PEMC websites for the guidance and information of all CCs.

Towards this end, all DUs shall submit to the DOE its monthly summary schedule of rates not later than ten (10) days after the reference month.

Section 4. Regulatory Support. The ERC shall issue guidelines and parameters on the determination of superior offer by the RES. As such, in cases of disputes arising in determining the superiority of the package being offered by the new RES, the matter shall be referred to and decided by the ERC.

Section 5. 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 6. Separability Clause. If for any reason, any section or provision of this Circular is declared unconstitutional or invalid, such parts not affected shall remain in full force and effect.

Section 7. Effectivity. This Circular shall take effect fifteen (15) days following its publication in at least two (2) newspapers of general circulation and shall remain in effect until otherwise revoked.

Issued this July 02, 2013, in Energy Center,
Bonifacio Global City, Taguig City

CARLOS JERICO L. PETILLA
SECRETARY

DEPARTMENT CIRCULAR NO. DC2013-07-0014

PROMULGATING THE RETAIL MARKET MANUALS FOR THE IMPLEMENTATION OF RETAIL COMPETITION AND OPEN ACCESS AND PROVIDING FOR TRANSITORY ARRANGEMENTS

WHEREAS, in Section 37 of the Republic Act No. 9136, otherwise known as “The Electric Power Industry Reform Act of 2001” (the *Act*), the Department of Energy (DOE) is mandated, among others, 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 the *Act*;

WHEREAS, on 06 June 2011, the Energy Regulatory Commission (*ERC*) through Resolution No. 10 Series of 2011, certified that the five (5) preconditions for the implementation of Retail Competition and Open Access as provided in Section 31 of the EPIRA have already been met;

WHEREAS, in preparation for the implementation of Retail Competition and Open Access (RCOA), the *DOE*:

- (a) Conducted a series of public consultations and focus group discussions with qualified customers in the Contestable Market, Suppliers, other relevant stakeholders of electric power industry and government agencies aimed at soliciting comments on the draft implementing rules and guidelines as well as identifying specific areas of concerns that requires formulation of policy; and
- (b) Following the public consultations and focus group discussions, promulgated the prescribed policies (collectively

“Prescribed Policies”) that will govern the implementation of Retail Competition and Open Access through Department Circular (DC) No. 2012-05-0005 dated 09 May 2012 entitled *“Prescribing the General Policies for the Implementation of Retail Competition and Open Access”* and DC No. 2012-11-0010 dated 28 November 2012, entitled *“Providing for Additional Guidelines and Implementing Policies for Retail Competition and Open Access and Amending Department Circular No. (DC) 2012-05-0005 entitled “Prescribing the General Policies for the Implementation of the Retail Competition and Open Access.”*

WHEREAS, the ERC promulgated on 17 December 2012 the *“Transitory Rules for the Initial Implementation of Open Access and Retail Competition”* and published the same in the ERC website at www.erc.gov.ph on 21 December 2012;

WHEREAS, consistent with the above cited policies and rules, the DOE spearheaded the formulation of the *Rules for the Integration of Retail Competition and Open Access in the Wholesale Electricity Spot Market* (the *Retail Rules*);

WHEREAS, following the series of public consultations with stakeholders of the electric power industry, the *DOE* promulgated the Rules for the Integration of Retail Competition and Open Access in the Wholesale Electricity Spot Market or the Retail Rules through DC No. 2013-01-0002 dated 09 January 2013, entitled *“Promulgating the Retail Rules for the Integration of Retail Competition and Open Access in the Wholesale Electricity Spot Market”*;

WHEREAS, pursuant to the Retail Rules, the *Central Registration Body* (CRB) drafted the necessary Market Manuals containing the criteria, guidelines and procedures for i) the registration of participants in the retail market; ii) market transactions procedures; iii) disclosure and confidentiality of Contestable Customer Information; and, iv) metering standards and procedures for the Retail Market.

WHEREAS, the draft Market Manuals were published on 1-8 February 2013 in the DOE website at www.doe.gov.ph to further solicit comments, views and suggestions from the stakeholders of the electric power industry; Said deadline was extended as requested by some stakeholders;

WHEREAS, the DOE received comments and suggestions from the following:

- Distribution Management Committee
- Manila Electric Company (MERALCO)
- Retail Electricity Suppliers Association of the Philippines
- Batangas Electric Cooperative II, Inc.
- MPOWER (MERALCO Local RES)
- Kratos RES, Inc.
- National Grid Corporation of the Philippines
- National Power Corporation
- Philippine National Bank
- Aichi Forging Company

WHEREAS, the proposed Market Manuals were then revised and finalized based on the comments, views and suggestions solicited from the stakeholders;

NOW THEREFORE, pursuant to its mandate under the Act, the *DOE* hereby issues, adopts and promulgates the following:

Section 1. Approval and Adoption of Market Manuals. In consideration of the foregoing, the Manuals listed below and presented as Annexes to this Circular are hereby approved

and adopted.

- a) *Annex A - Retail Manual on Registration Criteria and Procedures*
- b) *Annex B - Retail Manual on Market Transactions Procedures*
- c) *Annex C - Retail Manual on Disclosure and Confidentiality of Contestable Customer Information*
- d) *Annex D - Retail Manual on Metering Standards and Procedures*

Section 2. Transitory Provision

Notwithstanding the timetables provided for in the Retail Manual on Registration Criteria and Procedures and the Retail Manual on Metering Standards and Procedures, it is hereby provided that —

- a) *Contestable Customers* that applied for registration or whose applications for registration were submitted prior to the commencement of the Commercial Operation of Retail Competition and Open Access on 26 June 2013 (“Commencement Date”) but were unable to submit any of the following: Retail Supply Contracts, Load Profile and Distribution Wheeling and Metering Services Agreement prior to said Commencement Date shall be registered by the *Central Registration Body*. It is provided, however, that the said requirement must be complied with to the satisfaction of the *Central Registration Body* no later than ninety (90) days from the promulgation of this Circular. In the event of non-compliance, the non-complying *Contestable Customer* shall be suspended by the *Central Registration Body* in accordance with the *Retail Rules* and the *Retail Manual on Registration Criteria and Procedures*.
- b) Pursuant to the *Retail Manual on Metering Standards and Procedures*, all *Retail Metering Services Providers* shall provide the *Central Registration Body*

with the metering data of all *Contestable Customers* being served by them on the following trading day. It is provided, however, that in cases of incomplete or erroneous metering data, the *Retail Metering Services Provider* shall be allowed to submit the completed or corrected meter data no later than three (3) days after the end of the relevant billing period. It is provided, furthermore, that this arrangement shall be allowed only for the first three (3) billing periods from the Commencement Date. Thereafter, all *Retail Metering Services Providers* shall strictly comply with the timetable and procedures for submission of metering data provided for in the *Retail Manual on Metering Standards and Procedures*.

- c) Bilateral contract quantities in favor of *Contestable Customers* that the contract counterparties wish to be accounted for in the settlements of the *Wholesale Electricity Spot Market* transactions shall be declared to the *Market Operator* after each trading day. It is provided, however, that the relevant *Trading Participant* that declared the bilateral contract quantities may review its daily declarations and submit corrected declarations no

later than three (3) days from the end of each billing period. It is provided, furthermore, that this arrangement shall be allowed only for the first three (3) billing periods from the Commencement Date. Thereafter, all relevant *Trading Participants* shall strictly comply with the timetable for declaration of bilateral contract quantities.

Section 3. Separability Clause. If for any reason, any section or provision of this Circular or the attached Manuals and Annexes is declared unconstitutional or invalid, such parts not affected shall remain in full force and effect.

Section 4. Effectivity. This Circular shall take effect immediately following its publication in at least two (2) newspapers of general circulation.

Signed this ___ day of July in For Bonifacio, Taguig City, Metro Manila

CARLOS JERICHO L. PETILLA
SECRETARY

JULY 9, 2013

ANNEX A

Retail Manual

Registration Criteria and Procedures

I. INTRODUCTION AND GENERAL GUIDELINES

1. PURPOSE & SCOPE OF APPLICATION

Pursuant to Clause 2.5 of the *Retail Rules*, the *Central Registration Body* shall prepare and publish a Manual that shall provide the requirements and procedures for the registration of *Contestable Customers, Suppliers* and *Retail Metering Service Providers* in the *WESM*. The criteria, guidelines and procedures for registration of *metering installations* are covered by the Retail Metering Manual. The suspension and de-registration procedures shall be governed by the *WESM Manual on Registration, Suspension and De-Registration Criteria and Procedures*.¹

This Manual implements relevant provisions of Chapter 2 of the Rules for the Integration of Retail Competition in the Wholesale Electricity Spot Market (“Retail Rules”).

2. DEFINITIONS, REFERENCES AND INTERPRETATION

2.1 Definitions

Unless otherwise defined or the context implies otherwise, the italicized terms used in this Manual which are defined in the *WESM Rules* and *Retail Rules* will bear the same meaning as defined in the *WESM Rules* and *Retail Rules*.

2.2 Giving of Notices

The guidelines set forth in *WESM Rules* Clause 9.6.1 shall govern the giving of notices required in this Manual.

2.3 References

This Manual should be read in association with the -

- a) Republic Act No. 9136
- b) Implementing Rules and Regulations of Republic Act No. 9136
- c) ERCs Transitory Rules on the Implementation of OARC
- d) *WESM Rules*
- e) *Retail Rules*
- f) Philippine Grid Code
- g) Philippine Distribution Code
- h) Department of Energy Circular No. 2010-05-006
- i) Department of Energy Circular No. 2010-08-0010
- j) Department of Energy Circular No. 2012-011-0010
- k) Department of Energy Circular No. 2013-01-0002
- l) *WESM Manual: Registration, Suspension and De-Registration Criteria and Procedures*
- m) *WESM Manual: Billing and Settlements*
- n) *Retail Metering Manual*

2.4 Organization of the Manual/ Interpretation

- 24.1 This Manual is divided into three Chapters as follows -

¹ Clause 2.6, Retail Rules

- a) Chapter I - Introduction and Generation Guidelines
- b) Chapter II - Registration Procedures for Retail Market Participants
- c) Chapter III - Suspension, Disconnection and De-Registration

2.42 Any reference to a section or clause in any Chapter of this Manual shall refer to the particular section or clause of the same Chapter in which the reference is made, unless otherwise specified or the context provides otherwise.

3. GENERAL GUIDELINES

3.1 All *Contestable Customers, Suppliers and Retail Metering Service Providers* authorized by the *Energy Regulatory Commission* are eligible to become members of the *WESM* subject to compliance with set membership criteria. Pursuant to Republic Act No. 9136², the *Energy Regulatory Commission* is the agency mandated to authorize other persons or entities that can be eligible to become members of the *WESM*.³

3.2 Considering its implications, suspension and deregistration from the *WESM* shall be carried out in strict compliance with the procedures in *WESM Manual on Registration, Suspension and De-Registration Criteria and Procedures*.

4. RESPONSIBILITIES

4.1 Compliance and Implementation

4.1.1 **Applicants.** All *Contestable Customers, Suppliers and Retail Metering Service Providers* applying for registration in the *WESM* shall comply with the requirements and procedures set forth in this Manual and in the *WESM Rules* and the *Retail Rules*.

4.1.2 **Central Registration Body.** The *Central Registration Body* shall be responsible for implementing the pre-registration procedures and the handling of information exchange as set forth in this Manual.

4.1.3 **Service Providers.** The *System Operator* as well as the relevant *Retail Metering Services Provider* and *Network Service Provider* shall provide the information or document required of them to enable the timely assessment and action on applications for registration.

4.1.4 **Market Operator.** The **Market Operator** shall be responsible for assessing and evaluating applications for *WESM* membership in accordance with Chapter 2 of the *WESM Rules* and the *WESM Manual: Registration, Suspension and De-Registration Criteria and Procedures*. The *Market Operator* shall likewise be responsible for post-registration changes as set forth in the *WESM Registration Manual*.

4.2 Amendments

² Republic Act No.9136, Section 30
³ Republic Act No.9136, Section 30

Amendments to this Manual shall be submitted to the *WESM Rules Change Committee* and shall be acted upon pursuant to Section 1.8 of the *Retail Rules* and relevant market manuals.

5. EFFECTIVITY AND PUBLICATION

This Manual shall take effect upon promulgation by the *DOE*. Thereafter, it shall be published in the *market information website*.

II. REGISTRATION PROCEDURES

1. COVERAGE

Pursuant to Chapter 2 of the *Retail Rules*, this Section:

- a) Describes the *WESM* membership categories and levels of participation
- b) Prescribes the pre-requisites for applying for *WESM* registration; and
- c) Provides the procedures for pre-registration by *Suppliers*, *Contestable Customers* and *Retail Metering Service Providers* upon integration of retail competition in the *WESM*.

The procedures and criteria for registering in the *WESM* as a *WESM Member* are covered by the *WESM Manual on Registration, Suspension and De-Registration Criteria and Procedures*. This section provides information requirements and procedures that will guide the *Contestable Customers*, *Suppliers* and *Retail Metering Services Providers* in applying for *WESM* membership.

2. REGISTRATION OF SUPPLIERS

2.1 Overview

Suppliers shall register in the *WESM* as a *Direct WESM Members* under the *Customer Trading*

Participant category and shall fulfill all such registration requirements as provided for in Chapter 2 of the *WESM Rules*.⁴

Distribution Utilities shall register as *Direct WESM Members* in their capacity as *Local Suppliers*⁵ and *Suppliers of Last Resort*.⁶

Applications for registration shall be submitted to the *Market Operator* together with documents and information required by the *Market Operator* to prove compliance with membership criteria and requirements for registration.⁷

Suppliers must have completed their registration as *Direct WESM Members* before they can transact in the *WESM* for their *Contestable Customer* counterparties.

2.2 Information Requirements

22.1 The *Supplier* shall submit to the *Market Operator* the specific documents and information required as posted in the market information website to prove its compliance with *WESM* membership criteria and qualifications.

22.2 Once an applicant submits an accomplished application form with supporting requirements, the *Market Operator* shall assess and evaluate the application in accordance

with Chapter 2 of the *WESM Rules* and *WESM Manual on Registration, Suspension and De-Registration Criteria and Procedures*.

22.3 The *Suppliers, Local Suppliers* and *Suppliers of Last Resort* shall submit to the *Central Registration Body* for posting in the market website the contracting parameters including the general offer, terms and conditions such as indicative average contract price, offers and scope of services being offered by them.⁹

3. REGISTRATION OF CONTESTABLE CUSTOMERS

3.1 Overview

Registration shall be in accordance with the certification of contestability issued by the *Energy Regulatory Commission* which is on a “facility” basis in that each certificate is attached to a metering point. For registration purposes, entities who have more than one (1) *registered facility* shall have multiple registrations and, at their option, each registration may either be as *Direct WESM Member* or *Indirect WESM Member*.

Directly-connected customers are required to register in the *WESM* pursuant to *WESM Rules* Clause 2.2.4.2 whether or not it is certified by the ERC as a *Contestable Customer*.¹⁰

3.2 Pre-registration Procedures

3.2.1 *Distribution Utilities* shall notify the *Central Registration*

Body within fifteen (15) *working days* from its validation that a customer has met all the requirements of contestability.¹¹

3.2.2 The *Central Registration Body*, within five (5) *working days* from receipt of such notice, shall secure confirmation from the ERC if such customer has been certified as contestable.

3.2.3 Within thirty (30) *working days* from issuance of ERC’s certification, the *Contestable Customer* shall register in the *WESM*. If a *Contestable Customer* intends to participate in the *WESM* directly, it shall register as *Direct WESM Member* and shall fulfill all such registration requirements.¹² If a *Contestable Customer* intends to participate in the *WESM* indirectly, it shall elect a *Supplier* as its *Direct WESM Member* counterparty and said *Supplier* shall register the *Contestable Customer* as an *Indirect WESM Member*.

3.2.4 Within five (5) *working days* from entering into a *retail supply contract*, the *Supplier* shall register its *Contestable Customer* counterparty as an *Indirect WESM Member* by submitting to the *Central Registration Body* a copy of its retail supply contract together with an accomplished application form and registration requirements as summarized in Section 3.3 of this Manual.

3.3 Information Requirements

- 3.3.1 For *Direct WESM Membership of Contestable Customers*, the *Contestable Customer* (applying as a *Direct WESM member*) shall submit to the *Market Operator* the specific information and documents as posted in the market information website.
- 3.3.2 For *Indirect WESM Membership of Contestable Customers*, the *Supplier* (applying on behalf of a *Contestable Customer* who wishes to be an *Indirect WESM member*) shall submit to the *Market Operator* the specific information and documents as posted in the market information website.
- 3.3.3 A *Contestable Customer* registered as *Direct WESM Member* or a *Supplier* elected as *Direct WESM Member* counterparty on behalf of its *Contestable Customer* counterparty shall furnish the *Central Registration Body* with a copy of their *retail electricity supply contract* at least thirty (30) days prior to the effective date of their contract.¹⁴
- 3.3.4 A *Contestable Customer* that is registered as *Direct WESM Member* shall be responsible for providing the *Central Registration Body* with information on their connection and metering details by submitting a metering installation registration form in accordance with the *Retail Metering Manual*.¹⁵
- 3.3.5 A *Supplier* elected as *Direct WESM Member* counterparty shall provide information on the connection and metering details of its *Contestable Customer* registered as *Indirect WESM Member* by submitting a metering installation registration form in accordance with the *Retail Metering Manual*.¹⁶
- 3.3.6 *Suppliers* that wish their *bilateral power supply contracts* with *Generation Companies* be accounted for in the *WESM* settlements shall enroll those contracts in the *Market Operator* in accordance with the customer enrolment procedures not later than thirty (30) days before the effectivity of their contracts.¹⁷
- 3.3.7 The enrolment shall provide the following details-
- a) duration of the supply contract;
 - b) desired effective date on which the bilateral contract transactions are to be accounted for in the *WESM* settlements which shall coincide with the start of the billing period;
 - c) identification of the *Trading Participant* that shall be responsible for the payment of line rental trading amounts and for the net settlement surplus/ deficit allocations;

- d) copy of the supply contract; and
- e) written confirmation by the Supplier and the Generation Company of the foregoing information.

3.3.8 Once an applicant submits an accomplished application form with supporting requirements, the *Market Operator* shall assess and evaluate the application in accordance with Chapter 2 of the *WESM Rules* and *WESM Registration Manual*.

4. REGISTRATION OF METERING SERVICE PROVIDERS

4.1 Overview

Persons or entities wishing to register with the *Central Registration Body* as a *Retail Metering Services Provider* must have been authorized and issued the pertinent license or authorization to operate as *Retail Metering Services Provider* by the *ERC* and shall register in the *WESM* as a *Retail Metering Services Provider* and shall fulfill all such registration requirements as set out in Chapter 2 of the *WESM Rules*.

Upon the commencement of retail competition, *Distribution Utilities* shall serve as the default *Retail Metering Services Provider* for *Contestable Customers* with service addresses located within their franchise area and are deemed registered in the *WESM* without need of complying with registration requirements.¹⁸

4.2 Information Requirements

4.2.1 At the commencement of retail competition, the *Distribution Utilities* acting as default *Retail Metering Services Providers* shall submit the following to the *Market Operator*:

- a. Accomplished application form; and
- b. Signed *Market Participation Agreement*.¹⁹

4.2.2 Upon declaration by the *Energy Regulatory Commission* that the provision of retail metering services is competitive and open, a qualified entity shall submit the specific information and documents as posted in the market information website.

4.2.3 Once an applicant submits an accomplished application form with supporting requirements, the *Market Operator* shall assess and evaluate the application in accordance with Chapter 2 of the *WESM Rules* and *WESM Registration Manual*.

5. ESTABLISHMENT OF CONTESTABLE CUSTOMER INFORMATION

5.1 Prior to the commencement of retail competition and at any time thereafter, the *Distribution Utility* shall submit information as may be required by the *Central Registration Body* on all end users within its franchise area that it deems to have already met the required demand threshold.²⁰

¹⁹ By virtue of the designation of *Distribution Utilities* as default *Metering Services Providers* under DOE Circular No. DC 2012-05-005, the *Distribution Utilities* having *Contestable Customers* within their *Franchise Area* will be required only to submit an accomplished form and signed *Market Participation Agreement*.

5.2 The Central Registration Body shall, from time to time, publish the list of information that it requires and the timetable and procedures for submission.

III. SUSPENSION, DISCONNECTION AND DE-REGISTRATION

The suspension, de-registration and cessation of the membership of the Suppliers and Contestable Customers in the WESM shall be governed by the VVESM Rules.

ANNEX B

Retail Manual

Market Transaction Procedures

I. INTRODUCTION AND GENERAL GUIDELINES

1. PURPOSE

Pursuant to Clause 3.2.6 of the *Retail Rules*, the *Central Registration Body* shall prepare and publish a *Market Manual* that sets out in more detail the relevant timelines, requirements, and procedures for carrying out *Contestable Customer's* transactions.

This Manual presents the criteria, guidelines, and procedures for the *Customer Switching* requests from Suppliers, *Contestable Customer Relocation*, and termination of supply contracts that will be administered by the *Central Registration Body*.

This Manual implements relevant provisions of Chapters 3 and 5 of the *Retail Rules*.

2. SCOPE OF APPLICATION

This Manual covers the criteria, guidelines, and procedures for the *Customer Switching* requests from Suppliers, *Contestable Customer relocation* provided in Section 3.2.3 of the *Retail Rules*, termination of *Retail Supply Contracts*, and for the *Failure of Suppliers* in the implementation of retail competition in the *WESM*.

3. DEFINITIONS, REFERENCES AND INTERPRETATION

3.1 Definitions

Unless otherwise defined or the context implies otherwise, the

italicized terms used in this Manual which are defined in the *Retail Rules* will bear the same meaning as defined in the *Retail Rules*.

3.2 References

This Manual should be read in association with the -

- a) Republic Act No. 9136
- b) Implementing Rules and Regulations of Republic Act No. 9136
- c) *WESM Rules*
- d) *Retail Rules*
- e) *WESM Manual on Registration, Suspension and De-Registration Criteria and Procedures*
- f) *Retail Manual: Registration Criteria and Procedures*
- g) Department of Energy Circular No. 2012-05-0005
- h) Department of Energy Circular No. 2012-011-0010
- i) Department of Energy Circular NO. 2013-01-0002

3.3 Organization of the Manual/ Interpretation

3.3.1 This Manual is divided into four Chapters as follows -

- a) Chapter I - Introduction and Generation Guidelines
- b) Chapter II - Customer Switching
- c) Chapter III- Customer Relocation

d) Chapter IV -Termination of
Retail Supply Contracts

3.3.2 Any reference to a section or clause in any Chapter of this Manual shall refer to the particular section or clause of the same Chapter in which the reference is made, unless otherwise specified or the context provides otherwise.

4. GENERAL GUIDELINES and SCOPE

4.1 The integration of retail competition in the *WESM* aims to promote competition, customer choice and empowerment and greater efficiency in the power industry and to reflect the true cost of electricity.¹

4.2 Upon commencement of retail competition, *Suppliers* and *Contestable Customers* shall be permitted to transact in the *WESM* in accordance with Chapter 3 of the *Retail Rules*.²

4.3 The Philippine Electricity Market Corporation (PEMC) as the appointed Central Registration Body shall administer retail competition in the *WESM* and its operations in accordance with the *Retail Rules*. It shall also facilitate Customer Switching between Suppliers.³

4.4 The procedures set forth in this Manual shall take effect only after six (6) months from the Open Access Commencement Date of the integration of retail competition in the *WESM*.⁵ This means that no transfers of Suppliers and Customer Switching shall take place during the

Initial Commercial Operations and any transfer or Customer Switching shall take effect after the end of the Initial Commercial Operations.⁶

If a *Contestable Customer* wishes to transfer to another Supplier or perform Customer Switching that will become effective by the end of the Initial Commercial Operations, the pertinent Switch Request in accordance with Chapter 3 of these Retail Rules shall be submitted to the Central Registration Body not later than thirty (30) days before the end of Initial Commercial Operations.⁷

5. RESPONSIBILITIES

5.1 Compliance and Implementation

5.1.1 Suppliers. All persons or entities who are duly licensed by the Energy Regulatory Commission as Suppliers to Contestable Customers shall comply with the requirements and procedures set forth in this Manual, in the *WESM Rules*, and *Retail Rules*.

5.1.2 Contestable Customers. All persons or entities who are certified by the Energy Regulatory Commission as a Contestable Customer shall comply with the requirements and procedures set forth in this Manual, in the *WESM Rules*, and *Retail Rules*.

5.1.3 Central Registration Body. The Central Registration Body shall be responsible for implementing the guidelines and procedures set forth in this Manual.

1 Clause 1.3.2, Retail Rules

2 Clause 1.3.3, Retail Rules

3 Clause 1.1.1.a, Retail Rules

4 Clause 1.4.1.1.d, Retail Rules

5 DOE Circular No. DC 2012-05-0005, Section 12

6 Clause 5.6.4, Retail Rules

7 Clause 5.6.5, Retail Rules

5.1.4 Service Providers. The relevant Network Service Provider and Retail Metering Services Provider shall provide the information or document required of them to enable the timely assessment and action on Customer Switching and relocation requests.

5.2 Amendments

Amendments to this Manual shall be submitted to the *WESM Rules Change Committee* and shall be acted upon pursuant to Section 1.8 of the *Retail Rules* and relevant market manuals.

6. EFFECTIVITY AND PUBLICATION

This Manual shall take effect upon approval by the *Department of Energy*. Thereafter, it shall be published in the *market information website*⁸

II. CUSTOMER SWITCHING

1. COVERAGE

This Section describes the requirements and procedures that *Suppliers*, *Contestable Customers* and the *Central Registration Body* must meet and follow when submitting and processing a request to switch *Suppliers*.

2. OVERVIEW

2.1 *Customer Switching* shall apply to all transfers in *Retail Supply Contracts of Contestable Customers* from one *Supplier* to another. These commercial transfers do not involve transfer to a *Supplier of Last Resort* (SOLR) in case of a *Last Resort Supply Event*.⁹

2.2 *Customer switching* is only applied to *Retail Supply Contracts* between *Suppliers* and *Contestable Customers*. Bilateral supply contracts of *Directly Connected Customers* or *Suppliers with Generation, Companies* are covered by the customer enrolment procedures as provided for in the *WESM Manual on Registration, Suspension, and De-Registration Criteria and Procedures*.¹⁰

2.3 Before a *Switch Request* can be submitted by a *Supplier*, the following must be present:

2.3.1 A valid *Retail Supply Contract* between a *Supplier* and the *Contestable Customer* for which the request is made; and

2.3.2 An existing and valid wheeling service agreement with the relevant *Distribution Utility* or *Network Service Provider* and a metering services agreement with a registered *Retail Metering Services Provider* covering the *Contestable Customer*.¹¹

2.3.3 Switching shall take effect at the start of a billing period except in case of transfer from *Supplier of Last Resort* to a regular *Supplier* which may take effect within a *Billing Period*.¹²

3. SWITCHING PROCEDURES

3.1. Submission and Processing of Switch Request

⁸ www.wesm.ph

⁹ Clause 3.2.1.1, Retail Rules

¹⁰ Clause 3.2.1.2, Retail Rules and WESM Manual: Registration, Suspension and Deregistration Criteria and Procedures Section 3.5

¹¹ Clause 3.2.1.3, Retail Rules

¹² Clause 3.2.1.4, Retail Rules

3.1.1 Once all requirements are met, an accomplished switch request form shall be submitted by the new Supplier to the *Central Registration Body* not later than thirty (30) *working days* before the proposed effective date¹³. The request shall be accompanied by the following documentary requirements:

- a. Switch Request Form
- b. Copy of *Retail Supply Contract*
- c. Copy of valid *Wheeling Service Agreement*
- d. Copy of valid *Metering Services Agreement*

3.1.2 *Initial Assessment* - Within three (3) *working days* from receipt of the switch request, the *Central Registration Body* shall evaluate the switch application for completeness of requirements. In case of an incomplete application, the *Central Registration Body* shall immediately notify the requesting *Supplier* to furnish the lacking or additional requirements.

The *Central Registration Body* shall not proceed with the processing of application in case there is a failure of the requesting *Supplier* to complete the switching requirements.

The *Supplier* shall remedy the shortcoming or submit the incomplete requirements within ten (10) *working days* from *Central Registration*

Body's notice. Otherwise, the *Central Registration Body* will no longer process the request and consider it as disapproval of the switch request.

3.1.3 **Approval of Switch Request**

- The *Central Registration Body* shall verify that all conditions set out in *Retail Rule 3.2.1.3* are met and verify the membership type of the *Contestable Customer* whether it is registered as a Direct VVESM Member or an Indirect WESM Member. Based on the foregoing and subject to compliance with *Prudential Requirements*, the *Central Registration Body* will be able to confirm whether the switch is to take effect and when it will take effect.¹⁴

3.1.3.1. Contestable Customer is registered as Direct WESM Member:

- a. The *Central Registration Body* shall inform the *Contestable Customer* of their updated *Prudential Requirements* within three (3) *working days* from confirming that the switch request meets the conditions in *Retail Rule 3.2.1.3*.
- b. The *Contestable Customer* shall update

¹³ Clause 3.2.2.1, Retail Rules. Date should coincide with the end of the billing period.

¹⁴ Clause 3.2.2.2, Retail Rules

its *Prudential Requirements* if so required by the *Market Operator* to ensure that it fully satisfies the *Prudential Requirements* as set out in the *WESM Rules*.¹⁵ The *Contestable Customer* shall post the *Prudential Requirements* within ten (10) business days from CRB notification.

- c. Within two (2) *working days* from confirming that the *Contestable Customer* has complied with the *Prudential Requirements*, the *Central Registration Body* shall notify the new *Supplier*, the incumbent *Supplier*, the *Contestable Customer* and the relevant *Distribution Utility* or *Network Service Provider* of the confirmation and approval of the *Switch Request* and the effective date of the

switch.¹⁶

- d. The *Contestable Customer* shall be responsible for ensuring that it has fully complied with its obligations to the incumbent *Supplier* and the new *Supplier*, including but not limited to the payment of outstanding obligations and posting of security deposits.¹⁷

Compliance with such requirements will not be verified by the *Central Registration Body* and are not prerequisites to its confirmation of the switch. Thus, the contracting parties should be responsible for ensuring that conditions set out in their contracts affected by the switch are fulfilled.

3.1.3.2 Contestable Customer is registered as Indirect WESM Member:

¹⁵ Clause 3.2.2.2 a, Retail Rules

¹⁶ Clause 3.2.2.2 b, Retail Rules
¹⁷ Clause 3.2.2.2 c, Retail Rules

- a. The *Central Registration Body* shall inform the new and incumbent *Suppliers* of their updated *Prudential Requirements* within three (3) *working days* of confirming that the switch request meets the conditions in *Retail Rule 3.2.1.3*.
- b. The new *Supplier* shall submit the additional securities required by the *Market Operator* to fully satisfy the prudential requirement as set out in the *WESM Rules*.¹⁸
- c. Within two (2) *working days* from confirmation that the *Prudential Requirements* are satisfied, the *Central Registration Body* shall notify the new *Supplier*, the incumbent *Supplier* and Direct WESM Member counterparty, the *Contestable Customer* and the relevant *Distribution Utility* or *Network Service Provider* of the confirmation and approval of the switch request and the effective date of the switch.¹⁹
- d. The *Contestable Customer* shall be responsible for ensuring that it has fully complied with its obligations to the incumbent *Supplier* and Direct WESM Member counterparty, and the new *Supplier*, including but not limited to the payment of outstanding obligations and posting of security deposits.²⁰
- Compliance with such requirements will not be verified by the *Central Registration Body* and are not prerequisites to its confirmation of the switch.

3.2. Disapproval of Customer Switch and Remedies

¹⁹ Clause 3.2.2.3 c, Retail Rules

²⁰ Clause 3.2.2.3 d, Retail Rules

¹⁸ Clause 3.2.2.3 a, Retail Rules

3.2.1 The *Central Registration Body* shall approve the switch request upon submission by the *Supplier* of all the requirements for the customer switch.

3.2.2 **Notice.** Within two (2) *working days* from verification that the switching requirements set forth in *Retail Rule 3.2.1.3* have not been met or that *Prudential Requirements* have not been satisfied, the *Central Registration Body* shall issue a notice of switch failure to the *Contestable Customer*, the *Supplier* which submitted the switch request, and the incumbent *Supplier*. The notice shall indicate the reasons for such failure.²¹

3.2.3 **Submission of Additional Requirements.** The requesting *Supplier* may submit the lacking requirements or remedy the conditions that lead to the failure of customer switch within fifteen (15) *calendar days* upon receipt of the notification as provided in Section 3.2.2 of this Manual.²²

3.2.4 **Approval of Previous Switch Request.** In case of insufficient *Prudential Requirements*, the party required to comply shall update its *Prudential Requirements* to the satisfaction of the *Market Operator* and the switch can take effect without need of resubmission of a *Switch Request*.²³

3.3 Maintenance and Updating of Central Registration Body Registry

3.3.1 The *Central Registration Body* shall maintain and update its registration records of all switches in electronic copies. Retention, storage and destruction of records shall be in accordance with prevailing company policies or relevant market manuals. The *Central Registration Body* shall be responsible for maintaining and ensuring completeness of registration records.

3.2.2 The *Central Registration Body's* registration records shall include the following:

- a. Switch Request Forms and Revisions
- b. Notices and other communications to and from the requesting parties, and other parties or agencies
- c. Assessment forms and related internal communications
- d. Document submissions from the requesting parties

III. CUSTOMER RELOCATION

1. COVERAGE

This section provides for the conditions and procedures for implementing and giving effect to customer relocation upon the request of a *Contestable Customer*.

2. OVERVIEW

²¹ Clause 3.2.2.4 a, Retail Rules

²² Clause 3.2.3.4 b, Retail Rules

²³ Clause 3.2.2.4 c, Retail Rules

2.1 A *Contestable Customer* that wishes to relocate to a new service address within the same franchise area and wishes to continue to be served by its present *Supplier* shall send a prior request for relocation of service to the *Supplier* and the relevant *Distribution Utility* or *Network Service Provider*.²⁴

2.2 The relocation of a *Contestable Customer* shall apply only when the *registered facility* of a *Contestable Customer* is transferred to a different service address and the certification of contestability remains valid. However, if a new certification of contestability is issued by the *Energy Regulatory Commission* for the facility at its new location, the *Contestable Customer* shall-

- a. Apply for a new registration in respect to said facility, which registration shall be governed by Chapter 2 of the *Retail Rules* and the *Retail Manual: Registration Criteria and Procedures*; and
- b. Send a notice to the *Central Registration Body* of the cessation of registration of the previously-registered facility in accordance with Chapter 2 of the *Retail Rules* and the *WESM Manual: Registration, De-Registration and Suspension Criteria and Procedures*.²⁵

3. Procedures

3.1. If the present *Supplier* agrees to continue to provide service, the *Contestable Customer* shall submit a Customer Relocation Form to the *Central Registration Body* evidencing the concurrence of the *Supplier* and

the relevant *Distribution Utility* or *Network Service Provider*.²⁶

3.2. If the present *Supplier* does not agree to continue to provide service:

- a. The *Contestable Customer* shall switch to a new *Supplier* in accordance with the requirements and procedures set out in Clause 3.2.2 of the *Retail Rules* and Chapter II of this Manual prior to relocation. In case of a *Direct WESM Member*, the *Contestable Customer* shall submit additional securities required by the *Market Operator* as necessary to fully satisfy the *Prudential Requirements* set out in the *WESM Rules*.
- b. If a *Contestable Customer* fails to comply with the conditions set out in the previous paragraph, the *Central Registration Body* shall notify the *Supplier* and the relevant *Distribution Utility* or *Network Service Provider*. The *Distribution Utility* or *Network Service Provider* shall then not permit relocation to a new service area or if the relocation has already been effected, the *Distribution Utility* or *Network Service Provider* concerned shall cause disconnection of the *Contestable Customer*.²⁷

IV. TERMINATION OF RETAIL SUPPLY CONTRACTS

1. COVERAGE

This section establishes the requirements and procedures for implementing and approving, if necessary, the termination of *Supplier* service by the *Supplier*.

²⁴ Clause 3.2.3.1, Retail Rules

²⁵ Clause 3.2.3.2, Retail Rule

²⁶ Clause 3.2.3.6, Retail Rules

²⁷ Clause 3.2.3.7, Retail Rules

2. OVERVIEW

2.1 Types of Termination of Supply Contracts

2.1.1 **Non-renewal** - If the incumbent *Supplier* does not intend to renew the supply contract upon its expiration, the *Supplier* shall send a notice of non-renewal to the *Contestable Customer* and the *Central Registration Body* within thirty calendar (30) days prior to the expiration of the said supply contract.²⁸

2.1.2 **Pre-termination** - If the Incumbent *Supplier* intends to terminate the contract prior to the expiration of its term, the *Supplier* shall send a notice of pre-termination to the *Contestable Customer* in accordance with the terms specified in the contract to the *Central Registration Body* and to the relevant *Network Service Provider* and *Retail Metering Services Provider*.²⁹

2.2 Options for Affected Contestable Customer in case of Termination of Supply Contract

2.2.1 **Switch option for Non-renewal or pre-termination** - In case of non-renewal or pre-termination, the *Contestable Customer* shall switch to a new *Supplier* in accordance with the requirements

and procedures set out in Clause 3.2.2 of the *Retail Rules*.³⁰

2.2.2 **Application for Direct WESM Membership Customer Category or Additional Prudential Requirements for Direct WESM Member Contestable Customer** - A *Contestable Customer* who is registered as an Indirect WESM member may apply as a Direct WESM Member to be able to directly purchase its supply requirements from the spot market.

2.2.3 A *Contestable Customer* who is registered as a *Direct WESM Member* shall post securities to satisfy the *Prudential Requirements* set out in the *WESM Rules*.³¹

2.3. If the *Contestable Customer* is an Indirect WESM Member and it fails to successfully switch to another *Supplier* prior to the expiration of the *Retail Supply Contract*, the original *Supplier* shall:

2.3.1. Initiate the disconnection of said *Contestable Customer* following prevailing rules and procedures for disconnection; and³²

2.3.2. Notify the *Central Registration Body* that it has initiated disconnection procedures.³³

²⁸ Clause 3.2.5.1, Retail Rules

²⁹ Clause 3.2.5.2, Retail Rules

³⁰ Clause 3.2.5.3 a, Retail Rules

³¹ Clause 3.2.5.3 b, Retail Rules

³² Clause 3.2.5.4 a, Retail Rules

³³ Clause 3.2.5.4 b, Retail Rules

2.4 Role of the Central Registration Body

The termination of the contract shall be given effect by the Central Registration Body only if the following conditions are met.

3. PROCEDURES

3.1 Submission of Notices

3.1.1 Notice of Non-renewal - The *Supplier* shall send the notice to the *Contestable Customer* and the *Central Registration Body* within thirty (30) *working days* prior to the expiration of the said supply contract.

3.1.2 Notice of Pre-termination - The incumbent *Supplier* shall send a prior notice of termination to the *Contestable Customer* in accordance with the terms specified in the contract to the *Central Registration Body* and to the relevant *Network Service Provider* and *Metering Service Provider*.

3.2 Procedures for Non-renewal or Termination

The *Central Registration Body* shall ensure that the following conditions are satisfied before confirming the termination of the contract.

3.2.1 Switch to a New Supplier— If a *Contestable Customer* switches to a new *Supplier*, the following procedures shall apply:

- a. A new *Supplier* shall submit a switch request to the *Central Registration Body* following the procedures for switching;
- b. *Central Registration Body* shall process the Switch Request in accordance with the switching procedures of this Manual;
- c. Once the switch is successfully approved and implemented, the *Central Registration Body* shall confirm the termination of the previous *Retail Supply Contract*; and
- d. Within two (2) *working days* of confirming the termination above, the *Central Registration Body* shall send a notification letter to the previous *Supplier*, *Contestable Customer* and its new *Supplier*.

3.2.2 Submission of Additional Securities by a Contestable Customer registered as Direct WESM Member

- a. Prior to the expiration of its *Retail Supply Contract*, the *Contestable Customer* registered as *Direct WESM Member* shall post additional securities to meet the *Prudential*

Requirements set out in the *WESM Rules*.

- b. Once the *Contestable Customer* provides the *Prudential Requirements*, the *Central Registration Body* shall confirm the termination of the previous *Retail Supply Contract*.
- c. Within two (2) *working days* from giving effect to the termination, *Central Registration Body* shall send a notification letter to the previous *Supplier* and *Contestable Customer*.

3.2.3 Application as Direct WESM Member by Contestable Customer

A *Contestable Customer* may apply as Direct WESM Member in order to cover its supply requirements and to avoid disconnection of Supplier by meeting the criteria and procedures for the registration of WESM Members and Trading Participants set forth in Chapter 2 of the *WESM Rules* and in the *WESM Manual on Registration, Suspension and De-Registration Criteria and Procedures*.

V. TRANSFER TO A SUPPLIER OF LAST RESORT (SOLR)

1. COVERAGE

This section establishes the requirements and procedures for implementing and approving, if necessary, the transfer of *Contestable Customers* affected by a *Last Resort Supply Event* to a SOLR.

2. OVERVIEW

2.1 A *Contestable Customer* shall be transferred to the SOLR upon occurrence of any of the following *Last Resort Supply Events*:

- a. The Supplier has ceased to operate;
- b. The Supplier's license or authorization has been revoked by the *Energy Regulatory Commission*;
- c. The Supplier is no longer permitted to trade in the WESM due to suspension, deregistration, or cessation of membership, or
- d. The agreements for transmission, wheeling or distribution services with the relevant *Network Service Provider or Distribution Utility* have been terminated.³⁴

2.2 When the *Central Registration Body* determines the occurrence of any of the aforementioned last resort events, a notification shall be sent to the affected *Contestable Customer/s*, the SOLR, the *Direct WESM Member counterparty/ies* of the *Contestable Customer/s* if applicable and the defaulting Supplier, if practicable, of the occurrence and the effective date of the transfer to the SOLR.³⁵

For the *Contestable Customer* that is an *Indirect WESM Member* and the defaulting

³⁴ Clause 3.4.1, Retail Rules

³⁵ Clause 3.4.2, Retail Rules

Supplier is its *Direct WESM Member counterparty*, the *Contestable Customer* shall notify the *Central Registration Body* and the SOLR if it chooses to be served by the latter.³⁶

For the *Contestable Customer* that is an *Indirect WESM Member* and the defaulting Supplier is not its *Direct WESM Member counterparty* (due to existence of multiple suppliers), the availment of SOLR service must be approved first by the *Contestable Customer's Direct WESM Member counterparty* before the *Central Registration Body* and the SOLR are notified.

A *Contestable Customer* that is a *Direct WESM Member* may choose a) to be served by the SOLR following the timeline set out in Clause 3.4.3; or, b) not to be served by the SOLR. If it chooses the latter, the *Contestable Customer* shall submit additional securities required by the *Market Operator* to fully satisfy the prudential requirements set out in the *WESM Rules*.³⁷

The *Central Registration Body* shall be notified by the SOLR and the *Contestable Customer* of the transfer no later than 48 hours after being notified of the occurrence of the *Last Resort Supply Event*.³⁸

3. PROCEDURES

3.1 Submission and Processing of Switch Request (Switch to SOLR)–Once all parties agree, an accomplished

switch request form shall be submitted by the SOLR to the *Central Registration Body* no later than 48 hours after being notified of the occurrence of the *Last Resort Supply Event*.

3.2. **Assessment and Approval** - Upon receipt of the request, the *Central Registration Body* shall evaluate the form. The *Central Registration Body* shall immediately notify the SOLR to provide the prudential requirements within three (3) *working days* from receipt of the switch request/ notification.

3.3 **Disconnection** – The *Central Registration Body* shall initiate disconnection of a *Contestable Customer* based on the following grounds:

- a. Failure of the *Contestable Customer* to give notice within the period set out in the *Retail Rules*;
- b. Provision of notice that it elects not to be transferred to a SOLR within the period set out in the *Retail Rules*; or
- c. Failure to enter into a contract with the SOLR.

³⁶ Clause 3.4.3, Retail Rules

³⁷ Clause 3.4.4, Retail Rules

³⁸ Clause 3.4.3.3, Retail

ANNEX C

RETAIL MANUAL

DISCLOSURE AND CONFIDENTIALITY OF CONTESTABLE CUSTOMER INFORMATION

1. PURPOSE & SCOPE OF APPLICATION

Pursuant to Clause 2.3.2.3 of the Rules for the Integration of Retail Competition in the Wholesale Electricity Spot Market (Retail Rules), the *Central Registration Body* shall develop and publish procedures for the request and release of Contestable Customer information and the corresponding service fees.

This Manual covers the types of *Contestable Customer* information that may be subject to disclosure and available for dissemination and the procedures for requesting and the release of *Contestable Customer* information.

2. DEFINITIONS, REFERENCES AND INTERPRETATION

2.1 Definitions

Unless otherwise defined or the context implies otherwise, the italicized terms used in this Manual which are defined in the *WESM Rules* and *Retail Rules* will bear the same meaning as defined in the *WESM Rules* and *Retail Rules*.

2.2 Giving of Notices

The guidelines set forth in *WESM Rules* Clause 9.6.1 shall govern the giving of notices required in this Manual.

2.3 References

This Manual should be read in association with the -

- a. Republic Act No. 9136
- b. Implementing Rules and Regulations
- c. ERC's Transitory Rules and Regulations of Republic Act No. 9136
- d. *WESM Rules*
- e. *Retail Rules*
- f. Department of Energy Circular No. 2010-05-006
- g. Department of Energy Circular No. 2010-08-0010
- h. Department of Energy Circular No. 2012-011-0010
- i. Department of Energy Circular No. 2013-01-0002
- j. WESM Manual: Market Operator Information Disclosure and Confidentiality

2.4 Interpretation

Any reference to a section or clause in any Chapter of this Manual shall refer to the particular section or clause of the same Chapter in which the reference is made, unless otherwise specified or the context provides otherwise.

3. GENERAL GUIDELINES

The provisions of Chapter 5 of the *WESM Rules* and *WESM Manual on Market Operator Information Disclosure and Confidentiality* (Information Disclosure and Confidentiality Manual) relating to confidentiality and disclosure policies of market information shall be similarly applicable with regard to the disclosure and confidentiality of *Contestable Customer* information.

4. RESPONSIBILITIES

The *Central Registration Body* shall be responsible for implementing the guidelines and procedures set forth in this Manual

5. CONFIDENTIALITY AND DISCLOSURE POLICY

5.1 Upon prior authorization, provided in written or electronic form, the *Central Registration Body* shall provide the information so required to the *Supplier* or to such other person entity authorized by the *Contestable Customer*.¹ The information shall be provided in such form and upon payment of fees as the *Central Registration Body* deems appropriate.²

5.2 Subject to the procedures and permitted disclosures set forth in this Manual and Chapter 5 of the *WESM Rules* and Information Disclosure and Confidentiality Manual, the following *Contestable Customer* information are available for dissemination.

5.2.1 Administrative details such as but not limited to a) name of entity that owns the *registered facility*; b) service address of the *registered facility* and c) contact details;

5.2.2 Supply details such as a) incumbent *Supplier*; b) past *Supplier/s*; c) duration of contract and names of counterparties;

5.2.3 Details contained in the ERC's Certificates of Contestability;

5.2.4 Bilateral contact details;

5.2.5 Contestable Customer load data such as a) metered quantities and b) load profile; and

5.2.6. *Contestable Customer* metering and connection details.

5.3 In accordance with the *WESM Rules* and Information Disclosure and Confidentiality Manual, the following *Contestable Customer* information are considered confidential–

5.3.1 Bilateral contract data;

5.3.2 *Contestable Customer* load data; and

5.3.3 *Contestable Customer* metering and connection details

5.4 In accordance with *WESM Rules* and Information Disclosure and Confidentiality Manual, the following *Contestable Customer* information are considered public or non-confidential–

5.4.1 Administrative details such as but not limited to a) name of entity that owns the *registered facility*; b) service address of the *registered facility* and c) contact details;

5.4.2 Supply details such as a) incumbent *Supplier*; b) past *Supplier/s*; c) duration of supply contract and names of counterparties; and

5.4.3 Details contained in the ERC's Certificates of Contestability.

5.5 *Contestable Customer* information shall be made available by the Central Registration Body through

any of the following means–

5.5.1 *Market information website* at www.wesm.ph for public or non-confidential information; and

5.5.2 In printed or electronic copies for confidential information upon authorization by the *Contestable Customer*.

6. PROCEDURES FOR THE REQUEST AND RELEASE OF CONTESTABLE CUSTOMER INFORMATION

6.1 The *Central Registration Body* shall regularly update its Registry List of *Contestable Customers* together with information that are considered public or non-confidential as set forth in this Manual and publish the same in the *market information website*.

6.2 For confidential *Contestable Customer* information –

6.2.1 The requesting party shall submit a letter addressed to the *Central Registration Body* stating, the reasons for the request and the proof of authorization from the *Contestable Customer* allowing the *Central Registration Body* release the requested information.

6.2.2 Within two (2) *working days* from receipt of the request, the *Central Registration Body* shall seek confirmation from the authorized contact person of the *Contestable Customer* through electronic mail.

6.2.3 Within ten (10) *working days* from receipt of the confirmation by the *Contestable Customer*, the *Central Registration Body* shall process the requested data and release the information to the requesting party. An acknowledgement by the requesting party shall be made upon the release of the request information.

7. AMENDMENTS

Amendments to this Manual shall be submitted to the *WESM Rules Change Committee* and shall be acted upon pursuant to Section 1.8 of the *Retail Rules* and relevant market manuals.

8. AMENDMENTS

This Manual shall take effect upon promulgation by the *DOE*. Thereafter, it shall be published in the *market information website*.

ANNEX D

METERING STANDARDS AND PROCEDURES

SECTION I. INTRODUCTION

1.1 PURPOSE

Pursuant to Clause 4.9 of the *Retail Rules*, the *Central Registration body* shall formulate and *publish a market manual* that:

- a. Describes the class and accuracy requirements of *meters*;
- b. Defines the procedures that *Retail Metering Services Providers* must undertake to validate, estimate, correct or substitute erroneous meter data;
- c. Defines the information that must be contained in the *installation database* of a *Retail Metering Services Provider*; and
- d. Other relevant procedures to implement the metering provisions of the *Retail Rules*

As compiled, this Manual consolidates the pertinent metering procedures and standards applicable for *Contestable Customers* and for the reference of *Distribution Utilities*, *Suppliers* *Retail Metering Services Providers*, other *WESM Members* and the public. More specifically, this Manual, in compliance with Clause 4.9 of the *Retail Rules*, will:

- a) Define the *metering installation* standards that a *Contestable Customer meter installation* must comply with to be eligible for registration in accordance with *Retail Rules* Clause 4.3.2.
- b) Describe the standard numbering system that *Retail Services Providers*

must follow when numbering and identifying their *metering installations*;

- c) Describe the procedures that the *Central Registration Body*, *Contestable Customers*, and *Suppliers* must follow when registering *Contestable Customer metering installations* in WESM in accordance with *Retail Rules* Clause 4.3.2.1;
- d) Describe the procedures that the *Central Registration Body* and the *Retail Metering Services Providers* must follow to ensure *Contestable Customer metering data* is collected in a timely and efficient manner
- e) Describe the procedures of the *Central Registration Body* for the validation, estimation, and revision of *metering data* to make it settlement ready;
- f) Describe the reporting procedures in cases where there are errors associated with *metering data* or meter trouble; and
- g) Describe the procedures of the *Central Registration* for the measurement and monitoring of the annual performance of *Retail Metering Services Providers*.

1.2 SCOPE OF APPLICATION

This Manual covers the metering procedures and standards for *meters* of *Contestable Customers only*.

This Manual does not cover the procedure for the registration of *Retail Metering*

¹ As the default Retail Metering Services Provider

Services Providers, which is covered by the Retail Manual on Registration Criteria and Procedures².

1.3 CONVENTIONS and DEFINITIONS

1.3.1 Conventions

The standard conventions to be followed in this Manual are as follows:

- a) The word ‘shall’ denotes a mandatory requirement;
- b) Unless otherwise defined or the context implies otherwise, the italicized terms used in this Manual which are defined in the *WESM Rules, Retail Rules, WESM Manual on Metering Standards and Procedures*³, *Philippine Grid Code* or *Philippine Distribution Code* will bear the same meaning as defined in the *WESM Rules, Retail Rules, WESM Manual on Metering Standards and Procedures Issue, Philippine Grid Code* or *Philippine Distribution Code* are defined in Section 1.3.2 of this Manual.
- c) Double quotation marks are used to indicate titles of publications, legislation, forms, and other documents; and
- d) Any procedure-specific convention(s) shall be identified within the specific document itself.

1.3.2 Definition of Terms

American National Standards Institute (ANSI). A private non-profit organization that oversees

the development of voluntary consensus standards for products, services, processes, systems, and personnel in the United States.

End-to-End Test. A continuity test of data transfer from the *meter* to the Meter Data Retrieval System of the *Retail Metering Services Provider* and then to the Meter Data Collection System of the *Central Registration Body*.

Grid Off-Take Metering Point. Metering point at a grid at which the settlement quantity of a *Contestable Customer* connected to a distribution system will be determined.

Grid Off-Take Metering. The device which measures and records the consumption or production of electricity at the *grid off-take metering point*.

International Electro technical Commission (IEC). A non-profit, non-governmental international standards organization that prepares and publishes International Standards for all electrical, electronic and related technologies-collectively known as “electrotechnology”.

Institute of Electrical and Electronics Engineers (IEEE). A professional association that is dedicated to advancing technological innovation and excellence.

Instrument Transformers. A general term for current transformers and voltage transformers.

Meter Trouble. Any error associated with metering data.

Meter Trouble Report. A report issued by the *Central Registration Body* to a *Retail Metering Services Provider* for the correction of detected metering data errors.

1.4 RESPONSIBILITIES

1.4.1 Compliance and Implementation

- a) The *Central Registration Body* shall be responsible for the development, validation maintenance, publication, and revision of this document in coordination with *WESM Members*;
- b) The *Retail Metering Services Provider* shall provide the necessary information and references for subsequent revisions and validation of this document;
- c) The *Rules Change Committee* shall be responsible for the initial approval of the subsequent revisions and issuances of this Manual;
- d) The *PEM Board* shall be responsible for the initial approval and endorsement to the DOE of the subsequent revisions and issuances of this Manual;
- e) The *Dispute Resolution Administrator* shall be responsible for the investigation of any infraction by a *Retail Metering Services Provider* of a *Contestable Customer* cases where disputes involved *metering data*, and tampering of any metering installation that is detrimental to the integrity of the *Metering data*; and

- f.) Any other responsibilities of technical or legal committees or groups as stated in the *WESM Rules* and *Retail Rules*, the *Philippine Grid Code* or the *Philippine Distribution Code* which may affect the relevant provision of this Manual.

1.4.2 Amendments

Amendments to this Manual shall be submitted to the *WESM Rules Change Committee* and shall be acted upon pursuant to Section 1.8 of the *Retail Rules* and relevant market manuals.

1.5 EFFECTIVITY AND PUBLICATION

This Manual shall take effect upon approval by the *Department of Energy*. Thereafter it shall be *published* in the *market information website*.⁴

SECTION 2. METERING INSTALLATION STANDARDS

2.1 COVERAGE

This section defines the *metering installation* standards that a *Contestable Customer meter installation* must comply with to be eligible for registration in the *Wholesale Electricity Spot Market*.

The section also covers certain electrical, dimensional, and mechanical characteristics and designs, and takes into consideration certain safety features of current and inductively-coupled voltage transformers of types generally used in the measurement of electricity associated with revenue metering.

2.2 OVERVIEW

- a) A *metering Installation* shall be accurate in accordance with the *Retail Rules*, the *Philippine Grid Code*, the *Philippine Distribution Code*, the

WESM Rules and this Manual.⁵

- b) A *metering installation* shall be secured.⁶
- c) A *metering installation* shall have facilities to enable *metering data* to be transmitted from the *metering installation* to the *Retail Metering Services Provider's metering database* and be capable of communicating with the *Retail Metering Services Provider's metering database*.⁷
- d) A *metering installation* shall contain a device which has a visible or an equivalently accessible display of *metering data* or which allows the *metering data* to be accessed and read at the same time by portable computer or other equipment of a type or specification reasonably acceptable to all entities that are entitled to have access to that *metering data*.⁸
- e) A *metering installation* shall have electronic data recording facilities such that all *metering data* can be measured and recorded in *trading intervals*.⁹
- f) A *metering installation* shall, where bi-directional active energy flows occur, be capable of separately registering and recording flows in each direction.¹⁰
- g) A *metering installation* shall have a *meter* having an internal data logger capable of storing the *metering data* for at least sixty days and have a back-up storage facility enabling *metering data* to be stored for forty-eight hours in the event of external power failure.¹¹

- h) A *metering installation* shall have an active energy meter, and, if required in accordance with the *Philippine Grid Code* or *Philippine Distribution Code*, a reactive energy meter having an internal data logger.¹²

2.3 GENERAL COMPLIANCE

This Manual supplements the minimum requirements in the *Philippine Distribution Code* for *metering installations* of *Contestable Customers*. Any *metering installation* of a higher level of accuracy or functionality than the standards in the *Philippine Distribution Code* and this standard may also be installed.

2.4 METERS

This section provides the standards for *meters* located within the *metering installation*. These standards will enable a *metering installation* to comply with Clause 4.3.2 and Clause 4.3.3 of the Retail Rules.

2.4.1 Redundancy Requirement

The *Retail Metering Services Provider* may provide for a backup revenue *meter* upon the request of the *Contestable Customer*. The backup revenue *meter* shall have a different make and model (i.e. different brand) from the main revenue *meter*.

2.4.2 Technical Requirements

Meters, both installed as the main revenue *meter* and backup revenue *meter*, shall meet the minimum requirements listed in Table 1

Table 1. Minimum Technical Requirements for Main and Backup Revenue Meters

ITEM	SPECIFICATION		REFERENCE DOCUMENTS
	MAIN METER	BACK UP METER	
Accuracy Class	IEC 687 Class 0.2/ ANSI 12.20 Class 0.3 or better	Same as the main meter	ANSI or IEC
No. of Stator	Corresponds to the service type and complying with Blondel’s Theorem	Same as the main meter	<i>Philippine Distribution Code</i> ANSI
Voltage Rating	Corresponds to the secondary voltage rating of voltage transformers used	Same as the main meter	<i>Philippine Distribution Code</i>
Current Rating	Corresponds to the secondary current rating of current transformer used (typically 1A or 5A)	Same as the main meter	ANSI or IEC
Frequency	60Hz	Same as the main meter	<i>Philippine Distribution Code</i>
Measurement	Unidirectional active metering (delivered and 2-quadrant reactive metering) or, where bi-directional energy flows,bi-directional active metering	Same as the main meter	<i>Philippine Distribution Code</i> Retail Rules
Interval Data	Programmable to 5,15,30 minute interval	Same as the main meter	<i>Philippine Distribution Code</i>
No. of Channels	At least four (4) channels for bi-directional meters: a. kWh (Delivered) b. kVARh (Delivered) c. kWh (Received) d. kVARh (Received) At least two (2) channels for unidirectional meters: a. kWh (Received) b. kVARh (Received)	Same as the main meter	<i>Philippine Distribution Code</i>
Mass Memory	Minimum of 60 day recording of a 15-minute time-stamped demand interval for 4 recording channels for bidirectional meters or 2 recording channels for unidirectional meters	Same as main meter	<i>Philippine Distribution Code</i>
Recording Billing Quantities	Display and record TOU energy and power parameters, (kWh,kVARh)	Same as main meter	<i>Philippine Distribution Code</i>
Security	The meter shall have provisions for securing the meter data, meter configurations and programs by electronic means and/or passwords. It shall also be secured physically by way of security seals.	Same as the main meter	Retail Rules
Communication Capability	The meter shall have one (1) independent communication ports in addition to the optical port.	Same as the main meter	Retail Rules <i>Philippine Distribution Code</i>

ITEM	SPECIFICATION		REFERENCE DOCUMENTS
	MAIN METER	BACK UP METER	
Internal Clock/ Battery	With long life lithium battery for clock/ calendar maintenance	Same as main meter	Retail Rules <i>Philippine Distribution Code</i>
Time Synchronization	Shall be crystal synchronization time-based. The internal clock shall be capable of being reset/ set by the data collection software during normal collection operations.	Same as the main meter	Retail Rules <i>Philippine Distribution Code</i>
Digital Display	The meter shall have a digital display with a minimum of 5 integer digits.	Same as the main meter	Retail Rules <i>Philippine Distribution Code</i>
Codes and Standards Compliance	The meter shall adhere to established International Standards (e.g. IEC, ANSI IEEE)	Same as the main meter	IEC, ANSI, IEEE
Enclosure	The meter shall be provided with the necessary cover to protect the internal component against the harmful elements of environment that may affect its measuring circuit and operation.	Same as the main meter	ANSI

2.4.3 Communication Links

The communication link to be installed shall be a dedicated line (landline or wireless) solely for the metering of the *Retail Metering Services Provider*.

2.5 INSTRUMENT TRANSFORMERS

This section provides the standards for *instrument transformers* located within the *metering Installation*. With adherence to these standards, a *metering installation* shall be able to fully or partially comply with *Retail Rules Clause 4.3.2*

2.5.1 General Requirement

A *metering installation* shall include *instrument transformers*.

2.5.2 Use of Instrument Transformers

Instrument transformers supplying the revenue meter shall be

used solely for the purposes of revenue metering not for any other purposes, such as, but not limited to, the attachment of other devices. Moreover, the following schemes shall not be allowed:

- a) The use of an *instruments transformer* for two or more metering points; and
- b) Paralleling of *current transformers*.

2.5.3 Instrument Transformer Ratios

2.5.3.1 Selection of Current Transformer Ratios

Current transformer ratios shall be selected according to the following factors:

- a) The maximum sustained primary current in a *current*

transformer shall not exceed the primary tap multiplied by the primary factor of the *current transformer*; and

- b) The minimum sustained primary current during normal operations shall not be less than 10% of the primary tap.

2.5.3.2 Selection of Voltage Transformer Ratios

Voltage transformer ratios shall be selected such that operation at the minimum or maximum sustained secondary voltage shall not affect meter *accuracy* or meter function.

2.5.4 Accuracy Requirements

2.5.4.1 Current Transformers

Current transformers shall conform to the IEC 44-1 Class 0.2 or ANSI C57.13 Class 0.3 or better of any *instrument transformer*.

2.5.4.2 Voltage Transformers

Voltage transformers shall conform to the IEC 6044-2 Class 0.2 or ANSI C57.13 Class 0.3 of any *instrument transformer*.

2.5.4.3 Accuracy Test

2.5.4.3.1 Requirements

Where accuracy tests are required, they shall comply

with the requirements of the *Philippine Distribution Code* and other *ERC* issuances.

2.5.4.3.2 Instrument Transformer Burdens

Burdens shall include the following considerations:

- a) Every device connected to every *instrument transformer*;
- b) The burden imposed by each device; and
- c) The size of the conductors in the secondary cabling and the length of the path followed by the cabling.

2.5.4.3.2.1 Current Transformers Burden Calculation

The *burden* calculation for a *current transformer* shall include:

- a) The impedance of the secondary wiring;
- b) The impedance of all devices connected to the *current transformer*;
- c) The apparent impedance associated with the interconnection

of *current transformer* secondaries;

d) The apparent impedance associated with the sharing of a common current path through a measuring device with another *current transformer*;

e) The apparent impedance associated with the sharing of an approved common-return conductor;

f) The apparent impedance associated with the impedance of any other *current transformer(s)* connected in parallel with subject *Instrument transformer*;

g) *Burden* under balanced power system conditions; and

h) Worst-case unbalance, including single-phase power.

The measurement of calculation shall verify that actual *burdens*

in service do not exceed the nameplate rated burden limits for the IEC 44-1 Class 0.2 or ANSI C57.13 Class 0.3 of any instrument transformer.

2.5.4.3.2.2 Voltage Transformers Burden Calculation

The *burden* calculation for a *voltage transformer* shall include the apparent power and power factor at the secondary terminals of the *Instrument transformer*.

The measurement of calculation shall verify that actual burdens in service do not exceed the nameplate rated burden limits for IEC 6044-2 Class 0.2 or ANSI C57.13 Class 0.3 of any instrument transformer.

2.5.5 Safety Requirements and Grounding System

A *metering installation* shall conform to the requirements of:

- a) Philippine Electrical Code; and
- b) The IEC or ANSI/ IEEE C57.13-1983 IEEE Guide for Grounding of *Instrument Transformer* Secondary Circuits and Cases.

2.5.6 Technical Specifications

This section provides the minimum technical specifications of *current transformers, voltage transformers* of the main *meter*, as well as the lightning arresters connected to the *meter*.

2.5.6.1 Current Transformer

Current transformer installed at the main *meter* shall meet the minimum requirements listed in Table 2.

Table 2. Minimum Technical Specifications for Current Transformers.

ITEMS	SPECIFICATIONS	REFERENCE DOCUMENTS
Type	Outdoor Type; Minimum oil filled, Dry Type or Gas-filled	
Cooling	Oil immersed, Self-cooled; Butyl, Cast resin	
Construction	Single phase, wound type, free standing	
Accuracy Class	IEC 44-1 Class 0.2 / ANSI C57.13 Class 0.3 or better	
Burden	Shall not exceed the rated burden limit for the IEC 44-1 Class 0.2 / ANSI C57.13 Class 0.3 (Refer to Table 1 of the Appendix of the WESM Manual on Metering Standards and Procedures ¹³)	
Rated Primary Current	The thermal rating factor shall not be less than 1.0.	
Secondary Current	1A OR 5A	IEC 4.2 Standard values Of rated secondary currents
Rating Factor	Minimum of 1.0 at 30C	
Frequency	60 Hz	

¹³ Issue 7.0 WESM-IMS DM-MM-07

ITEMS	SPECIFICATIONS	REFERENCE DOCUMENTS
Ambient Air Temperature	-5° C and 50 °C for very hot climate	IEC 3.2.1 1996
BIL	Refer to Table 2 of the Appendix of the WESM Manual on Metering Standards and Procedures ¹³ for applicable BIL	
Creepage Distance	Refer to Table 3 of the Appendix of The WESM Manual on metering Standards and Procedures ¹³ for applicable creepage distance	
Number of Core	Either One (1) or two (2) metering core for existing instrument transformers, or at least two (2) metering core tor new instrument transformers	
Mounting	Depend on the applications	
Grounding	Must have adequate grounding And conformed to IEEE C57.13.3 or latest.	
Security	Seal holder shall be provided to the CT secondary terminal box	

2.5.6.2 Voltage Transformer

Voltage transformer installed at the main *meter* shall meet the minimum requirements listed in Table 3.

Table 3. Minimum Specifications for Voltage Transformers.

ITEM	SPECIFICATIONS	REFERENCE DOCUMENTS
Type	Outdoor Type; Minimum oil filled, Dry Type or Gas-filled	
Coolino	Oil immersed, Self-cooled; Butyl, Cast resin	
Construction	Single phase, Inductive type, single bushing	
Termination	Line-to-Ground	
Accuracy Class	IEC 6044-2 Class 0.2 / ANSI C57.13 Class 0.3 or better	
Burden	Shall not exceed {he rated burden limit for the IEC 6044-2 Class 0.2 / ANSI C57.13 Class 0.3 or better. (Refer to Table 4 of the Appendix of the WESM Manual on Metering Standards and Procedures ¹⁴)	

ITEM	SPECIFICATIONS	REFERENCE DOCUMENTS
Ratio	Refer to Table 5 of the Appendix of the WESM Manual on Metering Standards and Procedures ¹⁴	
Secondary Voltage	Refer to Table 5 of the Appendix of the WESM Manual on Metering Standards and Procedures ¹⁴	
Frequency	60 Hz	
Operating Temperature	55°C average ambient temperature, with max ambient temperature not exceeding 65°C	
BIL	Refer to Table 2 of the Appendix of the WESN, Manual on Metering Standards and Procedures ¹⁵ for applicable BIL	
Creepage distance	Refer to Table 3 of the Appendix of the WESM Manual on Metering Standards and Procedures ¹⁵ for applicable creepage distance	
Number of Core	Either One (1) or two (2) metering core for existing instrument transformers or at least two (2) metering core for new instrument transformers.	
Mounting	Depend on the applications	
Grounding	Must have adequate grounding and conformed to IEEE C57.13.3 or latest.	
Security	Seal holder shall be provided to the CT secondary terminal box	

2.5.6.3 Lightning Arrester

Lightning Arrester installed at the main *meter* shall meet the minimum requirements listed in Table 4.

Table 4. Minimum Requirements for Lightning Arresters.

Nominal System Voltage	Max. Rated Voltage	Standard Lightning Impulse withstand Voltage	Max. Continuous Operating Voltage	Max. Nominal Discharge Current	Maximum Line Discharge Class		Long Duration Current Impulse Withstand Capability
					IEC	ANSI	
[KV]	[KV]	[KV]	[KV]	[KA]	IEC	ANSI	[KVA]
13.8	15	95	12	10	CL2	Station	100
34.5	36	170	29	10	CL2	Station	100
69	72.5	325	58	10	CL2	Station	100
115	123	550	98	10	CL2	Station	100
138	145	650	116	10	CL2	Station	100
230	245	900	196	10	CL2	Station	100
500	525	1550	420	20	CL4	Station	100

2.5.7 Primary Connections

2.5.7.1 Location of Primary Terminals

2.5.7.1.1 Current Transformer

The primary terminals of each *current transformer* shall be located as close as practicable to the metering point.

2.5.7.1.2 Voltage Transformer

The primary terminals of each *voltage transformer* shall be:

- a) At the same potential as the *current transformer*; and
- b) As close as practicable to the primary terminals of the *current transformer* of the same phase.

2.5.7.2 Connection to Power System

With respect to any physical separation of the points at which the *voltage transformer* and the *current transformer* of each phase are connected to the power system, the *metering installation* shall:

- a) Minimize the voltage drop between the *voltage transformer* and the *current transformer*; and

- b) Minimize the leakage current between the *voltage transformer* and the *current transformer*.

2.5.7.3 Location/ Arrangement of Instrument Transformers

With respect to the physical arrangement of the *instrument transformers*, these *transformers* shall be installed in accordance with the *Philippine Electrical Code* and *Philippine Distribution code*.

2.5.7.4 Primary Cable

2.5.7.4.1 Quality of Materials and Workmanship

The primary cable terminations connected to the high-voltage terminals of an instrument transformer shall be in good quality and of accepted workmanship.

2.5.7.4.2 Electrical Location of Primary Connections

Primary connections of the instrument transformer shall be located such that operation of power system equipment does not degrade the following elements:

- a) Accuracy of measurement;

- b) Data required for validation or settlement;
- c) Loss adjustment factors; and
- d) Monitoring of metering equipment condition.

- a) The Philippine Electrical Code;
- b) The main *meter* shall be supplied from dedicated *Current transformers* used for no other purpose;
- c) *Voltage transformers* with one secondary winding shall be dedicated to the main *meter* and used for no other purpose;
- d) *Voltage transformers* with more than one secondary winding shall have one winding dedicated to the main *meter* and shall be used for no other purpose;
- e) Electrical connection to the *instrument transformer* secondary terminals shall not be outside of the meter box;
- f) Cabling from the *instrument transformers* to the meter enclosure shall be routed in dedicated conduit, and the route shall be visually traceable; and
- g) Each secondary terminal used for each *instrument transformer* shall be brought to the test block on a separate conductor.

2.5.8 Secondary Connections

2.5.8.1 Size of Secondary Cabling

2.5.8.1.1 Current Transformer

The secondary cabling between the *current transformers* and the meter test switch/ block shall be of a sufficient size that the rated *burden* for the IEC 0.2 or ANSI 0.3 accuracy class is not exceeded when rated current flows in the secondary winding.

2.5.8.1.2 Voltage Transformer

The secondary cabling between the *voltage transformers* and the meter test switch/ block shall be of correct size such that the voltage drop in each phase does not exceed 0.2 V.

2.5.8.2 Codes and Conditions

Instrument transformer secondary cabling and cabling accessories shall comply with the following codes and condition:

2.6 SECURITY OF METERING INSTALLATIONS AND DATA

This section provides the security standards for *metering installations* and its *metering data*. With adherence to these standards, a *metering installation* shall be able to fully or partially comply with *Retail Rules* Clause 4.3.2.3.

2.6.1 Physical Security

A *metering installation* shall be secured, tamper-proof, and conforms to the following applicable security requirements:

2.6.1.1 Instrument Transformers Connections

Secondary cabling shall be secured, tamper-resistant and compliant with the *Philippine Distribution Code* requirements on the security of registered revenue *metering installations* and *metering data*.

2.6.1.2 Conduit Systems

All wiring from the secondary terminal box of *instrument transformers* to the meter box shall be placed in a conduit consistent with the provisions in the *Philippine Distribution Code*.

2.6.1.3 Secondary Terminal Box

Secondary terminal boxes of the *current transformers* and *voltage transformers* shall be sealed to ensure the detection of unauthorized

access to the *instrument transformer* connections.

2.6.1.4 Meter Enclosure

All *meters*, test links, and communication equipment shall be contained within a meter enclosure. The meter enclosure shall comply with the following requirements:

- a) The meter enclosure shall be secured by the *Retail Metering Services Provider*;
- b) The *Retail Metering Services Provider* shall have access to the meter enclosure at all times;
- c) Persons other than the *Retail Metering Services Provider* shall not be given access to the meter enclosure;
- d) The meter enclosure shall be padlocked and sealed as far as practicable in a manner approved by the *Central Registration Body*; and
- e) The meter enclosure shall be weather proof.

2.6.1.5 Meter Test Block/ Switch

Meter test block/ switch shall be installed inside the meter enclosure to allow

the current and voltage from each *instrument transformer* and meter to be individually determined. The *meter test block/ switch* shall have the following technical description:

- a) Test Points: 10 points, (4 potential & 6 current Points);
- b) Pole Arrangement: P-CC-P-CC-P-CC-P;
- c) Rating: 600 VAC, 20 Amperes;
- d) Current carrying parts are made of non-tarnishing and non-corrosive resistant material;
- e) Switches are of the open knife-blade type;
- f) Current switch poles are provided with an auto-shorting jaw and the other has a shunted jack which is adaptable to a test plug; and
- g) Base is a one-piece resistant molding.

The meter test block/ switch shall also be provided with the standard cover: a one-piece molded high-impact removable cover.

2.6.1.6 Meter Seals and Padlock

2.6.1.6.1 Meter Seal Requirements

The requirements for meter seals are:

- a) Seals shall have unique serial numbers;
- b) Seals shall be traceable to the *Retail Metering Services Provider* or Energy Regulatory Commission personnel that installed the seals; and
- c) The *Retail Metering Services Provider* shall maintain a record of seal serial numbers and log subsequent changes, including reasons, for the seal change.

2.6.1.6.2 Padlock Requirements

The requirements for padlocks are:

- a) Padlock shall be heavy duty;
- b) Padlock shall have only one security key and placed on a secured area;
- c) Security key shall be documented and monitored.

- d) Use of security key shall be documented and monitored.

2.6.1.7 Metering Perimeter

The metering installation shall be secured by a perimeter fence, if applicable, and its gate properly padlocked, sealed and secured. Metering perimeter shall also be well-lighted and free from any unwanted materials, equipment, vegetation, and other entities. If the metering perimeter is not applicable, Section 84.5 Other Accessories of the Philippine Distribution Code shall apply.

2.6.2 Metering Data Security

- a) Each Contestable Customer through its Retail Metering Service Provider, shall ensure that the metering data recorded in each metering installation is protected from direct local or remote electronic access, including during the transfer of such metering data to the communication interface of the metering database. The Retail Metering Services Provider shall implement suitable passwords and other security controls.
- b) The Retail Metering Service Provider shall protect the metering data during delivery to the Central Registration body other than electronic means and from access by persons other than itself

regardless of the medium such as, but not limited to, diskettes, CDs or paper on or in which such metering data is transcribed, transferred or stored for purposes of such delivery.

- c) Each Retail Metering Service Provider shall keep all records of passwords for electronic access to metering data confidential.
- d) The Retail Metering Service Provider shall provide, for each metering installation passwords to the central Registration Body providing read-only access.
- e) The Retail Metering Service Provider may, or at the request of the Central registration Body shall, change one or more of the passwords relating to a metering installation in which it is the Retail Metering Service Provider.

2.7 REDUNDANT METERING INSTALLATION

A *metering installation* shall have a redundancy which can be achieved in two ways:

- a) Dual *metering* using two independent sets of *Instrument transformers* approved by the *Central Registration Body* where the main *Instrument transformers* are connected to the main meter and the alternate *instrument transformers* are connected to the backup *meter*; or
- b) Partial redundant *metering* using a single set of *Instrument transformers* approved by the *Central Registration Body* where both the main and

backup *meters* are connected to either common or separate core.

2.7.1 Minimum Requirement

The minimum requirement is partial redundant *metering* using single set of *instrument transformer* approved by the *Central Registration Body* where the main and backup *meters* are in series or in parallel and connected to a common core.

2.7.2 Minimum Metering Data Deviation

For metering installations with backup meters, the *metering data* recorded by the main and backup meter shall not deviate by more than 0.6%. In the event that the deviation exceeds this value, the *Retail Metering Service Provider* shall immediately investigate and correct the causes of such deviations.

2.8 EXISTING METERING INSTALLATIONS

An existing *metering installation* that does not fully comply with the requirements of this Manual shall be permitted by the *Central Registration Body* to remain in service subject to the following conditions:

- a) The *meter* has a mass memory capable of recording 15-minute demand interval and have communication ports for remote and manual data retrieval;
- b) The Energy Regulatory Commission has tested or verified and sealed the *meter*,
- c) All non-compliant *meters* shall be replaced within six (6) months from

the effectivity of its registration in the WESM.

- d) All non-compliant *instrument transformers* shall be replaced within the period of two (2) years from the effectivity of registration in the WESM.

SECTION 3. SITE EQUIPMENT IDENTIFICATION NUMBER (SEIN)

3.1 COVERAGE

This section describes the standard numbering system that *Retail Metering Services Providers* must follow when numbering and identifying their *metering installations* and its individual equipment.

3.2 OBJECTIVES

The objectives of establishing a standard numbering system for identifying and numbering *metering installations* and its individual equipment are:

- a) To facilitate the location of *metering installations* for administrative purposes by reflecting the geographical location of the *metering installation* in its Site Equipment Identification Number; and
- b) To facilitate the identification of *metering installations* whose details are recorded in the *metering database* administered by the *Central Registration Body* under *Retail Rules* Clause 4.5.2;

3.3 GUIDELINES

The *Retail Metering Services Providers* shall follow the procedures listed in this Section when numbering and identifying metering installations and its individual equipment.

3.3.1 Basis

The specific details of these guidelines are as prescribed in the following provisions of the *Philippine Distribution Code*:

- a) Provision 7.12.1.1
- b) Provision 7.12.1.2
- c) Provision 7.12.1.3
- d) Provision 7.12.2.1
- e) Provision 7.12.2.2
- f) Provision 8.3.1
- g) Provision 8.4.5

3.3.2 Metering Installation

A *metering installation* shall be numbered using the following convention:

WWW-XXXX-YY-CCCC-NN

Where:

WWW Shall be the Standard Site ID of the Substation where the *Contestable Customer* is drawing power from. Refer to Procedure No.1 and Table 9 of the Appendix of the WESM Manual on Metering Standards and Procedures¹⁶ for the procedure on the designation and a sample list of Standard Site IDs, respectively. Note: the Standard Site ID of the Substation where the *Contestable Customer* is drawing power from also denotes the *Market Trading Note* That its *metering installation* shall be mapped to by the *Central Registration Body*.

xxxx Shall be the Metered Participant ID of the Associated Grid Connection Point. Refer to Procedure No. 2 and Table -10 of the Appendix of the WESM Manual on Metering Standards and Procedures¹⁶ for the procedure on the designation and a sample

list of Metered Participant IDs of Associated Grid Connection Points, respectively.

YY Shall be a two (2) digit number designating the off-take grid meter.

CCCC Shall be the Metered Participant ID of the *Contestable Customer* as referenced to its short name ID. Refer to Appendix B for the procedure on the designation of Metered Participant IDs of *Contestable Customers*.

NN Shall a two (2) digit number identifying the *metering installation* of the facility of the Contestable Customer.

Example:

ARA-MECO-O1-PLDT-O1

ARA	Standard Site ID of Araneta S/S
MECO	Metered Participant ID of Meralco
O1	Grid Off-take Metering Point No.1
PLDT	Metered Participant ID of Philippine Long Distance Telephone Company
O1	Metering Installation No. 1 of the facility

3.3.3. Meter

A meter shall be numbered using the following convention:

BY- (WWW-XXXX-YY-CCCC-NN)

Where:

B Shall be a one (1) letter initial designating the purpose of the meter. Refer to table A-1 for The standard purpose desonations of meters.

Y Shall be a one (1) digit number designating the function of the meter . The standard function designations are as follows: 1- Delivered (OUT), 2 Received (IN), 3 - Bi-directional (IN&OUT).

WWW Shall be the Standard Equipment Identification Number of the *metering installation* where the meter is located.

-XXX-
YY-
CCCC-
NN)

R3-ARA-MECO-01-PLDT-01

Where:

R Main meter purpose designation
3 Main meter purpose designation

(WWW Standard Equipment Identification Number of the metering installation where the meter is located (See sample in section 3.3.2 for YY- details)

-XXXX-
CCCC-
NN)

3.3.4 Meter Box and Modem

A meter box or modem shall be numbered using the following convention:

DD-(B-WWW-XXXX-YY-CCCC-NN)

Where:

DD Shall be the two (2) letter initial designation for the relevant metering equipment, device, or auxiliary.

Refer to Table A-2 for the standards designation of metering equipment, devices and auxiliaries.

B Shall be a one (1) letter initial designating the purpose of the meter. Refer to Table A-1 for the standards purpose designation of meters.

(WWW Shall be the Standard Equipment Identification Number of the metering installation where the meter is located

-XXX-
YY-
CCCC-
NN)

Example:

MB-(R-ARA-MECO-01-PLDT-01)

Where:

MB Meter Box equipment, device, or auxiliary designation R Main meter purpose designation

(WWW Standard Equipment Identification Number of the metering installation where the meter is located (See sample in section 3.3.2 for details

-XXXX-
YY-
CCCC-
NN)

3.3.5 Meter Test Switch

A meter test switch shall be numbered using the following convention:

DDYY-(B-WWW-XXXX-YY-CCCC-NN)

Where:

DD Shall be the two (2) letter initial designation for meter test switch. Refer to table A-2 for the standard designations of metering equipment, devices and auxiliaries.

YY Shall be a two (2) digit number designating the off-take grid meter.

B Shall be a one (1) letter initial designating the purpose of the meter. Refer to Table A-1 for the standard purpose designations of meters

(WWW shall be the standard Equipment Identification Number of the metering installation where the meter is located

-XXXX-
YY-
CCCC-
NN)

Example:

TS01-(R-ARA-MECO-01-PLDT-01)

WHERE:

TS Meter Test Switch equipment, device, or auxiliary designation

Grid Off-take Metering Point No.

TS Meter Test Switch equipment, device, or auxiliary designation

Grid Off-take Metering Point No. | Main meter purpose designation

(vvvv Standard Equipment Identification Number of the installation where the meter is located (See sample in Section 3.32 for details)

-XXXX-
CCCC-

3.3.6 Current Transformer

A current transformer shall be numbered using the following convention:

PDD-(B-WWW-XXXX-YY-CCCC-NN)

P shall be a one (1) letter initial designation for phase of the current transformer: A - Phase A, B - Phase B, C - Phase C

DD Shall be the two (2) letter initial designation for the current transformer. Refer to Table A-2 for the standard designations of metering equipment, devices and auxiliaries.

B Shall be a one (1) letter initial designating the purpose of the meter. Refer to Table A-1 for the standard purpose designations of meters.

(WWW shall be the Standard Equipment Identification Number of the metering installation where the meter is located

-XXXX-
YY-
CCCC-
NN)

Example:

ACT-(R-ARA-MECO-01-PLDT)

Where:

A Phase A of the current transformer

CT Current transformer equipment, device, or auxiliary designation

R Main meter purpose designation

(WWW Standard Equipment Identification Number of the metering installation where the meter is located (See sample in Section 3.32 for details)

-XXX-
CCCC-
NN)

4. METERING INSTALLATION REGISTRATION

4.1 COVERAGE

Pursuant to *Retail Rules* Clause 4.3.2.1, a *metering installation* shall be registered in the WESM through the *Central Registration Body*.

This section provides the procedures to be followed by the *Central Registration Body*, *Contestable Customers*, *Suppliers*, and *Retail Metering Services Providers* for the registration of *metering installations* of *Contestable Customer* in the WESM.

4.2 OVERVIEW

In order for a *metering installation* to be successfully registered in the WESM, *Retail Metering Service Providers* must be able to demonstrate the following requirements to the *Central Registration Body*:

- a) *Metering installation* for registration are compliant with the *Retail Rules* and Section 2 of this Manual;
- b) *Metering installation* for registration has successfully undergone an *End-to-End Test*; and
- c) *Metering Installation* for registration has successfully undergone commissioning no tests.

4.3 METERS FOR REGISTRATION

Main and backup meters, of revenue quality and the same accuracy class, shall be registered.

4.4 REGISTRATION PROCEDURES

4.4.1 Submission of Application Form and Pertinent Documents

To initiate the registration of a *Metering installation* of a *Contestable Customer* its *Retail Metering Services Provider*, on behalf of the *Supplier* or *Contestable Customer*, shall submit the following to the *Central Registration Body* by courier:

- a) Accomplished *Metering Installation Registration Form* as published in the *Market information* web site¹⁷ signed by both *Retail Metering Services Provider* and *Contestable Customer*
- b) Load Profile of the *metering installation* during the previous twelve (12) months as well as its maximum and minimum hourly demand;
- c) Single Line Diagrams from the off-take meter or grid meter to the *metering point* of the *Contestable Customer*;
- d) Certification on Meter Test Results from the Energy Regulatory Commission with its corresponding seal;
- e) *Retail Metering Services Provider* test and calibration reports of *instrument transformer* and *meters* ;

- f) Pro-forma Agreement between the *Contestable Customer* or *Supplier* and its *Retail Metering Services Provider*; and
- g) Documentation of other special features of the meter.

4.4.2 Validation of Documents

Upon receipt of the Metering Installation Registration Form, the *Central Registration Body* shall inspect and validate the submitted documents for completeness and conformance to the standards established in Section 2 of this Manual.

4.4.2.1 Conformance to Requirements

If the *Central Registration Body* deems that the submitted documents are conformant and indicates conformance to its requirements, the *Central Registration Body* shall notify the *Retail Metering Services Provider* of the conformance through fax, mail, or e-mail.

4.4.2.2 Non-conformance to Requirements

4.4.2.2.1 Notification

If the *Central Registration Body* deems that the submitted documents are non-conformant or indicates a non-conformance to its requirements, the *Central Registration Body* shall request the relevant *Retail Metering Service Provider* to provide further clarifications by sending a notification either through fax, mail, or e-mail.

4.4.2.2.2 Resubmission of Documents

To proceed with the registration process, the *Retail Metering Services Provider* shall resubmit all necessary documents requested by the *Central Registration Body* through mail or courier.

4.4.3 Testing

In addition to the transmittal of the notification of conformance to the *Retail Metering Services Provider*, the *Central Registration Body* shall also request the *Retail Metering Services Provider* to perform commissioning tests and subsequent *End-to-End Test* on the *metering installation* for registration.

Upon notification from the *Central Registration Body*, the *Retail Metering Services Provider* shall then conduct the required tests.

4.4.3.1 Ready for Operation

When the metering installation for registration satisfactorily passes all required tests, the *Retail Metering Services Provider* shall submit all relevant reports to the *Central Registration Body*. Upon receipt of the reports, the *Central Registration Body* shall deem the metering installation ready for operation.

4.4.3.2 Failure of Tests

If the *metering installation* for registration fails any of the required tests, the *Retail Metering Services Provider* shall be responsible for rectifying all uncovered problems on the metering installation.

Upon correction of the uncovered problem, the metering installation shall again be subjected to the test that it failed until it passes all required tests.

4.4.4 Approval of Application

Upon receipt of all documents indicating the conformance of the *metering installation* for registration to the standards in this Manual and passing of all required tests, the *Central Registration Body* shall issue its approval to the *metering installation* for registration, update its registry and *publish* the newly registered *metering installation* of the *Retail Metering Service Provider* in the *market information web site*¹⁸.

5. METERING DATA COLLECTION

5.1 COVERAGE

Pursuant to *Rules Clause 4.4.2.1*, the *Retail Metering Services Provider*, on behalf of its associated *Supplier* or *Contestable Customer*, shall retrieve the *metering data* from the *meter* and transmit the *metering data* to the *Central Registration Body*.

This section provides the procedures to be followed by the *Central Registration Body*, *Contestable Customers*, *Suppliers*, and *Retail Metering Services Providers* in the collection and submission of metering data to the *Central Registration Body*.

5.2 DATABASES

5.2.1 Metering Database

Pursuant to *Retail Rules Clause 4.5.2.1*, the *Central Registration Body* shall create, maintain and

administer a *metering database*, which shall include a metering register containing information for each *metering installation* registered with the *Central Registration Body*.

5.2.1.1 Data Inclusions

The *metering database* shall include *metering data*, energy data, data substituted in accordance with *Retail Rules Section 4.6*, and all calculations made for settlement purposes.¹⁹

5.2.1.2 Storage Duration

Furthermore, data shall be stored in the *metering database*²⁰

- a) For sixteen (16) months in accessible format; and
- b) For ten (10) years in archive.

5.2.1.3 Access

The only entities²¹ entitled to have either direct or remote access to *metering data* on a read-only basis from the *metering database* or the metering register in relation to a *metering point* are:

- a) Each *Supplier* whose settlement amounts are determined by reference to quantities of energy flowing through that *metering point*,

- b) The *Retail Metering Services Provider* who is responsible for the *metering installation* at that *metering point*,
- c) The *Central Registration Body* and its authorized agents,
- d) The *Market Operator* and its authorized agents,
- e) Any *Contestable Customer* with respect to the *metering data* in relation to the *metering point* registered to it,
- f) Any *Distribution utility* with respect to *Contestable Customers* whose facilities are located in its franchise area and for whom said *Distribution Utility* is not the *Retail Metering Services Provider*;
- g) The Market Surveillance Committee,
- h) The Enforcement and Compliance Office,
- i) The Market Assessment Group,
- j) The PEM Auditor,
- k) The Department of Energy, and
- l) The Energy Regulatory Commission.

5.2.2 Installation Database

Pursuant to *Retail Rules* Clause 4.5.1.1, a *Retail Metering Services Provider* shall create, maintain and administer an installation database in relation to all its *metering installations*.

5.2.2.1 Data Inclusions

The *installation database* shall include *metering data*, *energy data*, and, if necessary, *data* substituted.

5.2.2.2 Access

In accordance with *Retail Rules* Clause 4.5.1.2, a *Retail Metering Services Provider* shall ensure that each affected *Supplier*, *Distribution Utility*, and *Contestable Customer* as well as the *Central Registration Body* is given access to the information in its *installation database* at all reasonable times and:

- a) In the case of data sixteen (16) months old or less, within seven (7) working days of receiving written notice from the person or entity seeking access; and
- b) In the case of data more than sixteen (16) months old, within thirty (30) working

days of receiving written notice from the person or entity seeking access.

5.3 Collection and Submission Procedure

This section provides the process for the collection and submission to the Central Registration Body of metering data.

5.3.1 Requirements

5.3.1.1 Data

The *metering data* shall contain the following:

- a) Date and time, or time series, of the meter readings received for each *Contestable Customer* meter,
- b) Active energy (kWh), active power (kW), reactive energy (kVARh), and reactive power (kVAR) data in 15-minute resolution with assigned channel number, and
- c) Site Equipment Identification Number of the *meter*

5.3.1.2 Format

The *Retail Metering Services Provider* shall submit the metering data in the meter data exchange format prescribed by the *Central Registration Body*.

5.3.1.3 Timing

Pursuant to *Retail Rules* Clause 4.3.8, all *meter* clocks shall be synchronized by the *Retail Metering Services Provider* to Philippine Standard Time (PST) to ensure accuracy of settlements.

5.3.2 Daily Process

5.3.2.1 Collection

At a fifteen-minute resolution, the *meter* at the *metering point* of a *Contestable Customer* continuously records *metering data*. Immediately at the end of the *trading day*, the *Retail Metering Services Provider* shall collect the *metering data* and event log of the whole *trading day* from each *meter*, identified by its Recorder ID (SEIN) and Device ID (Serial Number), of all its associated *Contestable Customers*.

5.3.2.2 Submission

The *Retail Metering Services Provider* shall submit the collected *metering data* of the *trading day* to the *Central Registration Body* at 0400H of the succeeding *trading day*.

5.3.2.2.1 Normal

The Meter Data Retrieval System of the *Retail Metering Services Provider* automatically exports the

metering data of all its associated *Contestable Customers* to the Meter Data Collection System of the *Central Registration Body* daily through file transfer protocol.

In the event that no *metering data* was received by 0800H the *Central Registration Body* shall immediately call the Retail Metering Services Provider to resend the data through the same method.

Upon receipt, the Meter Data Collection System of the *Central Registration Body* converts the *metering data* to the required file format for use in settlement.

5.3.2.2.2 Communication Failure

In case of communication failure between a meter and its Meter Data Retrieval System, the *Retail Metering Services Provider* shall retrieve the *metering data* from the meter manually through a meter reader handheld device or laptop. The *metering data* shall then be uploaded to the Meter Data Retrieval System of the *Retail Metering Services Provider* for export to the Meter Data Collection System of the *Central Registration Body*.

5.3.3 Monthly Process

Not later than three (3) *business days* after the end of the *billing*

period, the *Retail Metering Services Provider* shall submit monthly preliminary *metering data* of all metering points of its associated *Contestable Customers*. In addition, *Retail Metering Services Provider* shall submit a transmittal letter that includes a tabulation of all associated *metering points* and their corresponding total *metered quantity* for the *billing period*. The *Retail Metering Services Provider* shall also report to the *Central Registration Body* all discrepancies between the *monthly metering data* and the *daily metering data* values with justifications for the discrepancies,

In the event that *metering data* errors are detected by the *Central Registration Body* in accordance with Section 6 of this Manual, the *Retail Metering Services Provider* shall be required to submit final *metering data* addressing the errors (see also Section 6.3.2).

5.4 EMERGENCY PROCEDURES

This section provides the procedural steps to be followed in case of a failure of the Meter Data Retrieval System of the *Retail Metering Services Provider* or an emergency situation that requires the transfer of the *metering data* processing operations of the *Central Registration Body* from the Main Server to the Emergency Back-up System (EBS).

5.4.1 Failure of the Meter Data Retrieval System

In case of a failure of the Meter Data Retrieval System of the *Retail Metering Services Provider*

a) The *Retail Metering Services Provider* shall:

- i. Inform the *Central Registration Body* of the occurrence of a failure of its Meter Data Retrieval System;
 - ii. Perform emergency restoration of its Meter Data Retrieval System;
 - iii. While the Meter Data Retrieval System is out of service, retrieve all required *metering data* using alternative methods of retrieval and submit within seven (7) *business days* to the *Central Registration Body* in a file format that is compatible with the system of the *Central Registration Body*. For this purpose, the *Retail Metering Services Provider* may use a backup Meter Data Retrieval System, if it is available, or retrieve the *metering data* on-site or remotely using the appropriate software;
 - iv. Inform the *Central Registration Body* when its Meter Data Retrieval System is ready to resume normal operation; and
 - v. Resume normal retrieval and transmittal of *metering data* using the Meter Data Retrieval System.
- b) The *Central Registration Body* shall, upon receipt of the *metering data*, perform validation (refer to Section 6 of this Manual) and process the *metering data* for billing and

settlement, and upload the *metering data* to the *metering database*.

5.4.2 Transfer to Emergency Back-up System

In the event that an emergency situation requires the transfer of the *metering data* processing operations of the *Central Registration Body* from the Main Server to the Emergency Back-up System (EBS),

- a) The *Central Registration Body* shall:
 - i. Inform the *Retail Metering Services Providers, Suppliers,* and the *Contestable Customers* of the need to transfer operations from the Main Server to the Emergency Back-up Site;
 - ii. Instruct *Retail Metering Services Providers* to transmit *metering data* to the Emergency Back-up Site;
 - iii. Activate the Emergency Back-up Site, upload the *metering data*, perform validation and process the *metering data* for billing and settlement;
 - iv. Perform emergency restoration of its Main Server;
 - v. When the operations are ready to resume at the Main Server, inform the *Retail Metering Services Providers* to resume

metering data transmittal to the Main Server; and

- vi. Resume operations at and upload the *metering data* to the Main Server, perform validation and process the *metering data* for and settlement.
- b) The *Retail Metering Services Providers* shall'
- i. Transmit the *metering data* to the Emergency Back-up Site of the *Central Registration Body* when instructed; and
 - ii. Resume transmittal of *metering data* to the Main Server of the *Central Registration Body* when informed.

6. DATA VALIDATION, ESTIMATION AND EDITING

6.1 COVERAGE

Pursuant to *Retail Rules* Clause 3.3.5.3(c), the *Central Registration Body* shall develop and publish the methodologies and procedures for determining *metered quantity* by using historical load profiles.

This section provides the methodologies and procedures for validating, estimating, and editing *metering data* for the determination of the *metered quantity* of a *Contestable Customer* in accordance with *Retail Rules* Section 3.3.5.3.

Furthermore, this section discusses the obligations of the *Retail Metering Services Providers* in the validation, estimation, and editing of *metering data* as stipulated in *Retail Rules* Section

6.2 GENERAL DESCRIPTION

All *metering data* received by the *Central Registration Body* shall be evaluated using the Validation, Estimation and Editing process described in this section. When *metering data* contains missing values, uncertain values, or exceeds the maximum or minimum of the daily hourly load profile values of the registered *meter*, such *metering data* shall undergo estimation and editing wherein substitutions of *metering data* shall be made using historical data.

The *Central Registration Body* shall issue a *Meter Trouble Report* for all *metering data* that fails the validation component of the Validation, Estimate and Editing process. When *Meter Trouble Reports* are issued, the *Central Registration Body* shall give instructions to the concerned *Distribution Utility* or *Retail Metering Service Provider* who shall investigate the *meter trouble* and subsequently provide a report to the *Central Registration Body*. The concerned *Retail Metering Services Provider* shall then correct the meter data. Procedures regarding *Meter Trouble Reports* are described in more detail in Section 7 of this Manual.

6.3 VALIDATION PROCEDURES

This section provides the procedures to be followed by the *Central Registration Body* and the *Retail Metering Service Providers* in the daily and monthly validation processes.

6.3.1 Daily Validation

6.3.1.1 Validation Error Categories

The *Central Registration Body* shall perform several checks upon receipt of *metering data*. These checks are described

further in Section 6.3.1.2. *Metering data* that fails the checks will be reported according to four (4) error categories:

- a) Uncertain Value
- b) Missing Values
- c) Outside Historical Min/ Max
- d) Orphan values

6.3.1.2 Validation Checks

The following checks shall be performed by the *Central Registration Body* for the above validation error categories:

- a) Check for uncertain values.
- b) Check for missing values.
- c) Check for values in the *metering data* which fall outside the maximum and minimum range of the historical data. The historical data used in this check are as follows:
 - i) Value during the same hour last week,
 - ii) Value during the same hour the previous day, and
 - iii) Average of the values during the whole previous day

- d) Check for values in the *metering data* whose *meter* is not registered in the *Central Registration Body*.

6.3.1.3 Meter Trouble Report

In cases where a *metering data* error is detected, the *Central Registration Body* shall issue a *Meter Trouble Report* to the concerned *Retail Metering Services Provider*. Further details are provided in Section 7 of this Manual.

6.3.1.4 Validation Report

The *Central Registration Body* shall prepare a daily validation report containing the errors encountered for the day and their respective category.

6.3.2 Monthly Validation

In addition to the daily validation, the *Central Registration Body* shall also validate the monthly *metering data* sent to the *Central Registration Body* by the *Retail Metering Services Providers*. The procedure for the monthly validation is as follows:

- a) The *Retail Metering Services Provider* shall submit preliminary *metering data* in accordance with Section 5.3.3 of this Manual. The preliminary *metering data* must have no missing values. The *Retail Metering Services Provider* shall report to the

Central Registration Body all discrepancies between the monthly *metering data* and the daily *metering data* values with justifications for the discrepancies;

- b) The *Central Registration Body* shall compare the values contained in the monthly *metering data* to the daily *metering data* of each metering earlier submitted by the *Retail Metering Services Provider*. If there are discrepancies between the values, a *Meter Trouble Report* (refer to Section 7) shall be issued to the *Retail Metering Services Provider*;
- c) If issued a *Meter Trouble Report*, a *Retail Metering Services Provider* shall correct the *metering data* and submit final *metering data* not later than five(5) business days prior to the issuance of the final settlement statement; and
- d) All final *metring data* shall be formally transmitted to the *Central Registration Body* with a cover letter identifying all the *metering points*, through their Standard Equipment Identification Number.

6.3.3 Validation of Grid Off-Take Metering Points

The *Central Registration Body* shall, on a daily and monthly basis, validate the assignment of grid off-take metering point to facilities of *Contestable Customers*. In this validation, the *metered quantity* measured at the *grid off-take*

metering point is checked against the aggregate *metered quantity* of all facilities of *Contestable Customers* assigned to that *grid off-take metering point*. The *metered quantity* measured at the *grid off-take metering point* shall be greater than the aggregate metered quantity of all facilities of *Contestable Customers* assigned to that *grid of-take metering point*.

If the aggregate *metered quantity* of all facilities of *Contestable Customers* assigned to the grid off-take metering point exceeds the *metered quantity* at that grid off-take metering point, the *Central Registration Body* shall issue a *meter trouble report* to the concerned *Retail Metering Services Provider*.

6.3.4 Metering Installation Validation Tests

Pursuant to *Retail Rules* Clause 4.6.2.1, in case of *metering data* error, the *Retail Metering Services Provider* shall perform validation, estimation and editing in order to derive corrected metering data. This section provides the validation tests that a *Retail Metering Services Provider* shall perform on its *metering installations*.

6.3.4.1 Current and Voltage Check

This indicator detects the loss of voltage and/or current input to the meter due to failure of the supply from one or more instrument transformers or tampering.

6.3.4.2 Load Profile vs. Meter Reading

- This checks for corruption related to the *meter multiplier*.
- 6.3.4.3 Intervals Found vs. Interval Expected
- This checks for missing intervals.
- 6.3.4.4 Time Synchronization
- This checks for synchronism of meter clock to Philippine Standard Time/ Data Collection System time.
- 6.3.4.5 Number of Power Outage Intervals
- This indicator allows periods of zero primary power to be identified.
- 6.3.4.6 Cyclic Redundancy Check / Read-Only Memory / Random Access Memory
- This is part of the internal components of a meter, which is automatically flagged when failing.
- 6.3.4.7 Meter Clock Overflow
- Flag generated by the meter indicating failure of internal electronics.
- 6.3.4.8 Hardware Reset
- Flag generated by the meter indicating failure of internal electronics.
- 6.3.4.9 Time Reset
- This indicates the interval in which the meter clock time has been changed creating either a shorter or longer interval.
- 6.3.4.10 Data Overflow on Interval
- This indicates that the meter is creating more pulses than it can record in an interval or Data Collection System (DCS) can accommodate in an interval.
- 6.3.4.11 Number of Channels
- The actual number of data channels from the meter does not match the number expected at the data collection System.
- 6.3.4.12 Changed Device ID
- The internal device identifier does not match the value registered at the data collection system.
- 6.3.4.13 Watchdog Time Out
- This is the failure of the meter to return data in response to a poll within the required time frame. This is reported by some recorders when a watchdog register is tripped or activated.
- 6.3.4.14 Parity Error
- This indicator is determined by a parity error bit that is set by a recorder on a channel of data during status check or read/write function.

6.3.4.15 Event Log Check

This checks error messages and alarms recorded by the meter.

6.4 ESTIMATION PROCEDURES

6.4.1 Daily Process

Upon detection of a *metering error* in the daily metering data, the *Retail Metering Services Providers* shall correct and estimate the *metering data* on a daily basis.

6.4.1.1 Uncertain Value Checking

Any value in the *metering data* that falls outside the maximum and minimum range of the *metering data* as recorded in the registry of the *Central Registration Body* metering system shall be marked with the status 'uncertain'. Metering data with values with 'uncertain' status are estimated using the following:

6.4.1.1.1 Historical Values

The values with 'uncertain' status may be replaced using the following historical data:

- a) Value during the same hour last week,
- b) Value during the same hour the previous day, and
- c) Average of the values during the whole previous day.

6.4.1.1.2 Backup Meter

The values with 'uncertain' status may be replaced with the values from the backup meter during the same hour.

6.4.1.1.3 Previous Hour Data

The values with 'uncertain' status may be replaced using the reading from the previous hour.

6.4.2 Monthly Process

This section details the procedures conducted monthly for estimating *metering data* for the determination of the *metered quantity* of a *Contestable Customer*.

6.4.2.1 Interpolation of Metering Data

If *metering data* of one (1) to four (4) consecutive fifteen-minute intervals are missing, *metering data* shall be estimated by means of interpolation between the available intervals.

6.4.2.2 Back-up Meter Data

If *metering data* of more than four (4) consecutive fifteen-minute intervals are missing, metering data from the back-up *meter* can be directly substituted for the missing data from the main meter provided that the historical difference of *metering data* between the main

and backup meters does not exceed more than 0.2%. If the historical deviation exceeds 0.2% but not more than 0.6%, a correction factor based on the historical difference between the main and backup meter shall be applied on the *metering data* from the backup meter before it is substituted for the missing data.

6.4.2.3 From Grid Off-Take Meter

If both the main and backup *meters* fail, the *metering data* on the *metering point* of the facility of the *Contestable Customer* shall be estimated using the metering data from its *grid off-take* meter. The metering data of the *Contestable Customer* shall be estimated by adjusting the *metering data* of its grid off-take meter using a historical factor obtained through the comparison of the historical grid off-take metering data and historical contestable customer main metering data. This method of estimation is not applicable for variable loads whose historical load profile is indeterminate.

6.4.2.4 Scientific Method of Estimation

If *there is a loss* of one of the phase voltages and

currents, estimation shall be performed through the scientific method of calculation using the average remaining phase voltages or currents of good data from the historical load profile.

6.4.2.5 Historical Meter Data

If the above methods do not provide reasonable values, the following historical data from the main *meter* may be used for estimating missing values:

- a) Values during the same hour of the previous day with the same day type (i.e., weekday or weekend)
- b) Values during the same hour of the same day last week recorded by the same *meter* (i.e. Saturday, Sunday Holidays), and
- c) Average value of the values during the same hour of the same day of the three (3) previous weeks recorded by the same *meter*.

This method of estimation is not applicable for variable load whose historical load profile is indeterminate.

6.4.2.6 Other Technical Methods

Other technical methods proposed and submitted by the *Retail Metering Services Providers* may be considered by the *Central Registration Body*.

6.5 EDITING PROCEDURE

The *Central Registration Body* shall update the *metering data* in the metering database to correct the values submitted by the *Retail Metering Services Provider*. This update shall include actual *metering data* obtained as well as estimated data from the main and back-up *meters* within the required period.

6.6 APPROVAL AND EXPORTING

The *Central Registration Body* shall approve all received *metering data* before they are used in the settlement process. These *metering data* shall have been reviewed and verified using the methods discussed in Sections 6.3 and 6.4. Settlement-ready *metering* shall be exported to the settlement process and only approved data are transferrable.

7. METER TROUBLE REPORT

7.1 COVERAGE

This section provides the details and procedures in relation to the *Meter Trouble Report* and its issuance.

7.2 INITIATION

A *Meter Trouble Report* may be initiated due to the following:

- a) A *metering data error* is detected through the validation process described in Section 6.3 of this Manual; or

- b) A *Retail Metering Services Provider*, a *Contestable Customer*, or a *Supplier* requests the *Central Registration Body* to issue a *Meter Trouble Report* to the *Retail Metering Services Provider* due to difficulties in communicating with a metering installation, or validation of metering data. Where the *Central Registration Body* determines that a *Meter Trouble Report* is not required, it shall notify the *Retail Metering Services Provider*, *Contestable Customer*, or *Supplier* of its decision within twenty-four (24) hours.

7.3 ISSUANCE

The *Central Registration Body* shall issue a *Meter Trouble Report* to the concerned *Retail Metering Services Provider* and, for information, its associated *Contestable Customer* or *Supplier* within twenty-four (24) hours after detection or request.

7.4 RESOLUTION

7.4.1 Timeline

Upon receipt of the *Meter Trouble Report*, a *Retail Metering Services Provider* shall submit the correct *metering data* to the *Central Registration Body* within two (2) business days.

7.4.2 Unresolved Meter Trouble Reports

7.4.2.1 Estimation

If a *Meter Trouble Report* is still unresolved after the designated timeline in Section 7.4.1 the *Central Registration Body* shall implement the estimation and editing of *metering data* in accordance with Section 6 of this Manual.

7.4.2.2 Late Resolution

The *Retail Metering Services Provider* may still resolve a *Meter Trouble Report* and provide metering data acceptable to the *Central Registration Body* after the deadline set in Section 7.4.1. For late resolutions, the deadline to be reflected in the final settlement statement is five (5) business days prior to the issuance of the final settlement statement of the affected trading day.

7.4.2.2.1 Before Deadline

If the *Retail Metering Services Provider* resolves the *Meter Trouble Report* and submits metering data not later than five (5) business days prior to the issuance of the final settlement statement date of the affected trading day, the *Central Registration Body* shall use the submitted *metering data* for the final settlement of the *Supplier* or *Contestable Customer*.

7.4.2.2.2 After Deadline

If the *Retail Metering Services Provider* resolves the *Meter Trouble Report* and submits metering data later than five (5) business days prior to the issuance of the final settlement statement of the affected trading day the *Central Registration Body* shall reflect the

said adjustment in the succeeding *billing period*²²

7.4.2.3 Certification

The *Retail Metering Services Provider* a certification on the adjusted *metering data* showing the agreement of all affected parties in accordance with *Retail Rules* Clause 4.6.2.3.

7.4.2.4 Meter Malfunction

In cases where there is an unintentional *meter error* (e.g., meter multiplier) that causes a meter Malfunction, the *Retail metering Services Provider* shall reconcile the metering data of the affected trading intervals within one (1) year after the date of discovery of such error.

8. PERFORMANCE MANAGEMENT

8.1 COVERAGE

This section provides the *Contestable Customers, Suppliers, Retail Metering Services Providers* and the *Central Registration Body* the steps for the review, evaluation and measurement of the performance of a *Retail Metering Services Provider*.

8.2 OBLIGATIONS

The *Central Registration Body* shall conduct periodic monitoring and reporting of the ratings of *Retail Metering Services Providers* using the measures in this section.

The *Retail Metering Services Providers* shall, if requested, provide the *Central Registration Body* information necessary for the measurement of their performance.

8.3 OVERVIEW

The *Retail Services Providers* shall be measured with respect to the following areas:

- a) The integrity of *metering data* provided by the *Retail Metering Services Provider* to the *Central Registration Body* and the *Contestable Customer*;
- b) The timeliness of daily and monthly metering data delivery with respect to the deadlines in this Manual;
- c) The timeliness in resolving the daily and monthly Meter Trouble Reports; and
- d) Customer satisfaction.

8.4 PERFORMANCE MEASURES

The *Central Registration Body* shall rate the performance of *Retail Metering Services Providers* against the standards set forth in this section.

8.4.1 Service Delivery

8.4.1.1 Daily Meter Data Delivery

Daily Meter Data Delivery or Meter Retrieval Success is computed as the ratio of the number of metering installations with successfully communicated metering data to the total number of *metering installation* of the *Retail Metering*

Services Provider. Daily average of Daily Meter Data Delivery shall be greater than or equal to 95%.

8.4.1.2 Integrity of Metering Data

Integrity of Metering Data is computed as the ratio of the number of metering installations for which its *metering data* has passed the validation process to the total number of metering installation with successfully communicated *metering data*. Daily average of the Integrity of Metering Data shall be greater than or equal to 95%

8.4.1.3 Timeliness and Percentage Resolution of Daily Meter Trouble Reports

Timeliness and Percentage Resolution of Daily Meter Trouble Reports is computed as the ratio of resolved Meter Trouble Reports, within two (2) *business days*, to the total number of *metering installations* for which a daily Meter Trouble Report was issued on. Average daily Timeliness and Percentage Resolution of Daily Meter Trouble Reports shall be greater than or equal to 90%.

8.4.1.4 Timeliness and Percentage Resolution of Monthly Meter Trouble Reports

Timeliness and Percentage Resolution of Monthly

Meter Trouble Reports is computed as the ratio of resolved Meter Trouble Reports, not later than five (5) *working days* prior to the issuance of the final settlement statement, to the total number of *metering installations* for which a monthly Meter Trouble Report was issued. Average daily Timeliness and Percentage Resolution of Monthly Meter Trouble Reports shall be greater than or equal to 90%

8.4.1.5 Timeliness of Monthly Meter Data Delivery

Timeliness of Monthly Meter Data Delivery is computed as the ratio of the actual number of submitted *metering data* measured three (3) calendar days after the end of the *billing period* to the expected number of submitted *metering data* based on the number of *metering installation* of the *Retail Metering Services Provider*. Timeliness of Monthly Meter Data Delivery shall be 100% or complete delivery of *metering data*.

8.4.2 Customer Satisfaction

Customer Satisfaction shall be computed using inputs collected through a survey. The survey shall allow the customers of the *Retail Metering Services Provider* to rate their satisfaction with regard to the following areas:

- a) Corporate Image,
- b) Punctuality and Responsiveness,
- c) Safety, and
- d) Behavior and General Impression.

To facilitate the survey, a Retail Metering Services Provider Customer Satisfaction Rating (CSR) Sheet shall be issued to the customers of the Retail Metering Services Provider. Annual average Customer Satisfaction shall be greater than or equal to 90%.

8.4.3 Summary

The performance measures described above are summarized in Table 5.

Table 5. Summary of Retail Metering Services Provider Performance Measures

Performance Category	Measure	Criteria	Percent Weight	Percent Passing
Service Delivery	Daily Meter Data Delivery	Ratio of metering installations with successfully communicated metering data to total number of metering installation	25	95
	Integrity of Meter Data	Ratio of the number of metering installation with valid metering to the total number of metering installation with successfully communicated metering data	25	95
	Timeliness and Percentage Resolution the Daily Meter Trouble Report	Ratio of Resolved Meter Trouble Reports to the total number of metering installation for wich a daily Meter Trouble Report was issued on	15	90
	Timeliness and Percentage Resolution of Monthly Meter Trouble	Ratio of resolved Meter Trouble Reports to the total number of metering installation for which a monthly Meter Trouble Report was issued on	10	90
	Reports Timeliness of Monthly Meter Data Delivery	Ratio of the actual number of submitted metering data to the expected number of submitted metering data based on the number of metering installations	15	100
Customer Saticfaction	Customer Satisfaction Rating	Retail Metering Services Provider Performance Appraisal by their Customer	10	90

8.4.4 Computation of Overall Performance

The overall performance of the *Retail Metering Services Provider* shall be computed by summing the product of the rating of the *Retail Metering Services Provider* on each performance measure and the percent weight of the same performance measure as indicated in Table 5.

8.5 MONITORING PROCEDURES

The *Central Registration Body* shall calculate the performance measures

and the overall performance score (Refer to Section 8.4 for details) of each *Retail Services Provider* on a monthly, semi-annual and annual basis.

8.5.1 Monthly Performance Monitoring

After every *billing period*, the *Central Registration Body* shall release to concerned *Contestable Customers, Suppliers* and *Retail Metering Services Providers* the service delivery ratings (refer to Section 8.4.1) of their associated *Retail Metering Service Provider*. If requested, the *Central Registration Body* shall discuss the results of the

performance monitoring with the concerned *Contestable Customer, Supplier or Retail Metering Service Provider*. The results of the monthly performance monitoring shall be published in the *market information web site* ²³

8.5.2 Semi-Annual Customer Satisfaction Monitoring

Every six (6) months, the *Central Registration Body* shall determine the customer satisfaction rating of the *Retail Metering Services Providers* through the issuance of the Customer Satisfaction Rating Sheet to all direct *Contestable Customers* and *Suppliers*. The *Central Registration Body* shall require the direct *Contestable Customers* and *Suppliers* to accomplish and submit the Customer Satisfaction Rating Sheets back to the *Central Registration Body*.

The Customer Satisfaction Rating Sheets are to be accomplished every first week of July of the current year and January of the following year. The July rating shall determine the customer performance of the *Retail Metering*

Services Provider for the second half of the previous year (i.e. July to December).

8.5.3 Annual Performance Monitoring

The Annual Performance Monitoring of *Retail Metering Services Providers* covers the *billing periods* January to December of each year. It shall consist of:

- a) The annual rating of the performance measures under Section 8.4.1 computed by averaging the ratings during the twelve (12) *billing periods* of the year, and
- b) The Annual Customer Satisfaction Rating computed by averaging the ratings from the two (2) semi-annual surveys.

The Annual Performance of *Retail Metering Services Providers* shall be submitted by the *Central Registration Body* to the *Philippine Electricity Market Corporation (PEMC)* Management and published in the *market information web site*.

Appendix A Site Equipment Identification Number Tables

Table A-1. Meter Purpose Designations.

Designation	Meter Purpos
R	Main Meter
R1	Alternate Meter (Partial Redundant Metering)
B	Alternate Meter (Full RedundantMetering)
B1	Backup Meter

Table A-2. Metering Equipment, Devices and Auxiliaries Designations.

Designation	Description
CT	CurrentTransformer
LA	Lightning Arrester
MB	MeterBox
MD	Modem
MF	Multi-function ElectronicMeter (SmartMeter)
PT	Potential Transformer
ST	Metering Structure
TS	Meter TestSwitch

Appendix B Metered Participant ID Guidelines

These guidelines shall be followed in the labeling and numbering of *metering installations* of *Contestable Customers*.

1. The Metered Participant ID of *Contestable Customers* shall be identified by four (4) alphanumeric characters except for cases cited in items 5 and 6 of these guidelines.
2. The Metered Participant ID of *Contestable Customers* whose full name corresponds to a three- letter abbreviation shall be that three-letter abbreviation appended by the zero (0) character.

Example:

Contestable Customer	Metered Participant ID
American Power Conversion	APCO
Bank of the Philippine Islands	BPIO
Cultural Center of the Philippines	CCPO

3. The Metered Participant ID of *Contestable Customers* whose corporate name is composed of only one or two words shall be the first letter of the first word, the succeeding two (2) consonants of the first word, and the first letter of the second word or the zero (0) character.

Example:

Contestable Customer	Metered Participant ID
Amerton, Inc	AMRI
Ayala Corp	AYLC
Lancaster	LNCO
Magic Mall	MGCM
TIMEX	TMXO

4. The Metered Participant ID of *Contestable Customers* whose name consists of four (4) letters or less shall be its name itself appended by the zero (0) character, if necessary.

Example:

Contestable Customer	Metered Participant ID
PHPC	PHPC

5. The Metered Participant ID of *Contestable Customer* that has numeric characters in its corporate name shall be the numeric characters and the abbreviation of the alphabetic characters.

Example:

Contestable Customer	Metered Participant ID
14-678 PROPERTY HOLDINGS INC.	146PH
1590 ENERGY CORPORATION	159EC
18-2 PROPERTY HOLDINGS INC	182PH
19-1 REALTY CORPORATION	191RC
6-24 PROPERTY HOLDINGS INC	624PH
6-3 PROPERTY HOLDINGS INC.	63 PHI
21ST CENTURY STEEL MILLS,INC	21CSM

6. The Metered Participant ID of *Contestable Customers* that has several facilities in their name shall be composed of six (6) alpha-numeric characters. The Metered Participant ID shall be the combination of three (3) alpha-numeric characters corresponding to the abbreviation of their corporate name, two (2) numeric characters corresponding to the facility number, and one (1) numeric character corresponding to the metering installation in that location.

Example:

Contestable Customer	Metered Participant ID
ROBINSONS LAND CORP., Batangas	RLCO11
ROBINSONS LAND CORP., Cavite	RLC021
ROBINSONS LAND CORP., Cavite	RLC022
ROBINSONS LAND CORP., Laguna	RLC031
ROBINSONS LAND CORP., Makati City	RLC041
ROBINSONS LAND CORP., Mandaluyong	RLC051
ROBINSONS LAND CORP., Mandaluyong	RLC052
ROBINSONS LAND CORP., Mandaluyong	RLC053
ROBINSONS LAND CORP., Mandaluyong	RLC054
ROBINSONS LAND CORP., Mandaluyong	RLC055
ROBINSONS LAND CORP., Mandaluyong	RLC056
ROBINSONS LAND CORP., Mandaluyong	RLC057
ROBINSONS LAND CORP., Manila	RLC061
ROBINSONS LAND CORP., Manila	RLC062
ROBINSONS LAND CORP., Manila	RLC063
ROBINSONS LAND CORP., Pasig City	RLC071
ROBINSONS LAND CORP Quezon City	RLC081
ROBINSONS LAND CORP., Rizal	RLC091
ROBINSONS LAND CORP Bacolod	RLC101
ROBINSONS LAND CORP. Cebu	RLC111

DEPARTMENTCIRCULAR NO. DC2013-09-0020

ADOPTING AMENDMENTS TO THE INTERIM MINDANAO ELECTRICITY MARKET (IMEM) IMPLEMENTING RULES AND PROMULGATING THE IMEM MANUALS

WHEREAS, Section 2 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), declares as a policy of the state to ensure the quality, reliability, security, and affordability of the supply of electric power;

WHEREAS, Republic Act No.7638 or the “Department of Energy Act of 1992”,as amended by Section 37 of the EPIRA, authorizes the DOE to exercise supervision and control over government activities relative to energy projects and to formulate rules and regulations necessary to implement the objectives of these laws;

WHEREAS, Section 37 (i) of the EPIRA mandates the DOE 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 requirements¹¹

WHEREAS, after the conduct of the Mindanao Power Summit last April 2012 and a series of focused group discussions, consultations and meetings with relevant electric power industry participants in Mindanao and concerned energy agencies, the DOE has come up with a road map to sustainable solutions to the Mindanao power situation taking into consideration the current and future power supply and demand situation and the socio-economic, environmental and peace and order factors, among others;

WHEREAS, as part of the DOE’s roadmap providing for sustainable solutions for Mindanao, a market for the transparent and efficient utilization of available capacities shall

be established to encourage participation of existing power generating facilities and interruptible loads, and entry of new generating capacities in Mindanao;

WHEREAS,to establish such market,on 24 May 2013, the DOE issued Department Circular No. DC 2013-05-0008 promulgating the Interim Mindanao Electricity Market (IMEM) Implementing Rules (the “IMEM Rules”);

WHEREAS, further review of the IMEM rules, the DOE deems it necessary to amend the IMEM Rules to provide additional safeguards against possible gaming in the market and upon consultation with the Mindanao System Operator, there is a need to provide for a reasonable timeline for the issuance of In-Day Dispatch Instructions which takes into consideration the most current conditions in the grid to ensure systemsecurity;

WHEREAS, Clause 1.1.2.3 of the IMEM Rules provides that the DOE approves and promulgates the IMEM Manuals providing for specific procedures, systems or protocols for implementing the IMEM Rules.

WHEREAS, the following IMEM Manuals were posted for comments on the DOE website starting 12 August 2013 where in no substantial objections were received:

- a) Billing and Settlement
- b) Dispute Resolution
- c) Information Provision and Confidentiality
- d) Investigation Procedures
- e) Metering Standards and Procedures
- f) Registration Criteria and Procedures
- g) Dispatch Protocol

WHEREAS, several coordination meetings on the development of the Dispatch Protocol were held with the Philippine Electricity Market Corporation (PEMC), National Grid Corporation of the Philippines (NGCP), Power Sector Assets and Liabilities Corporation (PSALM) and the National Power Corporation (NPC) on the following dates

Date	Attendees
10 April 2013	PEMC,NGCP
25 April 2013	PEMC,NGCP
06 June 2013	PEMC,NGCP,DOE, NPC, PSALM
23 July 2013	PEMC,NGCP
05 August 2013	PEMC, NGCP, DOE, NPC, PSALM
19-20 August 2013	PEMC,NGCP
05 September 2013	PEMC,NGCP

NOW THEREFORE, premises considered, the DOE hereby adopts and promulgates the following:

Section 1. Amendment of Clause 3.1.2.10 of the IMEM Rules. Clause 3.1.2.10 is hereby amended to read-

Each day by 1500H, the [MEM Operator shall prepare and publish the Week-Ahead IMEM Demand Report.

Clause 3.1.2.10 is hereby renumbered to Clause 3.1.2.11 and Clause 3 1.2.11 is hereby renumbered to Clause 3.1.2.10.

Section 2. Amendment of Clause 3.5.1.1 of the IMEM Rules. Clause 3.5.1.1 of the IMEM

Rules is hereby amended to read-

Up until ten (10) minutes prior to the start of each IMEM Interval, the Mindanao System Operator shall issue In-Day Dispatch Instructions to IMEM Resources to meet any changes in system requirements in accordance with this Section 3.5.

Section 3. Approval and Adoption of the IMEM Manuals. The manuals listed below and attached as Annexes to this Circular are hereby approved and adopted:

- a) Annex "A"-Billing and Settlement
- b) Annex "B"-Dispute Resolution
- c) Annex "C"-Information Provision and Confidentiality
- d) Annex "O" -Investigation Procedures
- e) Annex "E"-Metering Standards and Procedures
- f) Annex "F"-Registration Criteria and Procedures
- g) Annex "G"-Dispatch Protocol

Section 4. Separability. If for any reason, any section or provision of this Circular or the attached IMEM Manuals is declared unconstitutional or invalid, such parts not affected shall remain in full force and effect.

Section 5. Effectivity. This Circular shall take effect fifteen (15) days after publication in two (2) newspapers of general circulation.

Issued at Energy Center ,Bonifacio Global City, Taguig City. September 10, 2013.

CARLOS JERICO PETILLA
Secretary

DEPARTMENT CIRCULAR NO. DC2013-09-0023

DECLARING THE LAUNCH OF THE INTERIM MINDANAO ELECTRICITY MARKET (IMEM) AND TERMS AND CONDITIONS FOR THE COMMENCEMENT OF THE FULL COMMERCIAL OPERATIONS OF THE IMEM

WHEREAS, Section 2 of Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001” (EPIRA), declares as a policy of the state to ensure the quality, reliability, security, and affordability of the supply of electric power;

WHEREAS, Republic Act No. 7638 or the “Department of Energy Act of 1992”, as amended by Section 37 of the EPIRA, authorized the Department of Energy (DOE) to exercise supervision and control over all government activities relative to energy projects and to formulate rules and regulations necessary to implement the objectives of these laws;

WHEREAS, Section 37 (i) of the EPIRA mandates the DOE 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, to address the power supply situation in Mindanao, the DOE undertook public consultations and Information, Education and Communication (IEC) Campaign on the establishment of an electricity market to encourage the transparent and efficient utilization of all available resources to alleviate the supply deficit;

WHEREAS, on 24 May 2013 and 17 September 2013, the DOE issued Department Circular Nos. DC 2013-05-0008 and DC 2013-09-0020 promulgating the Interim Mindanao Electricity Market (IMEM) Implementing Rules (the “IMEM Rules”) and the IMEM

Manuals respectively;

WHEREAS, on 12 August 2013, the Energy Regulatory Commission (ERC) issued an Order granting the provisional authority for the IMEM price determination methodology, subject however to the approval of an offer cap and the submission of the finalized Dispatch Protocol;

WHEREAS, the offer cap has yet to be agreed upon by the DOE, ERC and PEMC;

WHEREAS, there is an urgent need to address the supply deficit through immediate implementation of the IMEM for the general welfare of the Mindanao stakeholders;

WHEREAS, PEMC has commenced trial operations on 26 August 2013, and shall conclude the same on 25 September 2013; and

WHEREAS, after assessment of the trial operations, the DOE has determined that there is a need for the IMEM participants to fully familiarize themselves with the daily operations of the IMEM, particularly with respect to centralized scheduling and dispatch.

NOW THEREFORE, premises considered, the DOE declares as follows:

Section 1. Launch of the IMEM and Initial Commercial Operations. The DOE hereby declares the launch of the IMEM and sets the initial commercial operations on 26 September 2013.

1.1 Completion of Registration and Documentary Requirements.

Commencing 26 September 2013 until 02 October 2013, all participants identified under clause 2.1.1.1 and clause 2.1.1.2 of the IMEM Rules (Mandatory Participants) are hereby directed to submit an accomplished IMEM Membership Form and Market Participation Agreement.

Other documentary requirements provided in Section 2.5 of the IMEM Registration Criteria and Procedures Manual shall be completed by all participants by 15 November 2013 as a condition to the participation in the full commercial operation of the IMEM as provided in Section 2 hereof.

1.2 Terms of Initial Commercial Operations.

Beginning 03 October 2013 and until the declaration of full commercial operations in accordance with Section 2 of this Circular, all IMEM Members shall comply with the provisions on central scheduling and dispatch of all contracted bilateral quantities.

The central schedule and dispatch shall be implemented in the manner provided for in the IMEM Dispatch Protocol: *Provided*, That In-Day Dispatch Instructions issued by the Mindanao System Operator shall be in accordance with current practice for re-dispatch under the Capacity Nomination and Dispatch Protocol dated 22 March 2013 agreed upon by Power Sector Assets and Liabilities Corporation, National Power Corporation, the Mindanao System Operator and Aboitiz Power Corporation - Therma Marine, Inc. as may be applicable.

To this end, the IMEM Operator shall ensure the smooth implementation of the initial commercial operations by closely coordinating with the Mindanao System Operator and IMEM Members.

All other provisions in the IMEM Dispatch Protocol and all other provisions in the IMEM Rules and IMEM Manuals shall be followed to the extent practicable, provided, that full implementation of the IMEM Rules and Manuals shall be undertaken once full commercial operations have been declared by the DOE;

1.3 Monitoring of Energy Withdrawals.

The Mindanao System Operator, shall continue to perform its obligations under Section 2 of DOE Department Circular No. 2012-03-0004.

Section 2. Declaration of Full Commercial Operations.

Unless otherwise declared by the DOE, full commercial operations of the IMEM shall commence on 26 November 2013, subject to the fulfillment of the following conditions:

- a) The approval of the offer cap by the DOE, ERC and PEMC; and
- b) The constitution of the IMEM Governance Committee pursuant to clause 1.4.2.2 of the IMEM Rules.

Section 3. Severability. Should any provision of this Circular or any part thereof be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other provisions of this Circular.

Section 4. Effectivity. This Circular shall take effect fifteen (15) days after publication in a newspaper of general circulation and upon publication and filing with the University of the Philippines Law Center, Office of the National Administrative Register.

Issued at Taguig City, Metro Manila, Philippines September 24, 2013

CARLOS JERICO PETILLA
Secretary

DEPARTMENT CIRCULAR NO. DC2013-10-0024

DIRECTING THE NATIONAL ELECTRIFICATION ADMINISTRATION TO ASSIST THE MINDANAO ELECTRIC COOPERATIVES IN ENSURING COMPLIANCE WITH THE PRUDENTIAL REQUIREMENTS IN THE INTERIM MINDANAO ELECTRICITY MARKET (IMEM)

WHEREAS, Section 2 of Republic Act No.9136, otherwise known as the “Electric Power Industry Reform Act of 2001” (EPIRA), declares as a policy of the state to ensure the quality, reliability, security, and affordability of the supply of electric power;

WHEREAS, Republic Act No. 7638 or the “Department of Energy Act of 1992”, as amended by Section 37 of the EPIRA provides that the Department of Energy (DOE) exercises supervision and control over all government activities relative to energy projects and to formulate rule and regulation necessary to implement the objectives of these laws;

WHEREAS, Section 37 (i) of the EPIRA mandates the DOE 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 4 (g) and (n) of Presidential Decree No. 269 as amended by section 5 of the Republic Act No. 10531 or the “National Electrification Administration Reform Act of 2013,” respectively provide that the National Electrification Administration (NEA) “will provide institutional, financial and technical assistance to electric cooperatives upon the request of the electric cooperatives” and shall serve as guarantor to qualified electric cooperatives in their transactions with various parties”;

WHEREAS, on 28 June 2012, the DOE promulgated Department Circular No. DC2012-06-0007 entitled, “Directing the

National Electrification Administration to Develop a Mechanism for Ensuring the Adequacy of and Compliance by the Electric Cooperatives with the Prescribed Prudential Requirements in the Wholesale Electricity Spot Market and Spearhead the Collective Petition thereof”;

WHEREAS, due to the power supply situation in Mindanao, the DOE undertook public consultations on the establishment of an electricity market to encourage the transparent and efficient utilization of all available resources as one measure to alleviate the supply deficit in the grid;

WHEREAS, on 24 May 2013, the DOE issued Department Circular No. DC 2013-05-0008, or the Interim Mindanao Electricity Market (IMEM) Implementing Rules (the “IMEM Rules”), and directed, among others the NEA to ensure the financial and technical capability of the electric cooperatives, including but not limited to, guaranteeing their transaction in the IMEM;

WHEREAS, on 24 September 2013, the DOE Department Circular No. DC2013-09-000-0023, declared the launch and initial commercial operation of the IMEM on 26 September 2013; and

WHEREAS, the electric cooperatives may not have the means at present to provide the prudential security requirements in the IMEM.

NOW THEREFORE, premises considered, the DOE declares as follow:

Section 1. NEA Guarantee. The NEA is hereby

directed to provide the necessary guarantee or financial assistance to qualified grid connected electric cooperatives in Mindanao on their purchases and transaction as required under the IMEM Rules, until such time that the regulator has considered the prudential requirements in the ECs rates. For this purpose, the NEA may impose the necessary fee or interest charges in the provision of such guarantee or financial assistance consistent with existing laws and regulation.

SECTION 2. Obligation of Electric Cooperative.

All electric cooperatives are enjoined to act in a judicious and prudent manner in procuring its power supply, including entering into the necessary power supply contracts to ensure the adequacy and continuity of electricity services and stability of prices, consistent with the obligation under paragraph 3, Section 23 the EPIRA to “supply electricity in the least cost manner to its captive market”.

All grid-connected electric cooperative shall submit a monthly update of their monthly demand and level of contracted quantities with ten (10) days from the end of each IMEM

billing month, commencing 26 September 2013.

SECTION 3. Obligation of the IMEM Operator.

Ten (10) days from the end of each IMEM billing month, PEMC as the IMEM Operator shall submit to the DOE a report on the declared bilateral contract quantities of each electric cooperative.

SECTION 4. Separability. If for any reason, any section or provisions of this Circular and its Annexes, are declared unconstitutional or invalid, such parts not affected shall remain in full force and effect.

SECTION 5. Effectivity. This Circular shall take effect fifteen (15) days after its publication in two (2) newspapers of general circulation and filing with the University of the Philippines Law Center, Office of the National Administrative Register.

Issued October 09, 2013 at Energy Center, Rizal Drive, Bonifacio Global City, Taguig City.

CARLOS JERICO L. PETILLA
SECRETARY

DEPARTMENT CIRCULAR NO. DC2013-12-0027

DECLARING THE COMMERCIAL LAUNCH FOR THE TRADING OF ANCILLARY SERVICES IN LUZON AND VISAYAS UNDER THE PHILIPPINE WHOLESALE ELECTRICITY SPOT MARKET

WHEREAS, Section 37 of Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001” or “EPIRA” mandates the Department of Energy (DOE) to ensure the reliability, quality, and security of supply of electric power, encourage power sector investments in the electricity sector and promote development of indigenous and renewable energy sources and 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, the DOE is also mandated under section 30 of the EPIRA to establish the Wholesale Electricity Spot Market (WESM) and upon joint endorsement with the electric power industry participants, formulate and promulgate the WESM Rules;

WHEREAS, on 28 June 2002, the WESM Rules issued, adopted, and promulgated by the DOE; and pursuant to Section 10.3 (Transitory Provision) of the WESM Rules, only energy shall initially be traded;

WHEREAS, Section 3.3.4.1 of the WESM Rules provides that when reasonably feasible, the Philippine Electricity Market Corporation (PEMC) as the Market Operator, in coordination with the System Operator (SO), shall establish and administer a spot market for purchase of certain reserve categories;

WHEREAS, on 08 January 2007, the PEMC filed an application before the Energy Regulatory Commission (ERC) to secure the approval of the Pricing and Cost Recovery Mechanism (PCRM) for the WESM Reserve

Market docketed as ERC Case No. 2007-004 RC (WESM Reserve PCRM Case) in compliance with the ERC Division dated 20 June 2006 in ERC Case No. 2006-007 RC (WESM Price Determination Methodology) which provides that PEMC in coordination with SO shall establish and administer a spot market for purchase of certain reserve categories;

WHEREAS, under the Philippine Grid Code (PGC), the National Grid Corporation of the Philippines (NGCP), as the SO of the nationwide transmission system, is responsible for determining, acquiring, and dispatching the capacity needed to supply the ancillary services required to maintain power quality and the reliability and security of the nationwide grid following the dispatch schedule prepared by the Market Operator;

WHEREAS, the WESM Rules and the Order dated 07 July 2008 by the ERC in WESM Reserve Market PCRM Case, provided for the operation of the Reserve Market as a gross and undertake all necessary action to implement the Reserve Market on Commercial Launch Date.

PEMC shall, at least thirty (30) days before the Commercial Launch Date, submit to the DOE a certification attesting that all systems and procedures, including all interfaces with the participants and service providers, necessary for the operation of the WESM Reserve Market are in Place. The DOE shall confirm the Commercial Launch Date upon determination that the certification submitted by PEMC is acceptable. In the event that PEMC or any relevant entity as may be determined by the DOE shall immediately rectify or remedy the deficiency. In this case, the DOE shall, in the exercise of its discretion, declare a new

Commercial Launch Date. Subject to receipt of a new certification from PEMC on the readiness of the Reserve Market.

Section 3. Call for Registration. In preparation for the Commercial Launch date, all Generation Companies or Customers intending to participate as Ancillary Service Provider in the WESM Reserve Market are directed to register with the Market Operator on a per generating unit basis or reserve facility. PEMC is hereby directed to provide the list of necessary requirements for the concerned generators or Customers to be able to comply with this directive.

Section 4. Responsibilities. Pursuant to their respective functions provided under the EPIRA and its implementing Rules and Regulations, the WESM Rules, the Philippine Grid Code, and all other relevant laws and issuances, the following agencies and entities are hereby directed to undertake the following:

a) Philippine Electricity Market Corporation (PEMC)

- i. Submit to DOE detailed report and status of the proposed WESM Reserve Market within fifteen (15) days from the effectivity of this Circular;
- ii. Undertake preparatory activities for the Commercial Launch Date including, but not limited to, the filing of the appropriate pleading/s with the ERC in order to implement the directives provided herein;
- iii. Conduct the necessary trainings and other information dissemination activities to ensure the readiness of participants including Generation Companies and Customers intending to participate in the WESM Reserve Market;

- iv. Regularly publish in the WESM Public Information Website the activities undertaken or activities to be undertaken relative to the developments for the commercial operations of the WESM Reserve Market; and
- v. Submit to DOE, on a regular basis, reports on the preparations and development on the WESM Reserve Market which shall be the basis for the readiness determination to pursue its commercial launch

Towards this end, all electric power industry participants and customers connected to the establishment of the WESM Reserve Market are directed to comply with the requirements of PEMC on the submission of information or data necessary for the purpose of conducting simulations, assessing WESM Reserve Market readiness, or for such other purpose relevant to the commercial launch of the WESM Reserve Market.

b) National Grid Corporation of the Philippines (NGCP)

- i. Undertake activities to ensure that the performance of its functions and obligations on the provisions of ancillary services are in compliance with the EPIRA and its Implementing Rules and Regulations, the WESM Rules, the Philippine Grid Code, the Open Access Transmission Services (OATS) Rules, and other relevant rules and regulatory issuances.
- ii. Collaborate with PEMC for the timely completion for the necessary enhancements to the WESM Dispatch Protocol and Ancillary Services Monitoring Manual, ensure the reliability of the Energy Management System (EMS) in the transmission of data to the Market Management System (MMS), implement necessary

enhancements to the EMS-MMS Interface, and participate in the trainings and public dissemination organized by DOE and PEMC for the purpose of explaining matters relevant to the requirements of the SO for the various reserve categories, monitoring and compliance of reserve facilities, and such other matters within the competence of the SO;

- iii. Ensure that the testing and certification of all generating units capable of providing ancillary services, including customers intending to participate in the WESM Reserve Market, will be completed in accordance with the timeline set for the Commercial Launch Date of the WESM Reserve Market. NGCP is hereby directed to provide the list of necessary requirements for the concerned ancillary services providers and customers to be able to comply with this directive; and
- iv. Regularly submit to DO status report of its Ancillary Services contracts.

c) National Electrification Administration (NEA).

As provided for in Section 3.3 of DOE Department Circular No. DC2010-06-007 and pursuant to its mandate under Republic Act. No. 10531 or the NEA Reform Act, the NEA shall render appropriate assistance to Electric Cooperatives in ensuring their readiness for the commencement of the WESM Reserve Market.

d) All WESM Members and Electric Power Industry Participants.

Consistent with Section 3.4 of DOE Department Circular No. DC2010-06-007, all WESM members, as well as Generation

Companies and customers intending to participate as Ancillary Service Provider in the WESM Reserve Market, are hereby directed to undertake all necessary preparations for the commencement of the WESM Reserve Market, including but not limited to compliance with applicable rules and regulations, and the requirements of the Market Operator and the SO.

Pursuant to Section 4(b) (iii) of this Circular, all Generation Companies and/or plant operators are hereby directed to comply with the list of requirements issued by the NGCP to facilitate the timely testing and certifications of the generating units, in accordance with the timeline of the Commercial Launch of the WESM Reserve Market.

Section 5. Must Offer of Capacities in Energy and Reserve. Upon the Commercial Launch of the WESM Reserve Market and consistent with the WESM Rules 3.5.7.2. and 3.5.8.2. all Trading Participants are directed to submit offers for energy based on their Maximum Available Capacity and reserve based on their Maximum Capability for each trading interval. For avoidance of doubt, “Maximum Available Capacity” shall have the same meaning as provided in Section 2.1 of the DOE Department Circular No. DC2010-03-0003 while “Maximum Capability” shall refer to WESM Rule 3.5.7.3. (a).

Section 6. Conduct of Trial Operations. Similar to the commencement of the commercial operations of the Luzon and Visayas energy only market, PEMC shall conduct trial operations of the WESM Reserve Market consistent with the existing protocols on the Reserve Market without any settlement. This is to adequately prepare the market participants in the trading of WESM reserve and allow final refinements when necessary prior to Commercial Launch Dates.

Section 7. Supervision by the DOE. The DOE shall continue to oversee the WESM, including

the Reserve Market, and to undertake such actions as may be necessary to achieve the objectives of the EPIRA and the WESM.

Section 8. Regulatory Support. Consistent with its mandate to ensure competition in the generation and supply sectors, and in support of the provision of adequate, reliable and secured electricity services, the ERC shall render timely action on applications filed in relation to the operationalization of the WESM Reserve Market, particularly on the PCRM.

Section 9. Reportorial Requirements. For Purposes of monitoring compliance with the directives under this Circular, PEMC, NGCP, and NEA shall submit to the DOE monthly reports and issues register on the process and status of their preparations and readiness.

Section 10. Interpretation. Words and meanings stated in this Circular shall have the same meaning in the WESM Rules.

Section 11. Separability Clause. If for any reason. Any section or provision of this Circular is declared unconstitutional or invalid, such parts that are not affected shall remain in full force and effect.

Section 12. Effectivity. This Circular shall take effect immediately following its publication in two (2) newspapers of general circulation and shall remain in effect unless otherwise revoked. PEMC is directed to publish this Circular in the market information website.

Done this ____ day of November, 2013 at Taguig City, Metro Manila, Philippines.

CARLOS JERICO L. PETILLA
Secretary

DEPARTMENT CIRCULAR NO. DC2013-12-0029

ADOPTING AN INTERM CRITERIA FOR THE DECLARATION OF MARKET INTERVENTION IN THE WHOLESALE ELECTRICITY MARKET

WHEREAS, Republic act No.9136 or the “Electric Power Industry Reform of 2001” otherwise know as “EPIRA” declares as policy of the state, among others, to protect the public interest as it affected by the rates and services of electric utilities and other providers of electric power;

WHEREAS, Section 37 (f) of EPIRA mandates the Department of Energy (DOE) to, among others:

- a. Ensure the reliability, quality, and security of supply of electric power
- b. Encourage private sector investments in the electricity sector and promote development of indigenous and renewable energy sources;
- c. Promote a system of incentives to encourage electric power industry participants including new generation companies and end-users to provide adequate and reliable electric supply;
- d. Jointly with the electric power industry participants, establish the wholesale electricity spot market and formulate the detailed rules governing the operations thereof; and
- e. Exercise such other powers as may be necessary or incidental to attain the objectives of EPIRA;

WHEREAS, pursuant to Section 30 of EPIRA, the Energy Regulatory Commission (ERC) is empowered to suspend the operation of the wholesale electricity spot market or declare a temporary wholesale electricity spot market failure in cases of national and international security emergencies or natural calamities;

WHEREAS, on 28 June 2002, in consultation with the electric power industry participants, the Whole sale electricity Spot Market Rules (WESM) was issued, adopted, and promulgated by the DOE;

WHEREAS, Chapter 6 of the WESM Rules provides the procedures to be followed by the Market Operator, System Operator, and WESM Participants in an emergency situation, and the circumstances and manner by which the ERC, through the Market Operator, may intervene or suspend the spot market;

WHEREAS, Clause 6.8 of the WESM Rules only provides as conditions for ERC to declare Market Suspension in cases of natural calamities, or following the official declaration of a national and international security emergency by the President of the Republic;

WHEREAS, in light of recent events, the DOE saw the need to provide for an interim measure for the Market Operator and/or System Operator’s declaration of Market Intervention in order to ensure utmost consumer protection specially in times of critical situation of the supply of electric power that triggers high prices In the WESM;

NOW THEREFORE, pursuant to its authority under the WESM Rules, the DOE hereby issues, adopts and promulgates the following:

Section 1. Declaration of Market Intervention. To temper unusual price spikes in the WESM and to protect the interest of the public, the Philippine Electricity Market Corporation (PEMC), as Market Operator, through its President has the option to declare Market Intervention in the WESM as provided for under chapter 6 of the WESM Rules:

Provided, that the trigger for the declaration of market intervention exists when there is a supply emergency where electricity supply capacity shortfall, is measured at 4 percent (4%) or below the total demand: Provided further, that the 4% trigger shall continue to be applied until the DOE determines, through the National Transmission Corporation (TransCo), the National Grid Corporation of the Philippines (NGCP) and the Grid Management Committee (GMC), that a new trigger is applicable.

This abovementioned provision emphasizes that this is an option, hence notwithstanding the occurrence of the trigger, the Market Operator, may or may not exercise Market Intervention provided herein.

Section 2. Administered Price Cap. The Administered Price Cap approved by the ERC shall continue to be used for settlements in the trading intervals where market interventions were declared, until such time that the PEMC has recommend a new formulate for approval of the ERC.

Section 3. Responsibility of the National Transmission Corporation. The TransCo, in consultation with NGCP and GMC, is hereby directed to conduct a study on the triggers for the declaration of Market Intervention in the WESM taking into consideration the impact of the actual supply-demand situation on the WESM prices.

Section 4. Responsibility of the Philippine Electricity Market Corporation. The PEMC is hereby directed to review the applicability of the formula for the Administered Price Methodology and as necessary, recommend changes for consideration of the DOE. PEMC is likewise directed to cause the filing for ERC approval of the pricing methodology as may be necessary.

Section 5. Timelines and Reportorial Requirements. All entities so mandated by this Circular shall complete their respective deliverables within 30 (days) from the effectivity of this Circular. Provide, that a weekly report on the developments is submitted to the DOE.

Section 6. Separability Clause. If for any reason, any section or provision of this Circular is declared unconstitutional or invalid, such parts not affected shall remain in full force and effect.

Section 7. Effectivity. This Circular shall take into effect immediately following its publication in at least two (2) newspaper of general circulation and shall remain in effect until otherwise revoked.

Issued this December 27, 2013 at the Energy Center, Bonifacio Global City, Taguig City.

CARLOS JERICHO PETILLA
SECRETARY

DEPARTMENT CIRCULAR NO. DC2014-01-0003

DESIGNATING THE 650-MW MALAYA THERMAL POWER PLANT AS A MUST-RUN UNIT IN THE WHOLESALE ELECTRICITY SPOT MARKET

WHEREAS, Republic Act No. 9136 otherwise known as the “Electric Power Industry Reform Act of 2001” (EPIRA) declares as policy of the State, among others, to ensure the quality, reliability, security and affordability of the supply of electric power;

WHEREAS, pursuant to Section 37 of the EPIRA, the Department of Energy (DOE) is mandated to supervise the restructuring of the electric power industry as well as among other things, to:

- (a) Formulate policies for the planning and implementation of a comprehensive program for the efficient supply and economical use of energy consistent with the approved national economic plan and with the policies on environmental protection and conservation and maintenance of ecological balance, and provide a mechanism for the integration.. rationalization, and coordination of the various energy programs of the Government;
- (b) Ensure the reliability, quality and security of supply of electric power;
- (c) Jointly with the electric power industry participants, establish the wholesale electricity spot market and formulate the detailed rules governing the operations thereof; and
- (d) Formulate 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, the 650-MW Malaya Thermal Power Plant (MTPP), located in Pililia, Rizal,

an oil-fired power plant is government-owned through the Power Sector Assets and Liabilities Management Corporation (PSALM);

WHEREAS, the MTPP is consisting of two (2) generating units, MTPPI, commissioned on 20 August 1975 with a capacity of 300-MW and MTPP 2, commissioned on 21 April 1979 with a capacity of 350 MW;

WHEREAS, the MTPP is a base load plant, each unit having a capability to operate at a minimum stable load (*P_{min}*) of 130 MW each and capable of providing reactive power support or voltage support to the grid being strategically located in a load center;

WHEREAS, the MTPP, unlike other oil-based power plant, requires sixteen (16) hours start up before the generation units can be synchronized to the grid; and each generating unit having a ramp up and ramp down rate of three (3) MW per minute;

WHEREAS, on 28 June 2002, in consultation with the electric power industry participants, the WFSM Rules was issued, adopted, and promulgated by the DOE;

WHEREAS, the WESM started its commercial operations in Luzon Grid on 26 June 2006, while the Visayas Grid was integrated effective 26 December 2010;

WHEREAS, in ensuring effective and efficient operations of the Philippine electricity market, WESM Rules and various Manuals were promulgated including the Dispatch Protocol Manual (DPM);

WHEREAS, Appendix AI, Section 4.3 of the DPM provides that each Trading Participant classified as a scheduled generation company must submit bids/ offers corresponding to its maximum available capacity for each trading

interval, often referred to as the Must Offer Rule (MOR);

WHEREAS, the technical limitations of the MTPP makes it difficult to comply with the MOR and be compelled to run at Pmin level at all times, which exposes MTPP to operate at a loss since its production cost is above the normal Market Clearing Prices particularly during off-peak hours of the day;

WHEREAS, historical performance of MTPP shows that it has been utilized as Must Run Unit (MRU) during significant events such as supply shortfall, in times of system security and voltage support to the grid;

WHEREAS, on 14 August 2013, PSALM had written the DOE to declare the MTPP to be operated as a “Must Run Unit” only in times when (a) there is insufficient power supply offers in the WESM and/or (b) there is a need to provide reactive power for voltage support to address system security requirement and maintain the stability of the grid;

WHEREAS, the DOE recognizes that the MTPP was designed and previously operated as a base load plant and its distinct technical and operational characteristics make it difficult to comply with the MOR without incurring losses due to high costs of operations;

WHEREAS, the DOE further recognizes that the MTPP is not a suitable Generator Trading Participant in the WESM, but clearly manifest its importance during times of supply shortfall and system security by designating the MTPP as an MRU to ensure supply security in the grid;

NOW, THEREFORE, for and in consideration of the foregoing premises, the DOE, consistent with its mandate under the EPIRA, hereby adopts and promulgates the following:

Section 1. Designation of the 650-MW Malaya Thermal Power Plant (MTPP) as a Must-Run Unit (MRU). Pursuant to the provisions of the EPIRA, the MTPP shall be exempted from the Must Offer Rule (MOR) and shall continue to be utilized as MRU in the WESM. All existing

MRU compensation and settlement process shall remain the same. The System Operator (SO) may utilize the MTPP at its maximum capability in accordance with the Market Manual on Management of MRUs.

Section 2. Additional Responsibilities of Relevant Agencies. To ensure efficient implementation of the Circular, the following are hereby directed to undertake the following:

- (a) The PEMC shall ensure that the MTPP shall be compensated under the MRU settlement in accordance with the specified schedule of the SO.
- (b) The PSALM shall: (i) ensure efficient operation of MTPP; (ii) ensure the readiness of MTPP to run as MRU upon instruction of the SO; (iii) ensure availability of fuel supply at all times by maintaining adequate daily inventory; and (iv) diligently coordinate with PEMC on the timely recovery of compensation for the operation of MTPP as MRU.

Section 3. 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 4. Separability Clause. U for any reason, any section or provision of this Circular is declared unconstitutional or invalid, such parts not affected shall remain in full force and effect.

Section 5. Effectivity. This Circular shall take effect fifteen (15) days following its publication in at least two (2) newspaper of general circulation and shall remain in effect until otherwise revoked.

Issued at Energy Center, Bonifacio Global City, Taguig City. January 22, 2014.

CARLOS JERICHO PETILLA
SECRETARY

DEPARTMENT CIRCULAR NO. DC2014-02-0004

RELAXATION OF CHAPTER III SECTION 3.1.1 OF THE WESM MANUAL ON REGISTRATION, SUSPENSION, AND DEREGISTRATION CRITERIA AND PROCEDURES

WHEREAS, Republic Act No. 9136 otherwise known as the “Electric Power Industry Reform Act of 2001” (EPIRA) declares as policy of the State, among others, to:

- a) Ensure the quality, reliability, security and affordability of the supply of electric power; and
- b) Protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power.

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

- a) Ensure the reliability, quality, and security of supply of electric power;
- b) Encourage private sector investments in the electricity sector and promote development of indigenous and renewable energy sources;
- c) Promote a system of incentives to encourage electric power industry participants including electricity end-users to provide adequate and reliable electric power supply;
- d) Jointly with the electric power industry participants, establish the wholesale electricity spot market and formulate the detailed rules governing the operations thereof; and
- e) Exercise such power as may be necessary or incidental to attain the objectives of EPIRA.

WHEREAS, on 28 June 2002, in consultation with the electric power industry participants, the WESM Rules was issued, adopted, and promulgated by the DOE;

WHEREAS, Generation Company / ies registering in the WESM as Trading Participants are required to submit operating parameters consisting of the minimum (*Pmin*) and maximum (*Pmax*) generator stable loading of their generating units which information are then made as default inputs to the Market Dispatch Optimization Mode (MDOM) in accordance with the WESM Price Determination Methodology (PDM) approved by the Energy Regulatory Commission (ERC);

WHEREAS, the DOE, in cooperation with the PEMC, undertook a study on the WESM design which recommended setting the *Pmin* at a lower or zero (0) MW would provide more offers to the spot market and thereby reduce the capacity gap in the WESM;

WHEREAS, the WESM Manual on Registration, Suspension and Deregistration Criteria and Procedures only allows changes to be made on the registered *Pmin* and *Pmax* upon compliance to the procedures set therein;

WHEREAS, Section 3.1.1 of the said WESM Manual respectively provides that:

“3.1.1 The Trading Participant wishing to change the registered capacities of its generating unit/s shall make a request in writing to the Market Operator. Such changes shall be in accordance with either the latest Certificate of Compliance (COC) issued by the ERC or a certification of generator capability test to be issued jointly by the DOE, ERC, and SO. The

conduct of testing shall be based on the internationally-accepted testing procedures as required in the COC, and the cost of testing shall be the responsibility of the applicant.”

WHEREAS, the abovementioned WESM Manual requirement for the changes on the registered *Pmin*, which is generation testing and certification, may limit the opportunity to facilitate more offers in the WESM coming from generating units with fast start capability;

WHEREAS, the DOE deemed it appropriate to relax the requirement of the aforementioned WESM Manual Procedure concerning changes in *Pmin* for better efficiency in ensuring the security and reliability of supply of electric power;

NOW THEREFORE, pursuant to its authority under the WESM Rules, the DOE hereby issues, adopts and promulgates the following: **Section 1. Scope.** This Circular shall apply to all Generation Company/ies with generating units having fast start capability as defined in the Philippine Grid Code (PGC) and other entities mandated to support the implementation of the policy set therein.

Section 2. Relaxation of Specific Provisions of the WESM Registration Manual. Notwithstanding the procedures provided in the WESM Registration Manual for the changes in *Pmin* registration, effective 01 December 2013, Generation Company/ies, which generating units have fast start capability as defined in the Philippine Grid Code (PGC), may be allowed to register a lower operating limit or *Prim* of zero (0) in the WESM.

For this purpose, the National Grid Corporation of the Philippines (NGCP) in consultation with

the Grid Management Committee (GMC) is hereby directed to submit to the DOE within ten (10) days for the effectivity of this Circular a certified list of all generating units having fast start capability. Said Certification shall therefore serve as PEMC’s basis in allowing Generation Company/ies requests for change in their current *Pmin* registration to a lower level or zero (0) MW as provided for under this Circular.

Section 3. Review of WESM Design. Consistent with the objectives of this Circular, the Philippine Electricity Market Corporation (PEMC) shall review the applicable provisions of the Registration Manual and recommend necessary changes in accordance with the policy that may be adopted by the DOE on the overall WESM Design.

In the interest of ensuring adequacy and reliability of the power supply, the DOE shall continue to assess the performance of the generation units and if warranted, will issue the necessary policies and effect changes to the WESM Rules, *motu proprio*, as necessary.

Section 4. Separability Clause. If for any reason, any inspection or provision of this Circular is declared unconstitutional or invalid, such parts that are not affected shall remain in the full force and effect.

Section 5. Effectivity. This Circular shall take effect immediately following its publication in two (2) newspapers of general circulation and shall remain in effect unless otherwise revoked.

Issued in Energy Center, Bonifacio Global City, Taguig City on February 06, 2014

CARLOS JERICO L. PETILLA
Secretary

DEPARTMENT CIRCULAR NO. DC2014-03-0009

DECLARING A NEW COMMERCIAL LAUNCH DATE FOR THE WHOLESALE ELECTRICITY SPOT MARKET (WESM) RESERVE MARKET AND DIRECTING A CENTRAL SCHEDULING AND DISPATCH OF ENERGY AND CONTRACTED RESERVES

WHEREAS, Section 37 of Republic Act No. 9136 or the “Electric Power Industry Reform Act of 2001” (EPIRA), mandates the Department of Energy (DOE) to among others:

- a) ensure the reliability, quality, and security of supply of electric power;
- c) encourage power sector investments in the electricity sector and promote development of indigenous and renewable energy sources and develop policies and procedures, and;
- c) 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 30 of the EPIRA mandates the DOE to establish the Wholesale Electricity Spot Market (WESM) and, upon endorsement of electric power industry participants, promulgate the Wholesale Electricity Spot Market Rules (WESM Rules);

WHEREAS, Section 10.3.23 of the WESM Rules, the DOE is authorized to declare the commencement of the spot market for ancillary services, when applicable and reasonably feasible;

WHEREAS, Department Circular No. DC 2013-12-0027, issued on 02 December 2013 provides for the Commercial Launch Date of WESM Reserve Market on 26 March 2014, subject to fulfilment of certain conditions therein;

WHEREAS, pursuant to said Circular, the Philippine Electricity Market Corporation (PEMC) shall submit at least thirty (30) days prior to the Commercial Launch Date, a certification attesting that all systems and procedures are in place for the operation of the WESM Reserve Market, otherwise the DOE shall declare a new Commercial Launch Date;

WHEREAS, the same Circular states that “[i]n the event that PEMC fails to certify readiness or the DOE finds PEMC’s certification deficient, PEMC or any relevant entity, as may be determined by the DOE, shall immediately rectify or remedy the deficiency” and the DOE shall declare a new Commercial Launch Date subject to receipt of a new certification from PEMC on the readiness of the Reserve Market;

WHEREAS, on 26 February 2014, PEMC commenced the trial operations of the Reserve Market, which lasted until 25 March 2014. For this purpose and considering that the result of the trial operations is significant in the determination of the readiness of the commercial operation of the Reserve Market, PEMC requested to submit the formal report about two weeks prior to the end of trial operations;

WHEREAS, on 14 March 2014, PEMC submitted its report to the DOE stating that the WESM Reserve Market may not commercially operate on 26 March 2014 pending the regulatory approval of the Pricing and Cost Recovery Mechanism (PCRM) of the WESM Reserve Market and the completion of the registration of ancillary service providers;

WHEREAS, in the same report, PEMC recommended to continue with the trial operations while at the same time implement central scheduling of energy and contracted reserves in order to view all available generation capacity in the grid, and thereby take necessary policy actions to immediately address the adverse effects of an imminent supply deficiency, including but not limited to, directing certain capacities to be made available to the grid; and

WHEREAS, the central scheduling of energy and contracted reserves will further prepare market participants for the full commercial operation of the WESM Reserve Market.

NOW THEREFORE, premises considered, the DOE hereby declares the following:

Section 1. Scope and Application. This Circular shall apply to all electric industry participants, reserve providers with Ancillary Services Procurement Agreement (ASPA) contracts duly approved by the ERC, the PEMC and National Grid Corporation of the Philippines (NGCP) and shall be implemented in Luzon and Visayas.

Section 2. Deferral of Commercial Launch Date. It is hereby declared that the Commercial Launch Date, which was initially set on 26 March 2014 pursuant to Circular No. DC2013-12-0027 is hereby deferred; and the new Commercial Launch Date is hereby set to 26 May 2014, subject to the approval by the Energy Regulatory Commission (ERC) of the PCRM for the WESM Reserve Market.

Section 3. Central Scheduling and Dispatch of Energy and Contracted Reserves. Upon effectivity of this Circular, a central scheduling and dispatch of energy and contracted reserve capacities for WESM shall be in effect as part of the trial operations in order for the DOE to monitor all available generation capacity in both energy and reserve and to prepare the participants for the eventual commercial operation of the WESM Reserve Market.

For this purpose, NGCP and PEMC are hereby directed to convene and formulate the Central Scheduling and Dispatch of Reserves Protocol (The Protocol) within fifteen (15) days upon issuance of this Circular in order to implement the abovementioned central scheduling and dispatch of energy and contracted reserves. The Protocol, which shall be approved by the DOE, shall be guided by the following principles:

- a) The NGCP and PEMC shall observe the latest approved WESM Dispatch Protocol in determining the requirements for reserves to be traded in the WESM.
- b) The NGCP shall schedule all ASPA contracts for the reserve categories that will be traded in the WESM based on the ASPA nominations of the contracted reserve providers and the Day-Ahead Projection (DAP) prepared by the Market Operator.
- c) All scheduled ASPA providers shall submit reserve offer quantities into the WESM based on the Day-Ahead Ancillary Service Schedule determined by NGCP while observing the guidelines set forth in the Central Scheduling and Dispatch of Reserves Protocol.
- d) All scheduled ASPA contracts shall be settled in accordance with the respective provisions of their contract and no settlement of the reserves shall be settled in the WESM.

The approved Protocol shall be implemented for a limited period and shall immediately cease upon New Commercial Launch Date of the WESM Reserve Market.

Section 4. Continuing Responsibilities. All responsibilities of PEMC and NGCP under Circular No. DC2013-12-0027 shall subsist insofar as they are not inconsistent with this Circular. The PEMC shall submit to the DOE a report two (2) weeks prior to the New

Commercial Launch Date and certification of readiness to operate the WESM Reserve Market.

Section 5. WESM Registration of Reserve Providers under ASPA with NGCP. In order to implement the Central Scheduling and Dispatch of WESM Reserve providers in the Market Management System (MMS), all certified reserve providers under ASPA shall be required to register with the WESM.

Section 6. Interpretation. Words and meanings stated in this Circular shall have the same meaning in the WESM Rules.

Section 7. Separability Clause. If for any reason, any section or provision of this Circular is declared unconstitutional or invalid, such parts that are not affected shall remain in full force and effect.

Section 8. Effectivity. This Circular shall take effect fifteen (15) days after publication in two (2) newspapers of general circulation. PEMC is directed to publish this Circular in the market information website.

Issued at Energy Center, Bonifacio Global City, Taguig City. March 26, 2014.

CARLOS JERICHO PETILLA
SECRETARY

DEPARTMENT CIRCULAR NO. DC2014-10-0019

REVOKING SECTION 1 OF DEPARTMENT CIRCULAR NO. DC2013-12-0029 ENTITLED “ADOPTING AN INTERM CRITERIA FOR THE DECLARATION OF MARKET INTERVENTION IN THE WHOLESALE ELECTRICITY SPOT MARKET”

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 regulation 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, on 28 June 2002, the DOE, upon the joint endorsement of the electric power industry participants, promulgated the WESM Rules through Department Circular No. DC20002-06-003;

WHEREAS, on 27 December 2013, the DOE promulgated Department Circular No.DC2013-12-0029 adopting the four percent (4%) supply of electric power shortfall as an interim criteria for the declaration of Market Intervention by the Market Operator until the DOE through a study conducted by the National Transmission Corporation (TransCo), the National Grid Corporation of the Philippines (NGCP) and the Grid Management Committee (GMC) determine a new application criteria;

WHEREAS, on 8 April 2014, the TransCo, NGCP and GMC submitted their Report to the DOE pursuant to the above DOE Circular which noted that four percent (4%) supply shortfall interim trigger is already covered in the System Operator’s declaration of market intervention under system emergency, in accordance with the WESM Rules;

WHEREAS, in the same Report, TransCo, NGCP and GMC, as an alternative, recommended for the DOE to pursue a price cap in the WESM to protect the public from high price of electricity;

WHEREAS, on 05 May 2014, the Energy Regulatory Commission (ERC) adopted and issued the secondary price cap in the WESM through its ERC Resolution No.8, Series of 2014, entitled “An Urgent Resolution Setting an Interim Mitigating Measure in the Wholesale Electricity Spot Market” and have extended its effectivity through ERC Resolution No.14, Series of 2014, for a period of one hundred twenty (120) days from 10 August 2014 or until the establishment by the ERC of a permanent pre-emptive measure in the WESM, whichever comes earlier;

NOW THEREFORE, given the foregoing and pursuant to its authority under the WESM Rules, the DOE hereby revokes the Interim Criteria for the Market Intervention by the Market Operator as provided under Section 1 of DC No. 2013-12-0029.

This Circular shall take into effect fifteen (15) days from its publication in at least two (2) newspaper of general circulation and shall remain in effect until otherwise revoked.

Issued this 24 October 2014 at Energy Center, Rizal Drive, Bonifacio Global City, Taguig City.

CARLOS JERICHO L. PETILLA
SECRETARY

DEPARTMENT CIRCULAR NO. DC2014-12-0022

PROMULGATING THE PROTOCOL FOR THE CENTRAL SCHEDULING AND DISPATCH OF ENERGY AND CONTRACTED RESERVES IN PREPARATION FOR THE COMMERCIAL OPERATION OF THE WHOLESALE ELECTRICITY SPOT MARKET (WESM) RESERVE MARKET

WHEREAS, Section 37 of Republic Act No.9136, otherwise known as the “Electric Power Industry Reform Act of 2001” (EPIRA), mandates the Department of Energy (DOE) to among others:

- a) Ensure the reliability, quality, and security of supply of electric power;
- b) Encourage power sector investment in the electricity sector and promote development of indigenous and renewable energy sources and develop policies and procedures, and;
- c) 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 30 of the EPIRA mandates the DOE to establish the wholesale Electricity Spot Market (WESM), and upon endorsement of electric power industry participants, promulgate the WESM Rules;

WHEREAS, on 28 June 2002, the DOE, upon the joint endorsement of the electric power industry participants, promulgated the WESM Rules through Department Circular No.DC2002-06-003;

WHEREAS, Section 10.3.2.3 of the WESM Rules authorized the DOE to declare the commencement of the spot market for ancillary services, when applicable and reasonably feasible;

WHEREAS, on 02 December 2013, the DOE declared the Commercial Launch Date of WESM Reserve Market on 26

March 2014 through Department Circular No.DC2013-12-0027, subject to fulfilment of certain conditions such as Philippine Electricity Market Corporation's (PEMC) certification attesting that all system and procedures are in place for the operation of the Reserve Market;

WHEREAS, on 14 March 2014, PEMC submitted its report to the DOE stating that the WESM Reserve Market may not commercially operate on 26 March 2014 pending the regulatory approval of the Pricing and Cost Recovery Mechanism (PCRM) of the WESM Reserve Market and the completion of the registration of ancillary service providers; **WHEREAS**, on 26 March 2014, the DOE declared the new Commercial Launch Date of WESM Reserve Market on 26 May 2014, subject to the approval by the Energy Regulatory Commission (ERC) of the PCRM for the WESM Reserve Market, and directed the implementation of the Central Scheduling and Dispatch of Energy and Contracted Reserves through Department Circular No.DC2014-03-0009;

WHEREAS, the Central Scheduling and Dispatch of Energy and Contracted Reserves would provide the DOE better monitoring of all available generation capacity in both energy and reserve, and provide more preparations to the participants for the eventual commercial operation of the WESM Reserve Market;

WHEREAS, pursuant to the said Circular, PEMC and National Grid Corporation of the Philippines (NGCP) jointly formulated the Protocol for the Central Scheduling and Dispatch of Energy and Contracted Reserves in consultation with the Ancillary Service Providers under Ancillary Services Procurement Agreement (ASPA) contracts of NGCP;

WHEREAS, on 22 April 2014, the said Protocol was submitted by PEMC to the DOE for consideration and final approval pursuant to Department Circular No. DC2014-03-0009

NOW THEREFORE, pursuant to its mandated under the EPIRA and the WESM Rules, the DOE hereby issues, adopts and promulgates the following:

Section 1. Approval and Adoption of the Protocol for the Central Scheduling and Dispatch of Energy and Contracted Reserves. In consideration of the foregoing, the WESM Market Manual on the Protocol for the Central Scheduling and Dispatch of Energy and Contracted Reserves (The Protocol) presented as Annex "A" to this Circular is hereby approved and adopted.

The implementation of this Protocol shall immediately cease upon the Commercial Operation of the WESM Reserve Market or upon declaration of its cessation by the DOE.

Section 2. Responsibilities of PEMC, NGCP and Trading Participants. PEMC as the Market Operator, NGCP as the System Operator and all affected Trading Participants shall ensure compliance with this Circular and the said Protocol for the better achievement of this policy. PEMC shall continuously submit an assessment report to the DOE on its implementation of this Protocol and the development of the WESM Reserve Market.

Section 3. Separability Clause. If for any reasons, any section or provision of this Circular including the attached Annex is declared unconstitutional or invalid , such parts that are not affected shall remain in full force and affect.

Section 4. Effectivity. This Circular shall effect fifteen (15) days after publication in two (2) newspapers of general circulation. PEMC is directed to publish this Circular in the market information website.

Issued this 02 November 2014 at the DOE, Energy Center, Rizal Drive, Bonifacio Global City, Taguig City, Metro Manila.

CARLOS JERICO PETILLA
SECRETARY

PUBLIC

WESM MANUAL

Protocol for Central Scheduling and Dispatch of Energy and Contracted Reserves

Abstract

This document describes the processes involved in the central scheduling and dispatch of energy and contracted reserve capacities through the WESM

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SECTION 1 INTRODUCTION

1.1 BACKGROUND

1.1.1 On 26 March 2013, the Department of Energy (DOE) issued DOE Department Circular No. DC2014-03-0009 entitled “Declaring a New Commercial Launch Date for the Wholesale Electricity Spot Market (WESM) Reserve Market and Directing a Central Scheduling and Dispatch of Energy and Contracted Reserves”. The Department Circular No. DC2014-03-0009 sets forth the following directives:

- a. A central scheduling and dispatch of energy and contracted reserve capacities for WESM shall be in effect as part of the trial operations in order for the DOE to monitor all available generation capacity in both energy and reserve, and to prepare the participants for the eventual commercial operation of the WESM Reserve Market
- b. The National Grid Corporation of the Philippines (NGCP) and the Philippine Electricity Market Corporation (PEMC) are hereby directed to convene and formulate the Central Scheduling and Dispatch of Reserves Protocol (The Protocol)

1.1.2 WESM Rules Clause 3.3.1.2 states that ancillary services may include the following without limitation.

- a. The provision of sufficient regulating reserve to meet the fluctuations in load occurring within a trading interval

- b. The provision of sufficient contingency reserve to maintain power system frequency
- c. The provision of dispatchable reserve available to respond to a re-dispatch performed during a trading interval, on either a regular or an ad hoc basis;
- d. The provision of reactive support to guard against power system failure; and
- e. The provision of black start capability to allow restoration of power system operation after a complete failure of the power system or part of the power system.

1.1.3 Pursuant to WESM Rules Clause 2.3.5.1, a Trading Participant or network Service Provider providing ancillary services shall register with the Market Operator.

1.2 PURPOSE

1.2.1 Pursuant to the DOE Department Circular No. DC2014-03-0009, this Protocol implements the directive for NGCP and PEMC to formulate the Central Scheduling and Dispatch of Reserves Protocol. This Protocol shall be referred to as the “Protocol for Central Scheduling and Dispatch of Energy and Contracted Reserves”.

1.2.2 This Protocol shall be together with the WESM Dispatch Protocol Manual. The WESM Dispatch Protocol Manual aims to define functions and responsibilities among the Market Operator, the System Operator, and WESM Members with respect to the

scheduling and dispatch of reserve capacities.

1.2.3 All normal and emergency procedures defined in the WESM Dispatch Protocol Manual shall apply. This Protocol shall define specific arrangements among the Market Operator, System Operator, and Trading Participants for a limited period during the Central Scheduling of energy and reserves covered by Ancillary Services Procurement Agreement (ASPA) for WESM tradable reserve categories.

1.2.4 This Protocol provides for the mechanism to centrally schedule all energy and reserve capacities covered by Energy Regulatory Commission (ERC)-Approved ASPA in the WESM.

1.3 SCOPE

This Protocol covers specific guidelines in the scheduling and dispatch of reserve capacities during normal and emergency conditions during the Central Scheduling of energy and reserves.

1.3.1 This Protocol shall apply to the Market Operator, the System Operator and all WESM Members, including for a limited period and shall immediately cease upon New Commercial Launch Date of the WESM Reserve Market pursuant to the provision of the DOE Department Circular No. DC2014-03-0009.

1.3.2 Pursuant to the provision of the DOE Department Circular No. DC2014-03-0009, all scheduled ASPA Contracts shall be settled in accordance with the respective provision of their contract and no

settlement of reserves shall be made in the WESM

SECTION 2 DEFINITION, REFERENCE AND INTERPRETATION

2.1 DEFINITIONS

2.1.1 “Central Scheduling” shall refer to the activities taken prior to Commercial Launch Date of the WESM Reserve Market for the purpose of central dispatch of energy and reserve categories traded in the WESM. It intends to reflect the entire capacities in the WESM, including the reserve capacities contracted by NGCP, so that these can be centrally scheduled for either energy or reserve. No settlement of reserve shall be made through the WESM, but rather these shall be settled based on the respective provision of their ASPA.

2.1.2 Unless otherwise defined in the Glossary of this document or unless the context provides otherwise, all terms used in this Protocol that are defined in the WESM Rules shall have the meaning as so defined in the WESM Rules and relevant Market Manuals.

2.2 REFERENCES

2.2.1 This Protocol should be read together with WESM Dispatch Protocol Manual, including Chapter 3 and 6 of the WESM Rules, whenever applicable, and the DOE Department Circular No. DC2014-03-0009.

2.3 INTERPRETATION

2.3.1 The rules on interpretation set out in Chapter 9 of the WESM Rules,

as these may be amended from time to time, shall govern the interpretation of this Protocol.

- 2.3.2 In the event of inconsistencies, issuances of later date and those specific to Central Scheduling shall prevail over the earlier and/or general WESM Rules, WESM Market Manual or issuance insofar as central scheduling and dispatch are concerned.

SECTION 3 RESPONSIBILITIES

3.1 MARKET OPERATOR

3.1.1 The Market Operator is responsible for the administration of the Wholesale Electricity Spot Market (WESM) in accordance with the WESM Rules. Among other functions, it is responsible for determining the energy and reserve schedules of all facilities in the WESM, which shall then be submitted to the System Operator for implementation (WESM Rules Section 1.3.1).

3.1.2 In administering the operations of the WESM, the Market Operator shall carry out its functions by performing and complying with the obligations and procedures set out in this Protocol and the WESM Dispatch Protocol Manual

3.2 SYSTEM OPERATOR

3.2.1 The System Operation shall be responsible for and shall operate the power system in accordance with the WESM Rules and applicable Market Manuals, the Grid Code and dispatch schedule communicated by the Market Operator. Its primary responsibilities include providing

central dispatch to all generation facilities and loads connected, directly and indirectly, to the transmission system in accordance with the dispatch schedule submitted by the Market Operator (WESM Rules Section 1.3.3).

3.2.2 The System Operator shall carry out its function by performing and complying with the procedures and obligations set out in this Protocol and the WESM Dispatch Protocol Manual.

3.2.3 The System Operator shall continue to perform the monitoring, and settlement of reserve pursuant to each provider's ASPA.

3.3 TRADING PARTICIPANTS AND WESM MEMBERS

3.3.1 All Trading Participants and other WESM members shall comply with the timetable and procedures for scheduling and Dispatch that are set out in this Protocol and the WESM Dispatch Protocol Manual as such procedures apply to them.

3.3.2 They shall endeavour to adopt internal processes, system and infrastructure, as well as protocols with their counterparties, to comply with this Protocol and the WESM Dispatch Protocol Manual.

3.3.3 Pursuant to WESM Rules Clause 2.3.1.7, scheduled generation companies are required to operate their scheduled generating units in accordance with the scheduling and dispatch procedures described in Chapter 3 of the WESM Rules.

SECTION 4 CENTRAL SCHEDULING OF RESERVE CAPACITIES

4.1 DETERMINATION OF RESERVE REQUIREMENTS

4.1.1 Appendix A.12-Section 4 of the WESM Dispatch Protocol Manual provides the criteria for the determination of reserve requirements wherein all reserve requirements level are set by the System Operator through the Ancillary Service Procurement Plan (ASPP) or as ERC-approved level of reserve requirement.

4.1.2 The Market Operator shall use the result of the hourly forecasted demand of the 1200H Day-Ahead Projection (DAP) for the regulating, contingency, and dispatchable reserve requirements for the next day.

4.1.3 Should the System Operator prescribe regulating, contingency, and dispatchable reserve requirements for relevant periods, the Market Operator shall use such levels as input to the MDOM for consistency.

4.2 SUBMISSION OF GENERAL AND RESERVE OFFERS FOR MARKET PROJECTIONS.

4.2.1 All Trading Participants shall submit their generation offers pursuant to the provisions of the WESM Rules Appendix A1.

4.2.2 Only trading Participants with ERC-Approved ASPA shall submit reserve offers for the market projections (WAP and DAP) of the WESM. Their reserve offers shall correspond to their ancillary nominations to NGCP pursuant to the provision of their respective ASPA's.

4.2.3 Trading Participants shall submit their generation and reserve

offers consistent with the WESM Timetable for the Week-Ahead and Day-Ahead market projections to provide a more accurate determination of reserve requirements as set forth in Section 4.1 of this Protocol.

4.2.4 The submission of nominations and offers for Ancillary Services shall be based on per single unit per single type per interval of reserve service in accordance with Appendix A.12 of the WESM Dispatch Protocol Manual.

4.2.5 The Trading Participant shall see to it that the nomination submitted to the Market Operator shall be based on the day-ahead ancillary service schedule (DAAS) approved by the System Operator. For Regulating Reserves, only 50% (one-half) of the approved capacity by the System Operator shall be reflected by the Trading Participant to the Market Operator through the Market Participant Interface (MPI).

4.3 DAY-AHEAD SCHEDULING OF RESERVES BY THE SYSTEM OPERATOR

4.3.1 ASPA Provides shall observe the same nomination and scheduling process prescribed in their ASPA for the day-ahead scheduling of ancillary services

4.3.2 Trading Participant shall ensure that they nominate all available capacity to the Market Operator based on the approved day-ahead ancillary schedule.

4.3.3 The System Operator shall provide the approved day-ahead ancillary service schedule (DAAS) to the Market Operator and ASPA providers not later than 1700H.

4.4 SUBMISSION OF GENERATION AND RESERVE OFFERS FOR THE REAL-TIME DISPATCH (RTD)

4.4.1 All Trading Participants shall submit generation offers that represent their maximum available capacity pursuant to the provision of WESM Rules Clause 3.5.5.2.

4.4.2 Trading Participants that were scheduled by the System Operator to provide a specific reserve for a specific trading interval shall submit a reserve offer in the WESM equivalent to the capacity scheduled by the System Operator in accordance with Section 4.3 of this Protocol.

- a. Only two (2) reserve offer break quantities shall be submitted
- b. The first block should have a quantity (MW) of 0 MW
- c. The second block should have a quantity equivalent to the day-ahead schedule identified in Section 4.3 of this Protocol for that relevant trading interval
- d. The first and second price offer blocks shall be priced at PhPO.0/MWh only.

4.4.3 For trading Participants that were scheduled by NGCP to provide regulation service for the next day(s), they shall submit a reserve offer equal to one-half (1/2) of their day-ahead ancillary scheduled to account for the upward and downward dispatch.

4.4.4 All Trading Participants shall observe the “Open Market

Window” in submitting generation and reserve as stated in section 4.4 of Appendix A.1 of the WESM Dispatch Protocol Manual.

4.5 RE-NOMINATION OF RESERVE CAPACITIES

4.5.1 All ASPA providers may re-nominated capacity be approved by the System Operator,

4.5.2 Should an ASPA provider’s re-nominated capacity be approved by the System Operator, the ASPA provider update its generation and reserve offer in the WESM for the relevant trading intervals while observing the “Open Market Window” as stated in Section 4.4 of Appendix A.1 of the WESM Dispatch Protocol Manual.

4.6 SETTING OF CONSTRAINT VIOLATION COEFFICIENTS DURING TRANSITION

In order to ensure that energy supply prioritize over contingency and dispatchable reserve during under-generation condition, the recently approved WESM Manual on Constraint Violation Coefficient shall be used.

Priority	Constraint Violation Coefficient Name	Coefficient
9	Deficit Interruptible Load Reserve	100,000
8	Deficit Dispatchable Reserve	200,000
7	Deficit Contingency Reserve	300,000
6	Contingency (N-1 Thermal Limit	400,000
5	Nodal Value of Lost Load	800,000
4	Over Generation Under Generation	(1,000,000) 1,000,000
3	Deficit Regulating Reserve	1,300,000
2	TCG Constraint	1,400,000
1	Base Case Constraint	1,500,000

4.7 REAL-TIME DISPATCH SCHEDULING AND DISPATCH IMPLEMENTATION

4.7.1 Trading Participants shall ensure that their generators are at the appropriate loading levels prior to the trading intervals where it is expected to provide reserve service. This is to ensure that they obtain their intended energy and reserve schedules for the Real-Time Dispatch (RTD) considering their ramping characteristics.

4.7.2 The System Operator may constrain-on or constrain-off the output of generating unit/s in accordance with the WESM Merit Order Table (WMOT) and may designate must-run units (MRUs) in real-time if all available ancillary reserve capacity has been exhausted or depleted.

4.7.3 For generators that were scheduled below their respective technical Pmin for the next trading interval:

4.7.3.1 Trading Participants shall manage their offers appropriate for the following intervals so that such an incident may not recur.

4.7.3.2 If it is currently running or dispatched, then it should operate at its technical Pmin for that next trading interval.

4.7.3.3 If a generator is scheduled below its technical Pmin for the next trading interval, and it is currently off-line, then it should remain off-line for that next trading interval.

4.7.4 WESM Rules Clause 3.8.4 states that Trading Participants who are dispatched shall use reasonable endeavors to achieve a linear ramp rate over the trading interval to reach the target loading level by the end of that trading interval and within the dispatch tolerances specified in WESM Rules Clause 3.8.7 Trading Participants will not be required to operate in a different fashion unless it is necessary to:

a. Respond in accordance with the reserve or ancillary service contracts; or

b. Respond to a direction in accordance with WESM Rules Clauses 6.3 and 6.5

4.8 Issuance of Pricing Error Notices

4.8.1 Should the scheduling of contracted capacities in the WESM affect the scheduling and pricing of energy capacities, the Market Operator may issue pricing error notice for the affected trading interval

4.8.2 The Market Operator shall issue pricing errors and conduct market re-runs following existing guidelines and procedures.

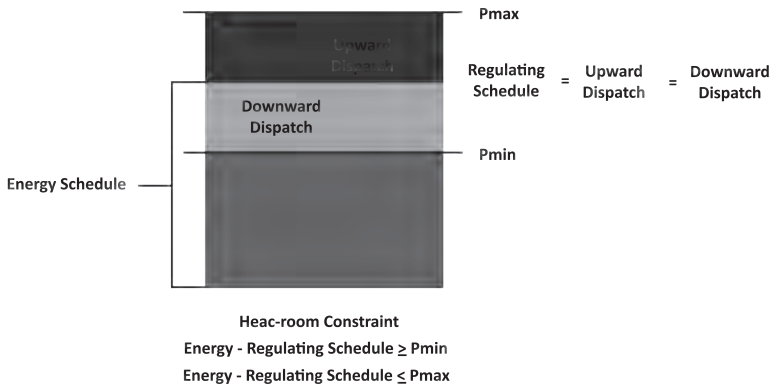
4.9 Settlement of Reserve Capacities

4.9.1 All reserve transactions shall be settled based on their Ancillary Service Procurement Agreement (ASPA)

4.9.2 If a generator that offered its day-ahead ancillary schedule in the WESM is utilized as energy based on either the RTD schedules or on its actual utilization, then it shall be treated as an ancillary service

with energy by NGCP for their ASPA settlement

4.9.3 Section 4.9.2 shall also consider the energy schedule obtained by an ASPA provider while being scheduled for regulation in the RTD because of the head-room constraint in the Market Dispatch Optimization Model (MDOM). The head-room constraint is imposed in the MDOM so that the energy and regulating reserve schedules are set in a manner so that the downward and upward dispatch of the regulating reserve will not violate the minimum stable loading (Pmin) and maximum available capacity (Pmax) respectively.



4.9.4 No spot transactions on reserves shall be settled in the WESM during the Central Scheduling of energy and reserves.

4.9.5 The Market Operator shall perform a simulated adding calculating following the billing cycle and to be made available to WESM members participating in the Central Scheduling and Dispatch of Energy and Contracted Reserves.

4.10 OTHER SUBMISSION REQUIREMENTS

4.10.1 The Market Operator shall submit to the System Operator the hourly

ex-ante and ex-post reserve schedules not later than 8AM of the following day.

SECTION 5 PERFORMANCE STANDARDS

PEMC and NGCP shall endeavour to adopt measure and perform its obligations under this Protocol in accordance with comparable industry standards of due diligence. Nothing herein shall make PEMC and NGCP, its employees, officer and board members liable for any actual or compensatory damages arising from the implementation of this Protocol in the absence of wilful negligence or bad faith. PEMC and NGCP shall in its reasonable opinion implement remedial measure in order to manage and mitigate any errors in the MMS arising from erroneous

input, system failure or other related circumstances.

SECTION 6 MODIFICATION AND EFFECTIVITY

In accordance with DOE Department Circular No. DC2014-03-009, this Protocol shall be in effect upon approval by the Department of Energy and shall terminate upon Commercial Operation of the WESM Reserve Market or upon declaration of its cessation by the DOE.

The DOE may, in its discretion, revise Section of this Protocol as the circumstances may require in consultation with Trading Participants.

DEPARTMENT CIRCULAR NO. DC2015-10-0015

PROVIDING POLICIES FOR FURTHER ENHANCEMENT OF THE WHOLESALE ELECTRICITY SPOT MARKET (WESM) DESIGN AND OPERATIONS

WHEREAS, Section 37 and 30 of the Electric Power Industry Reform Act 2001 (EPIRA) mandates the Department of Energy (DOE) to supervise the restructuring of the electricity industry and to establish the Wholesale Electricity Spot Market (WESM), respectively;

WHEREAS, Section 3(a), Rule 9 of the EPIRA Implementing Rules and Regulations (EPIRA IRR), further mandates the DOE to organize and establish the appropriate market design and governance structure of the WESM;

WHEREAS, the DOE, jointly with the electric power industry participants, formulated the detailed rules governing the operations of the WESM and subsequently, the DOE promulgated the WESM Rules on 28 June 2002 through Department Circular No. 2002-06-003;

WHEREAS, on 18 November 2003, through the initiative of the DOE, the Philippine Electricity Market Corporation (PEMC) was incorporated to manage, govern, and administer an efficient, competitive, transparent, and reliable market for the wholesale and purchase of electricity and ancillary service in the Philippines, in accordance with the EPIRA;

WHEREAS, in March 2008, the DOE created the Special WESM Rules Review Committee, tasked to review the WESM Rules and identify the weaknesses and operational concerns of the WESM that require enhancements in the areas of market design and system upgrading to include removal of Pmin constraints, immediate conduct of market re-runs, minimize workflow stoppages in the Market Management System (MMS) or software failures, and rationalize dispatch of must-run, minimize workflow stoppages in the Market

Management System (MMS) or software failures, and rationalize dispatch of must-run units among others;

WHEREAS, in accordance with the WESM Rules, the reports of the Independent Market Operations Audit undertaken in 2010, 2011 and 2012 identified several market design and implementation issues, undermining the efficiency of the WESM;

WHEREAS, the PEMC, to address the issues identified in the said Audits, commissioned an independent consultant in April 2013 to undertake a WESM Design Study with reports submitted to the DOE comprising of three phases, namely: Phase 1 WESM issues and recommendations; Phase 2 Specific issues on the trading and dispatch interval ; and Phase 3 Advise on the Day-Ahead Market;

WHEREAS, on 18 November 2013, the results of the WESM Design Study were subjected to public consultation with the electric power industry participants and other concerned stakeholders to discuss the recommendations and to solicit the suggestions and comments;

WHEREAS, the WESM Design Study was finalized in January 2014, incorporating the comments of the various stakeholders and was submitted to the DOE for considerations;

WHEREAS, the Technical Working Group (TWG) on the MMS Migration and Enhancement Project that was created by the DOE on 15 January 2010, recommended the procurement of a new MMS to ensure the reliability of the WESM operations and to implement the recommendations specified in the WESM Design Study;

WHEREAS, the DOE, after thorough review of the WESM Design Study and the recommendation and proposed changes to market operations, deemed that appropriate and reasonable changes be implemented consistent with the objectives of the WESM Rules as well as to incorporate the said changes to the new MMS;

NOW THEREFORE, for and in consideration of the foregoing premises, the DOE, consistent with its mandate under the EPIRA, hereby declares the following:

Section 1. Guiding Principles. Any changes in the WESM design and operations shall be in accordance with the following principles:

- a) Gross pool market, where generator trading participants offer their maximum available capacity for central scheduling and dispatch, ensures system security and a level-playing field among generators;
- b) Net settlement, where bilateral contract quantities are settled outside the WESM;
- c) Co-optimized energy energy and reserves, where the provision of energy and reserves are jointly optimized in the Market Dispatch Optimization Model (MDOM);
- d) Self-commitment, where trading participants are responsible for the management of their technical operations, unit commitment decisions and other market risks through submission of offers to the WESM;
- e) Prices are governed, as far as practicable, by commercial and market forces, and pricing errors and extremely high and low prices are mitigated;
- f) Trading participants are provided with regularly updated information on projected prices, dispatch and other market outcomes to ensure they can

make informed commercial and technical decisions; and

- g) Other guiding principles that may be issued by the DOE insofar as these principles are consistent with the objectives of the EPIRA.

Section 2. Adoption of the Enhancement to WESM Design and Operations. Consistent with the Guiding Principles in Section 1 herein, the following enhancement in WESM design and operations are hereby adopted:

- a) Removal of Pmin constraint in the MDOM;
- b) Shorter trading and dispatch interval of five (5)-minutes;
- c) Ex-ante pricing only for every five (5)-minute trading and dispatch interval;
- d) One (1)-hour settlement interval for settlement purposes based on weighted average of the five (5)-minute ex-ante prices;
- e) Automated pricing corrections;
- f) Mandatory integration of distribution Utilities' sub-transmission network, which materially affect dispatch schedules and prices in the WESM, into the Market Network Model (MNM);
- g) Changing the values and priorities of some of the Constraint Violation Coefficients (CVCs), including the corresponding values thereof taking into consideration the imminent implementation of the WESM Reserve Market;
- h) Imposition of WESM offer cap and floor for energy and reserve as determined through joint study by the DOE, Energy Regulatory Commission (ERC) and PEMC;

- i) Implementation of hourly Day-Ahead Projection (DAP) with sensitivities and Hour-Ahead Dispatch (HAD);
- j) Implementation of nodal-based short-term demand forecasting;
- k) Enhanced training of WESM participants; and
- l) Any other enhancement as may be deemed necessary and issued by the DOE.

Section 3. Responsibilities of the Philippine Electricity Market Corporation (PEMC).

To ensure the timely completion of the directives set forth in this Circular, PEMC is directed to:

- a) Submit to the Rules Change Committee (RCC), copy furnished the DOE, the proposed changes to the WESM Rules and Market Manuals, which are necessary for the implementation of the enhancement to WESM design and operations;
- b) Secure the ERC's approval of any changes to the Price Determination Methodology, as may be necessary and consistent with the amended WESM Rules;
- c) Ensure upgrading of the MMS and other system necessary to implement the enhancements of the WESM design and operations as stated herein;
- d) Develop dispatch conformance standard jointly with National Grid Corporation of the Philippines (NGCP) for consideration in the amendment of the WESM Rules and Market Manuals;
- e) Conduct information, education and communication campaign and trainings for the benefit of WESM members and relevant agencies; and
- f) Perform such other initiatives as may be directed by the DOE, which are deemed necessary for the needed improvement of WESM operation.

Section 4. Responsibilities of National Grid Corporation of the Philippines (NGCP). As the system Operator, NGCP is hereby directed to:

- a) Enhance associated interface necessary between PEMC and NGCP including but not limited to the energy Management System (EMS) and Supervisory Control and Data Acquisition (SCADA);
- b) Develop dispatch conformance standards jointly with PEMC for consideration in the amendment of the WESM Rules and Market Manuals;
- c) Enhance testing procedures and certification process for ancillary services to be traded in the WESM;
- d) Enhance procedures for Dispatch of energy and ancillary services to implement the MO dispatch schedules based on the amended WESM Rules; and
- e) Perform such other initiatives as may be directed by the DOE, which are deemed necessary for the needed improvement of WESM operations.

Section 5. Responsibilities of WESM Members.

- a) Ensure readiness, full compliance and to be accountable to the required internal systems and procedures, as applicable, to accommodate the changes in the WESM design and operations;
- b) Comply with the submission of necessary information and data as may be required by the DOE, ERC, PEMC and NGCP in order to effectively carry out the provisions of this Circular; and
- c) Participate in the rules change proceedings, information campaigns, and trainings.

Section 6. Regulatory Support. For the proper implementation of the policies set herein, the ERC is hereby enjoined to promulgated guidelines and undertake such necessary action to support the parties affected herein and enhance and implement the necessary technical and operation standards, to ensure a competitive market.

Section 7. Interpretation of Terms. For the avoidance of doubt or confusion, all other terms used in this Circular will have the same definition as provided for under the WESM Rules and its Market Manuals.

Section 8. Separability Clause. If for any reason, any section or provision of this Circular is declared unconstitutional or invalid, such parts not affected shall remain valid and subsisting.

Section 9. 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 10. Penalty Clause. Failure of any mandated entities to comply with their obligations set forth under this Circular shall be subject to the imposition of fines and penalties by ERC and, as so required to protect the public interest, may result in deregistration, suspension, or revocation of licenses and authorizations.

Section 11. Effectivity. This Circular shall take into effect fifteen (15) days from its publication and shall remain in effect until otherwise revoked.

Issued on 23 October 2015 at Energy Center, Rizal Drive, Bonifacio Global City, Taguig City.

ZENAIDA Y. MONSADA
SECRETARY

DEPARTMENT CIRCULAR NO. DC2015-11-0018

DECLARING THE COMMERCIAL OPERATION OF THE CENTRAL SCHEDULING AND DISPATCH OF ENERGY AND CONTRACTED RESERVES IN THE WHOLESALE ELECTRICITY SPOT MARKET AND FURTHER AMENDMENTS TO ITS PROTOCOL IN PREPARATION FOR THE EVENTUAL COMMERCIAL OPERATION OF THE WESM RESERVE MARKET

WHEREAS, Section 37 of the Electric Power Industry Reform Act of 2001 (EPIRA) provides that the Department of Energy (DOE) is mandated to, among others

- a) Supervise the restructuring of the electric power industry;
- b) Ensure the reliability, quality and security of supply of electric power;
- 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; and

- d) Exercise such other powers as may be necessary to attain the objectives Of the EPIRA;

WHEREAS, Section 37 of the EPIRA provides that the DOE, jointly With the electric power industry participants, shall establish the Wholesale Electricity Spot Market (WESM) and formulate the detailed rules governing

the operations thereof;

WHEREAS, on 28 June 2002, the DOE, upon the joint endorsement of the electric power industry participants, promulgated the WESM Rules through Department Circular No. DC2002-06-003;

WHEREAS, on 26 March 2014, the DOE directed the implementation of the Central Scheduling and Dispatch of Energy and Contracted Reserves (The Central Scheduling) through Department Circular No. DC-2014-03-0009 entitled *“Declaring a New Commercial Launch Date for the Wholesale Electricity Spot Market (WESM) Reserve Market and Directing a Central Scheduling and Dispatch of Energy and Contracted Reserves”* in order to provide better monitoring of the available capacity and more preparation for the eventual commercial operation of the WESM Reserve Market;

WHEREAS, on 02 December 2014, the DOE adopted and promulgated the Protocol for the Central Scheduling and Dispatch of Energy and Contracted Reserves (The Protocol), as jointly formulated by the Philippine Electricity Market Corporation (PEMC) and National Grid Corporation of the Philippines (NGCP), through Department Circular No. DC2014-12-0022 entitled *“Promulgating the Protocol for the Central Scheduling and Dispatch of Energy and Reserves in Preparation for the Commercial Operation of the Wholesale Electricity Spot Market (WESM) Reserve Market,”*

WHEREAS, the PEMC as the Market Operator started the Implementation of the said Central Scheduling through Trial Operations Program (TOP), but its commercial operation was deferred taking into consideration the recommendation of the stakeholder vis-à-vis supply demand outlook during the Summer months of 2015;

WHEREAS, on 26 July 2015, the PEMC reassessed that the electric power supply

situation became stable and resumed the TOP for the implementation of the Central Scheduling in the WESM;

WHEREAS, on 17 September 2015, the PEMC conducted a forum with the WESM Trading Participants wherein they confirmed that the readiness criteria for Central Scheduling in the Luzon Grid were fully met while facilities and familiarization of Some Visayas participants have yet to be completed;

WHEREAS, on 29 September 2015, the PEMC recommended through its letter to the DOE that the Commercial Operations of the said Central Scheduling should be launched on 07 October 2015 for Luzon Grid and 28 October for Visayas Grid, respectively;

WHEREAS, on the same PEMC’s letter to the DOE on 29 September 2015, the PEMC proposed an amendments to the said Protocol for Central Scheduling to include an additional provisions to address the dispatch scheduling issues encountered during the TOP; and

WHEREAS, the DOE thoroughly reviewed the abovementioned PEMC’s readiness assessment including the proposed amendments to the Protocol for the implementation of Central Scheduling, and deemed it consistent with the objectives of the WESM and the implementation of the WESM Reserve Market.

NOW THEREFORE, from the foregoing premises and pursuant to its authority under the EPIRA and the WESM Rules, the DOE hereby adopts, issues, and promulgates the following for the implementation of the Central Scheduling in the WESM:

Section 1. Commencement of the Commercial Operation of the Central Scheduling and Dispatch of Energy and Contracted Reserves (The Central Scheduling) in the WESM. The Commercial Operation of the Central Scheduling in the WESM (Luzon and Visayas

Grid) shall commence on 26 November 2015 (hereafter the Commencement Date). This is to provide additional preparations and familiarizations of the WESM Trading Participants and stakeholders for the impending WESM Reserve Market and its development.

During the implementation of Central Scheduling, all Reserve Transactions shall be based on the Trading Participant's existing Ancillary Service Procurement Agreement (ASPA). The implementation of the Central Scheduling and its Protocol shall immediately cease upon the Commercial Operation of the said Reserve Market or upon the declaration of its cessation by the DOE

Further, pursuant to DOE Circular No. 2014-12-0022, PEMC as the Market Operator shall continuously submit an assessment report to the DOE on its implementation of the Central Scheduling.

Section 2. Amendments to the Protocol for Central Scheduling and Dispatch of Energy and Contracted Reserves in the WESM. The following Sections are hereby amended to read:

(a) Section 4.2 under Central Scheduling of Reserve Capacities

"4.2 Submission of Generation and Reserve Offers for Market Projections

xxx xxx xxx

4.2.6 If a generating unit is not scheduled as a dispatchable reserve, and it has a zero commercial P_{min} and a non-zero technical P_{min}, the Market Operator shall use a security limit for that generating unit indicating its technical p_{min} as the minimum operating limit, whereas its maximum operating limit shall correspond to its maximum offered capacity.

4.2.7 If a generating unit is scheduled as a dispatchable reserve, and it has a non—zero commercial P_{min}, the Market Operator shall use a security limit for that generating unit indicating zero (0) as its minimum operating limit, whereas its maximum operating limit shall correspond to its maximum offered capacity

(b) Section 4.7 under Central Scheduling of Reserve Capacities —

"4.7 Real-Time Dispatch Scheduling and Dispatch Implementation

xxx xxx xxx

4.7.2 If a generating unit is not scheduled as a dispatchable reserve, and it has a zero commercial P_{min} and a non-zero technical P_{min}, the Market Operator shall use a security limit for that generating unit indicating its technical p_{min} as the minimum operating limit, whereas its maximum operating limit shall correspond to its maximum offered capacity.

4.7.3. If a generating unit is scheduled as a dispatchable reserve, and it has a non-zero commercial P_{min}, the Market Operator shall use a security limit for that generating unit indicating zero (0) as its minimum operating limit, whereas its maximum operating limit shall correspond to its maximum offered capacity.

4.7.4. The System Operator may constrain-on or constrain-off the output of generating unit/ s in accordance with the WESM Merit Order Table (WMOT) and may designate must-run units (MRUs) in real-time if all available ancillary reserve capacity has been exhausted

or depleted.

4.7.5 For generators that were scheduled below their respective technical Pmin for the next trading interval:

4.7.5.1 Trading Participants shall manage their offers appropriately for the following so that such an incident may not

4.7.5.2 If it is currently running or dispatched, then it should operate at its technical Pmin for that next trading interval.

4.7.5.3 If a generator is scheduled below its technical Pmin for the next trading interval, and it is currently off-line, then it should remain off-line for that next trading interval.

4.7.6 WESM Rules Clause 3.8.4 states that Trading Participants who are dispatched shall use reasonable endeavors to achieve a linear ramp rate over the trading interval to reach the target loading level by the end of that trading interval and within

the dispatch tolerances specified in WESM Rules Clause 3.8.7. Trading Participants will not be required to operate in a different fashion unless it is necessary to:

- (a) Respond in accordance with reserve or ancillary service contracts; or
- (b) Respond to a direction in accordance with WESM Rules Clauses 6.3 and 6.5.”

Section 3. Separability Clause. If for any reason, any section or provision of this Circular is declared unconstitutional or invalid, such parts not affected shall remain valid and subsisting.

Section 4. Effectivity. This Circular shall take effect upon publication in at least two (2) newspapers of general circulation and shall remain in effect until otherwise revoked.

Issued this 12 November 2015 at the DOE, Energy Center, Rizal Drive, Bonifacio Global City, Taguig City, Metro Manila.

ZENAIDA Y. MONSADA
SECRETARY

DEPARTMENT CIRCULAR NO. DC2015-03-0001

PROMULGATING THE FRAMEWORK FOR THE IMPLEMENTATION OF MUST DISPATCH AND PRIORITY DISPATCH OF RENEWABLE ENERGY RESOURCES IN THE WHOLESALE ELECTRICITY SPOT MARKET

WHEREAS, under Section 2 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), it is the declared policy of the state to among others, promote the utilization of indigenous and new and renewable energy resources in power generation in order to reduce dependence on imported energy, and ensure the quality, reliability, security and affordability of the supply of electric power;

WHEREAS, Section 37 of EPIRA mandates the Department of Energy (DOE) to encourage private sector investments and broaden the ownership base in the electric power industry and promote the development of indigenous and renewable energy resources;

WHEREAS, Section 2 of Republic Act No. 9513, otherwise known as the Renewable Energy Act of 2008 (RE Act), declares as a policy of the State to:

- (a) Accelerate the exploration and development of renewable energy resources such as, but not limited to, biomass, solar, wind, hydro, geothermal and ocean energy resources, including hybrid systems, to achieve energy self-reliance, through the adoption of sustainable energy development strategies to reduce the country's dependence on fossil fuels and thereby minimize the country's exposure to price fluctuations in the international markets, the effect of which spiral down to almost all sectors of the economy;
- (b) Increase the utilization of renewable energy 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; and

- (c) Encourage the development and utilization of renewable energy resources as tools to effectively prevent or reduce harmful emissions and thereby balance the goals of economic growth and development with the protection of health and the environment;

WHEREAS, Section 5 of the RE Act mandates the DOE as the lead agency to implement the provisions of the RE Act, while Section 7 of EPIRA empowers the DOE to supervise the restructuring of the electric power industry, in addition to its existing powers and functions;

WHEREAS, Section 7 of the RE Act provides for a feed-in tariff (FIT) system for electricity produced from wind, solar, ocean, run-of-river hydropower and biomass to accelerate the development of emerging renewable energy resources;

WHEREAS, Section 20 of the RE Act allows qualified and registered RE generating units with intermittent RE resources to be considered as "Must Dispatch" based on available energy and shall enjoy the benefit of priority dispatch;

WHEREAS, the implementation of the must Dispatch and Priority Dispatch requires guidelines that will ensure maximum injection of intermittent and FIT-eligible generation while maintaining system security at all times;

WHEREAS, the DOE spearheaded public consultations and focused group discussions

on the Guidelines for the Integration of Renewable Energy in the Wholesale Electricity Spot Market (WESM) in the following areas with the corresponding dates:

AREA	DATE
PEMC offices, Ortigas Center, Pasig	06 March 2014
Bacolod City	04 April 2014
Mandaluyong City	11 April 2014

NOW, THEREFORE, for and in consideration of the foregoing premises, the DOE hereby declares the herein framework for the implementation of Must Dispatch and Priority Dispatch of RE resources in the WESM:

PART 1. GENERAL PROVISIONS

Section 1. Scope and Application. This Circular shall apply to all agencies and entities named herein and all electric power industry participants in the country.

Section 2. Purposes. This Circular is being issued to:

- (a) Define Must Dispatch and Priority Dispatch pursuant to the RE Act including the high-level process for the qualification, certification, and registration of generating units designated as must dispatch and priority dispatch (collectively referred to as Preferential Dispatch Generating Units), and
- (b) Provide the framework for the integration in the WESM of Preferential Dispatch Generating Units consistent with the goals of the EPIRA and the RE Act.

Section 3. Statement of Policy. Pursuant to the RE Act, intermittent RE resources including FIT-eligible generation shall be allowed to maximize injection to the grid while:

- (a) Maintaining system security at all times;

- (b) Maintaining economically efficient short-run dispatch of energy and ancillary services; and
- (c) Holding WESM participants to account for what they are able to control.

Section 4. Definition of Must Dispatch and Priority Dispatch. The terms as used in this Circular shall have their respective meanings as follows:

- (a) *“Must Dispatch”* is facilitated in the WESM by qualified and registered intermittent RE-based plants, whether or not under FIT system, such as wind, solar, run-of-river hydro, or ocean energy, according to the preference in the dispatch schedule whenever generation is available. The enjoyment of Must Dispatch by intermittent RE-based plants is based on the difficulty to precisely predict the availability of RE resources thereby making the energy generated variable and irregular and the availability of resource inherently uncontrollable pursuant to Section 20 of the RE Act.
- (b) *“Priority Dispatch”* means giving preference to biomass plants, under the FIT system, in the Dispatch schedule pursuant to Section 7 of the RE Act.

PART 2. QUALIFICATION AND REGISTRATION OF PREFERENTIAL DISPATCH GENERATING UNITS

Section 5. Qualification and Registration of Preferential Dispatch Generating Units. Pursuant to Section 26 of the RE Act, the DOE shall issue certifications to qualified RE developers who are entitled to avail of the incentives under the RE Act. Such certification together with the Certificate of Compliance (COC) issued by the Energy Regulatory Commission (ERC) for generating facilities availing of preferential dispatch shall be used for purposes of registration in the WESM.

PART 3. RESPONSIBILITIES OF THE PHILIPPINE ELECTRICITY MARKET CORPORATION (PEMC), THE NATIONAL GRID CORPORATION OF THE PHILIPPINE (NGCP) AND DISTRIBUTION UTILITIES

To ensure the efficient and effective scheduling and dispatching of the Preferential Dispatch Generating Units, the PEMC, the NGCP, and Distribution Utilities shall have the following general mandate in the implementation of this Circular:

Section 6. Responsibilities of PEMC.

- (a) Undertake the necessary amendments in the WESM Rules and pertinent Market Manuals to implement Must Dispatch and Priority Dispatch of eligible renewable energy plants in the WESM;
- (b) Formulate the procedures on the qualification and registration of Preferential Dispatch Generating Units in the WESM;
- (c) Monitor the compliance of intermittent RE generation companies on the submission of projected output for each of its generating units pursuant to the WESM Rules and on the approved forecast accuracy standards consistent with the Philippine Grid Code (PGC). The annual compliance of the RE generation companies' facilities on the forecast accuracy standards shall be reported by PEMC to the PEM Board and the DOE;
- (d) Conduct information campaigns on the implementation of Must Dispatch and Priority Dispatch in the WESM; and
- (e) Jointly with the NGCP, implement technical mitigation measure and improvements in the system in order to ensure safety and reliability of electricity transmission.

Section 7. Responsibilities of NGCP.

- (a) Determine, through technical and economic analysis, the maximum penetration limit of intermittent RE-based power plants or Must Dispatch generating units to the grid, in consultation with stakeholders;
- (b) Ensure maximum dispatch of generation from intermittent RE plants in accordance with the PGC, and subject to the availability of sufficient operating reserves. Towards this end, NGCP is enjoined to obtain sufficient operating reserves at all times.
- (c) Jointly with the PEMC, implement technical mitigation measures and improvements in the system in order to ensure safety and reliability of electricity transmission;
- (d) Require and witness the conduct of technical test to ensure generators' compliance with the performance standards as prescribed in the PGC;
- (e) Produce and submit to the PEMC the RE aggregated generation forecast for each interconnected system it operates. These forecasts shall cover at least 24 hours and will be updated with the periodicity which the NGCP considers suitable but, at least, once every trading period as indicated in the WESM Rules;
- (f) Endeavor to operate the Must Dispatch generating units in free active power production control mode. However, if the NGCP considers it necessary for redispatch in order to maintain the security and reliability of the grid, the NGCP may instruct intermittent RE-based generators to change the Active Power or immediate disconnection of their generators as prescribed in the PGC;
- (g) Submit to PEMC an operational report including all instructions issued to the generators which resulted in a change in the active power production; and

- (h) Determine and incorporate in the Transmission Development Plan the necessary upgrading of its transmission facilities to ensure non-discriminatory access of all grid-connected Preferential Dispatch Generating Units.

For this purpose, intermittent RE resources is defined under Section 20 of the RE Act and also referred to as intermittent RE-based power plants or Must Dispatch generating units which include variable RE resources or VRE as described in the revised PGC.

Section 8. Responsibilities of Distribution Utilities.

- a) Determine and incorporate in the Distribution Development Plan the necessary upgrading of its distribution facilities to ensure non-discriminatory access of all embedded Preferential Dispatch Generating Units; and
- b) Ensure that embedded Preferential Dispatch Generating Units shall be given priority to inject into the distribution network.

Section 9. Compliance to WESM Rules. All Preferential Dispatch Generating Units shall strictly comply with:

- a) The submission of projected output for each of its generating units for each trading interval in each trading day of the week in accordance with the timetable;
- b) The revision of projected output for any trading interval, if they no longer represent a reasonable estimate of: (i) the expected availability of the relevant generating unit for that trading interval; or (ii) the offers likely to apply for the real time dispatch optimization of that trading interval; and
- c) Other relevant provisions of the WESM Rules and its Market Manuals that may

be established or revised in relation to the provisions of preferential dispatch.

Section 10. Dispatch Prioritization. Jointly and in consultation with the WESM Members, the PEMC and the NGCP shall update the Dispatch Protocol established in the WESM Rules and its Market Manual to consider the following hierarchy of dispatch schedule and implementation:

- (a) Minimum stable load or Pmin of all Conventional Generating Units;
- (b) Must-Dispatch Generating Units;
- (c) Priority Dispatch Generating Units;
- (d) Non-scheduled Generating Units; and
- (e) Scheduled Generating Units;

Notwithstanding the aforementioned hierarchy, the NGCP shall always consider technical parameters and limitations of the transmission facilities giving priority to the reliability and security of the Grid during its dispatch implementation. In case the Preferential Dispatch Generating Units are connected to a common constrained transmission facility, the following hierarchy of scheduling and dispatch shall be implemented:

- (a) Preferential Dispatch Generating Units under commissioning and testing; and
- (b) Pro-rated sharing based on available transmission capacity and Day-Ahead Generation Forecast of all Preferential Dispatch Generating Units.

PART 4. TRANSITORY PROVISIONS

Section 11. Interim Protocol. Taking into account line limitations and loading at the different NGCP substations, the PEMC and the NGCP shall develop the interim protocol for the dispatch of Preferential Dispatch Generating Units to address prioritization of the upcoming operation of new wind power projects. The Interim Protocol shall

be submitted to the DOE within ten (10) days from the effectivity of this Circular.

PART 5. FINAL PROVISIONS

Section 12. Imposition of Fines and Penalties.

All Preferential Dispatch Generating Units shall comply with the WESM Rules and Market Manuals and failure of which shall subject them to the investigation process under the WESM Rules.

Any violation of this Circular, including the failure to abide by the framework defined herein, shall be subject to administrative fines and penalties to be developed by the DOE pursuant to Section 36 of the RE Act.

Section 13. Regulatory Support. The ERC shall ensure the provision of support in the regulatory requirements particularly in the promulgation of the amended PGC and PDC for consistency with the RE Act and the EPIRA.

Section 14. Retroactive Effect. Consistent with Section 20 of the RE Act, the effects of the incorporated guidelines for the Must Dispatch and Priority Dispatch in the WESM Rules shall retroact to the date of the effectivity of the RE

Act insofar as the intended incentives given to the Preferential Dispatch Generating Units are concerned.

Section 15. Amendatory Clause. The provision of other department circulars which are inconsistent with the provisions of this Circular are hereby repealed, amended or modified accordingly.

Section 16. Separability Clause. If, for any reason, any section or provision of this Circular is declared unconstitutional or invalid, such parts not affected shall remain in full force effect.

Section 17. Effectivity. This Circular shall take effect immediately upon publication in two (2) newspapers of general circulation and will remain in effect until otherwise revoked by the DOE.

Issued this 20 March 2015 at the DOE, Energy Center, Rizal Drive, Bonifacio Global City, Taguig City, Metro Manila.

CARLOS JERICO L. PETILLA
SECRETARY

DEPARTMENT CIRCULAR NO. DC2015-06-0003

PROVIDING THE INTERIM MANNER OF DECLARING BILATERAL CONTRACT QUANTITIES (BCQ) IN THE WHOLESALE ELECTRICITY SPOT MARKET (WESM) AND DIRECTING THE PHILIPPINE ELECTRICITY MARKET CORPORATION (PEMC) TO ESTABLISH NECESSARY PROTOCOLS TO COMPLEMENT THE INTERRUPTIBLE LOAD PROGRAM (ILP)

WHEREAS, Republic Act (RA) No. 7638 or the “Department of Energy (DOE) Act of 1992” mandates the DOE to formulate policies for the planning and implementation of a comprehensive program for the efficient supply and economical use of energy;

WHEREAS, RA 9136 or the “Electric Power Industry Reform Act of 2001” (EPIRA) mandates the DOE:

- (a) to ensure the quality, reliability, security and affordability of supply of electric power; and,
- (b) to formulate such rules and regulations as maybe necessary to implement the objectives of the EPIRA;

WHEREAS, the Interruptible Load Program (ILP) was adopted through Energy Regulatory Commission (ERC) Resolution No. 8, Series of 2010, and amended through ERC Resolution No. 8, Series of 2013, to address the imminent power shortage and augment the limited power requirements of the Distribution Utilities (DUs);

WHEREAS, the DOE recognizes the potential of ILP to help alleviate the expected power shortage in the Luzon Grid within the period abovementioned as identified by the National Grid Corporation of the Philippines (NGCP) as the System Operator;

WHEREAS, there is a considerable number and capacity of back-up generating sets owned and operated by Contestable Customers (CCs), which can potentially augment the power supply through the ILP;

WHEREAS, a number of CCs through the Retail Electricity Supplier Association (RESA), expressed their support in the ILP;

WHEREAS, the ERC issued Resolution No. 5, series of 2015 “Adopting the Amended Rules to Govern the ILP” which was expanded to include, among others, CCs through their Retail Electricity Suppliers (RES) Local RES; and

WHEREAS, the DOE recognizes the need to provide further policies to ensure the effective participation of CCs in alleviating supply shortage without prejudice to the existing contractual arrangement between CCs and their respective RESs as a result of their participation in the ILP Program.

NOW, THEREFORE, for and in consideration of the foregoing premises, the DOE, hereby adopts and promulgates in the interim, an extended period to declare Bilateral Contract Quantities (BCQs) in the WESM, following the participation of CCs in the ILP:

Section 1. Policy Statement and Objective.

This Circular is intended to complement the ERC Resolution No. 5, Series of 2015, which expanded the scope of the ILP Program to include CCs, Directly-Connected Customers (DCCs) and the National Grid Corporation of the Philippines (NGCP). For this purpose, it is hereby declared that the ILP implementation shall continue to preserve the transparency and accountability in the WESM.

Section 2. Declaration and Submission of BCQ in the WESM. Trading Participants which deliver electricity pursuant to bilateral

contracts with CCs and/ or DCCs that participate in the ILP and those bilateral contracts to be accounted for in the WESM settlement as bilateral contracts quantities of the DU that implemented ILP, shall submit the schedule of bilateral quantities of the said CC or DCC in accordance with Clause 3.13.1 of the WESM Rules: Provided, That the schedule of bilateral quantities in favor of participating CCs or DCCs for intervals when the ILP was activated may be submitted no later than seven (7) days from the end of the relevant trading day: Provided further, That bilateral contract quantities which are declared after the 29th day of the relevant billing month may not be included in computation of the preliminary settlement statements but shall include the final settlement statements for that billing month.

Section 3. Provision of Protocols. PEMC is hereby directed to formulate and publish, within fifteen (15) days from the effectivity of this Circular, the necessary protocols to allow for the transparent adjustment of the WESM processes during the implementation of the ILP, with utmost consideration of the WESM objective to ensure transparency, efficiency, and accountability of the WESM Participants: Provided, That any protocols established shall not disrupt the existing systems and processes of the WESM including, but not limited to, the timeline for the issuance of the preliminary and final statements.

Section 4. Regular Review. On a regular basis, the DOE shall assess the impact of the implementation of the ILP on the WESM and shall provide the amendments to this Circular as may be needed, in consultation with ERC, PEMC, NGCP and other electric power industry participants.

Towards this end, PEMC shall submit to the DOE a report on the implementation of ILP, particularly on the impact of the extend BCQ declaration to WESM processes, not later than one (1) month after the final settlements have been issued following activation of ILP.

Section 5. Regulatory Support. The ERC shall provide the necessary support primarily in promulgating the supplemental rules and regulations for the smooth participation of the CCs through their RES / Local RES.

Section 6. Separability. If for any reason, any provision of this Circular is declared unconstitutional or invalid, such parts not affected shall remain in full force and effect.

Section 7. Effectivity. This Circular shall take effect immediately following its publication in two (2) national newspapers of general circulation, until otherwise revoked.

Issued at Energy Center, Bonifacio Global City, Taguig City. June 01, 2015.

CARLOS JERICHO L. PETILLA
SECRETARY

DEPARTMENT CIRCULAR NO. DC2016-05-0007

PROVIDING POLICIES FOR FURTHER IMPROVEMENTS OF THE OPERATIONS AND METERING INSTALLATIONS OF THE METERING SERVICES PROVIDERS (MSPs) IN THE WHOLESALE ELECTRICITY SPOT MARKET (WESM) AND RETAIL MARKET

WHEREAS, Section 30 and 37 (f) of the Electric Power Industry Reform Act of 2001 (EPIRA) provides that the Department of Energy (DOE) is mandated to, among others:

- a) Supervise the restructuring of the electric power industry;
- b) Ensure the reliability, quality and security of supply of electric power;
- 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) Jointly with the electric power industry participants, shall establish the Wholesale Electricity Spot Market (WESM) and formulate the detailed rules governing the operations thereof; and
- e) Exercise such other powers as may be necessary to attain the objectives of the EPIRA;

WHEREAS, on 28 June 2002, the DOE, with the endorsement of the electric power industry participants, promulgated the WESM Rules through Department Circular No. DC2002-06-003;

WHEREAS, on 09 January 2013, the DOE promulgated the Retail Rules through Department Circular No. DC2013-01-0002, entitled "Promulgating the Retail Rules for the Integration of Retail Competition and Open Access in the Wholesale Electricity Spot Market";

WHEREAS, on 26 June 2013, the Retail Market commenced its commercial operation and integration in the WESM;

WHEREAS, pursuant to the governance structure under the WESM Rules and Retail Rules, the Philippine Electricity Market Auditor (PEM Auditor)/ PEM Audit Committee (PAC) was created among others, to conduct annual audits of the system, procedures and performance of the Market Operator (MO) and review of metering installation and arrangements of the Metering Services Providers (MSPs) for the Wholesale and retail markets;

WHEREAS, the PAC, with the assistance of WESM-Technical Working Group created by the DOE, conducted the 1st Metering Arrangements Review for WESM MSPs and the 2nd Metering Arrangements Review for both WESM MSP and Retail MSPs in 2014 and 2015, respectively, through an Independent Auditor;

WHEREAS, the PAC through Philippine Electricity Market Corporation (PEMC) submitted to the DOE the Audit Reports of the aforementioned independent audits or review of the MSPs for appropriate action and consideration;

WHEREAS, the DOE studied the abovementioned Audit Reports, and it recognized that several audit findings such as appropriate metering sites, ownership and accountability of meters and implementation of business procedures should be addressed to improve the operations and efficiency of the MSPs in the integrated WESM and Retail Market as well as provide a more accurate metering and settlement data;

NOW THEREFORE, from the foregoing premises and pursuant to its authority under the EPIRA and the WESM Rules, the DOE hereby adopts, issues, and promulgates the following policies for the improvement of metering installation and operations of the Metering Services Providers (MSPs) in the WESM and Retail Market:

Section 1. Ownership and Accountability of Metering Installation in the WESM. In addition to the provisions of the WESM Rules, Retail Rules and Market Manuals, the Metering Services Providers (MSPs) and Trading Participants shall adhere to the following guidelines:

- a) Irrespective of the ownership of the metering facilities, the designated MSP is responsible for the regular testing, calibration and maintenance of the metering Installations, and shall ensure that the said requirements for metering Installation are complied with;
- b) The relevant Trading Participant shall collaborate with the MSP on the conduct of the said testing, calibration and maintenance, and shall allow the MSP to access the said Metering Installations at all times; and
- c) The MSP shall perform such regular testing, calibration and maintenance of the said Metering Installation subject to the metering charge to the relevant Trading Participant, provided that such charges shall be filed by the MSP with the Energy Regulatory Commission (ERC) for approval.

Section 2. Appropriate Location of Metering Points and Market Trading Node in the WESM. In order to minimize the use of Site Specific Loss Adjustment (SSLA) and to enhance the nodal-based load forecasting of the Market Operator, the Connection Point, Metering Installation / Metering Point and the installation of Remote Terminal Units

(RTU) in the Grid shall be harmonized or properly located in the same point.

For this purpose, the National Grid Corporation of the Philippines (NGCP) as the Transmission Service Provider shall provide, install and maintain a Remote Terminal Unit (RTU) at the Connection Point of the Users (i.e. Generating Plants and Loads) to the Grid in accordance with the Philippine Grid Code (PGC). Likewise, the NGCP as the Metering Services Provider (MSP) shall ensure that all Metering Installation shall be installed at the Connection Point as required in the PGC.

To ensure compliance and timely completion of this directive, the NGCP shall submit to the DOE within two (2) months from the effectivity of this Circular of its compliance program for all Connection Points which are not yet provided with RTUs and Metering Installations. Said compliance program shall be incorporated in the NGCP rate applications to be filed with the ERC for the recovery of costs. Further, PEMC shall coordinate with NGCP on the said installation of RTUs in order to properly represent the Market Trading Nodes with said Connection Point of the Users to the Grid in the WESM's Market Network Model. PEMC and NGCP shall continuously collaborate for the achievement of this undertaking and shall provide quarterly report or updates to the DOE.

Section 3. Metering Service Providers Internal Business Procedures. All MSPs in the WESM and Retail Market shall develop and update an Internal Business Procedures with regard to their obligations on the WESM Rules, Retail Rules, Market Manuals and other related DOE and ERC issuances. The said internal procedures shall cover, as minimum, the following categories:

- a) Meter installation, registration and maintenance;
- b) Meter data collection and uploading, including management of Meter Trouble Report (MTR);

- c) Internal performance monitoring and improvement;and
- d) Enforcement of the requirements of the Rules and Codes on non-owned metering.

All MSPs are hereby encourage to collaborate with each other for the development or enhancement of their Internal Business Procedures.

Section 4. Retail Metering Services Provider.

To ensure consistency of the Retail Rules with the DOE Department Circular Nos. DC2012-05-0005 and DC2012-11-0010, which prescribed the general policies for the implementation of the Retail Competition and Open Access (RCOA) particularly on the designation of Distribution Utilities as default Retail Metering Services Providers, the NGCP in coordination with the PEMC shall review and recommend to the Rules Changes Committee the appropriate rules changes in the applicable provisions of the Retail Rules and Market Manuals.

Section 5. Regulatory Support. The ERC, in the exercise of its powers and function under the EPIRA, is hereby enjoined to support the timely approval of the necessary funding requirements or rate application of the NGCP or the MSPs for proper implementation of the policies set herein.

Section 6. Separability Clause. If for any reason, any section or provision of this Circular is declared unconstitutional or invalid, such parts not affected shall remain valid and subsisting.

Section 7. Effectivity. This Circular shall take effect upon publication in at least two (2) newspapers of general circulation and shall remain in effect until otherwise revoked.

Issued this 19 May 2016 at the DOE, Energy Center, Rizal Drive, Bonifacio Global City, Taguig City, Metro Manila.

ZENAIDA Y. MONSADA
SECRETARY

DEPARTMENT CIRCULAR NO. DC2010-06-0007

DIRECTING THE PREPARATIONS FOR THE TRADING OF ANCILLARY SERVICES IN THE PHILIPPINE WHOLESALE ELECTRICITY SPOT MARKET (“WESM”)

WHEREAS, Section 37 of EPIRA Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001” or “EPIRA”, provides the mandate of the Department of Energy (“DOE”) to “ensure the reliability, quality and security of supply of electric power, encourage private sector investments in the electricity sector and promote development of indigenous and renewable energy sources and 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, the DOE is also mandated under Section 30 of the EPIRA to establish the Wholesale Electricity Spot Market (“WESM”) that would facilitate a transparent, competitive, and reliable market for electricity;

WHEREAS, the DOE, jointly with the electric power industry participants, is tasked to formulate the detailed rules for the WESM and, pursuant to this, the DOE upon the joint endorsement of electric power industry participants promulgated the Wholesale Electricity Spot Market Rules (“WESM Rules”) on 28 June 2002 through Department Circular No. DC- 2002-06-003;

WHEREAS, the Philippine Electricity Market Corporation was constituted as the autonomous group market operator of the WESM;

WHEREAS, upon declaration by the DOE through Department Circular No. DC-2006-06 0008, the WESM commenced commercial operations in Luzon on 26 June 2006;

WHEREAS, the WESM Rules in Section 10.3 provided that, initially, only energy shall be traded upon commencement of the WESM;

WHEREAS, for ancillary services, the WESM Rules Section 10.3.2.3 provides that when applicable and reasonably feasible, the Market Operator of the WESM shall establish a spot market mechanism for competitive spot market trading in the purchase of certain reserve categories and that the DOE shall declare the commencement of the spot market for ancillary services;

WHEREAS, the WESM Price Determination Methodology as approved by the Energy Regulatory Commission in its Decision dated 20 June 2006 in ERC Case No. 2006-007 RC embodies the principle of the co-optimization of reserve and energy in the pricing and scheduling processes of the WESM;

WHEREAS, there is a need to establish the conditions and the roles and responsibilities of concerned agencies and entities in the preparations for the establishment and commencement of the spot market for ancillary services;

NOW, premises considered, the DOE hereby declares as follows -

SECTION 1. Scope and Application. This Circular shall apply to the agencies and entities named in this Circular and to all electric power industry participants.

SECTION 2. Spot Market Mechanism for Ancillary Services. The spot market for ancillary services shall be made an integral part of the WESM and shall cover the reserve categories as prescribed in the WESM Rules

and as may be proposed by the Market Operator in consultation with the System Operator and approved by the Philippine Electricity Market Board in accordance with the WESM Rules. For this purpose, the principle of the co-optimization of reserve and energy as provided for in the WESM Rules and the approved WESM Price Determination Methodology shall always be followed.

SECTION 3. Responsibilities. Pursuant to their respective mandates and functions under the EPIRA and its Implementing Rules and Regulations, the WESM Rules and other relevant laws and issuances, the following agencies and entities are enjoined to extend their full cooperation toward the preparations for the establishment and commencement of the trading of reserves in the WESM (“reserve market” for brevity).

SECTION 3.1. Philippine Electricity Market Corporation (“PEMC”). Pursuant to its mandate as the autonomous group market operator of the WESM, the PEMC shall complete its preparations for the establishment of the reserve market. Its preparatory activities shall include, but shall not be limited to:

- a) Securing regulatory approval of the pricing and cost recovery methodology for reserves, provided that the methodology shall be consistent with the relevant provisions of the WESM Rules and the duly approved WESM Price Determination Methodology;
- b) Ensuring that the WESM Market Management System and other market infrastructure, both hardware, software and necessary interfaces, are in place to support the operations of the trading of reserves in the WESM;
- b) Ensuring readiness of all WESM members and trading participants as well as WESM service providers by conducting training, stakeholder consultations

and other information dissemination activities to fully inform the WESM members and participants of the relevant methodologies and processes for the trading of reserve;

- c) Review the existing WESM Rules, manuals and its internal business processes relevant to the trading of reserve and provision of ancillary services and, if warranted, propose and secure approval for changes to said rules, manuals, and business processes; and
- d) Comply with all directives from the DOE pertaining to the establishment of the reserve market.

SECTION 3.2. National Grid Corporation of the Philippines. The NGCP shall ensure that its performance of its functions and obligations pursuant to its mandate on the provision of ancillary services are in compliance with the EPIRA and its Implementing Rules and Regulations, the WESM Rules, the Philippine Grid Code, the Open Access Transmission Service Rules (“OATS Rules”), and other relevant rules and regulatory issuances. Toward this end, it shall closely coordinate with PEMC and the DOE to ensure that all pre-requisites and conditions for the establishment of the reserve market are complied with and completed in a timely manner.

SECTION 3.3. National Electrification Administration. The NEA shall render appropriate assistance to electric cooperatives (“ECs”) in ensuring their readiness for the commencement of the WESM reserve market. It shall submit regular reports to the DOE on the status of the activities undertaken together with the ECs in performing their responsibilities under this Circular.

SECTION 3.4. WESM Members and Electric Power Industry Participants. All WESM Members and Trading Participants, as well as non-registered WESM electric power

industry participants are hereby directed to undertake their own preparations to ensure their readiness for the commencement of the WESM reserve market. All qualified participants intending to participate in the WESM reserve market as ancillary services providers shall obtain the necessary regulatory approvals as such and shall ensure compliance with the requirements set forth in the WESM Rules and other requirements as may be set by the PEMC and NGCP for the registration and accreditation of ancillary services providers in the WESM.

SECTION 4. Criteria and Conditions for Declaration of Commencement of Spot Market for Ancillary Services. Pursuant to its mandate, the DOE shall determine the feasibility and reasonability of the commencement of the commercial operations of the reserve market in the WESM. Towards this end, it shall establish appropriate criteria for assessment of the readiness of all electric power industry participants to participate in and of the NGCP and PEMC to operate the reserve market. The DOE shall declare commencement of the commercial operations of the reserve market upon its determination that the conditions and criteria it has set have been substantially complied with.

SECTION 5. Reportorial Requirements. For purposes of monitoring compliance with the directives under this Circular, the PEMC, NGCP, NEA, and other relevant agencies shall be required to submit reports on the progress

and status of their preparations and readiness to the DOE from time to time.

SECTION 6. Supervision by the DOE. The DOE shall continue to oversee the development of the WESM which includes, among other things, the trading of reserves. Toward this end, it shall undertake such actions as provided in the EPIRA, its Implementing Rules and Regulations, and the WESM Rules in connection with the establishment of the WESM.

SECTION 7. No amendment or repeal of existing laws. Nothing in this Circular shall be construed as to amend, supplant, or repeal any of the mechanisms or institutions already existing or responsibilities already allocated and provided for under any existing law, rule or contract.

SECTION 8. Effectivity and Publication. This Circular shall be effective immediately upon its publication in two (2) newspapers of general circulation. The PEMC is also hereby directed to publish this Circular in the WESM Market Information Website.

This Circular shall remain in effect until otherwise revoked.

Taguig City, Metro Manila, Philippines, June 23, 2010.

JOSE C. IBAZETA
Acting Secretary

DEPARTMENT CIRCULAR NO. DC2010-07-0009

ENJOINING ALL ELECTRIC INDUSTRY STAKEHOLDERS IN THE VISAYAS GRID TO REGISTER AND PARTICIPATE IN THE VISAYAS WESM TRIAL OPERATION PROGRAM (TOP)

WHEREAS, the Department of Energy (the “DOE”) is mandated under Section 30 of Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001” or “EPIRA”, to establish the Wholesale Electricity Spot Market (WESM) that would facilitate a transparent, competitive and reliable market for electricity, and, jointly with the electric power industry participants, to organize the autonomous group market operator and formulate the detailed rules for the WESM;

WHEREAS, the Philippine Electricity Market Corporation (the “PEMC”), a non-stock, non-profit corporation with membership composed of an equitable representation of electricity industry participants and currently chaired by the Secretary of Energy, is the autonomous group market operator (the “AGMO”) as well as governing arm of the WESM. PEMC, as the AGMO, is responsible for the registration of participants and members of the WESM, pursuant to the requirements of Section 30 of the EPIRA and in accordance with the WESM Rules;

WHEREAS, the DOE declared the launch of the commercial operations of the WESM for energy in the Luzon Grid on June 23, 2006 through Department Circular 2006-06-0008 “Declaring the Launching of the Wholesale Electricity Spot Market (WESM) in the Luzon Grid and the Terms and Conditions for the Commencement of the Full Commercial Operations of the WESM”;

WHEREAS, PEMC launched the Trial Operations Program for Visayas as early as October 2005; likewise, PEMC has conducted actual implementation of the dispatch schedule in the Market Management System

(the “MMS”) through the Live Dispatch Operation from January 14 to 24, 2008 to enable Visayas market participants real-time trading exposure and end-to-end testing of all interfaces to the MMS with Supervisory Control And Data Acquisition (SCADA) and Energy Management System (EMS), including WESM procedures and protocols;

WHEREAS, the DOE, jointly with the PEMC Market Operator, conducted a series of Visayas WESM Stakeholders’ readiness meetings with Visayas-based generators, distribution utilities, and electric cooperatives, and with NGCP (System Operator, and Metering Services Group), in Cebu City, last March 10 to 12 and June 18, 2010 where they determined Visayas stakeholders’ issues and concerns on their compliance with Visayas WESM readiness program.

WHEREAS, during the last June 18, 2010 stakeholders’ meeting, the DOE has set June 30, 2010 as the official starting date of Visayas WESM Stakeholders’ registration with PEMC Market Operator;

NOW, THEREFORE, premises considered, the DOE hereby enjoins all electricity industry stakeholders in the Visayas grid to register and to participate in the WESM and to fully comply in the preparation of their respective facilities for the commercial launch of the Visayas WESM, and further declares as follows -

SECTION 1. Scope and Application. This Circular shall apply to all Visayas grid electric power industry stakeholders such as the generation companies, distribution companies, bulk consumers, transmission service providers, and metering service providers.

SECTION 2. Registration of All Electric Industry Participants. All Visayas electric industry participants are enjoined to register and to participate in the Trial Operation Program (TOP) for the Visayas WESM. Applications for registration are to be submitted to the PEMC at its offices either at (1) 9th Floor Robinsons Equitable Tower, ADB Avenue, Ortigas Center, Pasig City; (2) PEMC Visayas Office, 6th Floor Skyrise Building, IT Park, Lahug Cebu City. Application forms and relevant information may be obtained from PEMC or downloaded from the WESM Information Website at <https://www.wesm.ph>.

SECTION 3. Responsibilities. Pursuant to their respective mandates and functions under the EPIRA and its Implementing Rules and Regulations, the WESM Rules and other relevant laws and issuances, PEMC, NGCP, NEA, and Transco are enjoined to extend their full support and cooperation to ensure full registration and compliance of all Visayas WESM stakeholders; and to prepare the necessary conditions to successfully integrate the Visayas grid with Luzon WESM.

SECTION 4. Reportorial Requirements. For purposes of monitoring compliance with the directives under this Circular, the PEMC, NGCP, NEA, and other relevant agencies shall be required to regularly submit to DOE reports on the progress and status of their preparations and readiness.

SECTION 5. Supervision by the DOE. The DOE shall oversee the registration and compliance of Visayas stakeholders; and shall undertake appropriate actions as provided for in the EPIRA, its Implementing Rules and Regulations, and the WESM Rules relative to the successful integration of the Visayas grid with Luzon WESM.

SECTION 6. No Amendment or Repeal of Existing Laws. Nothing in this Circular shall be construed as to amend, supplant, or repeal any of the mechanisms or institutions already existing or responsibilities already allocated and provided for under any existing law, rule or contract.

SECTION 7. Effectivity and Publication. This Circular shall be effective immediately upon its publication in two (2) newspapers of general circulation. The PEMC is hereby directed to publish this Circular in the Market Information website.

This Circular shall remain in effect until otherwise revoked.

Taguig, Metro Manila.
30 June 2010.

JOSE C. IBAZETA
Acting Secretary

DEPARTMENT CIRCULAR NO. DC2010-08-0010

PRESCRIBING THE IMPLEMENTING RULES AND PROCEDURES FOR DEPARTMENT CIRCULAR NO. DC2010-05-0006, ENTITLED “TERMINATING THE DEFAULT WHOLESALE SUPPLIER ARRANGEMENT FOR THE PHILIPPINE WHOLESALE ELECTRICITY SPOT MARKET (WESM) AND DECLARING A DISCONNECTION POLICY.”

WHEREAS, on 06 May 2010, after various public consultations and meetings with the relevant government agencies and stakeholders in the electric power industry, the Department of Energy (DOE) issued Circular No. 2010-05-0006, entitled “Terminating the Default Wholesale Supplier Arrangement for the Philippine Wholesale Electricity Spot Market (WESM) and Declaring a Disconnection Policy”;

WHEREAS, the said DOE Circular was published on 12 May 2010 in two newspapers of general circulation and became effective last 27 May 2010;

WHEREAS, the said DOE Circular states that a disconnection policy shall be enforced within ninety (90) days from the effectivity of the DOE Circular for non-WESM members in areas where Wholesale Electricity Spot Market (WESM) is operational, while prescribing other grounds for disconnection of persons or entities pursuant to the overall intent of the EPIRA;

WHEREAS, the same DOE Circular provides that the DOE shall issue the guidelines for the disconnection of persons or entities who fail to comply with the DOE Circular”;

WHEREAS, pursuant to the mandate of the DOE under Section 37(p) of the EPIRA to formulate rules and regulations as may be necessary to implement the objectives of the EPIRA and the WESM Rules, the DOE, in coordination with the National Grid Corporation of the Philippines (NGCP), National Transmission Corporation (TransCo), National Power Corporation (NPC), Power Sector Assets and

Liabilities Management Corporation (PSALM), National Electrification Administration (NEA), and Philippine Electricity Market Corporation (PEMC), crafted these implementing rules and procedures to implement DOE Circular DC No. 2010-05-0006;

NOW, THEREFORE, premises considered, the DOE hereby adopts the following implementing rules and procedures for the disconnection of persons or entities who fail to comply with the DOE Circular No. DC2010-05-0006, entitled “Terminating the Default Wholesale Supplier Arrangement for the Philippine Wholesale Electricity Spot Market (WESM) and Declaring a Disconnection Policy.”

Section 1. Introduction.

1.1 Rationale

The DOE is mandated under the EPIRA to, among others, ensure the reliability, quality and supply of electric power and 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. Likewise, the DOE is mandated 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.

The DOE, after consultations with the different stakeholders in the industry, finds merit in the request of the National Power Corporation (NPC) and the Power Sector Assets and Liabilities Management (PSALM) Corporation to be relieved of their obligations as Default Wholesale Supplier (DWS) in view of the significant level of privatization of NPC generating assets as well as transfer or management and control of NPC's contracted energy outputs from its independent power producers.

Further, the DOE deems it necessary to establish a disconnection policy to ensure that all electric power industry participants comply with the EPIRA, its IRRs, and all other related rules and regulations with the end goal of encouraging new power generation investments in the country. The disconnection policy likewise intends to minimize if not avoid existing leakages in the electric power systems due to unauthorized withdrawal of electricity as well as unmetered and unbilled consumptions of facilities connected to the grid.

The membership of all the electric power industry participants especially the distribution utilities in the WESM will promote a level playing field in the industry.

1.2 Objectives

This implementing rules and procedures are issued with the following objectives:

- A. To facilitate further development of market discipline with the end view of fostering competition in the power generation and supply businesses;
- B. To establish the grounds, conditions or criteria including the processes and protocols as well as the relevant

procedures for disconnecting/reconnecting a person or entity from/to the grid. Towards this end, it is envisioned that the electricity end-users/customers comply with their financial obligations to their supply and service providers in a timely manner;

- C. To establish the authority and responsibilities of each of the concerned person or entity under the EPIRA and the WESM Rules and other related rules and regulations;
- D. To emphasize the need to register with the WESM and understand and comply with the WESM Rules;
- E. To formulate the guidelines for the restructuring of outstanding financial obligations and arrearages with PSALM/NPC; and

Section 2. Definition of Terms.

- 2.1 **“Connection Agreement”** or **“CA”** refers to the agreement between a User and the NSP, which specifies the terms and conditions pertaining to the connection of the User System or Equipment to a new Connection Point in the Grid (or the Distribution System);
- 2.2 **“Department of Energy”** or **“DOE”** refers to the government agency created pursuant to Republic Act No. 7638 whose expanded functions are provided in the EPIRA;
- 2.3 **“Direct WESM Member”** refers to a person or an entity registered with the Market Operator as provided under Clause 2.3. of the WESM Rules;
- 2.4 **“Distribution Code”** refers to a compilation of rules and regulations governing electric utilities in the operation and maintenance of their

distribution systems which includes, among others, the standards for service and performance, and defines and establishes the relationship of the distribution systems with the facilities or installations of the parties connected thereto;

2.5 **“Distribution Utility”** or **“DU”** refers to any EC, private corporation, government owned utility or existing local government unit which has an exclusive franchise to operate a distribution system in accordance with the EPIRA;

2.6 **“Economic Zones”** or **“EZs”** refer to selected areas which are being developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers. An EZ may refer to any of the following: Industrial Estates (IEs), Export Processing Zones (EPZs), Free Trade Zones (FTZs), Information Technology Parks and Tourist/Recreational Centers, such as those managed, administered, or operated by the Bases Conversion Development Authority (BCDA), Cagayan Economic Zone Authority (CEZA), Clark Development Corporation (CDC), Philippine Economic Zone Authority (PEZA), Phividec Industrial Authority (PIA), and Zamboanga City Economic Zone Authority (ZCEZA);

2.7 **“Electric Cooperative”** or **“EC”** refers to a DU organized pursuant to Presidential Decree No. 269, as amended, Republic Act 6939, as amended or as otherwise provided in the EPIRA;

2.8 **“Electric Power Customer”** or **“EPC”** is a collective term which refers to any EC, Private DU, EZs, large and other customers directly connected to the grid purchasing electric power from the EPS, for the purpose of supplying

the end-users’ requirements within its franchise area or for its own use;

2.9 **“Electric Power Service Provider”** or **“EPSP”** is a collective term which refers to any service providers such as the SO, MSP, NSP and other service providers in the electric power industry;

2.10 **“Electric Power Supplier”** or **“EPS”** is a collective term which refers to any Generation Company, IPPA, WA and any person or entity engage in supplying and/or selling electric power;

2.11 **“End-User”** refers to any person or entity requiring the supply and delivery of electricity for its own use;

2.12 **“Energy Regulatory Commission”** or **“ERC”** refers to the regulatory agency created under the EPIRA;

2.13 **“Generation Company”** refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity;

2.14 **“Grid Code”** refers to the set of rules and regulations governing the safe and reliable operation, maintenance and development of the high voltage backbone transmission system and its related facilities;

2.15 **“Implementation Review Committee”** or **“IRC”** refers to the committee tasked to formulate the implementing rules and regulations of DOE Circular No. DC2010-05-0006 and oversee its implementation;

2.16 **“Independent Power Producer”** or **“IPP”** refers to an existing power generating entity which is not owned by NPC/PSALM;

2.17 **“Indirect WESM Member”** refers to a person or an entity who wishes to

indirectly trade in the spot market through a Direct WESM member;

- 2.18 **“IPP Administrator”** or **“IPPA”** refers to qualified independent entities appointed by PSALM who shall administer, conserve and manage the contracted energy output of NPC IPPs, including the selling of the contracted energy output of these contracts and offering Ancillary Services, where applicable;
- 2.19 **“Market Operator”** or **“MO”** refers on the entity, currently the Philippine Electricity Market Corporation (PEMC), responsible for the operation of the WESM governed by the Philippine Electricity Market (PEM) Board in accordance with Clause 1.4 of the WESM Rules;
- 2.20 **“Metering Service Agreement”** or **“MSA”** refers to the agreement that defines the responsibilities and obligations of the MSP and the Metered Entity in relation to the provision of metering facilities, equipment and service as provided under the OATS Rules, the Grid Code and the WESM Rules;
- 2.21 **“Metering Service Provider”** or **“MSP”** refers to a person or entity authorized by the ERC to provide metering services and registered with the MO in that capacity in accordance with the Clause 2.3.6 of the WESM Rules;
- 2.22 **“National Electrification Administration”** or **“NEA”** refers to the government agency created under Presidential Decree No. 269, as amended, and whose additional mandate is further set forth in the EPIRA;
- 2.23 **“National Grid Corporation of the Philippines”** or **“NGCP”** refers to the corporation, by virtue of Republic Act No. 9511, granted a franchise to operate, manage and maintain, and in connection therewith, to engage in the business of conveying or transmitting electricity through high voltage back-bone system of interconnected transmission lines, substations and related facilities, systems operations, and other activities that are necessary to support the safe and reliable operation of a transmission system and to construct, install, finance, manage, improve, expand, operate, maintain, rehabilitate, repair and refurbish the nationwide transmission system of the Republic of the Philippines;
- 2.24 **“National Power Corporation”** or **“NPC”** refers to the government corporation created under Republic Act No. 6395, as amended;
- 2.25 **“National Transmission Corporation”** or **“TransCo”** refers to the corporation organized pursuant to the EPIRA;
- 2.26 **“Network Service Provider”** or **“NSP”** refers to a person who engages in the activity of owning, controlling, or operating a transmission or distribution system and who is registered with the MO in that capacity under Clause 2.3.4 of the WESM Rules;
- 2.27 **“Notice of Disconnection”** refers to a notice issued by any EPS, EPSP or the MO, as defined in this Implementing Rules and Procedures, informing any of its EPC of its impending disconnection from the grid or network in accordance with the provisions of its contracts and this Implementing Rules and Procedures;
- 2.28 **“Notice of Reconnection”** refers to a notice issued by any EPS, EPSP or the MO, as defined in this Implementing Rules and Procedures, addressed to

NGCP or other NSPs, copy furnished the EPC, authorizing the reconnection of any of its EPC to the grid or network in accordance with the provisions of its contract with the EPC and this Implementing Rules and Procedures;

2.29 **“Open Access Transmission Services Rules”** or **“OATS Rules”** refers to regulation that governs the implementation of the Open Access Transmission Services as approved by the ERC;

2.30 **“Power Sector Assets and Liabilities Management Corporation”** or **“PSALM”** refers to the corporation created pursuant to EPIRA Section 49;

2.31 **“Power Supply Agreement”** or **“PSA”** refers to the contract for the supply of electricity between the Generation Company, IPPA, WA, and the EPC. It may be in the form of Transition Supply Contract (TSC), Contract for the Supply of Electric Energy (CSEE) or bilateral contract;

2.32 **“Restructuring Agreement”** refers to a contract or agreement entered into by PSALM and EPC wherein the latter agrees to pay its arrearages to PSALM through monthly installments inclusive of interest pursuant to Section 3.2 of the DOE Circular No. 2010-05-0006 and in accordance with Section 4.1(D) of this Implementing Rules and Procedures;

2.33 **“System Operator”** or **“SO”** refers to the party responsible for generation dispatch, the provision of ancillary services, and operation and control to ensure safety, power quality, stability, reliability and security of the grid;

2.34 **“Transmission Service Agreement”** or **“TSA”** refers to the agreement entered into by the Transmission

Provider and user of the facility that specifies the terms and conditions of the transmission service by the Transmission Provider and the availment of such service by the Transmission Customer; also serves as the Connection Agreement;

2.35 **“Wholesale Aggregator”** or **“WA”** refers to a person or entity, engaged in consolidating electric power demand of the DUs and other EPCs, for the purpose of purchasing and reselling electricity on a group basis;

2.36 **“Wholesale Electricity Spot Market”** or **“WESM”** refers to the electricity market established by the DOE in accordance with the EPIRA.

Section 3. Title and Scope.

3.1 Title.

This issuance shall be referred to as the “Implementing Rules and Procedures for DOE Circular No. DC2010-05-0006, entitled “Terminating the Default Wholesale Supplier Arrangement for the Philippine WESM and Declaring a Disconnection Policy.”

3.2 **Termination of the Default Wholesale Supply Arrangement.** The DWS Arrangement is hereby terminated upon the effectivity of this Implementing Rules and Procedures. PEMC, NPC, and PSALM are hereby directed to finalize all the settlement amounts involving the DWS Arrangement within 30 days after the effectivity of this Implementing Rules and Procedures.

3.3 **Scope of Coverage.** The following shall be governed by Implementing Rules and Procedures:

A. EPCs

1. ECs directly connected to the grid;
2. Private Investor-Owned Utilities (PIOUs) directly connected to the grid;
3. Large and Other Customers directly connected to the grid;
4. WAs; and
5. EZs.

B. EPS

1. Generation Companies;
2. PSALM/NPC;
3. IPPAs; and
4. WAs;

C. EPSPs and MO

1. The MO, currently PEMC as the AGMO and Independent Market Operator (IMO) upon its appointment by the DOE
2. NGCP as the SO and MSP;
3. NSP other than the NGCP;
4. Other MSPs; and
5. Other electric power industry stakeholders given special arrangement by the NSP other than the NGCP.

- D. The Visayas and Mindanao stakeholders are exempted, in so far as WESM registration requirements are concerned. Furthermore, PSALM/NPC shall not issue any Notice of Disconnection within the ninety (90) day transition period as prescribed in the DOE Circular No. DC2010-05-0006.

The EPS, EPSP or the MO may issue a Notice of Disconnection to an EPC under any of the following circumstances:

A. MO

1. Failure of the EPC, EPS or EPSP to register in the WESM after the ninety-(90) day transition period in accordance with the registration process under the WESM Rules, the DOE Circular No. DC2010-05-0006 and other DOE issuances.

IPPs whose generating capacities are contracted with NPC are deemed WESM registered if its generating facilities are registered under any of the PSALM, NPC or the IPPA;

2. Suspension and deregistration as a WESM Member under the WESM Rules; and
3. In the case of the WA, suspension and deregistration from the WESM may result to the disconnection of its EPC.

All matters regarding the WESM Registration, Suspension and Deregistration shall be governed by the WESM Rules and Section 6 of this Implementing Rules and Procedures.

B. NGCP and NSPs Other than NGCP.

1. Failure of the EPS or EPC to comply with the required financial or technical obligations with the NGCP in accordance with their existing contracts, such as among others the TSA, CA, MSA, and the OATS Rules, Grid Code, and Distribution Code. The NGCP shall furnish

Section 4. Disconnection Process.

4.1 Grounds and Conditions for Disconnection.

the IRC and the MO a copy of the Notice of Disconnection or Notice of Reconnection issued to the EPS or EPC; and

2. In the case of NSPs other than NGCP, failure of the EPS or EPC to satisfy or settle their obligations under their existing contract with the NSP. Such NSP shall furnish the IRC and the MO a copy of the Notice of Disconnection or Notice of Reconnection issued to the EPS or EPC.

C. Generation Companies, IPPA and WA.

1. As provided under their existing contracts, failure of the EPC to comply with the required financial and technical obligations to the Generation Company, IPPA or the WA; and
2. Termination/Expiration of the existing contract of an EPC that is an Indirect WESM Member EPC unless such EPC has secured a new supply contract with other Generation Company or has renewed its existing supply contract with the Generation Company or has successfully registered in the WESM as Direct Member.

D. PSALM and NPC

1. Failure of the EPC to secure and enter into a Restructuring Agreement within the required period in accordance with DOE Circular No. 2010-05-0006;
2. Failure of the EPC to comply with its financial obligations (including non-remittance of Universal Charge) with PSALM

and NPC as provided under their PSAs or any existing contracts for the supply of electricity and Restructuring Agreement; and

3. Failure of the EPC to secure a Restructuring Agreement and/or fully settle its financial obligations with PSALM and NPC even such EPC is now being assumed and turned over to the NPC successor generation companies or has expired contracts with PSALM and NPC but still continue to draw power from the grid and are still being billed by PSALM and NPC.

For the above-cited EPC with outstanding financial obligations with PSALM and NPC, PSALM shall issue the Notice of Disconnection and shall submit a letter-request to NCGP for the execution of the Notice of Disconnection in accordance with Section 4 of this Implementing Rules and Procedures.

All matters regarding the Restructuring Agreement shall be governed by the PSALM's Restructuring Policy and Section 7 of this Implementing Rules and Procedures.

4.2 Procedures for and Execution of the Request to Disconnect a Person or Entity from the Grid.

The issuance of the Notice of Disconnection by the requesting party shall be the last resort option. Thus, it is encouraged that both the requesting party and the subject person or entity for disconnection have exhausted all remedies available.

The Notice of Disconnection and Letter-Request shall follow the formats provided under Appendix A and Appendix B hereof.

- A. Any EPS or EPSP, as the requesting party, shall issue a Notice of Disconnection to the EPC and shall submit a letter-request to NGCP for the execution of the Notice of Disconnection in accordance with Section 4 of this Implementing Rules and Procedures.
- B. The MO, as the requesting party, shall issue a Notice of Disconnection to the EPC, EPS or EPSP and shall submit a letter-request to NGCP for the execution of the Notice of Disconnection in accordance with Section 4 of this Implementing Rules and Procedures.
- C. Prior to issuance of any Notice of Disconnection by the requesting party and the letter-request to NGCP for the execution of the Notice of Disconnection, the EPS, EPSP, or the MO, consistent with the provisions under their respective contracts with the subject person or entity proposed for disconnection, shall endeavor to consider and undertake the following:
 - 1. The Notice of Disconnection is consistent with the DOE Circular No. DC2010-05-0006, the WESM Rules, the OATS Rules and this Implementing Rules and Procedures; and
 - 2. The Notice of Disconnection is consistent with the existing agreements or valid contract with the EPC sought to be disconnected.
- D. Within five (5) days after the receipt of the Notice of the Disconnection

by the EPC and the letter-request for the execution of the Notice of Disconnection, the NGCP shall execute the said Notice of Disconnection and prepare a report to the requesting party and the IRC. The NGCP shall advise the requesting party and the EPC of the schedule of the disconnection. For this purpose, the requesting party shall provide NGCP a copy of the proof of receipt of the Notice of Disconnection immediately after the receipt of the Notice of Disconnection by the EPC.

In case the 5th day falls on a Friday, weekends or a holiday, the disconnection shall be executed on the next working day.

- E. The NGCP shall prepare a report, taking into consideration the impact of such disconnection in the power system.

In case the disconnection cannot be implemented by NGCP within the five (5) day period due to technical reasons, the NGCP shall advise the requesting party prior the end of the five (5) day period, the date on when it can affect the actual disconnection including the specific technical reason/s.
- F. The EPS, EPSP or the MO issuing the Notice of Disconnection and the letter-request shall hold NGCP free and harmless from any kinds of suits that may arise or shall indemnify NGCP from any damages NGCP may have suffered in relation to the issuance of the Notice of Disconnection.
- G. NGCP shall only implement the disconnection after all the procedures and mitigating measures have been exhausted and complied

with. This Implementing Rules and Procedures is hereby declared to be a notice to all electric power industry stakeholders of NGCP's authority to undertake disconnection pursuant to their respective contracts and to this Implementing Rules and Procedures.

4.3 Remedial Actions to Stay or Defer the Disconnection.

A. Conditions and Pre-requisites.

The implementation of the disconnection may be deferred if any of the following conditions are present:

1. Settlement/payment of the outstanding amount due and demanded, consistent with the existing agreements or valid contracts with the EPS, EPSP or the MO within five (5) days prior to the scheduled disconnection date. The requesting party shall immediately inform NGCP of the settlement/payment of the outstanding amount due and demanded by the EPC using the pro-forma Request for Disconnection Recall in Appendix C of this Implementing Rules and Procedures prior to the scheduled disconnection date in order for the NGCP to defer the execution of such disconnection.
2. In the case of PSALM/NPC customers, execution of a Restructuring Agreement within five (5) days prior to the scheduled disconnection date. PSALM/NPC, as the requesting party shall immediately inform NGCP of the execution of a Restructuring Agreement with the EPC using the pro-forma Request for Disconnection

Recall in Appendix C prior to the scheduled disconnection date in order for the NGCP to defer the execution of such disconnection;

3. Recalled Notice of Disconnection by the requesting person or entity as a result of a Special Payment Agreement entered into by the contracting parties five (5) days prior to the scheduled disconnection date. The requesting party shall immediately inform NGCP of the recall using the pro-forma Request for Disconnection Recall in Appendix C prior to the scheduled disconnection date in order for the NGCP to defer the execution of such disconnection;
4. Proof of non-receipt of the Notice of Disconnection. In such case, the execution of the Notice of Disconnection may be deferred for up to five (5) days from the actual receipt of the Notice of Disconnection; and
5. In the case of the MO, the subject person or entity have successfully registered with the WESM pursuant to Section 2.2.4.2 of the WESM Rules. The MO, as the requesting party shall immediately inform NGCP of the registration of such person or entity to the WESM using the pro-forma Request for Disconnection Recall in Appendix C prior to the scheduled disconnection date in order for the NGCP to defer the execution of such disconnection.
6. Private entities may also enter into a Restructuring Agreement, subject to their existing agreements or valid contracts.

Section 5. Reconnection Process.

5.1 Conditions and Requirements for Reconnection.

Reconnection may be effected if such disconnected person or entity has complied with any of the following:

A. MO

1. Registration with the WESM in accordance with the registration processes under the WESM Rules;
2. The suspension and deregistration of a WESM Member has been lifted in accordance with the WESM Rules;
3. The suspension and deregistration of the WESM Registered Supplier/Aggregator has been lifted in accordance with the WESM Rules, will constitute a reconnection of its customer.

B. NGCP and NSPs other than the NGCP.

1. Upon full payment of the amount due and demanded from the concerned disconnected person or entity to NGCP;
2. If the disconnected person or entity has remedied its non-compliance, with the service contracts such as the TSA, CA, MSA; and the OATS Rules, Grid Code, and Distribution Code in a manner acceptable to the NGCP.

C. Generation Company, IPPA and WA.

1. Upon full payment of the amount due to and demanded

by the Generation Company, IPPA or the WA;

2. If such disconnected customer has secured a new supply contract or a renewal of the existing supply contract or has registered with the WESM as Direct Member.

D. PSALM and NPC.

1. If such disconnected customer has secured a Restructuring Agreement in accordance with PSALM's Restructuring Policy and Section 6 of this Implementing Rules and Procedures; and
2. Upon full payment of the amount demanded by PSALM and NPC as provided under their existing contracts and Restructuring Agreement.

In all instances, reconnection of electric service shall be in accordance with the existing agreements between the Generation Companies and their buyers or off-takers and shall be subject to payment of the Reconnection Fee to NGCP and/or Other NSPs by the EPC prior to reconnection.

5.2 Request for Reconnection.

- A. Any EPS, EPSP or MO requesting for a reconnection of person or entity shall submit its Notice of Reconnection and a letter-request to NGCP and IRC for the execution of the Request for Reconnection in Appendix D.
- B. Within two (2) days after the receipt of the Notice of Reconnection, the NGCP shall execute the Notice of Reconnection and prepare a report to the requesting party and the IRC.

- C. The NGCP shall prepare a report, taking into consideration the impact of such reconnection in the power system.

In case the reconnection cannot be implemented by NGCP within the two (2) day period due to technical reasons, the NGCP shall advise the requesting party prior the end of the two (2) day period, the date on when it can affect the actual reconnection including the specific technical reason/s. Towards this end, the EPS, EPSP or the MO issuing the Notice of Reconnection shall hold NGCP free and harmless from any kinds of suits that may arise or shall indemnify NGCP from any damages NGCP may have suffered in relation to the issuance of the Notice of Reconnection.

In the case of the disconnected entity which disconnection was issued by multiple requesting parties, the reconnection will only be executed when all the requesting parties have issued a letter-request and Notice of Reconnection.

- D. In all instances, a reconnection fee shall be paid by the disconnected EPC to NGCP or other NSPs prior to reconnection.

Section 6. WESM Registration, Suspension and Deregistration Guidelines.

All matters regarding the WESM Registration, Suspension and Deregistration in Section 4.1(A) of this Implementing Rules and Procedures shall be governed by the WESM Rules and the WESM Registration, Suspension, and Deregistration Guidelines.

Appendix E of this Implementing Rules and Procedures details the provisions for WESM Registration, Suspension and Deregistration.

Section 7. Guidelines in Implementing the Restructuring of Outstanding Financial Obligations and Arrearages with PSALM and NPC.

All matters relating to the implementation of the restructuring of outstanding financial obligations and arrearages between PSALM and the EPCs under Section 4.1(D) of this Implementing Rules and Procedures shall be governed by the PSALM's Restructuring Policy and the Guidelines in the Formulation of the Restructuring Plan.

Appendix F of this Implementing Rules and Procedures details the procedures and guidelines for negotiations and entering into a Restructuring Agreement with PSALM.

Section 8. Separability Clause. If for any reason, any section or provision of this Implementing Rules and Procedures 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 9. Effectivity and Publication. This Implementing Rules and Procedures shall be effective fifteen (15) days from its publication in a newspaper of general circulation. The PEMC is hereby directed to publish this Implementing Rules and Procedures in the market information website.

This Implementing Rules and Procedures shall remain in effect until otherwise revoked.

Taguig City, Philippines, August 23, 2010

JOSE RENE D. ALMENDRAS
Secretary

PRO-FORMA
NOTICE OF DISCONNECTION

(Date)

(Name of Authorized Person)

(Designation)

(Name of Entity to be disconnected)

(Address)

**Subject: NOTICE OF DISCONNECTION AND FINAL DEMAND FOR
(NAME OF THE PERSON/ENTITY TO BE DISCONNECTED)**

Dear _____:

The **(Name of the Requesting Party)** hereby serves you this notice for failing to **(Ground/s for Disconnection)** amounting to **(Total amount due and demanded, if applicable)**. In this regard, we advise you to immediately comply/settle the above requirements/amount within five (5) business days from receipt of this notice. Failure to do so shall result to the disconnection of your facility from the transmission/distribution network by the **(National Grid Corporation of the Philippines (NGCP)/Name of Network Service Provider)** on **(Date of Disconnection)**. **(Name of the Requesting Party)** shall hold **(NGCP/Name of Network Service Provider)** free and harmless from any kinds of suits that may arise and shall likewise indemnify **(NGCP/Name of Network Service Provider)** from any damages **(NGCP/Name of Network Service Provider)** may have suffered in relation to the issuance of this Notice of Disconnection/Final Demand.

This is without prejudice to the filing of the appropriate action in court to protect our rights and interests.

Your immediate and preferential attention and action is hereby requested.

Very truly yours,

(Name and Address of the Requesting Party)

Received by:

(Name and Signature of the Recipient/Date of Receipt)

Cf: Implementation Review Committee (IRC) through the Department of Energy-Electric Power Industry Management Bureau (DOE-EPIMB)
National Grid Corporation of the Philippines-Operation and Maintenance

(PLEASE DISREGARD THIS NOTICE IF REQUIREMENT/PAYMENT HAS ALREADY BEEN COMPLIED/MADE)

PRO-FORMA
LETTER-REQUEST FOR DISCONNECTION
Disconnection Request No. (to be filled up by NGCP/NSP)

(Date)

(Name of Authorized Person)

(Designation)

(Name of Network Service Provider)

(Address)

Subject: REQUEST FOR DISCONNECTION OF
(NAME OF THE PERSON/ENTITY TO BE DISCONNECTED)

Dear _____:

This to inform you that we served the Notice of Disconnection to **(Name of the Person/Entity to be Disconnected)** for failing to **(Ground/s for Disconnection)** amounting to **(Total amount due and demanded, if applicable)**. The Notice of Disconnection was issued on **(Date of Issuance of the Notice of Disconnection)**. In this regard, we request the **(National Grid Corporation of the Philippines (NGCP)/Name of the Network Service Provider)** to disconnect from the transmission/distribution network **(Name of the Person/Entity to be Disconnected)** after five (5) business days from receipt of this request. **(Name of the Requesting Party)** shall hold **(NGCP/Name of Network Service Provider)** free and harmless from any kinds of suits that may arise and shall likewise indemnify **(NGCP/Name of Network Service Provider)** from any damages **(NGCP/(Name of Network Service Provider))** may have suffered in relation to this request for Disconnection.

This is without prejudice to the filing of the appropriate action in court to protect our rights and interests.

Your immediate and preferential attention and action is hereby requested.

Very truly yours,

(Name and Address of the Requesting Party)

Received by:

(Name and Signature of the Recipient/Date of Receipt)

Cf: Implementation Review Committee (IRC) through the Department of Energy-Electric Power Industry Management Bureau (DOE-EPIMB)
 National Grid Corporation of the Philippines-Operation and Maintenance

PRO-FORMA
REQUEST FOR DISCONNECTION RECALL
Reference: Disconnection Request No. (to be filled up by NGCP/NSP)

(Date)

(Name of Authorized Person)

(Designation)

(Name of Network Service Provider)

(Address)

Subject: REQUEST TO RECALL THE DISCONNECTION OF
(NAME OF THE PERSON/ENTITY TO BE DISCONNECTED)

Dear _____:

This to inform you that **(Name of the Person/Entity to be Disconnected)** have complied/settled its obligations with **(Name of the Requesting Party)** within the 5 business days prescribed period. In this regard, we request the **(National Grid Corporation of the Philippines (NGCP)/Name of the Network Service Provider)** to recall the disconnection of **(Name of the Person/Entity to be Disconnected)**. **(Name of the Requesting Party)** shall hold **(NGCP/Name of Network Service Provider)** free and harmless from any kinds of suits that may arise and shall likewise indemnify **(NGCP/Name of Network Service Provider)** from any damages **(NGCP/Name of Network Service Provider)** may have suffered in relation to this Request for Disconnection Recall.

This is without prejudice to the filing of the appropriate action in court to protect our rights and interests.

Your immediate and preferential attention and action is hereby requested.

Very truly yours,

(Name and Address of the Requesting Party)

Received by:

(Name and Signature of the Recipient/Date of Receipt)

Cf: **(Person/Entity subject for Disconnection)**

Implementation Review Committee through the Department of Energy-Electric Power Industry Management Bureau

National Grid Corporation of the Philippines-Operation and Maintenance

PRO-FORMA
REQUEST FOR RECONNECTION

Reference: Disconnection Request No. (to be filled up by NGCP/NSP)

(Date)

(Name of Authorized Person)

(Designation)

(Name of Network Service Provider)

(Address)

**Subject: REQUEST FOR RECONNECTION OF
(NAME OF THE PERSON/ENTITY TO BE DISCONNECTED)**

Dear _____:

This to inform you that ***(Name of the Person/Entity to be Disconnected)*** have complied/settled its obligations with ***(Name of the Requesting Party)***. In this regard, we request the ***(National Grid Corporation of the Philippines (NGCP)/Name of the Network Service Provider)*** to reconnect ***(Name of the Person/Entity to be Disconnected)*** to the transmission/distribution network within 2 days from the receipt of this Request for Reconnection. (Name of the Requesting Party) pledges to pay NGCP the reconnection fee at NGCP's designated bank.

(Name of the Requesting Party) shall hold ***(NGCP/Name of Network Service Provider)*** free and harmless from any kinds of suits that may arise and shall likewise indemnify ***(NGCP/Name of Network Service Provider)*** from any damages ***(NGCP/Name of Network Service Provider)*** may have suffered in relation to this Request for Reconnection.

This is without prejudice to the filing of the appropriate action in court to protect our rights and interests.

Your immediate and preferential attention and action is hereby requested.

Very truly yours,

(Name and Address of the Requesting Party)

Received by:

(Name and Signature of the Recipient/Date of Receipt)

Cf: ***(Person/Entity to be reconnected)***

Implementation Review Committee through the Department of Energy-Electric Power Industry Management Bureau

National Grid Corporation of the Philippines-Operation and Maintenance

WESM REGISTRATION, SUSPENSION, AND DEREGISTRATION GUIDELINES

1. **Eligible Persons or Entities.** Pursuant to Section 30 of Republic Act No. 9136, subject to compliance with membership criteria, all generating companies, distribution utilities, suppliers, bulk consumers/users and other similar entities authorized by the Energy Regulatory Commission shall be eligible to become members of the Wholesale Electricity Spot Market.
 - ii. Is not under external administration as defined in the Corporation Code of the Philippines or under a similar form of administration under any laws applicable to the applicant in any jurisdiction;
 - iii. Is not immune from suit in respect of the obligations under the WESM Rules;
 - iv. Is capable of being sued in its own name in a court in the Philippines; and
 - v. Satisfies prudential requirements.
2. **Categories of WESM Member.** Consistent with the foregoing, the Wholesale Electricity Spot Market Rules (WESM Rules) require registration with the Market Operator of the WESM of Trading Participants, Network Service Providers, Ancillary Services Providers, Metering Services Providers and the System Operator.
3. **Mandatory WESM Registration.** No person or entity shall be allowed to inject or withdraw electricity to or from the grid unless that person or entity is a registered member of the WESM, either as a Direct or Indirect WESM Member. A person or entity that shall undertake activities or participate in or in relation to the spot market shall register as a Direct Member while a person or entity that wishes to indirectly trade shall register as an Indirect Member. However, an Indirect Member may only transact through a direct WESM Member.
4. **WESM Membership Criteria and Requirements**
 - a. An applicant for WESM Membership must meet the criteria set forth in the WESM Rules, that such applicant
 - i. is a resident in, or is permanently established in, the Philippines;
 - b. The Market Operator shall set forth the technical, commercial and legal requirements for registration in the WESM, which are consistent with the relevant provisions of the EPIRA, the WESM Rules and other relevant rules and regulations.
5. **De-registration**
 - a. The Market Operator may de-register a WESM Member for such grounds set forth in the WESM Rules and relevant market manuals, including but not limited to payment default and breach of the WESM Rules which the Market Operator determines is no longer capable of being rectified.
 - b. The Market Operator shall de-register a WESM Member following the procedures set forth the de-registration procedures approved by the Philippine Electricity Market Board (PEM Board) pursuant to WESM Rules clause 2.8.3.

- c. A WESM Member that is de-registered shall be allowed to register again only after the lapse of the prescriptive period and upon compliance with the requirements and procedures set forth in the de-registration procedures approved by the PEM Board

6. Suspension of WESM Members

- a. The Market Operator may issue a suspension notice to WESM Members based on the following grounds set forth in WESM Rules clause 2.7.1 -
 - i. Breach of the WESM Rules; and
 - ii. Payment default
- b. The Market Operator shall issue a suspension notice to the erring or defaulting WESM Member following procedures set forth in the WESM Rules and in relevant market manuals.
- c. Upon issuance by the Market Operator of a suspension notice, the WESM Member is suspended from participation in the spot market

unless and until the Market Operator declares the suspension notice to be revoked.

- d. The Market Operator shall publish the suspension notice and the notice of revocation.

7. Obligations and Liabilities Following Suspension or De-Registration

Notwithstanding that a WESM Member has been suspended from trading in or has been de-registered from the WESM, its obligations and liabilities which arose under the WESM Rules prior to the date in which it was suspended or de-registered remain unaffected by the suspension or de-registration.

- ## 8. Applicability of the WESM Rules and Manuals.
- The criteria, grounds, guidelines and procedures for registration, de-registration, cessation and suspension of WESM Members are set forth in the WESM Rules and relevant market manuals, which may be amended from time to time. In case of conflict between the foregoing provisions and the WESM Rules, and market manuals, the WESM Rules shall prevail.

GUIDELINES FOR THE FORMULATION OF THE RESTRUCTURING PLAN

Section I. Objective

These guidelines are issued to define the procedures in formulating the restructuring plan on debts/arrearages of customers of NPC and PSALM and the criteria to be considered in the restructuring plan in compliance to DOE Circular No.DC2010-05-006 entitled “Terminating the Default Wholesale Supplier Agreement for the Philippine Wholesale Electricity Spot Market (WESM) and Declaring a Disconnection Policy”.

Section II. Coverage of Restructuring

These guidelines shall be applied to the following customers of NPC and PSALM:

1. Distribution Utilities (Private Investor-Owned, Electric Cooperatives, and local government unit-owned);
2. Directly-connected Customers, including those with expired contracts with PSALM and NPC but still continue to draw power from the grid and are still being billed by PSALM and NPC;
3. Economic Zone; and
4. Other duly authorized entities engaged in the distribution of electricity.

Section III. Restructuring Plan

The restructuring plan shall be able to determine the terms and conditions to be applied to include among others, the capacity to pay of the customers of their debts/arrearages with PSALM and NPC and to ensure the timely payment of the restructured debts as well as their current accounts. The Plan should have a corresponding rehabilitation program to improve their financial and operational conditions. This is a one time

restructuring of the debts/arrearages of NPC and PSALM customers as of 30 June 2010.

1. Contents of the Restructuring Plan

The Restructuring Plan to be negotiated with PSALM shall consider the following:

- a) Audited Financial Reports for the past three (3) years;
- b) Applicable Restructuring Scheme;
- c) Statement of Accounts (SOA);
- d) Projected Financial Statements;
- e) Summary of Annual Collections Report from Distribution Utilities from 2005 to present;
- f) Rehabilitation plan that will focus on adopting measures that will result to increase in collection efficiency and reduction of system loss, as well as, measures to optimize operating costs and professionalize management and staff, etc.;
- g) Other documents that will show the capacity to pay of the customer and the implementation of the mode of restructuring.

2. Mode and Date of Submission

The customers shall submit to PSALM the documents itemized in Section III not later than the following schedules:

Grid	Items 1(a) to 1(e)	Items 1(f) to 1(g)
Luzon	30 June 2010	15 July 2010
Visayas	15 August 2010	15 September 2010
Mindanao	30 September 2010	31 October 2010

Submission dates may change depending on the decision of PSALM, being the lead responsible agency on restructuring the debts/arrearages of NPC and PSALM customers.

Section IV. Criteria of the Restructuring Plan/ Program

PSALM, subject to the approval of the PSALM Board, shall be guided and adopt the criteria hereunder to evaluate and approve the restructuring plan submitted by the customers.

1. Prioritization

PSALM shall prioritize the evaluation and approval of the restructuring plan of customers that it has already received. Thereafter, PSALM shall use the following order of prioritization in the evaluation and approval of the restructuring plan of its customer:

- a) By Grid (Luzon, Visayas, Mindanao)
 - Luzon to be completed within the 90-day period set by the DOE DC2010-05-0006.
 - Visayas within 180 days
 - Mindanao will depend on PSALM’s assessment of the customers.
- b) By Amount of Debts
From lowest to highest
- c) By Type of Customers

Within the 90 day period set by DOE DC2010-05-0006, Luzon Indirect Member Distribution Utilities/ Directly Connected Customers/ Economic Zones (without existing contract with NPC/PSALM); the others depending on the assessment of PSALM.

2. Coverage of Accounts to be Restructured

PSALM shall consider the restructuring of the following accounts:

- a) Power Bill;
- b) Interests;
- c) Default Wholesale Supply Charges;
- d) VAT collected but not remitted (exclusive of interest);
- e) Universal Charge collected but not remitted; and
- f) Other receivables, which include but not limited to, utilization fees, and debit charges due to corrected meter reading.

3. Approving Authority

PSALM shall follow this hierarchy in the approval of the restructured debt of its customers.

Restructured Amount

Restructuring	≤ Php300.0 M	≥ Php 300.0 M
1 to 24 months	VP-Finance	President
25 to 60 months	President	President
Over 60 months	PSALM Board	PSALM Board

4. Other Considerations

- a) The approval of restructuring does not assume the cancellation of the unreconciled accounts of the customers. All reconciled differences between the restructured amount and the amount per PSALM books will be added to the monthly amortization, divided equally over the remaining restructuring period.
- b) Accounts under litigation with NPC and/or PSALM as of the effectivity of DOE DC 2010-05-006 (May 27, 2010) will not be included in the amount to be restructured. Upon final decision

of the court wherein the disputed amount is indeed the accountability of the customer, the amount and corresponding interests will be added to the monthly amortization, and shall be divided equally over the remaining restructuring period.

- c) Customers with relatively sound financial status will only be allowed a maximum of twenty four (24) months restructuring period regardless of the total collectible amount. A “sound financial status” means a positive cash flow that can cover the total accountability over the restructuring period, a positive statement of operations or the customer have other means to pay the total accountability within twenty four (24) months. This will be assessed by PSALM-Treasury Department (TD) with proper coordination with customer’s management.
- d) For special cases (e.g., customers proposing other payment scheme other than what PSALM is utilizing, having disputed amount with PSALM, etc.) a much detailed review shall be done. PSALM will consider the current situation of the customer and will also be flexible to the restructuring proposal of the customer for as long as the PSALM Management deems it reasonable. Approval for these special cases will be by the PSALM Board.
- e) Reasons beyond the control of the customers, particularly those who have already complied with the requirements/documents for the MOA on Restructuring but evaluation has not yet been completed by PSALM, shall be temporarily exempted from disconnection until such time that the MOA on

Restructuring has been executed.

Section V. Memorandum of Agreement on Restructuring

Pursuant to Section 3.2 of DOE Circular No.DC2010-05-006, the customers identified in Section II shall either settle their arrearages or enter into a restructuring agreement with NPC and PSALM within 90 days from the effectivity of the said Circular to avoid disconnection from the grid (effectively the last day will be August 24,2010). However, Section 2 of this Plan provides longer period of time for customers in accordance to prioritization indicated in Section IV(1).

- 1. The Memorandum of Agreement (MOA) to be entered into by and between PSALM and the customer shall contain, but not limited to, the following terms and conditions:

- a) Interest Rates

The restructured account shall be subject to an interest based on the Philippine Dealing System Treasury Fixing (PDSTF) rate plus 2% spread.

- b) Payment Duration (based on the capacity to pay both the restructured debt/arrearages and current account)
- c) Indicators or Measures of Customer’s Performance Improvement

For monitoring purposes, the customers shall submit the agreed upon performance indicators to PSALM and NEA, every 15th of the month following the applicable month, their monthly report on their rehabilitation program highlighting the improvement in their collection efficiency, system losses, observance of cost cutting measures, professionalization of the management and staff, etc.

d) Other Conditions

the calendar year.

- i) Upon the failure or delay of payment of the restructured amount, the total unpaid restructured amount becomes due and demandable and shall result to disconnection from the grid, subject to the Guidelines on Disconnection Policy pursuant to DOE Circular No.DC2010-05-0006.
- ii) Customers shall grant PSALM auditorial rights.
- iii) Restructured account should rank *pari-passu* with other creditors.
- iv) Customers shall not issue any cash dividend without prior approval from PSALM during the entire restructuring period.
- v) For customers who are still supplied by PSALM/NPC, no Prompt Payment Discount shall be availed during the restructuring period.

- 2. The documents listed in Section III (1) shall be submitted as attachments to the MOA. For electric cooperatives (ECs), it should also include NEA-approved annual budget and the restructuring scheme or a supplemental budget if the application is submitted/being applied in the middle of

Section VI. Responsibilities

PSALM shall take the lead, and work jointly with NPC and NEA, in the implementation of the restructuring of debts/arrearages of customers in compliance to DOE DC 2010-05-006, to include the preparation of the pro-forma Memorandum of Agreement, list of customers according to the prioritization in this Guidelines and its corresponding timeline for the negotiations with each customer.

PSALM shall seek its Board approval of the Restructuring Policy, consistent with this Restructuring Plan.

Section VII. Timeline for Negotiation (by Customer)

PSALM shall set the timeline for negotiation for its customers with debts/arrearages.

Section VIII. Monitoring and Regular Reporting

After the execution of the MOA on Restructuring, there shall be continuous monitoring of PSALM and regular reporting of the customers of its implementation and compliance to the Rehabilitation Plan and DOE DC2010-05-0006.

In the case of the ECs, PSALM, in coordination with NEA, shall continuously share information on the developments of the power accounts receivables from ECs in settling their restructured debts/arrearages and current accounts.

DEPARTMENT CIRCULAR NO. DC2010-11-0012

DECLARING THE COMMERCIAL OPERATION OF THE WHOLESALE ELECTRICITY SPOT MARKET (WESM) IN THE VISAYAS GRID AND ITS INTEGRATION WITH THE LUZON GRID

WHEREAS, Section 2 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (“EPIRA”), declared as a policy of the State to 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; and to protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power;

WHEREAS, Section 37 of the EPIRA provides that the Department of Energy (“DOE”) is mandated to supervise the restructuring of the electricity industry; formulate rules and regulations as may be necessary to implement the objectives of the EPIRA; and exercise such other powers as may be necessary or incidental to attain the objectives of the EPIRA;

WHEREAS, the DOE is mandated under the EPIRA to establish the Wholesale Electricity Spot Market (“WESM”) that will facilitate a transparent, competitive, and reliable electricity market in the country and to organize and establish the appropriate market design and governance structure of the WESM;

WHEREAS, on 28 June 2002, the DOE promulgated the WESM Rules through Department Circular No. 2002-06-003;

WHEREAS, in accordance with Rule 9 Section 3(b) of the EPIRA-IRR, on 18 November 2003, at the initiative of the DOE, the Philippine Electricity Market Corporation (“PEMC”) was incorporated as a non-stock, non-profit

corporation and thereafter its Board of Directors (“PEM Board”) was constituted with equitable representation from electric power industry participants and chaired by the DOE, to serve as the governing arm of the WESM, which constituted the Autonomous Group Market Operator (“AGMO”) tasked to undertake the preparatory work and initial operation of the WESM;

WHEREAS, the Energy Regulatory Commission (“ERC”) has approved the Price Determination Methodology (“PDM”) for the WESM on 20 June 2006, the Administered Price Determination Methodology (“APDM”) and the Structure and Level of the Market Fees for the WESM on 22 June 2006;

WHEREAS, the Market Dispatch Optimization Model (“MDOM”) has been certified as compliant with the WESM Rules by an independent auditor on 10 December 2005 prior to the commercial operation of the WESM in the Luzon grid and subsequently on 22 July 2010 as a result of the Independent Operational Audit of the Systems and Procedures on Market Operations;

WHEREAS, on 21 June 2006, the DOE issued Circular No. 2006-06-0008 declaring the start of commercial operations of the WESM in the Luzon grid. The said Circular also provides that the commencement of the commercial operation of the WESM in the Visayas grid shall be separately declared by the DOE;

WHEREAS, PEMC has completed the Trial Operations Program (“TOP”) in preparation for the commercial operation of the WESM in the Visayas grid with the Live Dispatch Operation as the final phase of the Program;

NOW, THEREFORE, from the foregoing premises, the DOE hereby declares the following:

Section 1. Commencement of the Commercial Operation of the WESM in the Visayas Grid and its Integration with the Luzon Grid.

The commercial operation of the WESM in the Visayas grid shall commence on 26 December 2010 (hereafter the Commencement Date), subject to the submission of PEMC to the DOE of a certification attesting that all systems and procedures including all interfaces with the participants and service providers necessary for the operation of the WESM in the Visayas grid are in place and pursuant with the requirements set under the WESM Rules. Specifically, the said certification shall attest that the forecasting, scheduling, dispatch, pricing, metering, and settlement processes of the WESM are fully operational in the Visayas grid.

PEMC shall submit the said certification at least five (5) days prior to the WESM Visayas commercial operation Commencement Date. Upon the receipt of the said certification, the DOE shall determine its acceptability and sufficiency and shall confirm the Commencement Date as prescribed in Section 1 of this Circular. In the event that the DOE does not find the certification acceptable, PEMC or the relevant entity should immediately rectify or remedy the deficiency and that the DOE, at its discretion, shall declare or confirm a new commencement date once it is satisfied that the deficiency is already sufficiently rectified.

Section 2. Electric Power Industry Participants Mandatory Registration with the WESM. All electric power industry participants shall register with the WESM, either as Direct or Indirect Member, prior to the Commencement Date prescribed in Section 1 of this Circular:

- 2.1 All persons and/or entities injecting and/or withdrawing electricity to/from the grid namely the generation companies, distribution utilities and other customers are required to register with the WESM pursuant to DOE Circular No. DC2010-08-0010 and WESM Rules Section 2.2.4.2.
- 2.2 Service Providers namely the system operator, network service providers, the ancillary service providers and the metering services providers are required to register with the WESM pursuant to DOE Circular No. DC2010-08-0010 and the WESM Rules.
- 2.3 Applications for registration should be submitted to the PEMC at 6th Floor Skyrise Building Asiatown, IT Park, Lahug, Cebu City or at the 18th Floor Robinsons Equitable Tower, ADB Avenue, Ortigas Center, Pasig City. Application forms and relevant information may be obtained from PEMC Offices or downloaded from the Market Information Website at www.wesm.ph.

Section 3. Obligations of the Generation Companies and Distribution Utilities.

- 3.1 All distribution utilities and other customers shall ensure that their electricity requirements are adequately covered by bilateral power supply contracts.
- 3.2 All generation companies shall ensure the availability of their generating capacities including new additional generating capacities committed with the DOE in accordance with the DOE Circular No. DC2010-03-0003.

Section 4. Supervision by the DOE. The DOE shall continue to oversee the WESM and to undertake such actions as may be necessary to achieve the objectives of the EPIRA and the WESM.

Section 5. Regulatory Support. The ERC is recognized as the agency to whom issues related to the electricity rates and market competition in the commercial operations of the WESM in the Visayas grid shall be submitted for prompt settlement and resolution.

Section 6. Effectivity and Publication. This Circular shall be effective immediately upon its publication in two (2) newspapers of

general circulation. PEMC is hereby directed to publish this Circular in the market information website.

This Circular shall remain in effect until otherwise revoked.

Taguig City, Philippines, Nov. 26, 2010

JOSE RENE D. ALMENDRAS
Secretary

DEPARTMENT CIRCULAR NO. DC2010-12-0013

CREATING THE SPECIAL BIDS AND AWARDS COMMITTEE (SBAC) FOR THE PROCUREMENT OF THE NEW MARKET MANAGEMENT SYSTEM (MMS) FOR THE PHILIPPINE WHOLESALE ELECTRICITY SPOT MARKET (WESM)

WHEREAS, Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA) mandates the Department of Energy (DOE) to, among others, ensure the reliability, quality and supply of electric power; ensure transparent and reasonable prices of electricity in a regime of free and a fair competition and full public accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market; and 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 30 of EPIRA, the DOE is mandated to establish the Wholesale Electricity Spot Market (WESM) that will facilitate a transparent, competitive, and reliable electricity market in the country and to organize and establish the appropriate market design and governance structure of the WESM;

WHEREAS, in accordance with Rule 9, Section 3(b) of the EPIRA Implementing Rules and Regulations, the Philippine Electricity Market Corporation (PEMC) was incorporated on 18 November 2003 as a non-stock, non-profit

corporation, to act as the Autonomous Group Market Operator (AGMO) tasked to undertake the preparatory work and initial operation of the WESM;

WHEREAS, the PEMC, in the performance of its functions as the AGMO, utilizes the Market Management System (MMS) for the commercial operation of the WESM in Luzon which commenced on 26 June 2006. The MMS is the infrastructure with various hardware, software and interfaces that supports the operations of the WESM. It is the core system that forecasts electricity demand, receives bids and offers from trading participants generates real-time dispatch schedules, and process the settlement of the spot market transactions. It is composed of a full set of applications that runs twenty four hours a day, seven days a week (24x7). It is also connected with the National Grid Corporation of the Philippine (NGCP) System Operator's infrastructure that monitors, controls and optimizes the performance of all generating and transmission facilities;

WHEREAS, the MMS is designed in accordance with the market design contained in the WESM Rules issued by the DOE, jointly with the electric power industry participants;

WHEREAS, the MMS hardware is reaching the end of its economic life and its performance is beginning to deteriorate;

WHEREAS, the reliability of the MMS is crucial to the uninterrupted operation of the WESM and hence a concern of the DOE as current chairman of the Philippine Electricity Market (PEM) Board and as the supervisor of the electric power industry;

WHEREAS, on 15 January 2010, the DOE issued a memorandum creating the Technical Working Group (TWG) on the Market Management System (MMS) Migration and Enhancement Project to conduct study on all matters relating to MMS and implement the MMS migration project;

WHEREAS, as a result of the TWG's assessment, it is necessary to procure a new MMS to ensure the reliability of the WESM operation;

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

Section 1. A Special Bids and Awards Committee, hereinafter referred to as the "MMS-SBAC" is hereby created to supervise the overall activities related to the procurement of the new Market Management System (MMS) for the Philippine WESM.

1.1 Composition. The MMS-SBAC shall be composed of the following:

- Chairperson : Undersecretary for Power, DOE
- Members : Director-Electric Power Industry Management Bureau, DOE President, PEMC

1.2 Functions and Authority. The MMS-SBAC shall have the following functions and authority:

- i. Approve the bidding documents, the draft contract and all other necessary documents;
- ii. Approve all communications to bidders and the Board;
- iii. Approve and endorse the evaluation report/result to the Board including recommendation of the most competitive complying bid; and
- iv. Endorse to the Board the award of the contract to the winning bidder.

Section 2. MMS-SBAC Technical Working Group (TWG). To assist the Board and the MMS-SBAC in the performance of its functions and responsibilities, the MMS-SBAC TWG is hereby created:

2.1 Composition. The MMS-SBAC TWG shall be composed of the following:

- Chairperson : Assistant Director Electric Power Industry Management Bureau, DOE
- Vice Chairperson: Head-Information Systems and Technology Group, PEMC
- Members : Head-Trading Operations Group, PEMC
Head-Corporate Planning and Communications Group, PEMC
Head-Market Assessment Group, PEMC
Head-Corporate Services, PEMC
Head-Legal Services, PEMC
Head-Enforcement and Compliance Office, PEMC

2.2 Functions and Responsibilities. The MMS-SBAC TWG shall perform the following tasks:

- iii. Formulate the action plans and timeline for the procurement of the new MMS;
- ii. Prepare and issue the Request for Proposal (RFP) which includes, among others, the terms of reference (TOR), instructions to bidders/firms and the draft contract;
- iv. Issue invitation to the bidders to submit Technical and Financial proposals;
- iv. Participate in the Preliminary/ Technical Conferences;
- v. Evaluate the Technical and Financial Proposals submitted by bidders;
- vi. Submit evaluation report including recommendation of the most competitive complying bid to MMS-SBAC;
- vii. Assist the MMS-SBAC in the drafting of all other necessary documents;
- viii. Attend meetings as may be required by the MMS-SBAC;
- ix. Identify procurement issues and formulate recommendations to address such issues;
- x. Conduct contract negotiations with the winning bidder; and
- xi. Perform such other tasks as may be directed by the Board and the MMS SBAC.

Section 3. PEM Board Advisory Committee on MMS. A Board Advisory Committee on MMS shall be formed within the PEM Board

to assess the items to be discussed related to the procurement of the new MMS prior to presentation to the PEM Board for policy determination and directions.

Section 4. Technical Secretariat. To facilitate the meetings, reports and information dissemination among the MMS-SBAC and the TWG members, a MMS-SBAC Secretariat shall be formed which shall be composed of the representatives from the DOE and PEMC.

Section 5. Confidentiality. All activities undertaken in the performance of the above functions and responsibilities shall be made with utmost confidentiality and each member of the MMS-SBAC, the TWG and the Secretariat shall ensure that all documents, data and information in connection with the bidding and the actual implementation of the procurement of the new MMS shall not be released, reproduced or made available for other purposes.

Section 6. Tenure. The MMS-SBAC, the TWG and the Secretariat shall continue to undertake its functions until the procurement and its attendant activities have been completed.

Section 7. This Circular supersedes all issuances relating to the Market Management System (MMS) Migration and Enhancement Projects.

Section 8. Effectivity. This Circular shall take effect immediately upon its publication in a newspaper of general circulation. PEMC is hereby directed to publish this Circular in the market information website.

Issued this 22nd day of December, 2010 at Fort Bonifacio, Taguig City, Metro Manila.

This circular shall remain in effect until otherwise revoked.

JOSE RENE D. ALMENDRAS
Secretary

DEPARTMENT CIRCULAR NO. DC2012-11-0010

PROVIDING FOR ADDITIONAL GUIDELINES AND IMPLEMENTING POLICIES FOR RETAIL COMPETITION AND OPEN ACCESS AND AMENDING DEPARTMENT CIRCULAR NO. (DC) 2012-05-0005 ENTITLED "PRESCRIBING THE GENERAL POLICIES FOR THE IMPLEMENTATION OF THE RETAIL COMPETITION AND OPEN ACCESS

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

- (a) supervise the restructuring of the electric power industry;
- (b) formulate 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, on 06 June 2011, the Energy Regulatory Commission (ERC) certified the fulfillment of the five (5) pre-conditions for the implementation of the Retail Competition and Open Access (RCOA):

- (a) **Establishment of the Wholesale Electricity Spot Market (WESM).** The WESM started its commercial operation in Luzon on 26 June 2006, while Visayas Grid was integrated in the WESM on 26 December 2010;
- (b) **Approval of unbundled transmission and distribution wheeling charges.** The ERC approved the unbundled rates of the National Power Corporation (NPC) on 26 March 2002, which includes the transmission tariffs of the National Transmission Corporation (TRANSCO) and the NPC generation tariffs. Likewise, the ERC has rendered its decisions on the various applications unbundling of distribution wheeling charges of

distribution utilities;

- (c) **Initial implementation of the cross subsidy removal scheme.** The ERC approved the removal of inter-class cross-subsidies simultaneously with the unbundling of rates application filed by NPC and Distribution Utilities (DUs). Since 2002, the NPC and TRANSCO have completely removed the inter-and intra-grid cross subsidies in their tariffs, while almost all of DUs have completed their cross-subsidy removal process;
- (d) **Privatization of at least seventy (70%) percent of the total capacity of generating assets of NPC in Luzon and Visayas.** Pursuant to its mandate, the Power Sector Assets and Liabilities Management Corporation (PSALM) has privatized a total of nineteen (19) power plants of power plants of different fuel resources in Luzon and Visayas with a total capacity of 3,222 megawatts (MW), equivalent to 79.56 percent (79.56%) of the total generating capacity of NPC in Luzon and Visayas, thereby breaching the 70 percent (70%) condition for RCOA;
- (e) **Transfer of the management and control of at least seventy percent (70%) of the total energy output of power plants under contract with NPC to the IPP Administrators.** PSALM has successfully bid out 3,345.75 MW of NPC-contracted energy outputs with equivalent proceeds of US\$3,228.00 Million. This is equivalent to 76.85 percent (76.85%) of the total NPC-IPP contracted energy output in Luzon and Visayas.

WHEREAS, on 17 June 2011, the DOE issued Department Circular (DC) No. DC2011-06-0006 entitled, “Creating the Steering Committee Defining the Policies for the Implementation of Retail Competition and Open Access,” which tasks include among others:

- (a) provide the transition framework for the RCOA implementation; and
- (b) synchronize the preparatory actions towards ensuring the sufficiency of existing rules, infrastructures, and other institutional requirements necessary to achieve the goals of EPIRA;

WHEREAS, the RCOA Steering Committee (RCOA-SC) and its Technical Working Groups (TWG) conducted a series of meetings and consultations with electric power industry stakeholders as well as government agencies for the purpose of identifying the attendant issues and challenges that each sector of the industry are facing or may encounter, including assessment of the readiness of the systems and processes to warrant the effective implementation of RCOA;

WHEREAS, after series of meetings of the RCOA-SC and its TWG resolved to endorse to the DOE the following:

- (a) defer the Open Access Date to 26 December 2012;

- (b) integrate the RCOA in the WESM;
- (c) appoint the Philippine Electricity Market Corporation (PEMC) as the Central Registration Body (CRB);
- (d) define specific policies to operationalize the RCOA concepts such as customer empowerment or customer choice, the business of supply of electricity, Supplier, and Supplier of Last Resort (SOLR), and membership in the WESM, among others;

WHEREAS, on 24 February 2012, Department Circular No. DC2012-02-0002 appointed PEMC as CRB;

WHEREAS, the DOE as part of its continuing effort to align the policies and regulations that have been put in place, and in consultation with the stakeholders and the ERC issued on 09 May 2012, DC2012-05-0005, entitled “Prescribing the General Policies for the Implementation of Retail Competition and Open Access”;

WHEREAS, the DOE jointly with the RCOA-SC and the ERC, conducted another round of public consultations and focused group discussions with the stakeholders, with the end view of developing the implementing rules and regulations for the implementation of RCOA, and in order to provide all stakeholders sufficient time to adequately prepare for the eventual transition to RCOA regime:

Date	Venue	Participants
18 July 2012	DOE Headquarters	Manila Electric Company (MERALCO) and Visayan Electric Company (VECO)
19 July 2012	DOE Headquarters	Batangas II Electric Cooperative, Inc. (BATELEC II), Cebu I Electric Cooperative, Inc. (CEBECO I), Cebu II Electric Cooperative, Inc. (CEBECO II) and the Philippine Rural Electric Cooperatives Association (PHILRECA)
31 July 2012 16 August 2012	Waterfront Hotel, Lahug, Cebu City Holiday Inn Clark, Pampanga	Contestable Customers, Generation Companies, and Distribution Utilities in the Visayas Grid Contestable Customers, Generation Companies, and Distribution Utilities in the Luzon Grid

Date	Venue	Participants
23 August 2012	DOE Headquarters	Government Entities duly Certified Contestable Customers by ERC
03 September 2012	DOE Headquarters	Retail Electricity Suppliers' Association (RESA) and Suppliers
04 September 2012	Legend Hotel, Mandaluyong City	Contestable Customers
05 September 2012	PEZA, Roxas Boulevard, Pasay City	PEZA Economic Zone Locators
05 September 2012	Legend Hotel, Mandaluyong City	Directly Connected Customers

WHEREAS, as a result of the series of public consultations and focused group discussions, the DOE jointly with the ERC, the PEMC and the RCOA-SC, resolved to introduce additional policies and guidelines and provide amendments to the DC2012-05-0005;

NOW, THEREFORE, for and in consideration of the foregoing, the DOE hereby issues, adopts and promulgates the following additional guidelines and implementing policies for the implementation of RCOA, providing additional policies and amending certain provisions of the DC2012-05-0005:

Section 1. Declaration of Policy. Consistent with the declared policy of the State under Section 2 of EPIRA, this Circular reiterates the following policies as to their relevance to the RCOA implementation:

- (a) To ensure the quality, reliability, security and affordability of the supply of electric power;
- (b) To ensure fair and non-discriminatory treatment of public and private sector entities in the process of restructuring the electric power industry;
- (c) To assure socially and environmentally compatible energy sources and infrastructure;
- (d) To 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,

promote consumer choice and enhance the competitiveness of Philippine products in the global market;

- (e) To protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power; and
- (f) To encourage the efficient use of energy and other modalities of Demand Side Management (DSM).

Section 2. Objectives. This Circular is issued with the following objectives:

- (a) To ensure smooth transition to RCOA regime through provision of transparent and reasonable rules and procedures for all sectors of the electric power industry;
- (b) To foster competition in the power generation and supply businesses, while empowering electricity end-users;
- (c) To clearly define the respective responsibilities of each person or entity in so far as implementation of RCOA is concerned;
- (d) To ensure that RCOA shall not result to diminution of service which includes transparency in electricity fees and charges; and
- (e) To ensure protection of electricity end-users particularly those who have no power to choose their electricity suppliers.

Section 3. Coverage. This Circular shall govern the framework for the RCOA, including the responsibilities of Electric Power Industry Participants and governmental authorities, such as, but not limited to: the DOE, ERC, PEMC, National Electrification Administration (NEA), National Grid Corporation of the Philippines (NGCP), and DUs.

Section 4. Amendments to Section 2 of DC2012-05-0005.

4.1. The following definitions in Section 2 of DC2012-05-0005 are hereby amended, as follows:

xxx xxx xxx

f) **“Directly Connected Customers”** refer to industrial or bulk electricity end-users, which are directly supplied with electricity by a Generation Company or Power Sector Assets and Management Corporation (PSALM) or NPC pursuant to Republic Act No. 6395 as amended by Presidential Decree No. 395;

xxx xxx xxx

g) **“Last Resort Supply Event”** refers to an event when a supplier of a Contestable Customer has defaulted on its obligations or fails to provide electricity based on the following reasons: (i) cessation of its operation; (ii) revocation of its license; (iii) non-payment of transmission and distribution services; (iv) suspension of its membership in the WESM due to non-compliance to WESM Rules and retail market rules to be promulgated consistent with this Circular; and (v) such other grounds that may be specified by the ERC;

xxx xxx xxx

4.2. A new definition is hereby added

to Section 2 of Department Circular No. DC2012-05-0005, as follows:

l) **“Local Supplier”** refers to the non-regulated supply business of a Distribution Utility (DU) catering to the Contestable Customers within its franchise area, duly authorized by the ERC. This shall also include the Philippine Economic Zone Authority (PEZA) and the PEZA-accredited Utility Ecozone Enterprises in the public and private Economic Zones (EZs), respectively.

4.3 All other terms defined under DC2012-05-0005, and other related rules and regulations shall have the same meaning in so far as they are not inconsistent with this Circular.

Section 5. Responsibilities of Energy Agencies and Stakeholders. Consistent with EPIRA and EPIRA-IRR, the following energy agencies and stakeholders shall have the following responsibilities in so far as the RCOA implementation is concerned:

(a) The **ERC**. In the exercise of its mandate to promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry, the ERC shall perform the following regulatory functions in relation to RCOA:

- (i) Declare Open Access Date;
- (ii) Establish and approve a methodology for setting transmission and distribution wheeling rates for the use of the transmission and distribution system, and for setting retail rates for the Captive Market of a DU;
- (iii) Prescribe qualifications and evaluate applications for supply of electricity to the Contestable Market, and

for this purpose, issue license to suppliers, metering service providers, and other service providers as may be necessary for the implementation of RCOA;

- (iv) Upon the initial implementation of RCOA, specify the Contestable Market through the issuance of Certificate of Contestability to electricity end-users with an average twelve months peak demand of one (1) megawatt and above;
 - (v) Evaluate the performance of the market and based on its evaluation, gradually reduce the threshold level for the Contestable Market until it reaches the household demand level;
 - (vi) Determine the appropriate mechanism to mitigate the impact of migration of Contestable Customers in the operation of the DU and its Captive Market;
 - (vii) Ensure customer choice and promote competition, encourage market development, and discourage/penalize abuse of market power, cartelization and any anti-competitive or discriminatory behavior, in order to further the intent of the EPIRA and protect the public interest; and
 - (viii) Provision of regulatory support on the recoveries of needed investments to support the efficient and effective implementation of RCOA.
- (b) **PEMC.** As the designated CRB, PEMC shall perform its mandate pursuant to DC2012-02-0002 issued on 24 February 2012.
- (c) **National Grid Corporation of the Philippines (NGCP).** As the Concessionaire of the National Transmission Company, NGCP shall, among others:
- (i) Abide by the methodology approved by the ERC for setting transmission wheeling rates upon the implementation of RCOA;
 - (ii) As the System Operator, provide open and non-discriminatory access to its transmission system to all electricity users; and
 - (iii) Ensure reliability and adequacy of transmission system to cater to the RCOA requirements.
- (d) **National Electrification Administration (NEA).** In pursuit of its additional mandates under Section 58 of EPIRA and Rule 3, Section 3 of EPIRA-IRR, the NEA shall undertake among others the following:
- (i) Prepare Electric Cooperatives (ECs) for the RCOA regime and provide the technical, financial and institutional support and assistance necessary in ensuring that the ECs are able to complete and perform their mandates under a competitive environment;
 - (ii) Assist the ECs in educating their respective member-consumers about the implementation of RCOA and its impact on electricity end-users; and
 - (iii) Develop mitigating measure to address any impact on the operations and viability of the ECs resulting from the possible migration of Contestable Customers to their Suppliers.
- (e) **Distribution Utilities (DUs).**
- (i) Provide open and non-discriminatory access to its distribution system to all electricity end-users, including suppliers;

- (ii) Ensure reliability and adequacy of distribution system to cater to the RCOA requirements;
- (iii) Ensure least-cost supply to electricity end-users as well as transparency in the rates and charges applied to both regulated and competitive services;
- (iv) Perform the role as the default Metering Service Provider (MSP) and ensure compliance with the WESM Rules and Retail Rules to be promulgated by the DOE pursuant to RCOA;
- (v) Ensure provision of pertinent information necessary for Contestable Customers' transition to RCOA to include, among others, load profile data which shall be provided to Contestable Customers, forty five (45) days prior to Open Access Date to assist them in negotiating for supply contracts with various Suppliers;
- (vi) Continuously review and update respective Distribution Development Plan (DDP) and prepare for the investments necessary to adequately respond to the RCOA requirements;
- (vii) Notify ERC of its intent to recover stranded contract costs submitting thereto an estimate of such obligations, including the present value thereof and such other supporting data as may be required by the ERC; and
- (viii) Conduct regular Information and Education Campaign to all electricity end-users particularly the Captive Customers on the RCOA and its impact to the end-users.

implementation of RCOA and to prepare all stakeholders, it is hereby prescribed that a Transition Period of six (6) months shall be observed, from the Open Access Date as declared by the ERC.

During the Transition Period, the following activities, among others, shall take place:

- (a) The DU shall continue to serve Contestable Customers in their respective franchise area;
- (b) Contestable Customers shall start with or continue to negotiate and enter into supply contracts with Suppliers; provided, however, that such supply contract shall only take effect at the end of the Transition Period i.e., the day that immediately follows the end of the sixth month from the Open Access Date;
- (c) The ERC shall continue to evaluate and issue Certificate of Contestability to all eligible Contestable Customers;
- (d) The ERC shall identify DUs that will act as the SOLR services in areas where the franchised DUs were deemed not capable to perform their roles as the default SOLRs;
- (e) The CRB shall begin the registration of Contestable Customers and Suppliers as well as conduct of trainings to the RCOA participants;
- (f) The CRB shall conduct trial operations including mock settlements; and
- (g) The DOE shall spearhead the development and conduct of a comprehensive Information and Education Campaign to all stakeholders on the RCOA and its implementation.

After the Transition Period prescribed herein and pursuant to the Transitory Rules to be promulgated by the ERC, the full commercial

Section 6. Transition to RCOA Implementation and Timelines. To ensure smooth

operation of the RCOA, hereinafter referred to as the “Full RCOA Commercial Operation Date” shall take effect.

Section 7. Mandatory Contestability and Customer Choice. Consistent with the EPIRA, the RCOA should promote genuine competition, greater efficiency, customer choice, and the true cost of electricity. For this purpose, the power of choice is conferred to Contestable Customers subject to the rules and regulations prescribed herein as well as to subsequent issuances by the DOE.

Accordingly, all Contestable Customers shall be allowed to choose where to source its supply of electricity. For this purpose, any Contestable Customer may source its electricity supply requirements from a Supplier duly licensed by ERC, a Local Supplier duly authorized by ERC to perform such, or through the WESM. In the latter case, the Contestable Customer shall be responsible to manage its registration and compliance with the WESM Rules and Manuals, and managing its own risks as well.

As a general policy, a Contestable Customer can have one Supplier of electricity per Metering Point. Thus, any Contestable Customer may have several contracted Suppliers based on the number of its Metering Points. However, should a Contestable Customer opts to enter into a multiple supply contracts even with only single Metering Point, it shall be allowed, provided arrangements shall be consistent with the Circular and the Retail Rules to be promulgated by the DOE, and ERC rules and regulations.

Section 8. Supply Contract and Customer Switching. After the Transition Period and during the initial year of the Full RCOA Commercial Operation Date, all Contestable Customers shall have supply contracts with a minimum term of one (1) year with a Supplier. Notwithstanding, Contestable Customers shall be allowed to switch to a new supplier six (6) months after the Full RCOA Commercial

Operation Date, provided, further that any or all outstanding obligations of either party to the other party is fully settled.

One (1) year after the Full RCOA Commercial Operation Date, the Contestable Customers and Suppliers shall have the flexibility on the duration of their supply contracts and shall undertake switching in accordance with the Retail Rules to be promulgated by the DOE and consistent with the manual of procedures adopted by the CRB.

In such case, the switching shall take effect at the beginning of the WESM billing month, while formal advice/notification to the CRB of the Contestable Customer’s intent to exercise the switching shall be done at least one (1) month prior to switching date.

The Suppliers shall provide the DOE, ERC and CRB with copies of their supply contracts for purposes of monitoring, policy development, formulation of necessary rules, and guidelines for the effective implementation of RCOA.

Further, for purposes of assisting the Contestable Customers in supply contracting, forty five (45) days prior to the Open Access Date, Suppliers shall submit to the CRB, for posting in its website, contracting parameters, to include its general offer terms and conditions such as indicative average contract price offers and scope of services offered.

Section 9. Directly Connected Customers. Existing Directly Connected Customers, regardless of their average peak demand for the last twelve (12) months from the effective date of this Circular, shall register with PEMC, either as a Direct or Indirect Customer Trading Participant in the WESM. Existing supply contracts between Directly-Connected Customers and the Generators prior to Open Access Date shall not be affected by reason of the implementation of RCOA and as such shall there be diminution of services.

All Directly-Connected Customers shall therefore be considered Contestable Customers and shall secure Certificate of Contestability from the ERC. Any Directly-Connected Customer, in ensuring its supply requirements, may secure additional energy requirements from a Supplier duly licensed by the ERC, to supplement its current contract with a power generator. As such, a Directly-Connected Customer may have supply contract with a power generator registered in the WESM, and a Supplier of electricity.

Section 10. Role of Embedded Generation. The PEMC shall register embedded generators in accordance with the WESM Rules and relevant market manuals. Subject to the most beneficial arrangement, the policy for embedded generation shall be developed by the DOE in coordination with relevant stakeholders, as part of the government's effort to make any supply available in the grid. Towards this end, the DOE shall endeavor to develop policies and programs that will encourage Demand Response in coordination with the ERC and industry stakeholders.

Section 11. Supplier of Last Resort (SOLR). In the event that the Supplier is not able to perform its obligations to its Contestable Customers consistent with this Circular, the franchised DU shall act as the SOLR in the Last Resort Supply Event as defined in this Circular. However, should the franchised DU is deemed not capable to perform the SOLR service, the ERC, prior to the Full RCOA Commercial Operation Date, shall designate another DU which will perform the SOLR function for the affected Contestable Customers. The SOLR may source electricity to be supplied to the Contestable Customers through the WESM or any available source of energy supply. The SOLR shall be allowed to recover their costs attributable to its SOLR services.

Notwithstanding, the ERC shall design a mechanism to prevent the occurrence of a Last Resort Supply Event, which may include, among others, adequate due diligence on the technical and financial capability, and

other parameters used in the issuance of Supplier License. The CRB, on the other hand, shall issue timely notification of Suppliers' compliance with the prudential requirement pursuant to the WESM Rules.

Section 12. Government Entities as Contestable Customers. In cognizance of government entities that are considered as Contestable Customers, the DOE in coordination with the Government Procurement Policy Board (GPPB) and the Department of Budget and Management (DBM) shall issue supplementary rules on the procurement of electricity supply under the RCOA regime. Prior to Open Access Date, the DOE, DBM and GPPB shall issue a step-by-step procedure that will serve as guide for government entities Considered as Contestable Customers.

As a general rule, all Government Entities that are either Contestable Customers or Directly Connected Customers shall comply with the requirements of EPIRA and EPIRA-IRR.

Section 13. 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 14. 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 15. Effectivity. This Circular shall take effect fifteen (15) days following its publication in at least two (2) newspapers of general circulation.

Issued on 28 November 2012 in Energy Center, Bonifacio Global City, Taguig City.

(sgd) CARLOS JERICO L. PETILLA
Secretary

DEPARTMENT CIRCULAR NO. DC2013-05-0008

PROMULGATING THE INTERIM MINDANAO ELECTRICITY MARKET (IMEM) IMPLEMENTING RULES

WHEREAS, Section 2 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), declares as a policy of the state to ensure the quality, reliability, security, and affordability of the supply of electric power;

WHEREAS, Republic Act No. 7638 or the “Department of Energy Act of 1992”, as amended by Section 37 of the EPIRA, authorized DOE to exercise supervision and control over all government activities relative to energy projects and to formulate rules and regulations necessary to implement the objectives of these laws;

WHEREAS, Section 37 (i) of the EPIRA mandates the DOE to “[d]evelop 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, the Mindanao grid has been experiencing rotating brownouts due to generation capacity deficiencies to meet the energy and ancillary services requirement, ranging from 150 MW to 300 MW in 2012;

WHEREAS, after the conduct of the Mindanao Power Summit last April 2012 and a series of focused group discussions, consultations and meetings with relevant electric power industry participants in Mindanao and concerned energy agencies, the DOE came up with a roadmap to sustainable solutions to the Mindanao power situation taking into consideration the current and future power supply and demand situation and the socio-economic, environmental and peace and order factors, among others;

WHEREAS, as part of the roadmap, a market for the transparent and efficient utilization of available capacities shall be established to encourage participation of existing power generating facilities and interruptible loads, and entry of new generating capacities in Mindanao;

WHEREAS, on 9 January 2013, DOE issued Department Circular No. DC 2013-01-0001 entitled, “Directing the Philippine Electricity Market Corporation to Develop and Implement an Interim Mindanao Electricity Market (IMEM) as a Measure to Immediately Address the Power Supply Situation in Mindanao”;

WHEREAS, pursuant to DOE Department Circular No. DC2013-01-0001, PEMC submitted to the DOE the draft IMEM Implementing Rules last 25 March 2013;

WHEREAS, the draft IMEM Implementing Rules was posted on the DOE website for comments on 25 March 2013 and was subjected to public consultation on 3, 10, and 12 April 2013 in Zamboanga, Cagayan de Oro, and Davao City respectively;

WHEREAS, the DOE also closely coordinated with PEMC and the National Grid Corporation of the Philippines (NGCP) to ensure a smooth implementation of the IMEM;

WHEREAS, during the public consultation, the DOE received no major objections to the establishment of an interim electricity market in Mindanao;

NOW THEREFORE, premises considered, the DOE hereby adopts the attached IMEM Implementing Rules and further states:

Section 1. Scope. The IMEM Implementing Rules shall apply to all Electric Power Industry Participants in Mindanao. For this purpose, an Electric Power Industry Participant refers to any person or entity engaged in the generation, transmission, or distribution of electricity in Mindanao.

Section 2. Declaration of Policy. All Electric Power Industry Participants in Mindanao are hereby enjoined to participate in the IMEM in the most judicious and efficient manner bearing in mind the higher goal of supporting the economic growth of the Mindanao grid through the provision of a safe and reliable supply of electric power pending the entry of new capacities in 2015. For this purpose, all acts detrimental to the attainment of this goal including but not limited to the commission of anti-competitive behavior that will defeat the purpose of IMEM shall be dealt with accordingly by the appropriate government agency. All entities in Section 3 tasked to implement the IMEM are enjoined to perform their responsibilities in the most diligent manner.

Section 3. Responsibilities. In addition to their responsibilities under existing laws, the following are enjoined to extend their full cooperation and action for the smooth implementation of the IMEM.

- (a) **Philippine Electricity Market Corporation (PEMC).** PEMC is hereby designated as the IMEM Operator responsible for the overall implementation of the IMEM in Mindanao.
- (b) **National Grid Corporation of the Philippines (NGCP).** Consistent with the directive under DOE Department Circular No. 2013-01-0001, the NGCP shall perform its obligation of ensuring and maintaining the reliability, adequacy, security, stability and integrity of the nationwide electricity grid in accordance with the performance standards for the operations and maintenance of the

grid, as set forth in the Philippine Grid Code, while at the same time taking into consideration the current and future power supply and demand situation of Mindanao. The NGCP shall perform the obligations provided in the attached IMEM Implementing Rules and shall constantly coordinate with the IMEM Operator for the purpose.

- (c) **National Transmission Corporation (TransCo).** As the owner of the national grid, TransCo shall provide the necessary technical support to DOE and PEMC to assess the power situation and to ensure the compliance of NGCP to the responsibilities indicated herein.
- (d) **Power Sector Assets and Liabilities Management Corporation (PSALM) and National Power Corporation (NPC).** Consistent with the directive under DOE Department Circular No. 2013-01-0001, PSALM and NPC shall continue to fully utilize all available capacities of all power plants in the Mindanao region.

PSALM shall provide appropriate financial support to the NPC-owned power plants and obligations under the IPP contracted capacities, subject to existing PSALM and NPC arrangements. Meanwhile, NPC shall ensure efficient operation of the NPC-owned power plants.
- (e) **National Electrification Administration (NEA).** NEA is directed to assist in ensuring the financial and technical capability of Mindanao Electric Cooperatives (ECs) in the implementation of the IMEM, including but not limited to, by:
 - a. Guaranteeing the transactions of the ECs in the IMEM pursuant to Section 5 of Republic Act 10531 or otherwise known as “National Electrification Administration Reform Act of 2013”

- b. Providing capacity building programs to Mindanao ECs on forecasting, contracting and all other aspects of their operations
 - c. Ensuring that ECs comply with the requirements of the IMEM Operator for their active participation in the IMEM.
- (f) All Mindanao Distribution Utilities, Grid-Connected End-Users and Generating Facilities. All Mindanao Distribution Utilities, Grid-Connected End-Users and Generating Facilities (other than self-generating facilities) are hereby mandated to comply with the requirements of the IMEM Operator.

Section 4. Full Accounting of Supply. To ensure transparency and maximization of available supply in Mindanao, all registered Generating Facilities are hereby mandated to fully account all of their capacities in the IMEM.

Section 5. Authority to file the Price Determination Methodology. To implement the IMEM, PEMC is hereby authorized to file with the ERC the price determination

methodology developed in accordance with the IMEM Implementing Rules.

Section 6. Policy and Regulatory Support and Coordination. Pursuant to their respective mandates under the EPIRA, the DOE and the ERC shall closely coordinate in order that any policy or regulatory issue arising from the operation of the IMEM shall be jointly resolved by the DOE and ERC in consultation with the IMEM Operator.

Section 7. No amendment or repeal of existing laws. Nothing in this Circular shall be construed as to amend, supplant, or repeal any of the mechanisms or institutions already existing or responsibilities already allocated and provided for under any existing law, rule or contract.

Section 8. Effectivity. This Circular shall take effect fifteen (15) days after publication in two (2) newspapers of general circulation.

Done this 24 May 2013, Taguig City, Metro Manila, Philippines.

(SIGNED) CARLOS JERICHO L. PETILLA
Secretary

DEPARTMENT CIRCULAR NO. DC2013-12-0029

ADOPTING AN INTERIM CRITERIA FOR THE DECLARATION OF MARKET INTERVENTION IN THE WHOLESALE ELECTRICITY SPOT MARKET

WHEREAS, Republic Act No. 9136 or the “Electric Power Industry Reform of 2001” otherwise known as “EPIRA” declares as policy of the state, among others, to protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power;

WHEREAS, Section 37(f) of EPIRA mandates the Department of Energy (DOE) to, among others:

- a. ensure the reliability, quality, and security of supply of electric power;
- b. encourage private sector investments in the electricity sector and promote development of indigenous and renewable energy sources;
- c. promote a system of incentives to encourage electric power industry participants including new generation companies and end-users to provide adequate and reliable electric supply;
- d. jointly with the electric power industry participants, establish the wholesale electricity spot market and formulate the detailed rules governing the operations thereof; and
- e. exercise such other powers as may be necessary or incidental to attain the objectives of EPIRA;

WHEREAS, pursuant to Section 30 of EPIRA, the Energy Regulatory Commission (ERC) is empowered to suspend the operation of the wholesale electricity spot market or declare a temporary wholesale electricity spot market failure in cases of national and international security emergencies or natural calamities;

WHEREAS, on 28 June 2002, in consultation with the electric power industry participants, the Wholesale Electricity Spot Market Rules (WESM) was issued, adopted, and promulgated by the DOE;

WHEREAS, Chapter 6 of the WESM Rules provides the procedures to be followed by the Market Operator, System Operator, and WESM Participants in an emergency situation, and the circumstances and manner by which the ERC, through the Market Operator, may intervene or suspend the spot market;

WHEREAS, Clause 6.8 of the WESM Rules only provides as conditions for ERC to declare Market Suspension in cases of natural calamities, or following the official declaration of a national and international security emergency by the President of the Republic;

WHEREAS, in light of recent events, the DOE saw the need to provide for an interim measure for the Market Operator and/or System Operator’s declaration of Market Intervention in order to ensure utmost consumer protection specially in times of critical situation of the supply of electric power that triggers high prices in the WESM;

NOW THEREFORE, pursuant to its authority under the WESM Rules, the DOE hereby issues, adopts and promulgates the following:

Section 1. Declaration of Market Intervention. To temper unusual price spikes in the WESM and to protect the interest of the public, the Philippine Electricity Market Corporation (PEMC), as Market Operator, through its President has the option to declare Market Intervention in the WESM as provided for under Chapter 6 of the WESM Rules:

Provided, That the trigger for the declaration of market intervention exists when there is a supply emergency where electricity supply capacity shortfall, is measured at 4 percent (4%) or below the total demand: *Provided further*, That the 4% trigger shall continue to be applied until the DOE determines, through the National Transmission Corporation (TransCo), the National Grid Corporation of the Philippines (NGCP) and the Grid Management Committee (GMC), that a new trigger is applicable.

This abovementioned provision emphasizes that this is an option, hence notwithstanding the occurrence of the trigger, the Market Operator, may or may not exercise Market Intervention provided herein.

Section 2. Administered Price Cap. The Administered Price Cap approved by the ERC shall continue to be used for settlements in the trading intervals where market interventions were declared, until such time that the PEMC has recommend a new formulae for approval of the ERC.

Section 3. Responsibility of the National Transmission Corporation. The Transco, in consultation with NGCP and GMC, is hereby directed to conduct a study on the triggers for the declaration of Market Intervention in the WESM taking into consideration the impact of the actual supply-demand situation on the WESM prices.

Section 4. Responsibility of the Philippine Electricity Market Corporation. The PEMC is hereby directed to review the applicability of the formula for the Administered Price Methodology and as necessary, recommend changes for consideration of the DOE. PEMC is likewise directed to cause the filing for ERC approval of the pricing methodology as may be necessary.

Section 5. Timelines and Reportorial Requirements. All entities so mandated by this Circular shall complete their respective deliverables within 30 (days) from the effectivity of this Circular. Provided, that a weekly report on the developments is submitted to the DOE.

Section 6. Separability Clause. If for any reason, any section or provision of this Circular is declared unconstitutional or invalid, such parts not affected shall remain in full force and effect.

Section 7. Effectivity. This Circular shall take into effect immediately following its publication in at least two (2) newspapers of general circulation and shall remain in effect until otherwise revoked.

Issued this December 27, 2013, at the Energy Center, Bonifacio Global City, Taguig City.

(SIGNED) CARLOS JERICHO L. PETILLA
Secretary

DEPARTMENT CIRCULAR NO. DC2014-10-0019

REVOKING SECTION 1 OF DEPARTMENT CIRCULAR NO. DC 2013-12-0029 ENTITLED “ADOPTING AN INTERIM CRITERIA FOR THE DECLARATION OF MARKET INTERVENTION IN THE WHOLESALE ELECTRICITY SPOT MARKET”

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, on 28 June 2002, the DOE, upon the joint endorsement of the electric power industry participants, promulgated the WESM Rules through Department Circular No. DC2002-06-003;

WHEREAS, on 27 December 2013, the DOE promulgated Department Circular No. DC2013-12-0029 adopting the four percent (4%) supply of electric power shortfall as an interim criteria for the declaration of Market Intervention by the Market Operator until the DOE through a study conducted by the National Transmission Corporation (TransCo), the National Grid Corporation of the Philippines (NGCP) and the Grid Management Committee (GMC) determine a new applicable criteria;

WHEREAS, on 8 April 2014, the TransCo, NGCP and GMC submitted their Report to the DOE pursuant to the above DOE Circular which noted that four percent (4%) supply shortfall interim trigger is already covered in

the System Operator’s declaration of market intervention under system emergency, in accordance with the WESM Rules;

WHEREAS, in the same Report, TransCo, NGCP and GMC, as an alternative, recommended for the DOE to pursue a price cap in the WESM to protect the public from high prices of electricity;

WHEREAS, on 05 May 2014, the Energy Regulatory Commission (ERC) adopted and issued the secondary price cap in the WESM through its ERC Resolution No. 8, Series of 2014, entitled “An Urgent Resolution Setting an Interim Mitigating Measure in the Wholesale Electricity Spot Market” and have extended its effectivity through ERC Resolution No. 14, Series of 2014, for a period of one hundred twenty (120) days from 10 August 2014 or until the establishment by the ERC of a permanent pre-emptive measure in the WESM, whichever comes earlier;

NOW THEREFORE, given the foregoing and pursuant to its authority under the WESM Rules, the DOE hereby revokes the Interim Criteria for the Market Intervention by the Market Operator as provided under Section 1 of DC No. 2013-12-0029.

This Circular shall take into effect fifteen (15) days from its publication in at least two (2) newspapers of general circulation and shall remain in effect until otherwise revoked.

Issued this October 24, 2014 at Energy Center, Rizal Drive, Bonifacio Global City, Taguig City.

(SIGNED) CARLOS JERICHO L. PETILLA
Secretary

DEPARTMENT CIRCULAR NO. DC2014-12-0022

PROMULGATING THE PROTOCOL FOR THE CENTRAL SCHEDULING AND DISPATCH OF ENERGY AND CONTRACTED RESERVES IN PREPARATION FOR THE COMMERCIAL OPERATION OF THE WHOLESALE ELECTRICITY SPOT MARKET (WESM) RESERVE MARKET

WHEREAS, Section 37 of Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001” (EPIRA), mandates the Department of Energy (DOE) to among others:

- (a) ensure the reliability, quality, and security of supply of electric power;
- (b) encourage power sector investments in the electricity sector and promote development of indigenous and renewable energy sources and develop policies and procedures, and;
- (c) 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 30 of the EPIRA mandates the DOE to establish the Wholesale Electricity Spot Market (WESM), and upon endorsement of electric power industry participants, promulgate the WESM Rules;

WHEREAS, on 28 June 2002, the DOE, upon the joint endorsement of the electric power industry participants, promulgated the WESM Rules through Department Circular No. DC2002-06-003;

WHEREAS, Section 10.3.2.3 of the WESM Rules authorized the DOE to declare the commencement of the spot market for ancillary services, when applicable and reasonably feasible;

WHEREAS, on 02 December 2013, the DOE declared the Commercial Launch Date of

WESM Reserve Market on 26 March 2014 through Department Circular No. DC2013-12-0027, subject to fulfilment of certain conditions such as Philippine Electricity Market Corporation’s (PEMC) certification attesting that all systems and procedures are in place for the operation of the Reserve Market;

WHEREAS, on 14 March 2014, PEMC submitted its report to the DOE stating that the WESM Reserve Market may not commercially operate on 26 March 2014 pending the regulatory approval of the Pricing and Cost Recovery Mechanism (PCRM) of the WESM Reserve Market and the completion of the registration of ancillary service providers;

WHEREAS, on 26 March 2014, the DOE declared the new Commercial Launch Date of WESM Reserve Market on 26 May 2014, subject to the approval by the Energy Regulatory Commission (ERC) of the PCRM for the WESM Reserve Market, and directed the implementation of the Central Scheduling and Dispatch of Energy and Contracted Reserves through Department Circular No. DC2014-03-0009;

WHEREAS, the Central Scheduling and Dispatch of Energy and Contracted Reserves would provide the DOE better monitoring of all available generation capacity in both energy and reserve, and provide more preparations to the participants for the eventual commercial operation of the WESM Reserve Market;

WHEREAS, pursuant to the said Circular, PEMC and National Grid Corporation of the Philippines (NGCP) jointly formulated the Protocol for the Central Scheduling

and Dispatch of Energy and Contracted Reserves in consultation with the Ancillary Service Providers under Ancillary Services Procurement Agreement (ASPA) contracts of NGCP;

WHEREAS, on 22 April 2014, the said Protocol was submitted by PEMC to the DOE for consideration and final approval pursuant to Department Circular No. DC2014-03-0009;

NOW THEREFORE, pursuant to its mandate under the EPIRA and the WESM Rules, the DOE hereby issues, adopts and promulgates the following:

Section 1. Approval and Adoption of the Protocol for the Central Scheduling and Dispatch of Energy and Contracted Reserves. In consideration of the foregoing, the WESM Market Manual on the Protocol for the Central Scheduling and Dispatch of Energy and Contracted Reserves (The Protocol) presented as Annex "A" to this Circular is hereby approved and adopted.

The implementation of this Protocol shall immediately cease upon the Commercial Operation of the WESM Reserve Market or upon declaration of its cessation by the DOE.

Section 2. Responsibilities of PEMC, NGCP and Trading Participants. PEMC as the Market Operator, NGCP as the System Operator and all affected Trading Participants shall ensure compliance with this Circular and the said Protocol for the better achievement of this policy. PEMC shall continuously submit an assessment report to the DOE on its implementation of this Protocol and the development of the WESM Reserve Market.

Section 3. Separability Clause. If for any reason, any section or provision of this Circular including the attached Annex is declared unconstitutional or invalid, such parts that are not affected shall remain in full force and effect.

Section 4. Effectivity. This Circular shall take effect fifteen (15) days after publication in two (2) newspapers of general circulation. PEMC is directed to publish this Circular in the market information website.

Issued this ____ December 02, 2014 at the DOE, Energy Center, Rizal Drive, Bonifacio Global City, Taguig City, Metro Manila.

CARLOS JERICO L. PETILLA
Secretary

DEPARTMENT CIRCULAR NO. DC2014-05-0010

AMENDING THE INTERIM MINDANAO ELECTRICITY MARKET RULES AND PROVIDING FOR TRANSITORY ARRANGEMENTS

WHEREAS, Section 2 (b) of Republic Act No. 9136 or the “Electric Power Industry Reform Act of 2001” (EPIRA) states the declared policy of the State to ensure the quality, reliability, security and affordability of the supply of electric power;

WHEREAS, Republic Act No. 7638 or the “Department of Energy Act of 1992”, as amended by Section 7 of the EPRA, authorized the Department of Energy (DOE) to exercise supervision and control over all government activities relative to energy projects and to formulate rules and regulations necessary to implement the objectives of these laws;

WHEREAS, on 24 May 2013 and 17 September 2013, the DOE issued Department Circular Nos. DC 2013-03-0008 and DC 2013-09-0020, respectively, for the Interim Mindanao Electricity Market (IMEM) after the conduct of public consultations and Information, Education and Communication (IEC) campaigns to address the power supply situation in Mindanao;

WHEREAS, on August 2013, the Energy Regulatory Commission (ERC) issued an Order granting the provisional authority for the IMEM price determination methodology;

WHEREAS, trial operations were held from 26 August 2013 until 25 September 2013 to familiarize the market participants with the processes under the IMEM Rules;

WHEREAS, after a preliminary determination of participant readiness, the DOE issued Department Circular No. DC2013-09-0023 declaring the launch of initial operations on 26 September 2013 and full commercial operations on 03 December 2013 to allow

the market participants additional time to familiarize themselves with the processes under the IMEM.

WHEREAS, for the first billing period covering 03 December to 25 December 2013, several issues and operational concerns were experienced that prompted the DOE to initiate the conduct of series of reconciliation consultations of the First IMEM Billing between and among the IMEM Participants, and thereafter undertook studies of the concerns and recommendations to improve the implementation of IMEM

WHEREAS, in view of the initial market results, the IMEM Governance Committee (IGC) endorsed to the DOE that a transition period be provided, to enable the ‘MEM trading participants be fully acquainted with their obligations under the IMEM Rules and to consider relaxation of existing policies to ensure a smooth and successful implementation of the IMEM;

WHEREAS, as a result of the reconciliation and consultations with the IMEM Participants, the DOE in consultations with PEMC, deemed it necessary to amend certain provisions of the IMEM Rules, and to introduce Demand-Side Bidding and as such provide the IMEM Participants with additional time to adjust their respective systems and processes on the IMEM Rules;

NOW, THEREFORE, premises considered, the DOE declares as follows:

Section 1. IMEM Commercial Operations Transition Period. A transition period is hereby declared for the implementation of the IMEM commencing 03 December 2013

until 25 June 2014 unless sooner revoked by the DOE: *Provided*, That during the transition period, the IMEM Operator shall be guided by the following:

Section 1.1. The application of settlement amounts as provided in Clauses 5.4.1.2 (b), (c), 5.4.1.2 5.4.1.2 (d), 5.4.1.4 (a) and 5.4.1.5 of the IMEM Rules, as well as financial penalties as a consequence of breach of the IMEM Rules and Manuals shall be suspended to avoid financial impact to participants while familiarizing themselves with the IMEM trading process.

Section 1.2. The Timetable for Settlement and Billing as provided in Section 5.1.2 of the IMEM Rules shall be relaxed to ensure the calculation of correct settlement amounts in view of the need for familiarizing the IMEM trading participants with the IMEM trading and settlement processes.

When the circumstances warrant, the transition period for the application of Section 1.1 of this Circular may be extended by the DOE until one (1) year from the commencement of the IMEM.

Section 2. Incorporation of the Demand-Side Bidding in the IMEM. To afford the IMEM customers greater participation in the IMEM, demand-side bidding is hereby incorporated in the IMEM and shall be implemented as part of the price discovery process. Details of the Demand-Side Bidding are provided for in Annex “A” hereof.

For this purpose, PEMC is hereby directed, as may be necessary, to file with the Energy Regulatory Commission (ERC) an amendment to the IMEM Price Determination Methodology (PDM) to incorporate demand-side bidding.

PEMC is likewise directed to conduct the trial operation of the demand-side bidding pending the approval of the ERC.

Section 3. Other Provisions. Recognizing the need for a seamless implementation of EMEM and the role that Power Sector Assets and Liabilities Management Corporation (PSALM) capacity plays, the following amendments to the IMEM Rules detailed in Annex “B” are hereby made:

Section 3.1. Treatment of PSALM Capacity. All available capacity of PSALM shall be dispatched in-day without incurring charges under the IMEM Rules for the deviations. In situations of reduced production by PSALM in-day, affected customers which used resources from IMEM shall be responsible for the full compensation of re-dispatched resources required to meet their actual energy requirements. Otherwise, customers may choose to maintain their reduced contract allocation from PSALM or source from other bilateral contracts.

Section 3.2. Real-time Monitoring by the Mindanao System Operator. The Mindanao System Operator (MSO) will coordinate with the IMEM Customers in situations when additional IMEM resources are needed to maintain real-time system energy balance.

MSO shall likewise provide real-time loading on the feeders to enable customers to monitor their load. In case the customer opts not to get energy from the IMEM the customers are expected to be responsible for managing their actual energy requirements.

Section 3.3. Recognition of Contract Provisions. The IMEM Rules shall be further harmonized with the existing power contracts in the Mindanao Grid through the implementation of the following amendments:

Section 3.3.1. Re-Nomination of Contracts. IMEM Trading Participants may adjust their contract nominations

up to one (1) hour before the start of the delivery interval. The IMEM Operator shall take account of the re-nomination of contracts in its calculation of the variations of the IMEM Trading Participants for the purpose of settlement.

Section 3.3.2. Procedures during Shortage in Supply. The IMEM Operator shall perform calculation of Load-to-Maintain levels of all customers based on the power supply contracts they entered into to serve as basis of actual dispatch during supply shortage situations. IMEM Resources are required to submit to the IMEM Operator the supply contract level for each of its customer as an additional registration requirement.

Section 3.4. Deviations of Intermittent Generators. In addition to the option of contract re-nomination to reflect in-day adjustments as stated in Section 3.3.1 IMEM Generators with intermittent energy resources shall not incur charges for any deviations of their generating units from their schedule.

Section 3.5. Technical Constraints. The IMEM Operator shall consider additional constraints in its scheduling and settlement processes to reflect the technical characteristics of the facilities

in the Mindanao Grid. The technical characteristics shall include, but not limited to, the minimum stable loading and ramping capabilities of the IMEM Generators.

Section 3.6. Publication of Resource Outages. The Mindanao System Operator shall publish forced and planned outages of generating plants in the Mindanao Grid on a daily basis. The planned outages included in the publication shall be those whose start is scheduled within seven (7) days from the publication of the outage report.

Section 4. Assessment of the Transition Period and the Amendments. The IMEM Operator shall submit to the DOE an assessment report on the impact and results of the provisions in this Department Circular one (1) month before the end of the Transition Period.

Section 5. Repealing Clause. All rules and issuances inconsistent herewith or contrary to the provisions of this Circular are deemed amended, modified or repeated accordingly.

Section 6. Effectivity. This Circular shall take effect immediately after publication.

Do this 6th day of May at Taguig City, Metro Manila, Philippines.

CARLOS JERCHO L. PETILLA
Secretary

IMEM RULES REFERENCE	ORIGINAL PROVISION	REVISED PROVISION
Clause 2.3.3.3	[New Provision]	By default, the <i>Bid Type</i> of all <i>IMEM Customers</i> is <u>Standard Bid Type</u> . However, the <i>IMEM Operator</i> shall assign, upon provision of proof, the <i>Bid Type</i> of an <i>IMEM Customer</i> whose operations require the scheduling of its full <u>Demand Capacity</u> to an <u>All-or-Nothing Bid Type</u> for use in the process described in Section 3.3.
Clause 3.1.2.9	Each day by 1300H, each <i>IMEM Customer</i> shall submit to the <i>Mindanao System Operator</i> and to the <i>IMEM Operator</i> their <i>Week-Ahead Customer IMEM Demand</i> .	[Deleted]
Clause 3.1.2.1.1	Each day by 1500H, the <i>IMEM Operator</i> shall prepare and publish the <i>Week-Ahead IMEM Demand Report</i> .	Each day by 1500H, the <i>IMEM Operator</i> shall cease receiving <u>IMEM Demand Bids</u> from <u>IMEM Customers</u> for each <u>IMEM Interval</u> in the following day
Clause 3.1.2.14	Each day by 1600H, the <i>IMEM Operator</i> shall transmit the <i>IMEM Merit Order Table</i> and <i>IMEM Day-Ahead Schedule</i> of all <i>IMEM Resources</i> for each <i>IMEM Interval</i> to the <i>Mindanao System Operator</i> in the following day.	Each day by 1600H, the <i>IMEM Operator</i> shall transmit the <u>IMEM Merit Order Table</u> and <u>IMEM Day-Ahead Schedule</u> of all <u>IMEM Resources</u> and <u>IMEM Day-Ahead Load Schedule</u> of all <u>IMEM Customers</u> for each <u>IMEM Interval</u> to the <u>Mindanao System Operator</u> in the following day.
Clause 3.1.2.15	Each day by 1600H, the <i>IMEM Operator</i> shall transmit to each <i>WESM Resource</i> its <i>Day-Ahead Schedule</i> for each <i>IMEM Interval</i> in the following day.	Each day by 1600H, the <i>IMEM Operator</i> shall transmit to each <i>IMEM Resource</i> its <i>Day-Ahead Schedule</i> and to each <i>IMEM Customer</i> its <i>Day-Ahead Load Schedule</i> for each <i>IMEM Interval</i> in the following day.
Clause 3.1.2.17	The <i>Mindanao System Operator</i> may issue <i>In-Day Dispatch Instructions</i> to <i>IMEM Resources</i> in accordance with Section 3.5.1 .	[Moved to Clause 3.1.3.81]
Clause 3.1.2.18	The <i>IMEM Operator</i> shall publish the <i>Day-Ahead Schedules</i> and <i>Day-Ahead IMEM Schedules</i> for each <i>IMEM Trading Interval</i> in the <i>Market Information Website</i> two (2) <i>Business Days</i> after the publication of the <i>IMEM Day-Ahead Price</i> .	The <i>IMEM Operator</i> shall publish the <i>Day-Ahead Schedules</i> and <i>Day-Ahead Load Schedules</i> for each <i>IMEM Trading Interval</i> in the <i>Market Information Website</i> two (2) <i>Business Days</i> after the publication of the <i>IMEM Day-Ahead Price</i> .

IMEM RULES REFERENCE	ORIGINAL PROVISION	REVISED PROVISION
Section 3.2.7	The Week-Ahead Customer IMEM Demand	[Deleted]
Clause 3.2.8.2	The <i>Expected Demand</i> for an <i>IMEM Load Curtailment Resource</i> which is also an <i>WESM Customer</i> , or <i>Grid IMEM Load Curtailment Resource</i> , is the total <i>Ex-Ante Contract Allocation</i> for that <i>IMEM Customer</i> plus its <i>Customer IMEM Demand</i> .	The <i>Expected Demand</i> for an <i>IMEM Load Curtailment Resource</i> which is also an <i>IMEM Customer</i> , or <i>Grid IMEM Load Curtailment Resource</i> , is the total <i>Ex-Ante Contract Allocation</i> for that <i>IMEM Customer</i> plus its <i>IMEM Hour-Ahead Load Schedule</i> .
Section 3.2.9	The Week-Ahead <i>IMEM Demand Report</i>	[Deleted]
Section 3.3	Submission and Validation of <i>IMEM Offers</i>	Submission and Validation of IMEM Offers and <i>IMEM Demand Bids</i>
Section 3.3.5	[New Section]	Form of Demand Bids
Clause 3.3.5.1	[New Provision]	A valid <i>IMEM Demand Bid</i> for an <i>IMEM Customer</i> in an <i>IMEM Interval</i> shall consist of the following information: (a) The <i>Bid Type</i> ; (b) The <i>Bid Capacity</i> , and (c) The <i>Bid Price</i> .
Clause 3.3.5.2	[New Provision]	An <i>IMEM Demand Bid</i> with an All-Or-Nothing Bid Type, assigned to the <i>IMEM Customer</i> in accordance with Clause 2.3.2.6 will be scheduled in full or not at all.
Clause 3.3.5.3	[New Provision]	The <i>Bid Capacity</i> shall be a single megawatt amount, not split out into blocks and shall be in megawatts (MW) expressed to a precision of one decimal place (0.1 MW or 100kW).
Clause 3.3.5.4	[New Provision]	The <i>Bid Price</i> shall be in Philippine Pesos per megawatt-hour (Php/MWh) and shall be made in whole Philippine Pesos per megawatt-hour.
Clause 3.3.5.5	[New Provision]	By default, the <i>IMEM Demand Bid</i> of an <i>IMEM Customer</i> for an <i>IMEM Interval</i> is zero (0) MW at zero (0) Philippine Pesos per megawatt-hour.
Section 3.3.6	[New Section]	Submission of Demand Bids
Clause 3.3.6.1	[New Provision]	When submitting an <i>IMEM Demand Bid</i> for a specified <i>IMEM Interval</i> , the <i>IMEM Customer</i> shall provide to the <i>IMEM Operator</i> the information required under Section 3.3.5 in accordance with the electronic communication procedures in Section 6.1.2.
Clause 3.3.6.2	[New Provision]	An <i>IMEM Demand Bid</i> for an <i>IMEM Interval</i> submitted after the deadline of submission of <i>IMEM Demand Bids</i> for that <i>IMEM Interval</i> specified in Clauses 3.1.2.1.1 and 3.1.3.2 will be rejected by the <i>IMEM Operator</i> and the latest valid <i>IMEM Demand Bid</i> shall apply.
Clause 3.3.6.3	[New Provision]	The <i>IMEM Operator</i> shall, upon receipt of a valid <i>IMEM Demand Bid</i> from an <i>IMEM Customer</i> issue an electronic confirmation of receipt immediately.

IMEM RULES REFERENCE	ORIGINAL PROVISION	REVISED PROVISION
Clause 3.3.6.4	[New Provision]	If an <i>IMEM Customer</i> does not receive confirmation of receipt under Clause 3.3.6.3 from the <i>IMEM Operator</i> within a period of thirty (30) minutes, the <i>IMEM Customer</i> shall contact the <i>IMEM Operator</i> to determine whether or not the <i>IMEM Demand Bid</i> was received.
Section 33.7	[New Section]	Validation of Demand Bids
Clause 3.3.7.1	[New Provision]	To be valid, <i>IMEM Demand Bids</i> shall be submitted by the relevant <i>IMEM Customer</i> : (a) Prior to any relevant deadline: and (b) Inclusive of the information specified in, and consistent with the requirements of, Section 3.3.5.
Clause 3.3.7.2	[New Provision]	The <i>IMEM Operator</i> , upon receipt of a valid <i>IMEM Demand Bid</i> from an <i>IMEM Customer</i> , shall verify whether the <i>IMEM Demand Bid</i> is valid in accordance with Clause 3.3.7.1 and shall issue an electronic notification to the <i>IMEM Customer</i> indicating its validity within a period of thirty (30) minutes.
Clause 3.3.7.3	[New Provision]	The <i>IMEM Operator</i> shall, if an <i>IMEM Demand Bid</i> is determined not to be valid include in the electronic notification sent under Clause 3.3.7.2 the reason or reasons that the <i>IMEM Demand Bid</i> is not valid so that the <i>IMEM Customer</i> may correct and resubmit the <i>IMEM Demand Bid</i> .
Section 3.4.1	Day-Ahead IMEM Schedules	IMEM Schedules and <i>IMEM Load Schedules</i> .
Clause 3.4.1.1	The <i>IMEM Operator</i> shall determine the <i>Day-Ahead IMEM Schedule</i> of each IMEM Resource in accordance with the <i>IMEM Schedule Optimization Model</i> generally described in Section 3.4.3 and in detail in the <i>IMEM Price Determination Methodology</i> approved by the ERC.	The <i>IMEM Operator</i> shall determine the <i>IMEM Schedule</i> of each <i>IMEM Resource</i> and <i>IMEM Load Schedule</i> of each <i>IMEM Customer</i> in accordance with the <i>IMEM Schedule Optimization Mode</i> generally described in Section 3.4.3 and in detail in the <i>IMEM Price Determination Methodology</i> approved by the ERC.
Clause 3.4.1.2	If there is insufficient capacity across all <i>IMEM Offers</i> to meet the <i>IMEM Demand</i> , the <i>IMEM Operator</i> shall fully schedule all <i>IMEM Offers</i> and declare an Insufficient Supply Condition in accordance with Section 3.6.1.	[Deleted]
Clause 3.4.2.4	[New Provision]	The <i>Day-Ahead Load Schedule</i> or <i>Hour-Ahead Load Schedule</i> of an <i>IMEM Customer</i> in an <i>IMEM Interval</i> shall be its <i>Day-Ahead IMEM Load Schedule</i> or <i>Hour-Ahead IMEM Load Schedule</i> , respectively, determined in accordance with Section 3.4.1 plus its most recent total <i>Ex-Ante Contract Allocation</i> for that <i>IMEM Interval</i> during the determination of the <i>Load Schedules</i> .

IMEM RULES REFERENCE	ORIGINAL PROVISION	REVISED PROVISION
Clause 3.4.3.1	The <i>IMEM Schedule Optimization Model</i> determines the <i>Day-Ahead IMEM Schedule</i> of each <i>IMEM Resource</i> for an <i>IMEM Interval</i> .	The <i>IMEM Schedule Optimization Model</i> determines the <i>IMEM Schedule</i> of each <i>IMEM Resource</i> and the <i>IMEM Load Schedule</i> of each <i>IMEM Customer</i> for an <i>IMEM Interval</i> .
Clause 3.4.3.2	The objective of the <i>IMEM Schedule Optimization Model</i> shall be to minimize the total cost of purchasing energy from <i>IMEM Offers</i> in order to meet the <i>IMEM Demand</i> .	The objective of the <i>IMEM Schedule Optimization Model</i> shall be to minimize the total cost of purchasing energy from <i>IMEM Offers</i> with consideration of the <i>IMEM Demand Bids</i> .
Clause 3.4.3.3	<p>In formulating the <i>IMEM Schedule Optimization Model</i>, the <i>IMEM Operator</i> shall ensure that the determination of the <i>Day-Ahead IMEM Schedule</i> of <i>IMEM Resources</i> is made subject to:</p> <p>(a) Constraints representing the <i>Offered Capacities</i> of <i>IMEM Resources</i>;</p> <p>(b) Constraints representing the <i>OfferType</i> of <i>IMEM Resources</i>; and</p> <p>(c) An energy balance equation ensuring that the <i>IMEM Demand</i> will be met.</p>	<p>In formulating the <i>IMEM Schedule Optimization Model</i>, the <i>IMEM Operator</i> shall ensure that the determination of the <i>IMEM Schedule</i> of <i>IMEM Resources</i> and <i>IMEM Load Schedule</i> of <i>IMEM Customers</i> is made subject to:</p> <p>(a) Constraints representing the Offered Capacities of IMEM Resources;</p> <p>(b) Constraints representing the Offer Type of IMEM Resources;</p> <p>(c) An energy balance equation;</p> <p>(d) Constraints representing the Demand Capacities of <u>IMEM Customers and</u></p> <p>(e) Constraints representing the Bid Type of IMEM Customers.</p>
Clause 3.4.3.5	[New Provision]	In the case of <i>IMEM Demand Bids</i> with equal <i>Bid Prices</i> , the <i>IMEM Demand Bids</i> shall be scheduled based on a <i>Random Daily Priority</i> , which is generated and assigned to all <i>IMEM Customers</i> on a daily basis.
Section 3.6	<i>IMEM Trading Intervals</i> with Insufficient Supply	[Deleted]

IMEM RULES REFERENCE	ORIGINAL PROVISION	REVISED PROVISION
Clause 2.3.2.6	[New Provision]	<u>IMEM Resources</u> with intermittent energy source that are certified by the <u>DOE</u> shall be exempted from payments to the <u>IMEM</u> .
Section 3.1.2	Timetable for Operation of the <u>IMEM</u>	<u>Day-Ahead</u> Timetable for Operation of the <u>IMEM</u>
Section 3.1.3	[New Section]	<u>In-Day Timetable for Operation of the IMEM</u>
Clause 3.1.3.1	[New Provision]	Up to one (1) hour prior to the start of an <u>IMEM Interval</u> , an <u>IMEM Generator</u> may submit to the <u>IMEM Operator</u> updates to its <u>Ex-Ante Contract Allocations</u> for that <u>IMEM Interval</u> . If an <u>IMEM Generator</u> submit updates to its <u>Ex-Ante Contract Allocations</u> , it shall also submit its total <u>Ex-Ante Contract Allocation</u> for that <u>IMEM Interval</u> .
Clause 3.1.3.2	[New Provision]	Up to one (1) hour prior to the start of an <u>IMEM Interval</u> , an <u>IMEM Customer</u> may submit to the <u>IMEM Operator</u> updates to the <u>Demand Capacity</u> of its <u>IMEM Demand Bid</u> for that <u>IMEM Interval</u> .
Clause 3.1.3.3	[New Provision]	Up to five (5) minutes prior to the start of an <u>IMEM Interval</u> , the <u>IMEM Operator</u> shall publish the <u>IMEM Hour-Ahead Price</u> for that <u>IMEM Interval</u> in the <u>Market Information Website</u> .
Clause 3.1.3.4	[New Provision]	Up to five (5) minutes prior to the start of an <u>IMEM Interval</u> , the <u>IMEM Operator</u> shall transmit the <u>Hour-Ahead IMEM Order Table IMEM Hour-Ahead Schedule</u> of all <u>IMEM Resources</u> and <u>IMEM Hour-Ahead Load Schedule</u> of all <u>IMEM Customers</u> for that <u>IMEM Interval</u> to the <u>Mindanao System Operator</u> .
Clause 3.1.3.5	[New Provision]	Up to five (5) minutes prior to the start of an <u>IMEM Interval</u> the <u>IMEM Operator</u> shall transmit to each <u>IMEM Resource</u> its <u>Hour-Ahead Schedule</u> and each <u>IMEM Customer</u> its <u>Hour-Ahead Load Schedule</u> for that <u>IMEM Interval</u> .
Clause 3.1.3.6	[New Provision]	Up to five (5) minutes prior to the start of an <u>IMEM Interval</u> the <u>IMEM Operator</u> shall transmit to each <u>Mindanao Distribution Utility</u> that has <u>IMEM Resources</u> directly connected to its <u>Mindanao Distribution System</u> the <u>Hour-Ahead Schedules</u> of those <u>IMEM Resources</u> .
Clause 3.1.3.7	[New Provision]	The <u>IMEM Operator</u> shall publish the <u>Hour-Ahead Schedules</u> and <u>Hour-Ahead Load Schedules</u> for each <u>IMEM Interval</u> in the <u>Market Information Website</u> at the end of each day.
Clause 3.1.3.8	[New Provision]	The <u>Mindanao System Operator</u> may <u>Issue In-Da Dispatch Instructions</u> to <u>IMEM Resources</u> in accordance with Section 3.5.1
Clause 3.2.5.7	[New Provision]	At all times the valid <u>Ex-Ante Contract Allocations</u> of an <u>IMEM Generator</u> for an <u>IMEM Interval</u> shall be the <u>Ex-Ante Contract Allocations</u> that were most recently submitted to the <u>IMEM Operator</u> .

IMEM RULES REFERENCE	ORIGINAL PROVISION	REVISED PROVISION
Clause 3.2.6.8	At all times, the valid <i>Ex-Ante Contract Allocations</i> for an <i>IMEM Interval</i> shall be that in the most recently submitted <i>Week-Ahead Contract Allocations Report</i> that include that <i>IMEM Interval</i> .	[Deleted]
Section 3.4.2	Day-Ahead Schedules	Day-Ahead and Hour-Ahead Schedules
Clause 3.4.2.1	For each <i>IMEM Interval</i> , the <i>IMEM Operator</i> shall determine the <i>Day-Ahead Schedule</i> of all <i>IMEM Resources</i> at the end of that <i>IMEM Interval</i> .	For each <i>IMEM Interval</i> , the <i>IMEM Operator</i> shall determine the <i>Day-Ahead Schedule</i> and <i>Hour-Ahead Schedule</i> of all <i>IMEM Resources</i> , and the <i>Day-Ahead Load Schedule</i> and <i>Hour-Ahead Load Schedule</i> of all <i>IMEM Customers</i> at the end of that <i>IMEM Interval</i> .
Clause 3.4.2.2	The <i>Day-Ahead Schedule</i> of an <i>IMEM Generator</i> in an <i>IMEM Interval</i> shall be its <i>Day-Ahead IMEM Schedule</i> determined in accordance with Section 3.4.1 plus its total <i>Ex-Ante Contract Allocation</i> for that <i>IMEM Interval</i> .	The <i>Day-Ahead Schedule</i> or <i>Hour-Ahead Schedule</i> of an <i>IMEM Generator</i> in an <i>IMEM Interval</i> shall be its <i>Day-Ahead IMEM Schedule</i> or <i>Hour-Ahead IMEM Schedule</i> : respectively, determined in accordance with Section 3.4.1 plus its most recent total <i>Ex-Ante Contract Allocation</i> for that <i>IMEM Interval</i> during the determination of the Schedules.
Clause 3.4.2.3	The <i>Day-Ahead Schedule</i> of an <i>IMEM Load Curtailment Resource</i> in an <i>IMEM Interval</i> shall be equal to its <i>Day-Ahead IMEM Schedule</i> determined in accordance with Section 3.4.1 for that <i>IMEM Interval</i> .	The <i>Day-Ahead Schedule</i> or <i>Hour-Ahead Schedule</i> of an <i>IMEM Load Curtailment Resource</i> in an <i>IMEM Interval</i> shall be equal to its <i>Day-Ahead IMEM Schedule</i> or <i>Hour-Ahead IMEM Schedule</i> respectively, determined in accordance with Section 3.4.1 for that <i>IMEM Interval</i> .
Section 3.4.4	<i>IMEM Day-Ahead Price</i>	<i>IMEM Price</i>
Clause 3.4.4.1	The <i>IMEM Day-Ahead Price</i> for an <i>IMEM Trading Interval</i> shall correspond to the highest <i>Offer Price</i> fully or partially scheduled by the <i>IMEM Schedule Optimization Mode</i> for that <i>IMEM Trading Interval</i> .	The <i>IMEM Price</i> for an <i>IMEM Trading Interval</i> shall correspond to the highest <i>Offer Price</i> fully or partially scheduled by the <i>IMEM Schedule Optimization Mode</i> for that <i>IMEM Trading Interval</i> .
Clause 3.4.4.2	The <i>IMEM Day-Ahead Price</i> is the price that applies to the settlement of <i>IMEM Resources</i> in accordance with Chapter 5 of these <i>IMEM Rules</i> .	The <i>IMEM Hour-Ahead Price</i> of an <i>IMEM Trading Interval</i> , which is the <i>IMEM Price</i> published in accordance with Clause 3.1.3.3, is the price that applies to the settlement of <i>IMEM Resources</i> for that <i>IMEM Trading Interval</i> in accordance with Chapter 5 of these <i>IMEM Rules</i> .
Clause 3.4.5.6	[New Provision]	For each <i>IMEM Interval</i> , the <i>IMEM Operator</i> shall construct the <i>Hour-Ahead IMEM Merit Order Table</i> . The <i>Hour-Ahead / MEM Merit Order</i> shall be prepared using the same guidelines for preparing an <i>IMEM Merit Order Table</i> in this Section 3.45 but using the most recent <i>IMEM Offers</i> and <i>Ex-Ante Contract Allocations</i> at the time of its publication required under in Clause 3.1.3.4
Section 3.4.6	Implementation of the Day-Ahead Schedules	Implementation of the <i>Hour-Ahead Schedules</i>

IMEM RULES REFERENCE	ORIGINAL PROVISION	REVISED PROVISION
Clause 3.4.6.1	Each day, all <i>IMEM Resources</i> shall review their <i>Day-Ahead Schedule</i> determined by the <i>IMEM Operator</i> for the following day.	Each <i>IMEM Interval</i> , all <i>IMEM Resources</i> and <i>IMEM Customers</i> shall review their <i>Hour-Ahead Schedule</i> and <i>Hour-Ahead Load Schedule</i> , respectively, determined by the <i>IMEM Operator</i> for the following <i>IMEM Interval</i> .
Clause 3.4.6.2	If an <i>IMEM Resource</i> has a non-zero <i>Day-Ahead Schedule</i> for any <i>IMEM Interval</i> in the following day, it shall take all necessary actions to prepare for meeting its <i>Day-Ahead Schedule</i> in each <i>IMEM Interval</i> .	Each <i>IMEM Resource</i> and <i>IMEM Customer</i> shall take all necessary actions to prepare for meeting its <i>Hour-Ahead Schedule</i> for the following <i>IMEM Interval</i> .
Clause 3.4.6.3	in each <i>IMEM Interval</i> that an <i>IMEM Resource</i> has a non-zero <i>Day-Ahead Schedule</i> , it shall use reasonable endeavors to achieve a linear ramp rate over the <i>IMEM Interval</i> to reach its <i>Day-Ahead Schedule</i> at the end of the <i>IMEM Interval</i> .	In each <i>IMEM Interval</i> , each <i>IMEM Resource</i> and <i>IMEM Customer</i> shall use reasonable endeavors to achieve a linear ramp rate over the <i>IMEM Interval</i> to reach its <i>Hour-Ahead Schedule</i> or <i>Hour-Ahead Load Schedule</i> , respectively at the end of the <i>IMEM Interval</i> .
Clause 3.4.6.4	If an <i>IMEM Resource</i> is not technically capable of maintaining a linear ramp rate over the <i>IMEM Trading Interval</i> , it shall endeavor to inject or withdraw a quantity of energy consistent with the quantity that would have been injected or withdrawn if a linear ramp rate had been maintained.	If an <i>IMEM Resource</i> or an <i>IMEM Customer</i> is not technically capable of maintaining a linear ramp rate over the <i>IMEM Trading Interval</i> , it shall endeavor to inject or withdraw a quantity of energy consistent with the quantity that would have been injected or withdrawn if a linear ramp rate had been maintained.
Clause 3.4.6.5	If for any reason an <i>IMEM Resource</i> foresees that it will not be able to meet its <i>Day-Ahead Schedule</i> by the end of an <i>IMEM Interval</i> , it shall inform the <i>Mindanao System Operator</i> immediately.	If for any reason an <i>IMEM Resource</i> or <i>IMEM Customer</i> foresees that it will not be able to meet its <i>Hour-Ahead Schedule</i> or <i>Hour-Ahead Load Schedule</i> by the end of an <i>IMEM Interval</i> , it shall inform the <i>Mindanao System Operator</i> immediately.
Clause 3.5.1.2	In issuing <i>In-Day Dispatch Instructions</i> , the <i>Mindanao System Operator</i> shall follow the <i>IMEM Merit Order Table</i> received from the <i>IMEM Operator</i> while taking into account the <i>Offer Type</i> and ability to provide in-day dispatch of the facilities established in accordance with Clauses 2.3.2.4 and 2.3.2.5, respectively.	In issuing <i>In-Day Dispatch Instructions</i> , the <i>Mindanao System Operator</i> shall follow the <i>Hour-Ahead IMEM Merit Order Table</i> received from the <i>IMEM Operator</i> while taking into account the <i>Offer Type</i> and ability to provide in-day dispatch of the facilities established in accordance with Clauses 2.3.2.4 and 2.3.2.5, respectively.
Clause 3.5.1.6	<i>In-Day Dispatch Instructions</i> may be issued for any <i>IMEM Interval</i> for which the <i>Mindanao System Operator</i> has received an <i>IMEM Merit Order Table</i> , including <i>IMEM Intervals</i> that are not <i>IMEM Trading Intervals</i> and so do not have an <i>IMEM Demand</i> .	<i>In-Day Dispatch Instructions</i> may be issued for any <i>IMEM Interval</i> for which the <i>Mindanao System Operator</i> has received an <i>IMEM Merit Order Table</i> , including <i>IMEM Intervals</i> that are not <i>IMEM Trading Intervals</i> .

IMEM RULES REFERENCE	ORIGINAL PROVISION	REVISED PROVISION
Clause 5.2.3.1	The <i>IMEM Operator</i> shall determine the <i>Scheduled Quantity</i> for each <i>IMEM Resource</i> as the average of its <i>Day-Ahead Schedules</i> at the beginning and end of the relevant <i>IMEM Trading Interval</i> .	The <i>IMEM Operator</i> shall determine the <i>Scheduled Quantity</i> for each <i>IMEM Resource</i> as the average of its <i>Hour-Ahead Schedules</i> at the beginning and end of the relevant <i>IMEM Trading Interval</i> .
Clause 5.2.3.2	The <i>IMEM Operator</i> shall determine the <i>Dispatched Quantity</i> for each <i>IMEM Resource</i> as the average of the most recent <i>Day-Ahead Schedules</i> or <i>Dispatch Targets</i> , whichever is applicable, applying to that <i>IMEM Resource</i> at the beginning and end of the <i>IMEM Trading Interval</i> .	The <i>IMEM Operator</i> shall determine the <i>Dispatched Quantity</i> for each <i>IMEM</i> the most recent <i>Hour-Ahead Schedules</i> or <i>Dispatch Targets</i> , whichever is applicable, applying to that <i>IMEM Resource</i> at the beginning and end of the <i>IMEM Trading Interval</i> .
Clause 5.2.3.3	For the purposes of calculating the <i>Scheduled Quantity</i> or <i>Dispatched Quantity</i> under this Section 5.23, if the previous <i>IMEM Interval</i> was not an <i>IMEM Trading Interval</i> then the <i>Day-Ahead Schedule</i> at the beginning of the <i>IMEM Trading Interval</i> shall be taken as:	For the purposes of calculating the <i>Scheduled Quantity</i> or <i>Dispatched Quantity</i> under this Section 5.2.3, if the previous <i>IMEM Interval</i> was not an <i>IMEM Trading Interval</i> then the <i>Hour-Ahead Schedule</i> at the beginning of the <i>IMEM Trading Interval</i> shall be taken as.
Clause 5.2.4.1	Subject to Clause 5.2.4.2, the <i>Expected Demand</i> of an <i>IMEM Customer</i> is the total <i>Ex-Ante Contract Allocation</i> for that <i>IMEM Customer</i> plus its <i>Customer IMEM Demand</i> .	Subject to Clause 5.2.4.2, the <i>Expected Demand</i> of an <i>IMEM Customer</i> is the most recent total <i>Ex-Ante Contract Allocation</i> for that <i>IMEM Customer</i> plus its <i>Hour-Ahead IMEM Load Schedule</i> .
Clause 5.2.4.2	In any <i>IMEM Trading Interval</i> for which an <i>Insufficient Supply Condition</i> has been declared, the <i>Expected Demand</i> for an <i>IMEM Customer</i> is the <i>Load-to-Maintain</i> for that <i>IMEM Customer</i> determined in accordance with Section 3.6.2.	[Deleted]
Clause 5.2.6.2	The <i>IMEM Adjusted Metered Quantity</i> of an <i>IMEM Customer</i> is determined as its <i>Metered Quantity</i> less; (a) The <i>Metered Quantities</i> of all <i>IMEM Embedded Generators</i> for which the <i>IMEM Customer</i> is the <i>IMEM Network Service Provider</i> , and (b) The differences between the <i>Metered Quantity</i> and the <i>Expected Demand Quantity</i> of all <i>IMEM Load Curtailment Resources</i> which have <i>Day-Ahead Schedules</i> or <i>In-Day Dispatch Instructions</i> in that <i>IMEM Trading Interval</i> and for which the <i>IMEM Customer</i> is the <i>IMEM Network Service Provider</i> .	The <i>IMEM Adjusted Metered Quantity</i> of an <i>IMEM Customer</i> is determined as its <i>Metered Quantity</i> less; (a) The <i>Metered Quantities</i> of all <i>IMEM Embedded Generators</i> for which the <i>IMEM Customer</i> is the <i>IMEM Network Service Provider</i> , and (b) The differences between the <i>Metered Quantity</i> and the <i>Expected Demand Quantity</i> of all <i>IMEM Load Curtailment Resources</i> which have <i>Hour-Ahead Schedules</i> or <i>In-Day Dispatch Instructions</i> in that <i>IMEM Trading Interval</i> and for which the <i>IMEM Customer</i> is the <i>IMEM Network Service Provider</i> .

IMEM RULES REFERENCE	ORIGINAL PROVISION	REVISED PROVISION
Clause 5.2.8.3	For a <i>Grid IMEM Load Curtailment Resource</i> that does not have a <i>Day-Ahead Schedule</i> or an <i>In-Day Dispatch Instruction</i> for the relevant <i>IMEM Trading Interval</i> , its <i>IMEM Trading Quantity</i> shall be determined in accordance with Section 5.2.6. For clarity, the <i>IMEM Trading Participant</i> shall not be treated as an <i>IMEM Load Curtailment Resource</i> but as an <i>IMEM Customer</i> for that <i>IMEM Trading Interval</i> in the absence of a <i>Day-Ahead Schedule</i> or an <i>In-Day Dispatch Instruction</i> .	For a <i>Grid IMEM Load Curtailment Resource</i> that does not have an <i>Hour-Ahead Schedule</i> or an <i>In-Day Dispatch Instruction</i> for the relevant <i>IMEM Trading Interval</i> , its <i>IMEM Trading Quantity</i> shall be determined in accordance with Section 5.2.6. For clarity, the <i>IMEM Trading Participant</i> shall not be treated as an <i>IMEM Load Curtailment Resource</i> but as an <i>IMEM Customer</i> for that <i>IMEM Trading Interval</i> in the absence of an <i>Hour-Ahead Schedule</i> or an <i>In-Day Dispatch Instruction</i> .
Clause 5.2.8.4	For an <i>IMEM Load Curtailment Resource</i> which is not also an <i>IMEM Customer</i> , or <i>Embedded IMEM Load Curtailment Resource</i> , and has an <i>Day-Ahead Schedule</i> or an <i>In-Day Dispatch Instruction</i> for that <i>IMEM Trading Interval</i> , its <i>IMEM Trading Quantity</i> is determined as its <i>Metered Quantity</i> less its <i>Expected Demand Quantity</i> .	For an <i>IMEM Load Curtailment Resource</i> which is not also an <i>IMEM Customer</i> , or <i>Embedded IMEM Load Curtailment Resource</i> , and has an <i>Hour-Ahead Schedule</i> or an <i>In-Day Dispatch Instruction</i> for that <i>IMEM Trading Interval</i> , its <i>IMEM Trading Quantity</i> is determined as its <i>Metered Quantity</i> less its <i>Expected Demand Quantity</i>
Clause 5.2.8.5	For an <i>Embedded IMEM Load Curtailment Resource</i> that does not have a <i>Day-Ahead Schedule</i> or an <i>In-Day Dispatch Instruction</i> for that <i>IMEM Trading Interval</i> , its <i>IMEM Trading Quantity</i> shall be zero.	For an <i>Embedded IMEM Load Curtailment Resource</i> that does not have an <i>Hour-Ahead Schedule</i> or an <i>In-Day Dispatch Instruction</i> for that <i>IMEM Trading Interval</i> , its <i>IMEM Trading Quantity</i> shall be zero.
Clause 5.2.9.2	The <i>IMEM Operator</i> shall determine the <i>Upwards Resource Variation Quantity</i> or <i>Downwards Resource Variation Quantity</i> of each <i>IMEM Load Curtailment Resource</i> with a <i>Day-Ahead Schedule</i> or an <i>In-Day Dispatch Instruction</i> in each <i>IMEM Trading Interval</i> .	The <i>IMEM Operator</i> shall determine the <i>Upwards Resource Variation Quantity</i> or <i>Downwards Resource Variation Quantity</i> of each <i>IMEM Load Curtailment Resource</i> with an <i>Hour-Ahead Schedule</i> or an <i>In-Day Dispatch Instruction</i> in each <i>IMEM Trading Interval</i> .
Clause 5.2.9.3	For a <i>Grid IMEM Load Curtailment Resource</i> that does not have a <i>Day-Ahead Schedule</i> or an <i>In-Day Dispatch Instruction</i> for the relevant <i>IMEM Trading Interval</i> , its variation quantities shall be determined in accordance with Section 5.2.7. For clarity, the <i>IMEM Trading Participant</i> shall not be treated as an <i>IMEM Load Curtailment Resource</i> but as an <i>IMEM Customer</i> for that <i>IMEM Trading Interval</i> in the absence of a <i>Day-Ahead Schedule</i> or an <i>In-Day Dispatch Instruction</i> .	For a <i>Grid IMEM Load Curtailment Resource</i> that does not have an <i>Hour-Ahead Schedule</i> or an <i>In-Day Dispatch Instruction</i> for the relevant <i>IMEM Trading Interval</i> , its variation quantities shall be determined in accordance with Section 5.2.7. For clarity, the <i>IMEM Trading Participant</i> shall not be treated as an <i>IMEM Load Curtailment Resource</i> but as an <i>IMEM Customer</i> for that <i>IMEM Trading Interval</i> in the absence of an <i>Hour-Ahead Schedule</i> or an <i>In-Day Dispatch Instruction</i> .

IMEM RULES REFERENCE	ORIGINAL PROVISION	REVISED PROVISION
Clause 5.3.1.1	The price used for settlement purposes shall be the <i>IMEM Day-Ahead Price</i> for an <i>IMEM Trading Interval</i> determined under Section 3.4.4 for that <i>IMEM Trading Interval</i> .	The price used for settlement purposes shall be the <i>IMEM Hour-Ahead Price</i> for an <i>IMEM Trading Interval</i> determined under Section 3.4.4 for that <i>IMEM Trading Interval</i> .
Clause 5.3.2.2	The <i>IMEM Based Variation Price</i> for an <i>IMEM Trading Interval</i> shall be the <i>IMEM Day-Ahead Price</i> for that <i>IMEM Trading Interval</i> , except that if no <i>IMEM Day-Ahead Price</i> was determined in accordance with Section 3.4.4, it shall be the average <i>IMEM Day-Ahead Price</i> over all <i>IMEM Trading Intervals</i> in the thirty (3) days prior to the relevant <i>IMEM Trading Interval</i> .	The <i>IMEM Base Variation Price</i> for an <i>IMEM Trading Interval</i> shall be the <i>IMEM Hour-Ahead Price</i> for that <i>IMEM Trading Interval</i> , except that if no <i>IMEM Hour Ahead Price</i> was determined in accordance with Section 3.4.4, it shall be the average <i>IMEM-Hour Ahead Price</i> over all <i>IMEM Trading Intervals</i> in the thirty (30) days prior to the relevant <i>IMEM Trading Interval</i> .
Clause 5.4.1.4 (b)	Its <i>Upwards Dispatch Cost Recovery Amount</i> , which shall be calculated for each <i>IMEM Resource</i> with an <i>In-Day Dispatch Instruction</i> and an <i>Offer Price</i> exceeding the <i>IMEM Day-Ahead Price</i> and is the product of its <i>Upward Dispatch Quantity</i> plus its <i>Variation Tolerance</i> , and the difference between its <i>Offer Price</i> and the <i>IMEM Day-Ahead Price</i> .	Its <i>Upwards Dispatch Cost Recovery Amount</i> , which shall be calculated for each <i>IMEM Resource</i> with an <i>In-Day Dispatch Instruction</i> and an <i>Offer Price</i> exceeding the <i>IMEM Hour-Ahead Price</i> and is the product of the <u>lesser</u> of its <i>IMEM Trading Quantity</i> and <u>the excess of its Dispatched Quantity over its Hour Ahead Schedule</u> , and the difference between its <i>Offer Price</i> and the <i>IMEM Hour Ahead Price</i> .
Clause 5.4.1.7	[New Provision]	The <i>Upward Resource Variation Penalty Amount</i> and <i>Downwards Resource Variation Penalty Amount</i> of the <i>PSALM Portfolio</i> shall always be zero (0). The <i>Upwards Resource Variation Penalty Amount</i> and <i>Downwards Resource Variation Penalty Amount</i> of an <i>IMEM Resource</i> with an intermittent energy source identified under Clause 2.3.2.6 shall also always be zero (0).
Clause 5.4.4.2 (d)	[New Provision]	Its share from the <i>Resource Dispatch Compensation Recovery Amounts</i> calculated for the <i>PSALM Portfolio</i> or <i>IMEM Resources</i> with an intermittent energy sources identified under Clause 2.3.2.6
Clause 5.4.4.3	[New Provision]	Any <i>Resource Dispatch Compensation Recovery Amounts</i> calculated for the <i>PSALM Portfolio</i> for an <i>IMEM Trading Interval</i> shall be allocated to all <i>IMEM Customers</i> proportionate to their <i>IMEM Trading Quantity</i> during the same <i>IMEM Trading Interval</i> .
Clause 5.4.4.4	[New Provision]	Any <i>Resource Dispatch Compensation Recovery Amounts</i> calculated for an <i>IMEM Resource</i> with intermittent energy source identified under Clause 2.3.2.6 for an <i>IMEM Trading Interval</i> shall be allocated to the <i>IMEM Customers</i> proportionate to their <i>Downwards Customer Variation Quantity</i> during the same <i>IMEM Trading Interval</i> except for the <i>IMEM Customer</i> who is also the <i>IMEM Network Service Provider</i> of the <i>IMEM Resource</i> . The allocator of the <i>IMEM Customer</i> who is also the <i>IMEM Network Service Provider</i> of the <i>IMEM Resource</i> shall be based on the difference between the excess of the <i>Scheduled Quantity</i> over the <i>Metered Quantity</i> of the <i>IMEM Resource</i> and the excess of its <i>Expected Demand Quality</i> over its <i>IMEM Adjusted Metered Quantity</i> .

DEPARTMENT CIRCULAR NO. DC2015-06-0003

PROVIDING THE INTERIM MANNER OF DECLARING BILATERAL CONTRACT QUANTITIES (BCQ) IN THE WHOLESALE ELECTRICITY SPOT MARKET (WESM) AND DIRECTING THE PHILIPPINE ELECTRICITY MARKET CORPORATION (PEMC) TO ESTABLISH NECESSARY PROTOCOLS TO COMPLEMENT THE INTERRUPTIBLE LOAD PROGRAM (ILP)

WHEREAS, Republic Act (RA) No. 7638 or the “Department of Energy (DOE) Act of 1992” mandates the DOE to formulate policies for the planning and implementation of a comprehensive program for the efficient supply and economical use of energy;

WHEREAS, RA 9136 or the “Electric Power Industry Reform Act of 2001” (EPIRA) mandates the DOE:

- (a) to ensure the quality, reliability, security and affordability of supply of electric power; and,
- (b) to formulate such rules and regulations as may be necessary to implement the objectives of the EPIRA;

WHEREAS, the Interruptible Load Program (ILP) was adopted through Energy Regulatory Commission (ERC) Resolution No. 8, Series of 2010, and amended through ERC Resolution No. 8, Series of 2013, to address the imminent power shortage and augment the limited power requirements of the Distribution Utilities (DUs);

WHEREAS, the DOE recognizes the potential of ILP to help alleviate the expected power shortage in the Luzon Grid within the period abovementioned as identified by the National Grid Corporation of the Philippines (NGCP) as the System Operator;

WHEREAS, there is a considerable number and capacity of back-up generating sets owned and operated by Contestable Customers (CCs), which can potentially augment the power supply through the ILP;

WHEREAS, a number of CCs through the Retail Electricity Supplier Association (RESA), expressed their support in the ILP;

WHEREAS, the ERC issued Resolution No. 5, series of 2015 “Adopting the Amended Rules to Govern the ILP” which was expanded to include, among others, CCs through their Retail Electricity Suppliers (RES)/Local RES; and

WHEREAS, the DOE recognizes the need to provide further policies to ensure the effective participation of CCs in alleviating supply shortage without prejudice to the existing contractual arrangement between CCs and their respective RESs as a result of their participation in the ILP Program.

NOW, THEREFORE, for and in consideration of the foregoing premises, the DOE, hereby adopts and promulgates in the interim, an extended period to declare Bilateral Contract Quantities (BCQs) in the WESM, following the participation of CCs in the ILP:

Section 1. Policy Statement and Objective.

This Circular is intended to complement the ERC Resolution No. 5, Series of 2015, which expanded the scope of the ILP Program to include CCs, Directly-Connected Customers (DCCs) and the National Grid Corporation of the Philippines (NGCP). For this purpose, it is hereby declared that the ILP implementation shall continue to preserve the transparency and accountability in the WESM.

Section 2. Declaration and Submission of BCQ in the WESM. Trading Participants which deliver electricity pursuant to bilateral contracts with CCs and/or DCCs

that participate in the ILP and those bilateral contracts to be accounted for in the WESM settlement as bilateral contracts quantities of the DU that implemented ILP, shall submit the schedule of bilateral quantities of the said CC or DCC in accordance with Clause 3.13.1 of the WESM Rules: *Provided*, That the schedule of bilateral quantities in favor of participating CCs or DCCs for intervals when the ILP was activated may be submitted no later than seven (7) days from the end of the relevant trading day: *Provided further*, That bilateral contract quantities which are declared after the 29th day of the relevant billing month may not be included in computation of the preliminary settlement statements but shall be included in the final settlement statements for that billing month.

Section 3. Provision of Protocols. PEMC is hereby directed to formulate and publish, within fifteen (15) days from the effectivity of this Circular, the necessary protocols to allow for the transparent adjustment of the WESM processes during the implementation of the ILP, with utmost consideration of the WESM objective to ensure transparency, efficiency, and accountability of the WESM Participants: *Provided*, That any protocols established shall not disrupt the existing systems and processes of the WESM including, but not limited to, the timeline for the issuance of the preliminary and final statements.

Section 4. Regular Review. On a regular basis, the DOE shall assess the impact of the

implementation of the ILP on the WESM and shall provide the amendments to this Circular as may be needed, in consultation with ERC, PEMC, NGCP and other electric power industry participants.

Towards this end, PEMC shall submit to the DOE a report on the implementation of ILP, particularly on the impact of the extend BCQ declaration to WESM processes, not later than one (1) month after the final settlements have been issued following activation of ILP.

Section 5. Regulatory Support. The ERC shall provide the necessary support primarily in promulgating the supplemental rules and regulations for the smooth participation of the CCs through their RES/Local RES.

Section 6. Separability. If for any reason, any provision of this Circular is declared unconstitutional or invalid, such parts not affected shall remain in full force and effect.

Section 7. Effectivity. This Circular shall take effect immediately following its publication in two (2) national newspapers of general circulation, until otherwise revoked.

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

June 01, 2015.

CARLOS JERICHO L. PETILLA
Secretary

DEPARTMENT ORDER NO. DO2010-06-0012

CREATING THE DEPARTMENT OF ENERGY- PHILIPPINE ELECTRICITY MARKET CORPORATION (DOE-PEMC) JOINT SECRETARIAT OF THE STEERING COMMITTEE ON THE ESTABLISHMENT OF THE RENEWABLE ENERGY MARKET

WHEREAS, Republic Act No. 9513, otherwise known as the Renewable Energy Act of 2008 (RE Act), was enacted to promote the development, utilization, and commercialization of renewable energy resources and for other purposes;

WHEREAS, Section 8 of the RE Act mandates the Department of Energy (DOE) to establish the Renewable Energy Market (REM) and the Philippine Electricity Market corporation (PEMC) to implement changes in the WESM Rules in order to incorporate the rules specific to the operations of the REM under the WESM;

WHEREAS, the DOE issued Department Circular No. 2010-02-0001 dated 03 February 2010 creating a Steering Committee on the Establishment of the REM (Steering Committee) which will be primarily responsible for the formulation and establishment of the framework that will govern the operations of REM;

WHEREAS, there is a need to constitute a Joint Secretariat to assist the Steering Committee in the performance of its functions;

NOW THEREFORE, from the foregoing premises, the DOE-PEMC Joint Secretariat of the Steering Committee on the Establishment of the RE Market is hereby created.

Section 1. Composition. The DOE-PEMC Joint Secretariat shall be composed of the following representatives from the DOE and PEMC:

Electric Power Industry Management
Bureau - DOE

Energy Policy and Planning Bureau - DOE
Renewable Energy Management Bureau -
DOE
Billing, Settlement and Metering
Department - PEMC
Corporate Planning Group - PEMC
Information Technology Group - PEMC
Market Assessment Group - PEMC
Trading Operations Group - PEMC

Section 2. Functions. The DOE-PEMC Joint Secretariat shall perform the following functions:

1. Responsible for the administrative and logistical needs of the Steering Committee;
2. Ensure proper coordination with the member-entities of the Steering Committee;
3. Prepare minutes of the meeting, notices, and provisional agenda of the meetings of the Steering Committee;
4. Accountable for the flow of documents from receipt of correspondence by relevant agencies and stakeholders; and
5. Perform such other functions as may be directed by the Chairman of the Steering Committee.

Section 3. Effectivity. This Department Order shall take effect immediately.

Issued this 24th day of June 2010 at Fort Bonifacio, Taguig City, Metro Manila.

JOSE C. IBAZETA
Secretary

DEPARTMENT ORDER NO. DO2010-08-0015

CREATING THE TECHNICAL WORKING GROUP (TWG) FOR THE AUDIT OF NATIONAL GRID CORPORATION OF THE PHILIPPINES' (NGCP) SYSTEM OPERATIONS AND METERING SERVICE OPERATIONS

WHEREAS, Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA) mandates the Department of Energy (DOE) to, among others, ensure the reliability, quality and supply of electric power; ensure transparent and reasonable prices of electricity in a regime of free and a fair competition and full public accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market; and 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 30 of the EPIRA, on June 26, 2006, the DOE established the wholesale electricity spot market composed of the wholesale electricity spot market participants which provides the mechanism for identifying and setting the price of actual variations from the quantities transacted under contracts between sellers and purchasers of electricity;

WHEREAS, WESM Rules 1.3.3 provides that the National Grid Corporation of the Philippines (NGCP) as the System Operator, shall, among others, be responsible for and operate the power system in accordance with the WESM Rules, the Grid Code and any instruction issued by the Market Operator or the ERC; provide central dispatch to all generation facilities and loads connected, directly or indirectly, to the transmission system in accordance with the dispatch schedule submitted by the Market Operator; and contribute towards the development of procedures, processes or systems, or to assist with any aspect of the operation of the spot market, in coordination with the Market Operator;

WHEREAS, the NGCP as the current Metering Service Provider (MSP), shall be responsible to, among others, ensure that the metering installations are provided, installed, tested, calibrated and maintained in accordance with the WESM Rules, the Grid Code and Distribution Code and all applicable laws, rules and regulations; ensure the accuracy of each of its metering installations in accordance with the requirements of the WESM Rules, the Grid Code and Distribution Code; and if the Market Operator requires, arrange for the provision of remote monitoring facilities to alert the Market Operator of any failure of any components of the metering installation, which might affect the accuracy of the metering data derived from that metering installation;

WHEREAS, WESM Rules provides that the PEM Board shall oversee and monitor the activities of the Market Operator and the System Operator to ensure that they fulfill their responsibilities under the WESM Rules, and acting in a manner consistent with the WESM Rules; and that the PEM Board through the PEM Audit Committee, in consultation with the Market Operator and Metering Services Providers, shall review the security arrangements and requirement of metering installations annually;

WHEREAS, as required under WESM Rules, the audit of the Market Operator was conducted in 2009;

WHEREAS, to assess the compliance of the System Operator and the Metering Service Provider with their responsibilities under the WESM Rules, an independent audit of NGCP's System Operations and Metering Service Operations shall be conducted;

NOW, THEREFORE, for and in consideration of the foregoing premises, the Technical Working Group (TWG) for the Audit of the NGCP's System Operations (SO) and Metering Service Operations (MSO) is hereby created:

Section 1: Composition. The SO-MSO TWG shall be composed of:

Chairperson: Director Mylene C. Capongcol
DOE

Co-Chairperson: Assistant Director
Irma C. Exconde, DOE

Members: Atty. Josefina Patricia M. Asirit,
DOE
Eduardo B. Fernandez, DOE
Thelma B. Ejercito, DOE
Rodel S. Limbaga, DOE
Madonna M. Naling, DOE
Ruth C. Perez, DOE
Ferdinand B. Binondo, DOE
Jesusito H. Sulit, PEMC
Carlito C. Claudio, PEMC
Mario R. Pangilinan, PEMC
Chrysanthus S. Heruela, PEMC
Milan H. Libongco, PEMC
Renato B. Afurong, PEMC
Joseph Roseller M. Atienza,
TRANSCO
Norman R. Ampat, TRANSCO
Alipio M. Agaton, TRANSCO
Kennedy Anthony B. Elarmo,
TRANSCO
Bienvenido D. Valeros,
Grid Management Committee
Ronaldo T. Garcia,
Distribution Management
Committee

Section 2: Responsibilities. The TWG shall be responsible in assisting the PEM Board and the PEM Audit Committee (PAC) and will be performing the following tasks:

1. Prepare and issue the Request for Proposal (RFP) which includes, among others, the terms of reference (TOR), instructions to bidders/firms and the draft audit contract;

2. Evaluate the Expression of Interest (EOIs) submitted by the bidders/firms for shortlisting;
3. Evaluate the Technical and Financial Proposals submitted by shortlisted firms;
4. Actively participate in the Preliminary/ Technical Conferences, and public consultations;
5. Assist the PAC in the drafting of other necessary documents;
6. Review and assess the deliverables submitted by the Auditor;
7. Attend meetings as may be called by the PAC; and
8. Perform such other tasks as may be directed by the PAC.

Section 3. Confidentiality. All activities undertaken in the performance of such responsibilities by the TWG shall be approved by the PAC and shall be made with utmost confidentiality and ensure that all documented data and information in connection with the bidding and the actual implementation of the Audit shall not be released, reproduced or made available for other purposes.

Section 4. Effectivity. This Department Order shall take effect immediately.

Issued this 23rd day of August 2010 at Fort Bonifacio, Taguig City, Metro Manila.

(sgd) JOSE RENE D. ALMENDRAS
Secretary

DEPARTMENT ORDER NO. DO2012-03-0002

CREATING A TECHNICAL WORKING GROUP TO ASSIST THE PHILIPPINE ELECTRICITY MARKET AUDITOR UNDER THE PHILIPPINE ELECTRICITY MARKET CORPORATION IN THE CONDUCT OF AN INDEPENDENT REVIEW OF METERING SERVICES OF THE NATIONAL GRID CORPORATION OF THE PHILIPPINES

WHEREAS, under Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA), it is hereby declared policy of the state to, among others:

- a. ensure the reliability and quality of 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; and
- c. protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power.

WHEREAS, the EPIRA mandated the Department of Energy (DOE) to supervise the restructuring of the electricity industry and jointly with the electric power industry participants, establish the wholesale electricity spot market and formulate the detailed rules governing the operations thereof;

WHEREAS, on 28 June 2002, the DOE promulgated the Wholesale Electricity Spot market Rules (WESM Rules), which aims to promote competition, provide an efficient, competitive, transparent and reliable spot market;

WHEREAS, on 26 June 2006, the Wholesale Electricity Spot Market (WESM) started its commercial operations in the Luzon Grid, while the Visayas Grid was integrated effective 26 December 2010;

WHEREAS, pursuant to the governance structure under the WESM Rules, the Philippine Electricity Market Auditor (PEM Auditor) was created among others, to conduct annual audits of the Market Operator (MO) and the settlement system and any other procedures, persons, systems or other matters relevant to the operation of the spot market;

WHEREAS, under 4.5.5.4 of the WESM Rules, the PEM Auditor, in consultation with the MO and the Metering Services Providers, shall review the security arrangements and requirements of metering installations annually;

WHEREAS, the National Grid Corporation of the Philippines (NGCP), as the current Metering Service Provider (MSP), shall be responsible to:

- a. ensure that the metering installations are provided, installed, tested, calibrated and maintained in accordance with the WESM Rules, the Philippine Grid and Distribution Codes and all applicable laws, rules and regulations;
- b. ensure the accuracy of each of the metering installations in accordance with the requirements of the WESM Rules, the Philippine Grid and Distribution Codes; and
- c. if the MO requires, provide remote monitoring facilities to alert the MO of any failure of any components of the metering installation, which might affect the accuracy of the metering data from that metering installation.

WHEREAS, on 25 August 2010, the PEM Board approved the recommendation of the PEM Auditor to review the compliance of the NGCP as the current MSP, with its obligations under the WESM Rules, the Philippine Grid Code and the Philippine Distribution Code, to be undertaken under the supervision of the DOE;

WHEREAS, the DOE and the PEM Auditor agreed to formally constitute a Technical Working Group (TWG), composed of the DOE, the Philippine Electricity Market Corporation (PEMC) with the representatives from the National Transmission Corporation (TransCo), the Grid Management Committee (GMC) and the Distribution Management Committee (GMC) and the Distribution management Committee (DMC) to provide technical assistance to the PEM Auditor in the conduct of an independent review of the metering services of the NGCP.

NOW THEREFORE, for and in consideration of the foregoing premises, a TWG is hereby created to assist the PEM Auditor in the preparation and implementation of an independent review of the metering services of the NGCP;

Section 1. Composition. The Technical Working group (TWG) for an independent review of the Metering Services of the National Grid Corporation of the Philippines shall be composed of:

- Chairperson : Director Mylene C. Capongcol, DOE
- Co-Chairperson : Assistant Director Irma C. Exconde, DOE
- Members : Luningning Baltazar, DOE
Ferdinand B. Binondo, DOE
Victorina S. Cortez, DOE
Rodel S. Limbaga, DOE
Jesusito H. Sulit, PEMC
Carlito C. Claudio, PEMC
Robinson Descanzo, PEMC
Atty. Caryl Lopez-Mateo, PEMC
Raymund D. Villapeña, PEMC
Bienvenido Valeros, TransCo
Tomas B. Vivero, GMC/DMC
Ruben Orillaza, GMC
Ronaldo T. Garcia, DMC

Section 2. Responsibilities. The TWG shall assist the PEM Auditor and the PEM Audit Committee (PAC) and will be performing the following tasks:

1. Assist in the conduct of on-site inspection/ audit of metering facilities;
2. Assist in preparing the schedule and grouping of metering facilities for audit/ review;
3. Actively participate in the Preliminary/ Technical Conferences and public consultations;
4. Assist the PAC in the crafting of necessary documents and formulating review processes;
5. Review and assess the deliverables submitted by the Reviewer/Auditor;
6. Attend meetings as may be called by the PAC; and
7. Perform such other tasks as may be directed by the PAC.

Section 3. Confidentiality. All activities undertaken in the performance of such responsibilities by the TWG shall be approved by the PEM Auditor in consultation with the DOE and shall be made with utmost confidentiality and ensure that all documents, data and information in connection with the bidding and the actual implementation of an independent review of the metering services of the NGCP shall not be released or made available for other purposes.

Section 4. Effectivity. This Department Order shall take effect immediately.

Issued this 2nd day of March 2012. Fort Bonifacio, Taguig City, Metro Manila.

JOSE RENE D. ALMENDRAS
Secretary

DEPARTMENT ORDER NO. DO2013-03-0003

CREATING A CONTINGENCY COMMITTEE FOR THE DEVELOPMENT AND FORMULATION OF A COMPREHENSIVE PLAN FOR THE MINDANAO POWER SITUATION AND ITS EXECUTION

WHEREAS, Section 2 of Republic Act No. 9136, otherwise known as the Electric Power Industry reform Act of 2001 (EPIRA) provides that it is a declared policy of the State to ensure the quality, reliability, security and affordability of supply of electric power and to protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power;

WHEREAS, recent developments in the power situation of Mindanao show impaired quality, reliability and security of power in the area;

WHEREAS, based on the latest Power Development Plan of the country, the earliest time for new power generation projects are expected to commence commercial operations by 2015;

WHEREAS, there is a need to immediately address the supply gap from now until the new power generation projects come on line, and minimize the impact to the economy of the region the present Mindanao power situation;

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

Section 1. Creation of a Contingency Committee for Mindanao Power Situation. A Contingency Committee for the Mindanao Power Situation (CCM) is hereby created be primarily composed of representatives from the following:

Department of Energy (DOE)
National Electrification Administration (NEA)
National Power Corporation (NPC)

In support, representatives from other government agencies and concerned

stakeholders shall serve as resource persons and shall be invited as appropriate to the CCM meetings:

Mindanao Development Authority (MinDA)
Association of Mindanao Electric Cooperatives (AMRECO)
National Transmission Corporation (TransCo)
National Grid Corporation (NGCP)
Philippine Electric Market Corporation (PEMC)
Power Sector Assets and Liabilities Management Corporation (PSALM)

The DOE Electric Power Industry Management Bureau shall serve as Technical Secretariat of the CCM.

Section 2. Responsibilities of the Contingency Committee for Mindanao Power Situation. The CCM shall be responsible for the formulation, development and recommendation to the DOE Secretary for a plan to address the Mindanao Power Situation. For this purpose, the CCM may request and solicit from concerned electric industry participants the necessary data and information.

Section 3. Separability Clause. If for any reason, any section or provision of this Order is declared unconstitutional or invalid, such parts not affected shall remain in full force and effect.

Section 4. Effectivity. This order shall take effect immediately and shall remain in effect until otherwise revoked.

Done this 20th day of March 2013 at Energy Center, Bonifacio Global City, Taguig City.

CARLOS JERICO L. PETILLA
Secretary

DEPARTMENT ORDER NO. DO2013-08-0014

CREATING A TECHNICAL WORKING GROUP TO PROPOSE THE GUIDELINES FOR THE IMPLEMENTATION OF THE ENERGY SECURITY ASSET PROGRAM

WHEREAS, Republic Act no. 7638 otherwise known as the “Department of Energy Act of 1992,) as amended, mandates the Department of Energy (DOE to ensure continuous, adequate, and economic supply of energy;

WHEREAS, the 7.8% gross domestic product (GDP) rate in 2012 of the Philippine Economy calls for the re-examination of the electricity demand and supply of the country;

WHEREAS, DOE’s latest forecasts indicate a possible supply gap for electricity during peak hours from 2014-2016 should committed power projects particularly in Luzon encounter delays;

WHEREAS, the latest forecasts highlight the need for the government to develop an Energy Security Asset Program or the “Program,” to secure energy security assets to serve as buffer for electricity requirements of the country and to address the possible supply gap;

WHEREAS, the DOE views that certain assets under management by Power Sector Assets and Liabilities Management (PSALM) may be used as energy security asset under the Program; and

WHEREAS, the DOE identifies that the Philippine National Oil Company (PNOC), directly or through any of its subsidiaries, is best suited to implement the Program.

NOW, THEREFORE, in consideration of the foregoing, a Technical Working Group

(TWG) is hereby created for the purpose of drafting and proposing the legal and technical framework that will establish the Program:

Section 1. Composition of the TWG. The TWG shall be composed of the following:

Chairperson : DOE Representative
Members : DOE Representative
PNOC Representative
PSALM Representative

Section 2. Mandate. The TWG shall draft and propose the legal and technical framework for the implementation of the Program consistent with existing laws and rules.

The TWG shall submit its proposal to the Board of PNOC for the endorsement by the latter to the DOE Secretary within thirty (30) days from issuance of this order.

Section 3. Secretariat. The TWG Secretariat shall be composed of one (1) Technical Staff from DOE, PNOC and PSALM respectively. The TWG Secretariat shall provide the necessary administrative and technical support to the TWG.

This Department Order shall take effect immediately.

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

(sgd) CARLOS JERICO L. PETILLA
Secretary

DEPARTMENT ORDER NO. DO2014-01-0001

CREATING A TECHNICAL WORKING GROUP TO ASSIST THE PHILIPPINE ELECTRICITY MARKET AUDITOR UNDER THE PHILIPPINE ELECTRICITY MARKET CORPORATION IN THE CONDUCT OF 2ND METERING ARRANGEMENTS REVIEW

WHEREAS, under Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA), it is hereby declared policy of the State to, among others:

- a. ensure reliability and quality of supply of electric power;
- b. ensure transparent and reasonable prices accountability 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; and
- c. protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power.

WHEREAS, the EPIRA mandated the Department of Energy (DOE) to supervise the restructuring of the electricity industry and jointly with the electric power industry participants, establish the wholesale electricity spot market and formulate the detailed rules governing the operations thereof;

WHEREAS, on 28 June 2002, the DOE promulgated the Wholesale Electricity Spot Market Rules (WESM Rules), which aims to promote competition, provide an efficient, competitive, transparent and reliable spot market;

WHEREAS, on 26 June 2006, the Wholesale Electricity Spot Market (WESM) started its commercial operations in the Luzon Grid, while the Visayas Grid was integrated effective 26 December 2010.

WHEREAS, pursuant to the governance/structure under the WESM Rules, the Philippine Electricity Market Auditor (PEM Auditor)/PEM Audit Committee (PAC) was created among others, to conduct annual audits of the Market Operator (MO) and the settlement system and any other procedures, persons, systems or other matters relevant to the operations of the spot market;

WHEREAS, under 4.5.5.4 of the WESM Rules, the PEM Auditor/PAC, in consultation with the MO and the Metering Services Providers, shall review the security arrangements and requirements of metering installations annually;

WHEREAS, the National Grid Corporation of the Philippines (NGCP), as the current Metering Service Provider (MSP), shall be responsible to:

- a. ensure that the metering installations are provided, installed, tested, calibrated and maintained in accordance with the WESM Rules, the Philippine Grid and Distribution Codes and all applicable laws, rules and regulations;
- b. ensure the accuracy of each of the metering installations in accordance with the requirements of the WESM Rules, the Philippine Grid and Distribution Codes; and
- c. if the MO requires, provide remote monitoring facilities to alert the MO of any failure of any components of the metering installation, which might affect the accuracy of the metering data from that metering installation.

WHEREAS, the 1st Metering Arrangements Review was conducted thenceforth to review the compliance of the NGCP as the current MSP, with its obligations under the WESM Rules, the Philippine Grid Code and the Philippine Distribution Code under the supervision of the DOE.

WHEREAS, said Review was completed on 27 March 2013 and the PEM Auditor/PAC transmitted the External Auditor's Report to the DOE and the Energy Regulatory Commission (ERC) and a copy of which was provided to the PEM Technical Committee (PEM-TC) for their comments and recommendations.

WHEREAS, on 26 July 2013, the PEM-TC transmitted its comments and recommendations to the PEM Auditor/PAC and upon the latter's review of the former's submission, it supported the same and suggested that the 2nd Metering Arrangements Review be conducted in partnership with the PEM-TC.

WHEREAS, to ensure NGCP's commitment to address the findings and observations identified in the said Report, the DOE shall constitute a Technical Working Group (TWG) for the 2nd Metering Arrangements Review and shall be composed of the DOE, Philippine Electricity Market Corporation (PEMC) and National Transmission Corporation (TransCo) with no representatives from the Grid Management Committee (GMC) and the Distribution Management Committee (DMC) as they are already represented in the PEM-TC which shall form part of the TWG;

NOW, THEREFORE, for and in consideration of the foregoing premises, a TWG is hereby created for the 2nd Metering Arrangements Review to assist the PEM Auditor/PAC in the preparation and implementation of an independent review of the metering services of the NGCP:

Section 1. Composition. The Technical Working group (TWG) for an independent

review of the Metering Services of the National Grid Corporation of the Philippines shall be composed of:

Chairperson : Director Mylene C. Capongcol, DOE
Members : Mr. Ferdinand B. Binondo, DOE
Atty. Maria Lourdes San Andres, PEMC
Ms. Maria Delia B. Arenos, PEMC
Mr. Bienvenido D. Valeros, TransCo
PEM-TC
Alternates : Mr. Bienvenido C. Mendoza, PEMC
Joseph Roseller M. Atienza, TransCo
Michael C. Bernabe, TransCo

Section 2. Responsibilities. The TWG shall assist the PEM Auditor /PAC and will be performing the following tasks:

1. Conduct of on-site inspection/audit of metering facilities;
2. Prepare the schedule and grouping of metering facilities for audit/review;
3. Participate in the Preliminary/Technical Conferences and public consultations;
4. Craft the necessary documents and formulating review processes;
5. Review and assess the deliverables submitted by the External Auditor;
6. Attend meetings as may be called by the PEM Auditor/ PAC; and
7. Perform such other tasks as may be directed by the PEM Auditor/PAC.

Section 3. Regulatory Support. The Energy Regulatory Commission, consistent with its mandate to enforce the WESM Rules and regulate the transmission sector, shall extend assistance to this undertaking through an observer representative capable of providing technical and regulatory advise during the conduct of metering arrangements review.

Section 4. Confidentiality. All activities undertaken in the performance of such responsibilities by the TWG shall be approved

by the PEM Auditor/PAC in consultation with the DOE and shall be made with utmost confidentiality and ensure that all documents, data and information in connection with the bidding and the actual implementation of an independent review of the metering services of the NGCP shall not be released, reproduced or made available for other purposes.

Section 4. Effectivity. This Department Order shall take effect immediately.

Issued this 9th day of January 2014, Fort Bonifacio, Taguig City, Metro Manila.

(sgd) CARLOS JERICO L. PETILLA
Secretary

DEPARTMENT ORDER NO. DO2014-11-0019

CREATING THE DIRECT CONNECTION REVIEW AND EVALUATION COMMITTEE FOR THE PURPOSE OF PROCESSING AND RESOLVING DIRECT CONNECTION APPLICATIONS OF INDUSTRIAL ENTERPRISES/ END-USERS

WHEREAS, Republic Act No. 7638 otherwise known as the “Department of Energy Act of 1992,” or the Department of Energy (DOE) Charter mandates the Department to prepare, integrate, coordinate, supervise, and control all plans, programs, projects, and activities of the Government relative to energy exploration, development, utilization, distribution, and conservation, among others;

WHEREAS, Republic Act No. 9136 otherwise known as the “Electric Power Industry Reform Act of 2001” or (EPIRA) stated that it is the policy of the State to:

1. Ensure the quality, reliability, security, and affordability of the supply of electric power;
2. 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;
3. Protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power; and

4. Encourage the efficient use of energy and other modalities of demand side

WHEREAS, on 08 May 2014, the Energy Regulatory Commission (ERC or Commission) endorsed to the DOE all Direct Connection applications in compliance with the Supreme Court ruling in the Mactan Electric Company, Inc. (MECO) vs. NPC, etc (G.R. No. 172960); and

WHEREAS, in the above-cited case the Supreme Court ruled that the jurisdiction over disputes involving distribution of energy resource, specifically direct supply of electricity, belongs to DOE and not with the ERC.

NOW, THEREFORE, for and in consideration of the foregoing, it is hereby ordered as follows:

Section 1. Declaration of Principles and Policies. Consistent with the mandate of the DOE under the DOE Charter and the EPIRA, the following principles and policies are hereby ado[ted relative to the review and evaluation of all Direct Connection applications, to wit:

- a. The DOE shall promote the economic and efficient generation and transmission of electricity, with due regard to the capability of the franchised electric

distribution utility to serve the power requirements of such industrial enterprises; and

- b. The DOE shall ensure the provision of adequate and reliable power supplies for industrial enterprises with the end view of promoting investments and industrial development and generating exports and employment.

Section 2. Creation and Structure of Direct Connection-Review and Evaluation Committee (D-REC). To ensure orderly and transparent manner of processing and resolving Direct Connection applications, it is hereby constituted a Direct Connection - Review and Evaluation Committee (D-REC), with the following structure and composition:

A. Direct connection Review and Evaluation Committee (D-REC)

	Permanent	Alternate
Chair	Undersecretary supervising the Electric Power Industry Management Bureau (EPIMB)	Assistant Secretary supervising the EPIMB
Vice Chair	Director – EPIMB	Assistant Director - EPIMB
Members		
	Director - Legal Service (LS)	Chief - Contract Division, LS
	Director - Financial Service (FS)	Chief - Compliance Division, FS
	Representative,	National Electrification Administration (NEA)
	Representative,	National Grid Corporation of the Philippines (NGCP)
	Representative,	National Transmission Corporation (TransCo)
	Representative,	Power Sector Assets and Liabilities Management Corporation (PSALM)
	Representative,	Philippine Electricity Market Corporation (PEMC)

B. Direct Connection Review and Evaluation Committee - Technical Working Group (D-REC TWG)

Chairperson : Director, EPIMB

Vice Chairperson : EPIMB Division Chief Concerned

Members : Staff/s from EPIMB
: Staff/s from FS
: Staff/s from LS

The D-REC TWG may also invite members from attached agencies or entities that can contribute on the proper evaluation and resolution of Direct Connection applications.

C. D-REC Secretariat. There shall be a Secretariat of the D-REC to be pooled from the staff of EPIMB.

In order to ensure the timely evaluation of Direct Connection applications, which shall cover technical, financial and legal aspects, the DOE shall endeavor to provide logistics support to the EPIMB, subject to availability of funds, and usual accounting and auditing rules and regulations.

The maximum number of days for the processing of applications for Direct Connection shall be thirty (30) days from its submission at the Office of the Secretary. The evaluation and tracking system, include the timelines in the different evaluation stages shall be strictly observed.

Section 3. Functions and Duties. The duly-constituted Direct Connection-Review and Evaluation Committee (D-REC), Direct Connection-Review and Evaluation Committee - Technical Working Group (D-REC TWG), and Direct Connection-Review and Evaluation Committee Secretariat (D-REC Secretariat), shall perform the following functions and duties:

A. Direct Connection-Review and Evaluation Committee (D-REC)

- i. Reviews and evaluates the report submitted by the D-REC TWG.
- ii. Meets at least every month or as often as may be necessary to ensure

proper disposition of all applications and matters under its jurisdiction. Special meetings may be called upon by the Chairperson or upon the direction by the DOE Secretary.

- iii. Conducts consultations, focused group discussions, and/or formal hearings if necessary, in order to gather and determine all facts relating to the Direct Connection applications particularly from the petitioner industrial enterprises, concerned franchised distribution utilities, the NGCP and concerned generation companies, and other concerned groups. The evidences gathered will serve as bases for the recommendation to the DOE Secretary.

B. Direct Connection Review and Evaluation Committee - Technical Working Group (D-REC TWG)

- i. Conducts technical, financial and legal evaluation of Direct Connection applications based on the guidelines set by the Department.
- ii. Conducts coordination meetings with the petitioner, concerned franchised distribution utilities, and other concerned groups to clarify preliminary information.
- iii. Conducts site inspection and/or field verification to validate the technical, economics and feasibility of the Direct Connection applications.
- iv. Endorses to D-REC the Evaluation Report based on information and evidences gathered for review and evaluation.

C. Direct Connection Review and Evaluation Committee Secretariat (D-REC Secretariat)

- i. Prepares and distributes Notice of Meetings and order of business including invitation to concerned individuals duly issued by the D-REC Chairperson.
- ii. Records, prepares, and routes Minutes of Meetings, resolutions or decisions, and cause for the dissemination or publication thereof duly approved by the D-REC.
- iii. Provide administrative support to the D-REC.
- iv. Assist in the preparation of reports to be submitted to the Office of the Secretary.
- v. Assist in the monitoring of status on the evaluation processes as provided in relevant issuances of the Department.
- vi. Discharge such other duties as may be directed by the D-REC Chairperson.

Section 4. Appropriations and Sources. All expenses so appropriated necessary in the performance of the duties and functions of the D-REC and its Secretariat shall be charged against the respective bureaus, offices, or agencies fund and/or such appropriate sources subject to usual accounting and auditing rules and regulations.

Section 5. Effectivity. This Department Order shall take effect immediately. The EPIMB shall initiate the preliminary meeting of the D-REC together with the D-REC TWG and D-REC Secretariat.

Issued at Energy Center, Rizal Drive, Bonifacio Global City, Taguig City, Philippines.

(sgd) CARLOS JERICHO L. PETILLA
Secretary

November 11, 2014

DEPARTMENT ORDER NO. DO2016-12-0015

CREATING AN INDEPENDENT COMMITTEE TO REVIEW AND AUDIT THE FINANCIAL, OPERATIONAL AND SYSTEMS RECORDS OF THE PHILIPPINE ELECTRICITY MARKET CORPORATION

WHEREAS, under Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA), it is hereby declared policy of the State to, among others:

- d. ensure reliability and quality of supply of electric power;
- e. ensure transparent and reasonable prices accountability 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; and
- f. protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power.

WHEREAS, EPIRA mandated the Department of Energy (DOE) to supervise the restructuring of the electric industry and jointly with the electric power industry participants, establish the wholesale electricity spot market and formulate detailed rules governing the operations thereof; and

WHEREAS, consistent with the thrust of President Rodrigo R. Duterte to ensure protection of the public, particularly the Filipino electricity consumers, the DOE deemed it proper to constitute an independent committee to audit and review the financial, operational and systems records of the Philippine Electricity market Corporation (PEMC).

NOW THEREFORE, in consideration of the aforementioned premises, the following are hereby ordered:

Section 1. Creation and Composition. There is hereby created an independent committee to be composed of the following:

Chairman : Usec Jesus Cristino P. Posadas
Vice Chairman : Usec Felix William B. Fuentebella
Members : Asec Leonido Pulido
 Maria Teresa F. Mendoza
 Jose M. Layug, Jr.
 Araceli S. Soluta
 Thelma M. Cerdena

Section 2. Responsibilities. The committee shall have the following responsibilities:

- a. Conduct a review and audit of the financial, operational and systems records of PEMC;
- b. Submit a report of the results of its review to the DOE Secretary; and
- c. Perform such other responsibilities as the DOE Secretary may direct.

Section 3. Term and Completion of Report. The term of the committee shall end on February 28, 2017, or until the completion of its functions, whichever is earlier. The DOE Secretary may provide for a reasonable period of extension of the term upon the request of the committee.

Section 4. Secretariat and Technical Working Group. The DOE Financial Services, through its Compliance Division and Accounting Division. Is hereby authorized to provide technical and secretariat support during the conduct of meetings and other relevant activities of the committee.

Section 5. Confidentiality. Pursuant to Republic Act No. 9136, any confidential

information obtained in the course of the review shall be maintained in confidence. No statement shall be disclosed as to the contents of the committee's report prior to its submission to the DOE.

Section 6. Funding. Funding for the effective and efficient operation of the committee shall be sourced from any available funds of the DOE.

Section 7. Effectivity. This Order shall take effect immediately.

Issued this 28th day of November, 2016 at Energy Center, Rizal Drive, Fort Bonifacio Global, Taguig City.

(sgd) ALFONSO G. CUSI
Secretary

DEPARTMENT ORDER NO. DO2017-04-0004

DESIGNATING TRANSCO AS GRID OWNER TO PARTICIPATE IN THE PREPARATION, REVIEW AND EVALUATION OF THE TRANSMISSION DEVELOPMENT PLAN

WHEREAS, it is a declared policy of the State to ensure the quality, reliability, security and affordability of the supply of electric power and to protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power.

WHEREAS, quality, reliability, security and affordability is ensured by a comprehensively prepared the Philippine Energy Plan (PEP) which is prepared and updated by the Department of Energy (DOE) annually.

WHEREAS, the Transmission Development Plan (TDP) is a vital component of the PEP.

WHEREAS, the DOE is, likewise, mandated to monitor private sector activities relative to energy projects in order to attain the goals of the Restructuring, Privatization and Modernization of the electric power sector.

WHEREAS, Section 9 of the EPIRA and Rule 6, Section 7 of the Implementing Rules and Regulations (IRR) mandated the National Transmission Corporation (TransCo) and/or its Concessionaire, presently the National Grid Corporation of the Philippines (NGCP), to provide open and non-discriminatory access to its transmission system to all electricity

users, ensure and maintain the reliability, adequacy, security, stability and integrity of the nationwide electric grid in accordance with the performance standards for the operations and maintenance of the grid and set forth in the Philippine Grid Code (PGC), and improve and expand its transmission facilities, consistent with the PGS and the TDP to adequately serve generation companies, distribution utilities and suppliers requiring transmission service and/or ancillary services through the transmission system: *Provided*, That TransCo and /or its Concessionaire shall submit any plan for expansion or improvement of its facilities for approval by the Energy Regulatory Commission (ERC).

WHEREAS, Section 7.01 of the Concession Agreement states that NGCP, as Concessionaire, shall consult TransCo in preparing the TDP.

WHEREAS, Transco remains the owner of the transmission assets even after the privatization of the transmission business.

NOW THEREFORE, for and in consideration of the foregoing premises, the DOE hereby designates TransCo, as Grid Owner, and hereby orders the following:

Section 1. Transmission Development Plan (TDP). NGCP shall consult and actively involve TransCo from the early stage of the preparation of the TDP and at any stage thereafter, including but not limited to the formulation of the assumptions in the initial determination of proposals for expansion, upgrading, additional installations, power system studies i.e. load flow, contingency analysis, short circuit, dynamic studies, reliability, protection and communications assessment, among others.

NGCP shall provide all the technical data/documents, including the updated power system models of the power grids used for computer simulations, to DOE and TransCo as deemed necessary in the performance of TDP activities.

Prior to the submission to the DOE, TransCo shall formally certify that it was consulted in the preparation of the TDP.

Section 2. Compliance Monitoring. TransCo shall adopt and implement measures that are necessary to ensure NGCPs compliance with the TDP and in accordance to the terms and conditions set forth under the Concession Agreement, including but not limited to, the monitoring, evaluation and disclosure of the operational state of transmission assets, plans for the execution of project to improve or expand the transmission and substation facilities.

Section 3. Technical Studies and Grid Related Activities. TransCo shall conduct studies and perform such other related functions

that may be assigned by the DOE in the implementation of the PEP vis-a-sis the TDP. TransCo shall continue providing guidance on government policies and regulatory framework and directions, being the grid owner, in Grid Management Committee (GMSC) related activities, pursuant to the Philippine Grid Code.

Section 4. Capacity-Building. Subject to pertinent government policies, rules and regulations, TransCo is directed to strengthen its organizational capability and assure that this Order is carried out effectively without compromising the performance of other mandated responsibilities.

Section 5. Assistance from NGCP and Other Agencies Concerned. NGCP, as well as all other agencies concerned, is directed to provide all relevant data and information that the DOE and TransCo may require in the implementation of this Order.

Section 6. Separability Clause. If for any reason, any section or provision of this Order is declared unconstitutional or invalid, such parts not affected shall remain in full force and effect.

Section 7. Effectivity. This order shall take effect immediately and shall remain in effect until otherwise revoked.

Done this 04 April 2017, Energy Center, Bonifacio Global City.

(sgd) ALFONSO G. CUSI
Secretary

DEPARTMENT ORDER NO. DO2017-04-0006

CREATION OF A TASK FORCE TO REVIEW, STUDY AND LOOK INTO THE ALLEGATIONS OF IRREGULARITIES AND CORRUPTION IN THE ENERGY REGULATORY COMMISSION (ERC) AND MAKE RECOMMENDATIONS FOR THE DEPARTMENT, THE OFFICE OF THE PRESIDENT AND CONGRESS

WHEREAS, under Republic Act No. 9136 or the 2001 EPIRA Law, it is the declared policy of the State, among others, (1) to ensure the quality, reliability, security, and affordability of the supply of electric power; (2) to 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; (3) to protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power; and (4) to establish a strong and purely independent regulatory body and system to ensure consumer protection and enhance the competitive operation of the electricity market;

WHEREAS, the EPIRA Law converted the Energy Regulatory Board into the Energy Regulatory Commission (ERC) as the rate-fixing regulatory agency for energy in the country;

WHEREAS, due to the unfortunate suicide of one of ERC's directors last November 9, 2016, allegations of irregularities, prohibited practices and corruption in ERC was brought to light and has since then escalated to the point of rendering the Commission unable to effectively and efficiently perform its duties and functions as mandated by the EPIRA Law;

WHEREAS, the lamentable state of affairs in the ERC has resulted in backlogs in the approvals, applications, issuances and resolution of complaints and cases before the Commission;

WHEREAS, if the situation is not immediately resolved, this will adversely impact our already overburdened end-users and project a negative image for the energy industry which may potentially discourage prospective investors this administration has worked so hard to entice and bring in to do business in our country;

WHEREAS, the Department was recently furnished a copy of the Letter-Complaint dated 10 April 2017 and signed by four Commissioners of the ERC addressed to the Office of the President which was received with its corresponding attachments; and

WHEREAS, the Department is authorized under Section 37 (q) of the EPIRA Law to exercise such other powers as may be necessary and incidental to attain the objectives of this Act.

NOW, THEREFORE, in consideration of the above-mentioned premises, the following are hereby ORDERED.

Section 1. Creation and Composition. There is hereby created a Task Force to be composed of the following:

Chairman : Asec. Caron Aicitel E. Lascaño
Vice-Chairman : Atty. Arthus T. Tenasas
Members: Asec. Robert B. Uy
Asec. Leonido J. Pulido, III
Ms. Angelina V. Manga

Section 2. Responsibilities. The Task Force shall have the following responsibilities:

- a. Conduct a review, validation and further probe into the allegations contained in

the Letter-Complaint dated 10 April 2017;

- b. Study the recommendation included therein (if any), make a recommendation to the Secretary whether or not to endorse the same and other steps to take in order to assist and expedite its adoption and implementation;
- c. Make recommendations as to what other courses of action to take to include legal bases, rationale, and other relevant details;
- d. Make an assessment of the potential damage and impact and recommend measures to prevent or at least mitigate its adverse impact to the Commission, public and the industry sector;
- e. Report on findings of areas for improvement and make policy recommendations to correct or prevent the same problems from occurring the same; and
- f. Perform such other functions as the DOE Secretary may direct.

Section 3. Term and Completion. The term of the Task Force shall end upon the conclusion or complete performance of the responsibilities upon the submission of the Final Report in full compliance of its mandate

as directed in Section 2 above or 31 May 2017, whichever is earlier. The DOE Secretary may grant for reasonable period of extension upon justified request from the Task Force.

Section 4. Confidentiality. Given the sensitivity of some of matters and its potential impact to the public and the industry, the Task Force shall maintain the confidentiality and respect the sensitivities and wishes of the bereaved family of Atty. Francisco Villa, Jr. on matters not a matter of public knowledge. Further, the confidential nature of information obtained in the course of performance of the mandate of the task force shall be maintained. No statements may be made as to the findings of the committee or content of the report prior to its submission to the DOE Secretary.

Section 5. Funding. Necessary funding for the effective and efficient execution of the objectives of the Task Force shall be sourced from available funds of the Department.

Section 6. Effectivity. This Order shall take effect immediately.

Issued this 19th day of April 2017 at Energy Center, Rizal Drive, Fort Bonifacio Global, Taguig City, Philippines.

(sgd) ALFONSO G. CUSI
Secretary

DEPARTMENT ORDER NO. DO2017-07-0009

CREATING A TASK FORCE TO ENSURE IMMEDIATE RESTORATION OF POWER SERVICE IN THE AREAS AFFECTED BY THE EARTHQUAKE IN JARO, LEYTE AND FOR OTHER PURPOSES

WHEREAS, at 4:03 PM on 6 July 2017, a 6.5 magnitude earthquake hit Jaro, Leyte causing black out in Leyte, Samar and Bohol islands and power interruptions in Panay, Negros and Cebu islands.

WHEREAS, there is a need to nationalize and expedite rehabilitation efforts in energy and power infrastructures damaged and destroyed by the earthquake and restore power services to affected areas as fast and as safely as possible.

ACCORDINGLY, following the emergency meeting held on 7 July 2017, a Special task Force is hereby created.

1. **Composition** – The Task Force shall be composed of the following:

- Chairman – Usec. Felix William Fuentebella
- Vice Chairman – Asec. Caron Lascano
- Members – Director Mylene Capongcol
Asst. Dir. Irma C. Exconde
Director Antonio E. Labios
Mark Marollano
Beejee B. Dequina

2. **Functions** – The Task Force shall perform the following powers and functions:

- 2.1 Coordinate all rehabilitation activities of government agencies and private entities;
- 2.2 Coordinate and maintain linkages with local government units and private stakeholders to ensure fast and efficient implementation of rehabilitation efforts;
- 2.3 Monitor progress of rehabilitation efforts;

2.4 Make recommendations/studies in disaster preparedness/readiness to minimize damage and destruction of facilities in the event of future disasters;

2.5 Provide temporary power to affected areas. For this purpose, the Task Force shall consider the following:

- i. Deployment of Power Barges;
- ii. Utilization of Bohol Diesel Power Plant
- iii. Inventory of generation sets (gensets) needed to augment power supply and tap public and private institutions that can provide the needed gensets;
- iv. Designation of collection point for the gensets and identification of areas for deployment
- v. Determination of compensation for the genset owners and identification of source of funds.

The Task Force shall ensure that the use of alternative power suppliers shall not add further burden to the consumers.

2.6 Such other functions necessary to effect the foregoing.

3. **Submission of Report** – The Task Force shall regularly submit a progress report to the undersigned and shall, within 15 days upon completion of the functions stated here, submit a comprehensive report.

4. **Effectivity** – This Department Order shall take effect immediately and shall remain in full force and effect until the completion of the foregoing functions.

7 July 2017.

(sgd) ALFONSO G. CUSI
Secretary

DEPARTMENT ORDER NO. DO2017-07-0010

CREATING THE TRANSITION COMMITTEE FOR THE INTERIM MANAGEMENT OF THE PHILIPPINE ELECTRICITY MARKET CORPORATION AND THE WHOLESALE ELECTRICITY SPOT MARKET

WHEREAS, under Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA), it is hereby declared policy of the State to, among others:

- a. ensure reliability and quality of supply of electric power;
- b. ensure transparent and reasonable prices accountability 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; and
- c. protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power.

WHEREAS, EPIRA mandated the Department of Energy (DOE) to supervise the restructuring of the electricity industry, establish the wholesale electricity spot market (WESM) and jointly with the electric power industry participants, formulate the detailed rules governing the operations thereof;

WHEREAS, the Philippine Electricity Market Corporation (PEMC) was constituted as the autonomous group market operator (AGMO), and as such performs the Market Operator functions in the WESM as well as its governance;

WHEREAS, the DOE recognizes the need to adapt the WESM to the current environment and prepare it to meet the challenges of the future;

WHEREAS, in furtherance of the above objective, and consistent with the thrust of President Rodrigo R. Duterte to ensure the protection of the public, particularly the Filipino electricity consumers, it is essential to constitute a Transition Committee for the interim management of PEMC and the WESM and for the discharge of the specific mandate set out herein upon approval of the PEMC Board of Directors.

NOW, THEREFORE, in consideration of the aforementioned premises, the following are hereby ordered:

Section 1. Creation and Composition. There is hereby created the Transition Committee to be composed of the following:

Chairman : Atty. Oscar E. Ala
Members : Atty. Francis Saturnino C. Juan
Atty. Jose M. Layug, Jr.
Mr. Rauf A. Tan
Mr. Jose Mari T. Bigornia

The Transition Committee shall be created and shall perform the functions and responsibilities set out below upon the confirmation and approval of the PEMC Board of Directors.

Section 2. Responsibilities. The Transition Committee shall ensure the effective and efficient management and operation of the PEMC and the WESM. It shall have the following specific responsibilities:

- a. Exercise such powers and perform such duties as set out in Article X, Section 5 of the PEMC By-Laws;
- b. Validate the soundness of the information system and ascertain that the information technology resources and system are appropriate, effective, efficient, flexible and adaptable;
- c. Ensure the responsiveness of the organization and its human resources;
- d. Clarify the role and responsibilities of the WESM in the Retail Competition and Open Access;
- e. Carry out proper measures in the conduct of its responsibilities;
- f. Propose a way forward for the WESM to adapt to the current environment and prepare it to meet the challenges of the future; and
- g. Perform such other responsibilities as the DOE Secretary may direct and as the

PEMC Board of Directors may delegate under Article IX, Section 2 (Delegation of Powers) of the PEMC By-Laws.

Section 3. Term. The term of the Transition Committee shall be for seven (7) months and shall commence on 01 August 2017 and end on 1 March 2018, or until the completion of its functions, whichever is earlier. The DOE Secretary, with the confirmation of the PEMC Board of Directors, may provide for a reasonable period of extension of the term upon the request of the committee.

Section 4. Honoraria. The members of the Transition Committee shall receive the appropriate honoraria as may be approved by the DOE Secretary and confirmed by the PEMC Board of Directors. The funding for the effective and efficient operation of the Transition Committee shall be sourced from the funds of the PEMC.

Section 5. Effectivity. This Order shall take effect immediately.

Issued this 28th day of July, 2017 at Energy Center, Rizal Drive, Fort Bonifacio Global, Taguig City.

(sgd) ALFONSO G. CUSI
Secretary

CASES

CASES

Republic of the Philippines
SUPREME COURT
Manila

SECOND DIVISION

G.R. Nos. 176935-36, October 20, 2014

RESOLUTION

ZAMBALES II ELECTRIC COOPERATIVE, INC. (ZAMECO II) BOARD OF DIRECTORS, NAMELY, JOSE S. DOMINGUEZ (PRESIDENT), ISAIAS Q. VIDUA (VICE-PRESIDENT), VICENTE M. BARRETO (SECRETARY), JOSE M. SANTIAGO (TREASURER), JOSE NASERIV C. DOLOJAN, JUAN D. FERNANDEZ AND HONORIO L. DILAG, JR. (MEMBERS), *Petitioners*, v. CASTILLEJOS CONSUMERS ASSOCIATION, INC. (CASCONA), REPRESENTED BY DOMINADOR GALLARDO, DAVID ESPOSO, CRISTITA DORADO, EDWIN CORPUZ, E. ROGER DOROPAN, JOSEFINA RAMIREZ, FERNANDO BOGNOT, JR., CARMELITA DE GUZMAN, MAXIMO DE LOS SANTOS, AURELIO FASTIDIO, BUENAVENTURA CELIS, ROBERTO LADRILLO, CORAZON ACAYAN, CARLITO CARREON, EDUARDO GARCIA, MARCIAL VILORIA, FILETO DE LEON AND MANUEL LEANDER, *Respondents*,

ZAMBALES II ELECTRIC COOPERATIVE, INC. (ZAMECO II) BOARD OF DIRECTORS, JOSE S. DOMINGUEZ (PRESIDENT), ISAIAS Q. VIDUA (VICE-PRESIDENT), VICENTE M. BARRETO (SECRETARY), JOSE M. SANTIAGO (TREASURER), JOSE NASERIV C. DOLOJAN, JUAN D. FERNANDEZ AND HONORIO L. DILAG, JR. (MEMBERS), *Petitioners*, v. NATIONAL ELECTRIFICATION ADMINISTRATION (NEA) NEA-OFFICE OF THE ADMINISTRATIVE COMMITTEE, ENGR. PAULINO T. LOPEZ AND CASTILLEJOS CONSUMERS ASSOCIATION, INC. (CASCONA), *Respondents*.

BRION, J.:

The Court notes the March 25, 2010 Report submitted by the Court of Appeals (CA) pursuant to our March 13, 2009 Decision¹ and takes this Report into account in fully resolving the case in caption.

By way of background, our March 13, 2009 Decision remanded the case to the CA to resolve the factual issue raised in relation with the registration of Zambales II Electric Cooperative, Inc. (ZAMECO II) with the Cooperative Development Authority (CDA). We needed to settle these factual issues to determine whether the November 24, 2004² resolution and February 15, 2005 decision³ of the National Electrification Administration (the NEA) may still be enforced against petitioners Jose S. Dominguez, Isaias Q. Vidua, Vicente M. Barreto, Jose M. Santiago, Jose Naseriv C. Dolojan, Juan D. Fernandez and Honorio L. Dilag, Jr. (petitioners).cralawred

Factual Antecedents

I. Background

The NEA proceedings

The petitioners are members of the Board of Directors of the ZAMECO II, an electric cooperative organized and registered under Presidential Decree (P.D.) No. 269.⁴ Castillejos Consumers Association,

Inc. (CASCONA), on the other hand, is an organization of electric consumers from the municipality of Castillejos, Zambales under the coverage area of ZAMECO II.

On November 21, 2002, CASCONA filed a letter-complaint⁵ with the NEA seeking the removal of the petitioners from the Board based **on the NEA's June 25, 1998 Financial Audit Report of ZAMECO II for the period January 1, 1989 to September 30, 1997.**⁶ The NEA endorsed the letter-complaint⁷ to the NEA-Office of the Administrative Committee (the *NEA-ADCOM*), which in turn immediately set the case for mandatory conference after completion of the exchange of pleadings between the parties. The NEA-ADCOM thereafter issued its Report and Recommendations,⁸ recommending the removal of the petitioners from office. The NEA-ADCOM's Report and Recommendations was eventually endorsed to the NEA for its consideration.

On November 24, 2004, the NEA issued its resolution⁹ (*NEA Resolution*) removing the petitioners from office with the accessory penalty of perpetual disqualification to run for the same position.¹⁰ To address the operational vacuum caused by the petitioners' removal, the NEA urged the NEA Administrator to designate a Project Supervisor to manage the operations of ZAMECO II, until the election and constitution of a new set of Board of Directors.¹¹

In arriving at its conclusions, the NEA relied on the NEA-ADCOM's Report and Recommendations and **the July 24, 2003 Audit Report** that was not part of the letter-complaint,¹² or of the proceedings before the NEA-ADCOM. The petitioners thus moved for reconsideration of the NEA resolution contending that they had been denied due process as they had never been notified of the charges based on the July 24, 2003 Audit Report.

The NEA, however, would later deny the petitioners' motion for reconsideration,¹³ in its February 15, 2005 decision (*NEA decision*), prompting the petitioners to seek the CA's intervention, under Rule 43 of the Rules of Court, docketed as CA-G.R. No. SP 88845.¹⁴

Previously, the NEA also designated Engr. Paulino T. Lopez as ZAMECO II's Project Supervisor in its Office Order No. 2005-003 (*NEA Office Order*).¹⁵ The petitioners promptly questioned this NEA Office Order with the CA via a Rule 65 special civil action for *certiorari*, with prayer for a temporary restraining order (*TRO*),¹⁶ docketed as CA-G.R. SP No. 88195.

The CA eventually consolidated these two cases,¹⁷ and on October 4, 2006, rendered its decision,¹⁸ denying both petitions and affirming the assailed the NEA issuances. The petitioners timely moved for reconsideration,¹⁹ but the CA denied their motion.²⁰ The petitioners then filed the present Rule 45 petition for review²¹ with this Court.

The Rule 45 proceedings

The petitioners argued that the NEA's jurisdiction over electric cooperatives originated from the loans extended by the NEA. According to the petitioners, Republic Act (R.A.) No. 9136, otherwise known as the "*Electric Power Industry Reform Act of 2001*" (EPIRA),²² effectively abrogated the NEA's power to supervise and control electric cooperatives after it transferred to the Power Sector Assets and Liabilities Management Corporation (*PSALM*) all outstanding financial obligations of electric cooperatives to the NEA.²³ They likewise claimed a denial of due process as the NEA failed to notify them of the charges based on the July 24, 2003 Audit Report. **Subsequently, the petitioners filed a supplemental petition,²⁴ contending that ZAMECO II's**

registration with the CDA on December 4, 2007, had ousted the NEA of its jurisdiction.

The NEA, in its Comment²⁵ of November 18, 2008, assailed the validity of ZAMECO II's registration with the CDA. It claimed that ZAMECO II failed to comply with the EPIRA's formal conversion requirements to structure either as a stock cooperative under R.A. No. 6938 (*Cooperative Code*), in relation to R.A. No. 6939,²⁶ or as a stock corporation under the Batas Pambansa Blg. 68 (*Corporation Code*), before it registered with the CDA. The NEA thus insisted on assuming jurisdiction over ZAMECO II in light of its invalid registration.²⁷

The Court's March 13, 2009 Decision. We denied the petitioners' petition for lack of merit in our Decision²⁸ of March 13, 2009. We ruled that the NEA's regulatory power over electric cooperatives is not dependent on the existence of any creditor-debtor relationship between them. The passage of the EPIRA and its creation of the PSALM, which assumed all outstanding financial obligations of electric cooperatives, did not therefore affect the power of the NEA particularly over administrative cases involving the board of directors, officers and employees of electric cooperatives.

The NEA's authority is expressly recognized under the last paragraph of Section 58, Chapter VII of the EPIRA, which states that *"the NEA shall continue to be under the supervision of the [Department of Energy] and shall exercise its functions under [P.D. No. 269], as amended by [P.D. No. 1645]²⁹ insofar as they are consistent with this Act."*

Although we agreed with the petitioners' observation that they had been denied due process before the NEA, as they had not been informed of the charges based

on the July 24, 2003 Audit Report, we refused to nullify the entire proceedings. We found substantial evidence to support the other allegations in the letter-complaint, to justify the petitioners' removal from office.

Lastly, while we upheld the NEA's assumption and exercise of jurisdiction over electric cooperatives, we recognized the adverse effect of ZAMECO II's **supposed registration with the CDA as a stock cooperative** on the NEA's power to enforce its assailed resolution and decision. Since the validity of ZAMECO II's registration involved a factual question, we remanded the case to the CA for further proceedings. To quote our ruling:

WHEREFORE, the instant case is hereby REMANDED to the Court of Appeals for further proceedings in order to determine whether the procedure outlined in Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001, and its Implementing Rules for the conversion of an electric cooperative into a stock cooperative under the Cooperative Development Authority had been complied with. The Court of Appeals is directed to raffle this case immediately upon receipt of this Decision and to proceed accordingly with all deliberate dispatch. Thereafter, it is directed to forthwith transmit its findings to this Court for final adjudication. No pronouncement as to costs.

Motion for Partial Reconsideration and the Court's August 10, 2009 Resolution

The petitioners moved for reconsideration of our March 13, 2009 Decision on the ground that the EPIRA's condonation of these NEA loans *ipso facto* deprived the NEA of any power to regulate or supervise ZAMECO II.³⁰ The petitioners further argued that a CDA certificate of registration is a conclusive evidence of registration under the Cooperative Code; it was thus unnecessary

to remand the case to the CA to resolve the factual issue of validity of registration.³¹ We denied the petitioners' Motion for Partial Reconsideration for lack of merit in our August 10, 2009 Resolution.³²

Entry of Judgment and its subsequent recall in view of the denial of the petitioners' Motion for Partial Reconsideration, this Court issued an Entry of Judgment on September 2, 2009,³³ stating that our March 13, 2009 Decision had become final and executory. The petitioners, afterwards, promptly filed a motion to set aside the entry of judgment on the sole ground that our March 13, 2009 Decision is an interlocutory order.³⁴

On February 3, 2010, we granted the petitioners' motion³⁵ and recalled the Entry of Judgment as our Decision was interlocutory in character. It **still left something to be done** by the CA, *i.e.*, to determine whether the proceedings outlined in the EPIRA and its Implementing Rules and Regulations (IRR), for the conversion of an electric cooperative into a stock cooperative under the CDA, had been complied with. In this sense, our March 13, 2009 Decision cannot attain a final and executory character.

II. CA's Compliance Report

On March 25, 2010, the CA submitted its Report pursuant to our March 13, 2009 Decision. The CA found that **ZAMECO II's registration with the CDA did not comply with the referendum requirement under the EPIRA's IRR.** In the absence of a referendum, ZAMECO II failed to obtain the required simple majority vote in order to validly convert it into either a stock cooperative or a stock corporation. On June 16, 2010 we issued a resolution noting the CA's Report.³⁶

The Court's Ruling

In view of the CA's Report, we find no reason to depart from our March 13, 2009

Decision and August 10, 2009 Resolution. Before proceeding to discuss the validity of ZAMECO II's registration in 2007, however, we shall first determine the basis of the NEA's jurisdiction up to the time of its challenge by the petitioners.

A. The NEA's creation and disciplinary jurisdiction

The present NEA was created in 1973 under P.D. No. 269 to administer the country's total electrification on an area coverage basis, by organizing, financing and regulating electric cooperatives throughout the country. The NEA's enforcement powers under P.D. No. 269, however, was limited.³⁷

In 1979, P.D. No. 1645 amended P.D. No. 269 and **broadened the NEA's regulatory powers, among others.** Specifically, the amendments **emphatically recognized the NEA's power of supervision and control** over electric cooperatives; and **gave it the power to conduct investigations, and impose preventive or disciplinary sanctions over the board of directors** of regulated entities. Section 10 of P.D. No. 269, as amended by P.D. No. 1645

Section 10. Enforcement Powers and Remedies. **In the exercise of its power of supervision and control over electric cooperatives** and other borrower, supervised or controlled entities, **the NEA is empowered to issue orders, rules and regulations and motu-propio or upon petition of third parties, to conduct investigations, referenda and other similar actions in all matters affecting said electric cooperatives and other borrower, or supervised or controlled entities.**

If the electric cooperative concerned or other similar entity fails after due notice to comply with the NEA orders, rules and regulations and/or decisions, or with any

of the terms of the Loan Agreement, the NEA Board of Administrators may avail of any or all of the following remedies:

x x x x

(e) Take preventive and/or disciplinary measures including suspension and/or removal and replacement of any or all of the members of the Board of Directors, officers or employees of the Cooperative, other borrower institutions or supervised or controlled entities as the NEA Board of Administrators may deem fit and necessary and to take any other remedial measures as the law or the Loan Agreement may provide.
[Emphasis supplied]

Likewise, Section 24 of P.D. No. 269, as amended by P.D. No. 1645, stressed that the board of directors of a regulated electric cooperative is subject to the NEA's control and supervision. That provision

Section 24. Board of Directors. (a) The Management of a Cooperative shall be vested in its Board, subject to the supervision and control of the NEA which shall have the right to be represented and to participate in all Board meetings and deliberations and to approve all policies and resolutions.
[Emphasis supplied]

The NEA's **disciplinary jurisdiction** over the petitioners stems from **its power of supervision and control over regulated electric cooperatives** and over the board of directors who manage their operation. In the exercise of this broad power, the NEA may take preventive and/or disciplinary measures including the suspension, removal and replacement of any or all of the members of the board of directors, officers or employees of the cooperative.

B. The Cooperative Code and the CDA

The enactment in March 1990 of the Cooperative Code³⁸ and R.A. No. 6939 establishing the CDA **did not automatically divest the NEA of its control over the NEA's regulated entities.**

Although Section 9 of R.A. No. 6939 transferred the NEA's registration functions of electric cooperatives to the CDA,³⁹ the transfer did not amount to the consequent renunciation of the NEA's regulatory jurisdiction. In fact, **the Cooperative Code cautions us against such a wholesale interpretation** when it emphatically expressed *"that nothing in this Code shall be interpreted to mean the amendment or repeal of any provision of [P.D. No.] 269."*⁴⁰

R.A. No. 6939 and the Cooperative Code outline the **registration procedure for the NEA cooperatives to qualify and register with the CDA** to remove an electric cooperative from the NEA's coverage and disciplinary jurisdiction.⁴¹ Section 128 of the Cooperative Code provides:chanroblevirtuallawlibrary

Section 128. Transitory Provisions.
- All cooperatives registered under Presidential Decrees Nos. 175 and 775 and Executive Order No. 898, and all other laws shall be deemed registered with the Cooperative Development Authority: *Provided, however, That they shall submit to the nearest Cooperative Development Authority office the certificate of registration, copies of the articles of cooperation and by-laws and their latest duly audited financial statements within one (1) year from the effectivity of this Act, otherwise their registration shall be cancelled: Provided further, That cooperative created under Presidential Decree No. 1645, shall be given three (3) years within which to qualify and register with the Authority: Provided finally, That after these*

cooperatives shall have qualified and registered, the provisions of Sections 3 and 5 of Presidential Decree No. 1645 shall no longer be applicable to said cooperatives. [Emphasis supplied]

Section 17 of R.A. No. 6939 similarly provides:

Section 17. Transitory Provisions. - All cooperatives registered under Presidential Decree Nos. 175 and 775, and Executive Order No. 898 shall be deemed registered with the Cooperative Development Authority: Provided, however, That they shall submit to the nearest Cooperative Development Authority office their certificates of registration, copies of their articles of incorporation and bylaws, and their latest duly audited financial statements within one (1) year from effectivity of this Act, otherwise, their registration shall be cancelled: **Provided, further, That cooperatives created under Presidential Decree No. 269, as amended by Presidential Decree No. 1645, shall be given three (3) years within which to qualify and register with the Authority: Provided, finally, That after these cooperatives shall have qualified and registered, the provisions of Sections 3 and 5 of Presidential Decree No. 1645 shall no longer be applicable to the said cooperatives.** [Emphasis ours]

It is thus essential that ZAMECO II registers within three (3) years from the effectivity of R.A. No. 6939 and the Cooperative Code (i.e., on April 1, 1990) to place it outside the NEA coverage. Records indubitably show that ZAMECO II failed to qualify and register within the three-year statutory period; its supposed certificate of registration was issued only on December 4, 2007⁴² or seventeen (17) years after the effectivity of the Cooperative Code⁴³ and R.A. No. 6939.

C. **The EPIRA P.D. No. 269 Electric Cooperatives under the EPIRA**

The EPIRA, which took effect in 2001, instituted institutional reforms in the electric power industry and its regulation. One notable change was the creation of the Energy Regulatory Commission (ERC) tasked with the regulation of the restructured electric power industry, the promotion of competition, the encouragement of market development, choice and the use of sanctions for the abuse of market power.⁴⁴ The EPIRA likewise considered an electric cooperative organized under P.D. No. 269, to be a distribution utility, over which the ERC exercises jurisdiction.⁴⁵

A reading of the EPIRA, however, shows that the ERC's jurisdiction pertains to and is exercised in conjunction with the ERC's highly technical mandate.⁴⁶ This is completely different from the NEA's own jurisdiction that is largely administrative and comparatively less technical in character. In short, the functions of these two agencies are not inconsistent with the supervisory power exercised by the NEA or with the ERC's own power under the EPIRA. Far from expressly divesting the NEA of its jurisdiction, the **EPIRA continued to recognize the NEA's jurisdiction** by expressly providing that the NEA shall continue to exercise its functions under P.D. No. 269, as amended by P.D. No. 1645, "insofar as they are consistent with this Act."⁴⁷

ii. **Conversion of Electric Cooperatives under the EPIRA**

To promote rural electrification, the EPIRA gave electric cooperatives the option to convert into either a stock cooperative under the Cooperative Code, in relation to R.A. No. 6939, or a stock corporation under the Corporation Code. This conversion, in turn, requires

the “approval of a simple majority of the required number of turnout of voters as provided in the [Guidelines] in a referendum conducted for [the] purpose.” In either case, a “successful conversion” would effectively place an electric cooperative outside the NEA’s disciplinary jurisdiction, and within the coverage of the CDA or the Securities and Exchange Commission (SEC), as the case may be.⁴⁸ Section 57 of the EPIRA provides:

Section 57. Conversion of Electric Cooperatives. - Electric cooperatives are hereby given the option to convert into either stock cooperative under the Cooperatives Development Act or stock corporation under the Corporation Code. Nothing contained in this Act shall deprive electric cooperatives of any privilege or right granted to them under existing laws, particularly those under the provisions of Republic Acts No. 6938, 7160 and 8241.

Rule 7, Section 7(c)(i) of the EPIRA’s IRR provides that the conversion and registration shall be implemented in the following manner :

x x x x

- (i) [Electric Cooperatives] shall, upon approval of a simple majority of the required number of turnout of voters as provided in the Guidelines in the Conduct of Referendum (Guidelines), in a referendum conducted for such purpose, be converted into a Stock Cooperative or Stock Corporation and thereafter shall be governed by the Cooperative Code of the Philippines or the Corporation Code, as the case may be. The NEA, within six (6) months from the effectivity of these Rules, shall promulgate the guidelines in accordance with Section 5 of Presidential Decree No. 1645.

On this critical point, we see no reason to depart from the findings of the CA. As the petitioners themselves admitted, the requirements for conversion were not observed prior to their registration with the CDA.⁴⁹ During the CA proceedings, counsel for the petitioners, Atty. Alberto Jacinto, categorically admitted the following:chanroblesvirtuallawlibrary x

x x x

JUSTICE BARZA:

My question is simple, did you comply with the procedures outlined in Republic Act No. 9136 [EPIRA]?

ATTY. JACINTO:

With respect to referendum, no Your Honor.

x x x x

JUSTICE BARZA:

What about the obtainment of a simple majority vote, was there?

ATTY. JACINTO:

There was none, Your Honor.

x x x x⁵⁰

In short, the CDA’s issuance of a certificate of registration in favor of ZAMECO II in **December 2007 did not operate to oust the NEA of its jurisdiction because the petitioners failed to comply with the statutory requirement of conversion outlined under the EPIRA.** The petitioners cannot claim that ZAMECO II was validly converted under the Cooperative Code (in relation with R.A. No. 6939) because the period to qualify and register under these laws

had already lapsed. Thus, the lack of a proper registration with the CDA justifies the NEA's continued exercise of jurisdiction over the petitioners.

D. ***Implied repeal by R.A. No. 9520 and the doctrine of adherence of jurisdiction***
On March 22, 2009, Congress enacted **R.A. No. 952051 which amended the Cooperative Code and renamed it as the Philippine Cooperative Code of 2008.**

Among the significant changes introduced by the Philippine Cooperative Code of 2008 was the inclusion of a new chapter applicable specifically to electric cooperatives.⁵² According to the petitioners, the Philippine Cooperative Code of 2008 **categorically considered electric cooperatives as registered** electric cooperatives if they had previously registered with the CDA under the Cooperative Code, **without need to convert themselves into stock cooperatives.**

In support of their allegations, the petitioners cited Article 132(6) of the Philippine Cooperative Code of 2008, which provides that **“[e]lectric cooperatives registered and confirmed with the [CDA] under [the Cooperative Code] and [R.A.] No. 6939 are hereby deemed registered under [the Philippine Cooperative Code of 2008].”** Pursuant to this **alleged recognition of registration** enshrined under Philippine Cooperative Code of 2008, the petitioners, citing Article 132(3) of the Philippine Cooperative Code of 2008,⁵³ insisted that the NEA could no longer exercise disciplinary jurisdiction over ZAMECO II and its board of directors. In addition, the petitioners stressed that the repealing clause of the Philippine Cooperative Code of 2008 expressly repealed Section 10 of P.D. No. 269, as amended by P.D. No. 1645, which deals with the NEA's enforcement powers and remedies.⁵⁴

In their discussions, the petitioners heavily relied on the selective interpretation of Articles 132 and 143 of the Philippine Cooperative Code of 2008. We, however, do not consider the petitioners' arguments to be sufficiently persuasive for the reasons we discuss below.

The statute must be construed as a whole

i. ***The Philippine Cooperative Code of 2008 merely continued the requirement under the EPIRA's IRR***

It is a basic rule of statutory construction that a law must be construed as a whole. This means that the meaning of the law or its intent (to repeal or not an earlier law) is not to be extracted from a single part, portion or section or from isolated words and phrases, clauses or sentences, but from a general consideration or view of the act as a whole.⁵⁵ In short, every provision of the law must be considered together with the other provisions, and must be kept subservient to the general intent of the enactment as a whole.⁵⁶

Applying this principle to the present case, we find that the supposed inconsistency between the EPIRA and the Philippine Cooperative Code of 2008 is more apparent than real. A reading of the law in its entirety shows that far from dispensing with the requirement of conversion, Congress even expressly adopted and continued the similar procedural requirement under the EPIRA's IRR before an electric cooperative may be registered with the CDA and be entitled to the provisions of the Cooperative Code and the Philippine Cooperative Code of 2008. Articles 127 and 128 of Philippine Cooperative Code of 2008 categorically state:

x x x x

ART. 127. *Registration of Electric Cooperatives.* – **The registration of an electric cooperative with the Authority under this Code shall be submitted for approval to the members through a referendum, called for the purpose as provided for under Articles 183 and 129 of this Code.**

ART. 128. *Voting Requirement for Registration.* – In compliance with the referendum as a voting procedure, the required number of votes for registration with the Authority shall be twenty percent (20%) of all members in good standing. (Emphasis supplied)

x x x x

Notably, the aforesaid provisions of the Philippine Cooperative Code of 2008 expressly require that the registration of an electric cooperative with the CDA shall be submitted for approval to the members through a referendum.⁵⁷ It also provides that for purposes of the referendum requirement, the required number of votes for registration with the CDA shall be twenty percent (20%) of all members in good standing.⁵⁸ If only to stress the requirement for a referendum, one of the documents required to be submitted for purposes of registration is a copy of the board resolution certifying to the result of the vote approved through a referendum approving the registration of the cooperative with the CDA.⁵⁹

In other words, ***the requirement for a referendum under the Philippine Cooperative Code of 2008, which is similar to the requirement under the IRR of the EPIRA strongly militates against the claim that the Philippine Cooperative Code of 2008 deprived the NEA of its jurisdiction simply because of the supposed registration with the CDA.*** Congress's continued recognition

of the need for conducting a referendum as a condition for registration speaks very loudly against the petitioners' suggestion of a repeal of this significant statutory requirement by ***the Philippine Cooperative Code of 2008.***

The rationale for the requirement of a referendum under both laws is that the conversion of an electric cooperative from a non-stock cooperative under P.D. No. 269, as amended, to either a stock cooperative or a stock corporation — previously, under the Cooperative Code and currently, under the EPIRA and the Philippine Cooperative Code of 2008— is a matter that affects the ownership status of the consumers-members of the cooperatives themselves. Since the cooperatives operate on the principles, among others, of voluntary and open membership⁶⁰ and democratic control, then a matter that directly touches on these principles must be decided by the cooperative's membership.

At this point, we observe that even the petitioners themselves recognized the necessity of conversion under the IRR of the EPIRA by attempting to comply with this requirement, albeit belatedly. This recognition is apparent from the letter by ZAMECO II's General Manager to the Mayor of the Municipality of Castillejos, Zambales, informing him of ZAMECO II's registration with the CDA. This letter in part states:

x x x x

Accordingly, the ZAMECO II Board of Directors passed [a resolution] on **September 13, 2008** calling for a Special General Membership Assembly x x x to conduct massive information drives and referenda **leading to conversion** of our electric cooperative into a stock cooperative and the issuance of Credit Memorandum to be

converted into Membership Equity Shares, eventually conferring evidence of ownership of ZAMECO II to its Members-Customers-Owners (MCOs).

x x x

The agenda x x x includes x x x Discussion on the Pros (Advantages) and Cons (Disadvantages) of Conversion; x x x⁶¹

x x x x

Accordingly, it is too late in the day for the petitioners to change their position.

ii. Section 132(6) of the Philippine Cooperative Code of 2008 does not refer to cooperatives registered under the EPIRA

We also find applicable to the present case the rule that *repeals by implication* are not favored. An implied repeal will not be allowed *unless it is convincingly and clearly demonstrated that the two laws are clearly repugnant and patently inconsistent with each other that they cannot co-exist*.⁶²

Accordingly, courts will only recognize and give a repealing effect to a new law once it is clearly shown that in enacting the new law, Congress' intent was to abrogate the old one. The intention to repeal must be clear and manifest; otherwise, at least, as a general rule, the later act is to be construed as a continuation of, and not a substitute for, the first act and will continue insofar as the two acts are the same from the time of the first enactment.⁶³ The requirement of patent inconsistency for implied repeal to apply is miserably wanting in this case.

Notably, the Philippine Cooperative Code of 2008 clearly distinguishes **the kind of registration** with the CDA that produces jurisdictional implications insofar

as existing electric cooperatives are concerned. Article 132 of the Philippine Cooperative Code of 2008 provides as follows: ART. 132. *Effects of Registration with the Authority.* –

- (1) Upon the effectivity of this Code, **electric cooperatives that are duly registered with the Authority, and issued a certificate of registration, shall no longer be covered by Presidential Decree No. 269**, as amended by Presidential Decree No. 1645: Provided, That electric cooperatives registered with the Authority shall now be covered by the provisions of this Code as well as future rules and issuances of the Authority: *Provided, however*, That the security of tenure and the collective bargaining agreement between the cooperative management and the employees shall be respected, with no diminution of their existing salaries, emoluments, ranks and other benefits;
- (2) The electric cooperatives registered with the Authority with existing loans obtained from the NEA after June 26, 2001 shall continue to observe the terms of such loans until full payment or settlement thereof;
- (3) Except as provided in the immediately preceding paragraph, the **NEA shall no longer exercise regulatory or supervisory powers on electric cooperatives duly registered with the Authority**;
- (4) Electric cooperatives registered with the Authority are entitled to congressional allocations, grants, subsidiaries and other financial assistance for rural electrification which can be coursed through the Department of Energy, the Authority and/or local government units. The electric cooperatives

registered under this Code can avail of the financial services and technical assistance provided by the government financial institutions and technical development agencies on terms respecting their independence as autonomous cooperatives;

- (5) All condoned loans, subsidies, grants and other assistance shall form part of the donated capital and funds of the electric cooperatives and as such, it shall not be sold, traded nor be divided into shareholdings at any time; these donated capital/fund shall be valued for the sole purpose of determining the equity participation of the members: *Provided*, That in the case of dissolution of the cooperative, said donated capital shall be subject to escheat; and
- (6) **Electric cooperatives registered and confirmed with the Authority under Republic Act No. 6938 [the Cooperative Code] and Republic Act No. 6939 are hereby deemed registered under this Code.** [Emphasis supplied].

A reading of the above-provision would lead to two important observations. First, only those electric cooperatives that “are **duly registered** with the [CDA] **and issued a certificate of registration** ***at the time of the effectivity of the Philippine Cooperative Code of 2008*** (or on April 6, 2009) are excluded from the NEA’s jurisdiction under P.D. No. 269, as amended. If this electric cooperative obtained a loan from the NEA after the EPIRA took effect on June 26, 2001, the NEA may exercise regulatory or supervisory powers over it but only for the purpose of enforcing the terms of the loan until its full payment or settlement.⁶⁴ **Second**, electric cooperatives that are registered and ***confirmed with the CDA under the Cooperative Code in***

relation to R.A. No. 6939 are “**deemed registered**” under the law.⁶⁵ Article 144 of the Philippine Cooperative Code of 2008, pertinently reads:

ART. 144. Transitory Provisions.-
(1) All cooperatives registered and confirmed with the Authority under **Republic Act No. 6938 and Republic Act No. 6939**, are hereby **deemed registered** under this code, and a new certificate of registration shall be issued by the authority: *Provided*, That such cooperative shall submit to the nearest office of the authority a copy of their certificate of registration or certificate of confirmation, the articles of cooperation, their bylaws, and their latest audited financial statement within one (1) year from the effectivity of this code, otherwise the (sic) shall be deemed cancelled *motu proprio*.

(2) Following the issuance of the new certificate of registration, the registered cooperatives shall secure their certificate of tax exemption from the nearest office of the Bureau of Internal Revenue (BIR): *Provided*, That such exemptions shall be valid of (sic) five (5) years from the date of issue: *Provided, further*, That all unpaid assessments of previously registered cooperative shall be the subject of compromise settlement on terms favorable to such cooperative; and: *Provided, finally*, That the BIR and the authority shall be jointly issue (sic) the necessary regulations on this exemption and compromise within ninety (90) days from the effectivity from this Code. [Emphasis supplied]

x x x x

The Philippine Cooperative Code of 2008 thus distinguishes between existing electric cooperatives that are registered

under the provisions of the EPIRA, on one hand, and those that are registered under the provisions of the Cooperative Code (and R.A. No. 6939) prior to its amendment. **Electric Cooperatives registered under the provision of the EPIRA must comply with the procedural requirements of conversion, i.e., approval by a simple majority of the required number of turnout of voters in a referendum conducted for the purpose, in order to be considered “duly registered” because both the EPIRA and the Philippine Cooperative Code of 2008 expressly impose this requirement. Otherwise, it will be considered as an electric cooperative that is not registered with the CDA.**

The significance of compliance with the proper procedure is stressed by the use of the adverb **duly**, which means *in the proper or expected way*,⁶⁶ to modify the verb **registered**. In contrast, those electric cooperatives that have **registered and qualified** within **the three-year period** under the Cooperative Code need not comply with the conversion requirement because they are “deemed registered” with the CDA, by virtue of the express provision of the Philippine Cooperative Code of 2008, subject to some other requirements.⁶⁷

In the present case, ZAMECO II cannot be considered a **“deemed registered”** electric cooperative under the Philippine Cooperative Code of 2008 because it failed to register with the CDA within the three-year qualification period under the Cooperative Code. Neither can ZAMECO II be considered as **“duly registered”** under the Philippine Cooperative Code of 2008 because it failed to comply with the procedural requirements of a simple majority vote and a referendum for purposes of conversion under the EPIRA. Without a valid registration with the CDA, then the petitioners’ claim against the

NEA’s continued exercise of jurisdiction has no leg to stand on.

The petitioners cannot make a stubborn reliance on their certificate of registration with the CDA alone to claim the “effects of registration.” The Philippine Cooperative Code of 2008 itself expressly requires that for an electric cooperative to be excluded from the NEA’s jurisdiction, it must be **“duly registered with the [CDA] and issued a certificate of registration”** at the time of the effectivity of the Philippine Cooperative Code of 2008. In the face of the petitioners’ own admission that they have not actually complied with the essential registration requirement, what petitioners actually have, at most, is a paper registration with the CDA. For the purpose of determining the NEA’s jurisdiction and the validity of enforcing its decision against them, the Court cannot give weight to this paper registration and make the issue of jurisdiction merely a farce.

More importantly, the classification of electric cooperatives as **“duly registered,” “deemed registered”** or **“not registered,”** instead of lumping them together, completely negates the petitioners’ theory of implied repeal.

If the Philippine Cooperative Code of 2008 intended to dispense with the conversion requirement under the EPIRA, then there would have been no need to classify electric cooperatives based on the law under which they registered. More specifically, the two-fold requirement that electric cooperatives (which failed to register within the three-year period under the Cooperative Code, prior to its amendment) be **duly registered and issued a certificate of registration is a recognition of the continuing need for complying with the conversion requirement even under the Philippine Cooperative Code of 2008.**⁶⁸

E. ***The NEA and the electric cooperatives under the new law***

At any rate, the Court judicially notices that on February 4, 2013, Congress enacted R.A. No. 10531, known as the National Electrification Administration Reform Act of 2013. Aware of the effects of restructuring the electric power industry under the EPIRA on electric cooperatives under P.D. No. 269, as amended, and on the responsibilities of the appropriate government agencies, like the NEA and the CDA, Congress enacted R.A. No. 10531 with a declared threefold state policy: *first*, to empower and strengthen the NEA; *second*, to empower and enable electric cooperatives (organized under P.D. No. 269 and its amendments, and the Philippine Cooperative Code of 2008; and related laws) to cope with the changes brought about by the EPIRA; and *third*, to promote the sustainable development in the rural areas through rural electrification.⁶⁹

Towards these ends, Congress further authorized the NEA to “supervise the management and operations of all electric cooperatives.” Pursuant to its power of supervision, Congress granted it the following powers:

x x x x

- (a) issue orders, rules and regulations, *motu proprio* or upon petition of third parties, **to conduct investigations, referenda and other similar actions on all matters affecting the electric cooperatives;**
- (b) **issue preventive or disciplinary measures** including, but not limited to, suspension or removal and replacement of any or all of the members of the board of directors and officers of

the electric cooperative, as the NEA may deem fit and necessary and to take any other remedial measures as the law or any agreement or arrangement with the NEA may provide, to attain the objectives of this Act: and⁷⁰ [Emphasis supplied]

Also, R.A. No. 10531 reiterated Section 57 of the EPIRA, giving the electric cooperative the option either to remain as a non-stock, non-profit cooperative or convert into and register as a stock cooperative under the CDA or a stock corporation under the SEC in accordance with the law’s IRR.⁷¹ Unlike the EPIRA’s IRR, the IRR of R.A. No. 10531, which was drafted in coordination with the NEA and the CDA, among others, contains a more detailed enumeration of the requirements for conversion to be determined by the NEA itself. This enumeration still includes the conduct of a referendum.⁷²

More importantly, R.A. No. 10531 expressly provides that the NEA’s power of supervision applies whether an electric cooperative remains as a non-stock cooperative or opts to register with the CDA as a stock cooperative. This only means that even assuming *arguendo* that the petitioners validly registered ZAMECO II with the CDA in 2007, the NEA is not completely ousted of its supervisory jurisdiction over electric cooperatives under the R.A. No. 10531. This law may be considered as curative statute that is intended to address the impact of a restructured electric power industry under the EPIRA on electric cooperatives, which has not been fully addressed by the Philippine Cooperative Code of 2008.

WHEREFORE, premises considered, the Court DENIES the petition with finality for lack of merit. Costs against the petitioners.

SO ORDERED. Carpio, (Chairperson), Mendoza, Perlas-Bernabe,* and Jardeleza,** JJ., concur.

Endnotes:

* Designated as Acting Member in lieu of Associate Justice Marvic M.V.F. Leonen, per Special Order No. 1841 dated October 13, 2014.

** Designated as Acting Member in lieu of Associate Justice Mariano C. Del Castillo, per Special Order No. 1838 dated October 13, 2014.

1 Rollo, pp. 1356-1378.

2 Id. at 109-125.

3 Id. at 128-131.

4 CREATING THE "NATIONAL ELECTRIFICATION ADMINISTRATION" AS A CORPORATION, PRESCRIBING ITS POWERS AND ACTIVITIES, APPROPRIATING THE NECESSARY FUNDS THEREFOR AND DECLARING A NATIONAL POLICY OBJECTIVE FOR THE TOTAL ELECTRIFICATION OF THE PHILIPPINES ON AN AREA COVERAGE SERVICE BASIS, THE ORGANIZATION, PROMOTION AND DEVELOPMENT OF ELECTRIC COOPERATIVES TO ATTAIN THE SAID OBJECTIVE, PRESCRIBING TERMS AND CONDITIONS FOR THEIR OPERATIONS, THE REPEAL OF REPUBLIC ACT NO. 6038, AND FOR OTHER PURPOSES.

5 Rollo, pp. 132-135.

6 Management and Financial Audit Report of ZAMECO II for the period from 01 January 1989 to 30 September 1997, id. at 137-156. Among the accusations were the following: 1) illegal payment of 13th Month Pay and Excessive Mid-Year and Christmas Bonus to the petitioners; 2) excessive expenses of the Board President, petitioner Mr. Jose S. Dominguez, charged to ZAMECO Power Corporation (ZPC) and Central Luzon Power Transmission Development Corporation (CLPTDC) but advanced by ZAMECO II and treated as receivables by the ZAMECO II from the aforesaid corporations; 3) anomalous contract with Philreca Management Corporation (PMC) for ZAMECO II's Systems Loss Reduction Program; and 4) overstaying as members of the Board of Directors of ZAMECO II.

7 Rollo, pp. 132-135.

8 Id. at 337-352.

9 Id. at 109-125.

10 Id. at 124.

11 Id. at 125.

12 Id. at 132-135.

13 Id. at 128-131.

14 Id. at 72-103.

15 Id. at 373 and 1175. Among the duties of Engr. Paulino T. Lopez were: 1) to oversee the operations of ZAMECO II; 2) to sign/ countersign all checks and other banking transactions; 3) to supervise the preparations for the actual conduct of district elections; and 4) to ensure assumption into office of the newly-elected directors.

16 Id. at 374-395.

17 Id. at 885-887.

18 Id. at 55-66.

19 Id. at 888-897.

20 Id. at 68-71.

21 Id. at 10-48.

22 An Act Ordaining Reforms in the Electric Power Industry, Amending for the Purpose Certain Laws and for other Purposes.

23 Id., Section 60. Debts of Electric Cooperatives. – Upon the effectivity of this Act, all outstanding financial obligations of electric cooperatives to NEA and other government agencies incurred for the purpose of financing the rural electrification program shall be assumed by the PSALM Corp. in accordance with the program approved by the President of the Philippines within one (1) year from the effectivity of this Act which shall be implemented and completed within three (3) years from the effectivity of this Act. The ERC shall ensure a reduction in the rates of electric cooperatives commensurate with the resulting savings due to the removal of the amortization payments of their loans. Within five (5) years from the condonation of debt, any electric cooperative which shall transfer ownership or control of its assets, franchise or operations thereof shall repay PSALM Corp. the total debts including accrued interests thereon.

24 Rollo, pp. 1157-1166.

25 Id. at 1212-1226.

26 AN ACT CREATING THE COOPERATIVE DEVELOPMENT AUTHORITY TO PROMOTE THE VIABILITY AND GROWTH OF COOPERATIVES AS INSTRUMENTS OF EQUITY, SOCIAL JUSTICE AND ECONOMIC DEVELOPMENT, DEFINING ITS POWERS, FUNCTIONS AND RESPONSIBILITIES, RATIONALIZING GOVERNMENT POLICIES AND AGENCIES WITH COOPERATIVE FUNCTIONS, SUPPORTING COOPERATIVE DEVELOPMENT, TRANSFERRING THE REGISTRATION AND REGULATION FUNCTIONS OF EXISTING GOVERNMENT AGENCIES ON COOPERATIVES AS SUCH AND CONSOLIDATING THE SAME WITH THE AUTHORITY, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

27 Rollo, pp. 1236-1237.

28 Zambales II Electric Cooperative, Inc. (ZAMECO II) Board Of Directors v. Castillejos Consumers Association, Inc. (CASCONA), G.R. Nos. 176935-36, March 13, 2009, 581 SCRA 320.

29 AMENDING PRESIDENTIAL DECREE NO. 269, INCREASING THE CAPITALIZATION AND BROADENING THE LENDING AND REGULATORY POWERS OF THE NATIONAL ELECTRIFICATION ADMINISTRATION AND FOR OTHER PURPOSES.

30 Rollo, pp. 1383-1389 and 1391-1393.

31 See Article 17 of THE PHILIPPINE COOPERATIVE CODE OF 2008; rollo, pp. 1393-1394 and 1450-1451; see also the petitioners' separate Manifestation dated March 16, 2009 and July 2, 2009, id. at 1423-1425 and 1450-1451.

32 Rollo, pp. 1470-1472. In view of the denial of petitioners' motion for reconsideration, an Entry of Judgment was made in the case, stating that the Court's March 13, 2009 Decision has become final and executory on September 2, 2009 (id. at 1474 and 1477).

33 Id. at 1473-1474.

34 Id. at 1479-1491.

35 Id. at 1504-1507.

36 Id. at 1541-1542.

37 The original text of P.D. No. 269, Section 10 states: Enforcement Powers. If any public service entity which has borrowed funds from the NEA, or from any other lender with the NEA's lawfully required prior approval, shall default in its principal or interest payments, or shall fail, after notice from the NEA, to comply with any other term or condition of the loan agreement or of any rule or regulation promulgated by the NEA in administering the provisions of this Decree, the Board of Administrators is hereby authorized and empowered in its discretion to do any or any combination of the following: (a) Refuse to make, or give my lawfully required approval to, any new loan to the borrower; (b) Withhold without limitation the NEA's advancement, or withhold its approval for any other lender with respect to which the NEA has such approving power to make advancement, of funds pursuant to any loan already made to the borrower; (c) Withhold any technical or professional assistance otherwise being furnished or that might be furnished to the borrower; (d) Foreclose any mortgage or deed of trust or other security held by the NEA on the properties of such borrower, in connection with which the NEA, may, subject to any superior or co-equal rights in such lien held by any other lender; (1) bid for and purchase or otherwise acquire such properties; (2) pay the purchase price thereof and any costs and expenses incurred in connection therewith out of the revolving fund; (3) accept title to such properties in the name of the Republic of the Philippines; and (4) even prior to the institution of foreclosure proceedings, operate or lease such properties for such period, and in such manner as may be deemed necessary or advisable to protect the investment therein, including the improvement, maintenance and rehabilitation of systems to be foreclosed, but the NEA shall, within five years after acquiring such properties in foreclosure proceedings, sell the same for such consideration as it determines to be reasonable and upon such terms and conditions as it determines most conducive to the achievement of the purposes of this Decree; or (e) Take any other remedial measure for which the loan agreements may provide. In addition to the foregoing, the Board of Administrators may, at its own instance and in the name of the NEA, petition any court having jurisdiction for such purpose or any administrative agency possessing regulatory powers for such purpose (including the Board of Power and Waterworks) to issue such order and afford such lawful relief as may be necessary.cralawred x x x

38 Published in Malaya on March 15, 1990. Took effect on April 1, 1990.

39 R.A. No. 6939. Section 9. Power to Register Cooperatives. - The power to register cooperatives shall be vested solely on the Authority. The functions of the following departments and agencies relating to the registration of cooperatives as such are hereby transferred to the Authority: ChanRoblesVirtualawlibrary (a) The Department of Agriculture; (b) The Bureau of Agricultural Cooperatives Development; (c) The Department of Transportation and Communications; (d) The Sugar Regulatory Administration; (e) The National Electrification Administration; and (f) Any other pertinent government agency.

40 The repealing clause of the COOPERATIVE CODE reads: ChanRoblesVirtualawlibrary Section 127. Repeals. - Except as expressly provided by this Code, Presidential Decree No. 175 and all other laws, or parts thereof, inconsistent with any provision of this Code shall be deemed repealed: Provided, however, That nothing in this Code shall be interpreted to mean the amendment or repeal of any provision of Presidential Decree No. 269: Provided further, That the electric cooperatives which qualify as such under this Code shall fall under the coverage thereof. [Boldfacing supplied]

- 41 Section 96 of the COOPERATIVE CODE reads pertinently reads: ChanRobles Virtualawlibrary Section 96. Definition and Coverage. - A public service cooperative, within the meaning of this Code, is one organized to render public service as authorized under a franchise or certificate of public convenience and necessity duly issued by the appropriate government agency. Such services may include the following: x x x (2) Ice plants and cold storage services. Electric cooperatives created under [P.D.] No. 269 shall be governed by this Chapter if they qualify as cooperative under the provisions of this Code; x x x
- 42 Rollo, p. 1194.
- 43 Took effect on April 1, 1990.
- 44 The EPIRA, Section 43.
- 45 Id. Section 4 (p) and (q).
- 46 This jurisdictional mandate may be seen scattered in the several provisions of the EPIRA, among others, as follows: ERC shall ensure that NPC shall provide to all electric power industry participants open and non-discriminatory access to its transmission system, prior to the transfer of the transmission functions by NPC to TRANSCO. Any violation thereof shall be subject to the fines and penalties (Section 8); Failure of a TRANSCO concessionaire to comply with such obligations under the Grid Code and Transmission Development Plan shall result in the imposition of appropriate sanctions or penalties by the ERC (Section 21); Failure of a distribution utility to submit a feasible and credible plan (to comply) and/or failure to implement the same shall serve as grounds for the imposition of appropriate sanctions, fines or penalties (Section 23); Electricity suppliers shall be subject to the rules and regulations concerning abuse of market power, cartelization, and other anti-competitive or discriminatory behavior to be promulgated by the ERC (Section 29); The ERC shall promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry x x x. Towards this end, it shall be responsible for the following key functions in the restructured industry: chanroblesvirtualawlibrary (k) Monitor and take measures in accordance with this Act to penalize abuse of market power, cartelization, and anti-competitive or discriminatory behavior by any electric power industry participant; (l) Impose fines or penalties for any non-compliance with or breach of this Act, the IRR of this Act and the rules and regulations which it promulgates or administers; x x x (r) In the exercise of its investigative and quasi-judicial powers, act against any participant or player in the energy sector for violations of any law, rule and regulation governing the same, including the rules on cross-ownership, anti-competitive practices, abuse of market positions and similar or related acts by any participant in the energy sector or by any person, as may be provided by law, and require any person or entity to submit any report or data relative to any investigation or hearing conducted pursuant to this Act; (s) Inspect, on its own or through duly authorized representatives, the premises, books of accounts and records of any person or entity at any time, in the exercise of its quasi-judicial power for purposes of determining the existence of any anti-competitive behavior and/or market power abuse and any violation of rules and regulations issued by the ERC; x x x The ERC shall have the original and exclusive jurisdiction over all cases contesting rates, fees, fines and penalties imposed by the ERC in the exercise of the above mentioned powers, functions and responsibilities and over all cases involving disputes between and among participants or players in the energy sector (Section 43).
- 47 The EPIRA, Section 58.
- 48 See generally Section 7(c) of the EPIRA's IRR.
- 49 In his letter dated September 30, 2008, Engr. Fidel Correa, ZAMECO II's General Manager, admitted that the ZAMECO II board of directors passed a resolution on September 13, 2008 calling for a Special General Membership Assembly to conduct a referendum, leading to the conversion of ZAMECO II into a stock cooperative (rollo, p. 1251). Thus, there was yet no referendum held at the time of ZAMECO II's registration (rollo, p. 1237).
- 50 Id. at 1520-1521.
- 51 AN ACT AMENDING THE COOPERATIVE CODE OF THE PHILIPPINES TO BE KNOWN AS THE "PHILIPPINE COOPERATIVE CODE OF 2008."
- 52 Id. See generally Chapter XVII.
- 53 Id. Section 132. Effects of Registration with the Authority. (1) Upon the effectivity of this Code, electric cooperatives that are duly registered with the Authority, and issued a certificate of registration, shall no longer be covered by Presidential Decree No. 269, as amended by Presidential Decree No. 1645: Provided, That electric cooperatives registered with the Authority shall now be covered by the provisions of this Code as well as future rules and issuances of the Authority: Provided, however, That the security of tenure and the collective bargaining agreement between the cooperative management and the employees shall be respected, with no diminution of their existing salaries, emoluments, ranks and other benefits; (2) The electric cooperatives registered with the Authority with existing loans obtained from the NEA after June 26, 2001 shall continue to observe the terms of such loans until full payment or settlement thereof; (3) Except as provided in the immediately preceding paragraph, the NEA shall no longer exercise regulatory or supervisory powers on electric cooperatives duly registered with the Authority; (4) Electric cooperatives registered with the Authority are entitled to congressional allocations, grants, subsidiaries and other financial assistance for rural electrification which can be coaxed through the Department of Energy, the Authority and/or local government units. The electric cooperatives registered under this Code can avail of the financial services and technical assistance provided by the government financial institutions and technical development agencies on terms respecting their independence as autonomous cooperatives; (5) All condoned loans, subsidies, grants and other assistance shall form part of the donated capital and funds of the electric cooperatives and as such, it shall not be sold, traded nor be divided into shareholdings at any time; these donated capital/fund shall be valued for the sole purpose of determining the equity participation of the members: Provided, That in the case of dissolution of the cooperative, said donated capital shall be subject to escheat; and (6) Electric cooperatives registered and confirmed with the Authority under Republic Act No. 6938 and Republic Act No. 6939 are hereby deemed registered under this Code.
- 54 PHILIPPINE COOPERATIVE CODE of 2008, ART. 143. Repealing Clause. - Except as expressly provided by this Code, Presidential Decree No. 175 and all other laws, or parts thereof, inconsistent with any provision of this Code shall be deemed repealed: Provided, That the provisions of Sections 3, 5, and 7 of Presidential Decree No. 1645, Executive Order No. 623, series of 2007. Revenue Regulation No. 20-2001, and all laws, decrees, executive orders, implementing rules and regulations, BIR circulars, memorandum orders, letters of instruction, local government ordinances, or parts thereof inconsistent with any of the provisions of this Act are hereby repealed, amended or modified accordingly.
- 55 Aquino v. Quezon City, 529 Phil. 486, 498 (2006).
- 56 Paras v. Commission on Elections, G.R. No. 123169, November 4, 1996, 264 SCRA 49, 54.
- 57 Philippine Cooperative Code of 2008, ART. 127. Registration of Electric Cooperatives. - The registration of an electric cooperative with the Authority under this Code shall be submitted for approval to the members through a referendum, called for the purpose as provided for under Articles 183 and 129 of this Code.
- 58 Id. ART. 128. Voting Requirement for Registration. - In compliance with the referendum as a voting procedure, the required number of votes for registration with the Authority shall be twenty percent (20%) of all members in good standing.
- 59 Id. ART. 129. Documents to be Submitted for Registration with the Authority. - For purposes of registration, electric cooperatives shall submit the following (a) Copy of the board resolution certifying to the result of the vote approved through a referendum approving the registration of the cooperative with the Authority in compliance with Article 128; x x x
- 60 See Article 4 of The Cooperative Code. See also Article 4 of The PHILIPPINE COOPERATIVE CODE OF 2008.
- 61 Rollo, p. 1251.
- 62 Republic of the Philippines v. International Communication Corporation, 527 Phil. 518, 528 (2006).
- 63 Mecano v. Commission on Audit, G.R. No. 103982, December 11, 1992, 216 SCRA 500, 505-506.
- 64 See The PHILIPPINE COOPERATIVE CODE OF 2008, Section 123(1) to (3).
- 65 Id., Article 132(6) of the Philippine Cooperative Code of 2008 provides that "electric cooperatives registered and confirmed with the Authority under Republic Act No. 6938 and Republic Act No. 6939 are hereby deemed registered under this Code."
- 66 <http://www.merriam-webster.com/dictionary/duly>, last accessed October 4, 2014.
- 67 The IRR of The PHILIPPINE COOPERATIVE CODE OF 2008 is consistent with this distinction under the law by classifying the electric cooperatives that may be registered with the CDA under the Philippine Cooperative Code of 2008 into three: one, electric cooperatives that are not registered with the CDA; two, new electric cooperatives; and three, electric cooperatives that are deemed registered under Art. 144 of the Code.
- 68 The IRR of The PHILIPPINE COOPERATIVE CODE OF 2008 reiterates that one of the requirements for the registration is a "certified true copy of the board resolution certifying the result of the vote approved through a referendum approving the registration of the cooperative with the Authority in compliance with Article 128."
- 69 See Section 2 of R.A. No. 10531.
- 70 Id., Section 11, adding a new section, to be designated as Section 26-B, to P.D. No. 269, which pertinently reads: ChanRobles Virtualawlibrary x x x The NEA may, after due notice to the board of directors and officers of the electric cooperative, disqualify, suspend or remove any director or officer, who commits any act which renders him unfit for the position.
- 71 Id., Section 12.
- 72 See Section 23 of Department of Energy Department Circular No. DC-2013-07-0015.

DOJ Opinions

Power Electric Power Industry Reforms Swiss Challenge

DOJ OPINION NO. 034, s.2013

April 2, 2013

Secretary Carlos Jericho L. Petilla
Department of Energy
Energy Center, Rizal Drive, Bonifacio Global
City, Taguig, Metro Manila

Dear Secretary Petilla:

This refers to the request for opinion of then Secretary Jose Rene D. Almendras, transmitted to this Department by the Office of the Solicitor General (OSG), on “whether the Competitive Selection Process (CSP) conducted by the Province of Siquijor Electric Cooperative (PROSIELCO) for the sourcing of its electric power requirement through the New Power Provider (NPP) complied with the CSP requirements,” as contemplated under Department of Energy (DOE) Circular No. 2004-01-001¹ and ERC Resolution No. 11-2005.²

The antecedents are as follows: ³

1. The electricity of the entire Island Province of Siquijor is currently being supplied by the National Power Corporation (NPC) through its Small Power Utilities Group (SPUG).
2. PROSIELCO, a non-stock, non-profit electric cooperative organized existing under Presidential Decree (PD) No. 269, has a franchise to distribute electricity in the Municipalities of Enrique Villanueva, Larena, Lazi, Maria, San Juan and Siquijor, all in the Province of Siquijor. These areas are not connected to, and cannot

source electricity from, the nationwide transmission grid.

3. Due to ageing, NPC’s generation facilities are less reliable and consume more fuel to generate electricity, notwithstanding proper operation and maintenance.
4. Because of this, the generation facilities frequently break down, consequently, there are power shortages and outages as well as daily brownouts in Siquijor, much to the detriment of its residents and local businesses.
5. It thus became apparent that the generation capacity is no longer capable to meet the electricity demands in Siquijor.
6. As Siquijor’s power requirements increase and as NPC’s generation facilities continue to deteriorate over time, the power supply deficiency in expected to worsen unless the existing power generation facilities are replaced and additional capacity is installed.
7. The end result would be that PROSILECO will continue to have worsening power supply problems, adversely affecting the residents and local businesses.
8. To obviate the looming disaster, PROSIELCO, in accordance with DOE Circular No. 2004-01-001 and pursuant to its mandate to provide stable, secure

- and reliable power supply for Siquijor, undertook the conduct of competitive selection process to contract with a private generation company.
9. In 2010, upon PROSIELCO's request, DOE, NPC and PROSIELCO entered into a MOA for DOE to provide assistance through the International Finance Corporation as Transaction Advisor in conducting Competitive Selection Process (CSP) to procure its NPP. However, as there was only one (1) private power supplier which participated, the selection failed.
 10. Because of said failure, PROSIELCO asked NPC whether the latter could conduct a selection process but NPC answered in the negative.
 11. In 2011, PROSIELCO, through its Bids and Awards Committee, conducted another selection process.
 12. In June 2011, SI Power Corporation (SIPCOR) submitted an unsolicited proposal to install brand new facilities.
 13. Subsequently, PROSIELCO subjected the unsolicited proposal to a Swiss Challenge, a procedure similar to the Revised Implementing Rules and Regulations of Republic Act (RA) No. 6957, n as amended by RA No. 7718.
 14. PROSIELCO was likewise guided by the ruling of the ERC in 'In Re: Petition for Approval of the Power Supply Agreement (PSA) and the New Power Provider-True Cost Generation Rat (NPP-TCGR), with prayer for Provisional Authority, Palawan
 15. From July to August 2011, the Challenge Period, PROSIELCO caused the publication for three (3) consecutive weeks in newspaper of national circulation an Invitation to submit Comparative Proposals inviting interested parties to challenge SIPCOR's unsolicited proposal.
 16. Two (2) parties, namely, FUDC and TR/GP, procured bid packages during the Challenge Period. However, FUDC could not comply with the bid bond and TR/GP could not offer a competitive proposal. Thus, no competitive proposals were received by PROSIELCO at the deadline on October 26, 2011.
 17. Thus, a Notice of Award was granted to SIPCOR and PROSIELCO requested the DOE to recognize the procedure of unsolicited proposal through Swiss Challenge that it adopted in securing its NPP.
 18. The DOE, in its letter dated February 22, 2012, informed PROSIELCO that it is not in a position to recognize procedure it adopted. Said DOE action was prompted by the opinion rendered by the OSG on the same issue, raised by National Power Corporation (NAPOCOR) President Froilan A. Tampinco, to the effect that the selection process conducted by PROSIELCO for its NPP through the Unsolicited Proposal with Swiss Challenge Procedure was improper because (1) the same is not considered as CSP and (2) the process was not in accordance with the above-mentioned PALECO case.
 19. PROSIELCO sought reconsideration of the DOE ruling on the following grounds: a) DOE Circular No. 2004-01-001 does not mention or define what constitutes a CSP; b) the ERC has recognized the Swiss Challenge Procedure as an acceptable and valid method in securing NPP; and c) the CSP in question has been widely endorsed by the stakeholders in Siquijor Province.
 20. The DOE through then Secretary Jose Rene D. Almendras, sought the opinion of the OSG and the OSG transmitted to the Department the request.
 21. Upon the other hand, it is the opinion of the Director of the DOE Legal Service that

the PALECO case cited by PROSIELCO, is deemed valid, binding and with legal force and effect and has the effect of supplementing ERC Resolution No. 11-2005, and that electric cooperatives organized under PD No. 269, like PROSIELCO, are considered government-owned and controlled corporations pursuant to COA Resolution No. 86-23, s. 1986.

22. Considering that the aforesaid opinion of the DOE Legal Service Director and that the ground relied upon by PROSIELCO was not addressed by the OSG Opinion dated September 13, 2011, the instant query is raised.

After a careful perusal of the issues raised, the Department opines that the Swiss Challenge is a valid form of CSP.

We now discuss the issues raised.

Competitive Selection Process (CSP) is defined in ERC Resolution No. 11, s.2005.

We propose that there is no need to define in the DOE Department Circular No. DC 2004-01-001, which was prescribed, pursuant to Rule 13 of the Electric Power and Industry Reform Act of 2001, what a Competitive Selection Process is, because the definition is provided in ERC Resolution No. 11, Series of 2005. Relevant portions of the above directives are provided, as follows:

DOE Department Circular No. DC 2004-01-001

“Section 3. Procedures for Selection of New Power Provides.-

“(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.”

ERC Resolution No. 11 Series of 2005
“Section 2.....

“(c) Competitive Selection Process shall refer to the process wherein a New Power Provider is selected through transparent and competitive bidding undertaken by an Electric Cooperative to secure, among others, the lowest long term cost of power and services, a transparent procurement process for the fuel used in the generation of power, environmental compatibility with the local area, and the most advantageous implementation scheduled.” (Emphasis supplied)

The specific requirements of a CSP must be complied with, notwithstanding the lack of its definition of CSP in the DOE Department Circular No. DC 2004-01-001, because to reiterate, the definition provided in ERC Resolution No. 11 is deemed read into the circular. Thus, the process must include a competitive bidding.

The Swiss Challenge Procedure is an acceptable and valid method in securing NPP.

The ERC, in the PALECO case, recognized that the Swiss Challenge Procedure is acceptable and valid method in securing NPP.

In the PALECO case, the ERC ruled that the Swiss Challenge Procedure is an acceptable and valid method in securing NPP. The pertinent portions of the said Decision read:

“3. PALECO’s Electricity Procurement Process “

PALECO conducted a “Swiss Challenge”, which it considered being a competitive selection process, and for which the DOE, in its letter dated February 19, 2009, initially considered to be just a procedure to assess the unsolicited proposal of DELTA P to transform itself from an independent power producer (IPP) of the NPC-SPUG to become the NPP of PALECO.

“An exchange of correspondences between PALECO and the DOE ensued to clarify the matter which concluded in the issuance of a certification on April 1, 2009 stating that the selection of DELTA P as PALECO’s NPP is a result of a “Swiss Challenge”.

“On August 8, 2008, the Board of Directors (BOD) of PALECO accepted the Unsolicited Proposal of DELTA P and subjected the same to the competitive process via “Swiss Challenge” as per PALECO’s Board Resolution No. 069, Series of 2008.

“On August 14, 2008, PALECO sent a Letter of Advice through its General Manager, Ponciano D. Payuyo that it will subject DELTA P’s proposal through a ‘Swiss Challenge’.

“On August 19 and 26, and September 1, 2008, the Invitation to Bid and Procedure for the Selection of PALECO’s NPP were published in Malaya, a newspaper of general circulation in the Philippines.

“On August 27, 2008, PALECO wrote the DOE informing them of the competitive selection via “Swiss Challenge”.

“On November 25, 2008, the unsolicited proposal was challenged by a bid from HAPPY LINK, a corporation duly organized under the laws of the Republic of the Philippines which is supposed to represent a “Consortium” that allegedly includes some Korean entities.

“On December 19, 2008, PALECO Board of Directors conducted a special meeting adopting the recommendation of its Bids and Awards Committee (BAC) on the competitive selection process for a NPP.

“A ‘Swiss Challenge’ is a form of public procurement in some jurisdictions which requires a public authority, usually an agency of the government, which has received an unsolicited bid for a public project or service, to publish the bid and invite third parties to match or exceed it. It is an offer made by the original proponent to the government ensuring his process to be the best by his initiative, either as a result of his own innovative approach or on the demand of the government to perform certain task. It also allows the original proponent the right to counter-match any superior offers given by the third party.

“It is a new bidding process to help private sector initiative in core sector projects and further allows third parties to make better offers (challenges) for a project during a designated period with simple objective to discourage frivolous project, or to avoid exaggerated project development costs.” (Emphasis supplied)

In the PROSIELCO case, the ERC ruled that the Swiss Challenge Procedure is a valid CSP.

The recognition of the Swiss Challenge Procedure as an acceptable and valid method in securing NPP was raised during the hearing before the ERC of ‘In the Matter of the Application for Approval of the Power Supply Agreement (PSA), as revised, between Province of Siquijor Electric Cooperative, Incorporated (PROSIELCO) and SI Power Corporation (SIPCOR)’, docketed as ERC Case No. 2012-018-RC.

Initially, the Petition was assailed through an “Urgent Motion to Deny the Petition Outright” primarily on the ground that an unsolicited proposal does not equate to a competitive bidding. The motion was denied by the ERC in an Order dated June 11, 2012, upholding the use of Swiss Challenge as a form of CSP. We quote: 4

“Swiss Challenge’ was considered as a form of competitive selection process, for the following reasons:

“a. There is an offer to the public. On June 14, 2011, SIPCOR submitted an unsolicited proposal to PROSIELCO to install a brand new generation facilities in the Municipalities of Siquijor and Lazi, with a total installed capacity of 6.464

MW to supply its present and future energy requirements. The said unsolicited proposal was accepted by PROSIELCO on July 14, 2011. Subsequently, on July 18, 2011, July 25, 2011, and August 1, 2011, the same was published to invite interested parties to submit their respective counter-proposals. Thus, it is clear that the public was invited to submit better proposals than that of SIPCOR.

“b. There is competition. Those who intend to submit their respective counter-proposals will definitely have to submit more competitive offers and the original proponent who submitted the unsolicited proposal can match their offers.

“c. Determination of better offer. The unsolicited proposal and the submitted offers can be compared to determine which is the better offer.”

Subsequently, an “Urgent Motion for Reconsideration” was filed but was denied by the ERC in its Order dated August 14, 2012.

Thereafter, the ERC rendered its Decision dated December 17, 2012, granting SIPCOR and PROSIELCO’s application for approval of the Power Supply Agreement and re-affirming its Order dated June 11, 2012 that the CSP conducted by PROSIELCO is compliant with ERC Resolution No. 11-2005.

Considering that the ERC ruled that the Swiss Challenge was considered as a form of competitive selection process, we accord such findings appropriate respect.

ERC is tasked with, among others, approval of the Power Supply Agreements and setting electric rates and tariffs including transmission and distribution wheeling

charges, cross subsidies, universal charge, and lifeline rates and other related issues. Thus, it has the requisite expertise to decide on technical matters such as these. Findings or conclusions of administrative bodies which have gained expertise in their fields because their jurisdiction is confined to specific matters, supported by substantial evidence, are generally respected and even given finality, in the absence of a showing of unfairness or arbitrariness on the part of the administrative body amounting to abuse of discretion or lack of jurisdiction.⁵

The ERC ruling in the PALECO case was applied in the ERC ruling involving PROSIELCO.

Both PALECO and PROSIELCO used Swiss Challenge as a Competitive Selection Procedure in the determination of their respective NPP's. However, while there was no question as to whether PALECO complied with CSP requirements, said doubt is cast on PROSIELCO.

The objection, it seems, as to the applicability of the PALECO case to the PROSIELCO case, is that in the PALECO case, there was eventually a valid challenge to the unsolicited proposal of DELTA P by HAPPY LINK. In contrast, in the PROSIELCO case, no challenge was submitted to the unsolicited proposal of SIPCOR since FUDC and TR/GP, the two (2) firms which responded to the published invitation to match the unsolicited proposal withdrew from pursuing their intention to participate in the Swiss Challenge Procedure.

Be that as it may, ERC disposed of this argument by stating that there was indeed a CSP as there was an invitation to the public to bid and there was an intention to subject SIPCOR's proposal to other proposals to determine which is the better offer. Thus, the requirements of a CSP were complied.

RA No. 7718 is not applicable in the case at bar

In its Opinion, the OSG mistook PROSIELCO's Competitive Selection Process to procure its NPP through Swiss Challenge, as covered by the provisions of RA No. 6957, as amended by RA No. 7718 or the Build Operate and Transfer Law (BOT Law), as amended, and opined that said law does not apply to electric cooperatives but to projects of the national government and local government units. In the same vein, DOE raised its concern about the validity of the Swiss Challenge Procedure because the NPPs are entitled to a subsidy from the universal charge for missionary electrification which cannot be extended to unsolicited proposals under the BOT law.

The weakness of these arguments, however, lies on the fact that it fails to appreciate that PROSIELCO's CSP was merely patterned after the Swiss Challenge Rule as found in RA No. 7718 which the ERC found to be compliant with the CSP rules under DOE Circular No. 2004-01-001 and ERC Resolution No. 11-2005.

Thus, the Competitive Selection Process Rules, as part of the Competitive Selection Process Package, prepared by the BAC, Province of Siquijor Electric Cooperative, Inc., specifically provides that:

"The Unsolicited Proposal shall be subjected to a Swiss Challenge as part of the competitive selection process in accordance with these Competitive Selection Rules ('Competitive Selection Process'). The said Rules are similar to the Revised Implementing Rules and Regulations of RA No. 6957, as amended by RA No. 7718, or the Build-Operate-Transfer Law."

Endorsement by the stakeholders in the Siquijor Province is irrelevant.

Finally, the fact that the CSP in question has been widely endorsed by the stakeholders in the Siquijor Province does not in any way affect the selection of NPP beyond the coverage of DOE Circular No. 2004-01-001 and ERC Resolution No. 2011, s. 2005. Hence, we find this statement to be irrelevant in rendering the herein legal opinion.

Please be advised accordingly.

Very truly yours,

(SGD.) LEILA M. DE LIMA
Secretary

Footnotes

1. 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).
2. Adopting the Guidelines for the Setting and Approval of Electricity Generation Rates and Subsidies for Missionary Electrification Areas.
3. As culled from the Order dated August 14, 2012 and Decision dated December 17, 2012 of "In the Matter of the Application for Approval of the Power Supply Agreement (PSA), as revised, between Province of Siquijor Electric Cooperative, Incorporate (PROSIELCO) and SI Power Corporation (SIPCOR)", docketed as ERC Case No. 2012-018-RC; Hereafter referred to as the PROSIELCO case; and Memorandum dated February 24, 2012 addressed to Atty. Josefina Patricia M. Asrit, Undersecretary of DOE from Dir. A. T. Tenazas, LS.
4. From the Decision dated December 17, 2012, reiterating the reasons for the denial of the Urgent Motion to Deny the Petition Outright.
5. See DOJ Opinion Nos. 35, 31, 25, 14, 6, s. 2010.

Note from the Publisher: Copied verbatim from the official copy, Formerly "Revised Implementing Rules and Regulations of Republic Act (RA) No. 957".

EPIRA

DOJ OPINION NO. 001, s. 2005
January 11, 2005

Secretary Vincent S. Perez Jr.
Department of Energy
Energy Center, Merritt Road
Fort Bonifacio, Taguig City

Sir :

This refers to your request for further clarification of this Department's Opinions No. 87 and No. 101, series of 2004, specifically on the following issues:

1. Whether Opinion No. 101, s. 2004 validates the position of the Power Sector Assets and Liabilities Management Corporation (PSALM) that Section 21 of the Electric Power Industry Reform Act (EPIRA) allows the award of the concession contract for the National Transmission Corporation (TRANSCO) through modes other than public bidding, such as through negotiation or limited source bidding, after two failed biddings.
2. Whether the award of the concession contract for TRANSCO through means other than public bidding falls within the exceptions from public bidding as required under Executive Order No. 109-A for the award of such contracts.

It will be recalled that this Department's Opinions No. 87 and 101, s. 2004 are both premised on the view that the opinion of this Department, as required under Section 4 of E.O. No. 109-A, is no longer necessary prior to the award of the concession contract for TRANSCO through modes other than public bidding, since "the provisions of R.A. No. 9184 does not apply to the privatization of TRANSCO for while the said law speaks of procurement, the transaction, subject matter of your request for opinion, forms part of

the privatization plan for TRANSCO which, as earlier defined, pertains not to procurement or acquisition but to the sale, disposition or transfer of ownership and control." As such, we recommended that PSALM coordinate with the Commission on Audit because of the latter's issuances on the disposal of government properties.

In your present request for clarification, you now advance the position that the award of the concession contract is not strictly and solely a disposition of government assets. You state that in the disposition of government property, the only factor to be considered is the price offered by the bidders. However, in the award of the concession contract for TRANSCO, the EPIRA provides as follows:

SEC. 21. TRANSCO Privatization. —

In any case, the awardee shall comply with the Grid Code and the TDP 1 as approved. The sale agreement/concession contract shall include, but not limited to, the provision for performance and financial guarantees or any other covenants which the national government may require. Failure to comply with such obligations shall result in the imposition of appropriate sanctions or penalties by the ERC.

The awardee shall be financially and technically capable, with proven domestic and/or international experience and expertise as a leading transmission system operator. Such experience must be with a transmission system of comparable capacity and coverage as the Philippines. CSAcTa

Because of this, you state that the requirements imposed on the concessionaire for TRANSCO under Section 21 of the EPIRA gives the award of the concession contract the character of procurement of a contractor. The conditions on the concessionaire require

a mechanism similar to the procurement of a service provider. As such, the award of the concession contract for TRANSCO may be seen as a hybrid of disposal and procurement of government assets.

As provided in Section 21 of the EPIRA, TRANSCO's privatization could either be through outright sale or concession. Outright sale definitely involves a transfer of ownership and control over a particular government asset, consistent with the definition of "privatization" under Section 4(pp) of the EPIRA, which is the "sale, disposition, change and transfer of ownership and control of assets and IPP contracts from the Government or a government corporation to a private person or entity." On the other hand, Section 4 (g) of the EPIRA defines a "concession contract" as "the award by the government to a qualified private entity of the responsibility for financing, operating, expanding, maintaining and managing specific Government-owned assets". Nothing in the said definition provides for the government's relinquishment of ownership or control over TRANSCO as a government asset.

With this clarification, this Department confirms the view of PSALM that the award of the concession contract over TRANSCO should be preceded by an opinion from this Department, as required under Section 4 of E.O. No. 109-A, that such contract falls within the exceptions from public bidding. As you have stated, the requirements imposed on the concessionaire for TRANSCO under Section 21 of the EPIRA gives the award of the concession contract the character of a procurement of a contractor since the conditions on the concessionaire require a mechanism similar to the procurement of a service provider. Such being the case, the provisions of R.A. No. 9184 likewise apply.

This Department also confirms PSALM's stand, as it has consistently raised in its previous requests for opinion/clarification, that although Section 21 of the EPIRA speaks

of PSALM's awarding "in open competitive bidding" the transmission facilities, including grid interconnections and ancillary services to a qualified party either through an outright sale or a concession contract, this does not preclude PSALM from awarding the concession contract through modes other than public bidding, such as through negotiation or limited source bidding, both of which are allowed under R.A. No. 9184, after two failed biddings.

As you have pointed out, PSALM has complied with the requirement of open competitive bidding under Section 21 2 of the EPIRA and the phrase "open competitive bidding" refers to a system of procedures for awarding government contracts. Previous statutes involving public bidding, and which authorize negotiations after failed biddings, must therefore be considered when interpreting Section 21 of the EPIRA. To harmonize Section 21 with the pre-existing body of laws on public bidding, the said Section must be interpreted to mean that the award of a concession contract through negotiation or limited source bidding after two failed public biddings is allowed inasmuch as both negotiation and limited source bidding are recognized in various laws as another mode of awarding government contracts.

This modifies this Department's Opinions No. 87 and 101, s. 2004 on the matter.

Please be guided accordingly.

Very truly yours,

(SGD.) RAUL M. GONZALEZ Secretary

Footnotes

1."Transmission Development Plan" refers to the program for managing the transmission system through efficient planning for the expansion, upgrading, rehabilitation, repair and maintenance, to be formulated by DOE and implemented by the TRANSCO pursuant to this Act (EPIRA).

2.SEC. 21. TRANSCO Privatization. — . . . The President of the Philippines thereafter shall direct PSALM Corp. to award, in open competitive bidding, the transmission facilities, including grid interconnections and ancillary services to a qualified party either through an outright sale or a concession contract. . . .

DOJ OPINION NO. 005, s. 2016
January 19, 2016

Secretary Cesar V. Purisima
Department of Finance
Roxas Boulevard Corner P. Ocampo, Sr. St.
Manila

Dear Secretary Purisima :

This refers to your request for this Department's legal opinion on the continuing efficacy of the terms of the Casecnan Project Agreement, particularly of its Buyout clause, notwithstanding the privatization policy of the Electric Power Industry Reform Act of 2001 (EPIRA).¹

Specifically, you want to be clarified on whether the proposed buyout by the National Irrigation Administration (NIA) of the Casecnan Multipurpose Irrigation and Power Project (Casecnan Project) may be pursued, notwithstanding the policy declaration of the EPIRA to privatize the National Power Corporation's (NPC) generation assets. cSaATC As a backgrounder, you state the following facts:

The NIA and CE Casecnan Water and Energy Company, Inc. (CE Casecnan) entered into a Project Agreement dated 13 November 1994 (the Casecnan Project Agreement) under the BOT Law, 2 where CE Casecnan agreed to: (i) deliver to NIA at the Pantabangan Reservoir all water diverted from the Casecnan Watershed for NIA's subsequent irrigation use in the Central Luzon Valley; and (ii) deliver to NIA all net electrical energy generated by the project. NIA, on the other hand, agreed to pay CE Casecnan corresponding water delivery fees and the energy delivery fees therefor.

The Cooperation Period between NIA and CE Casecnan is to last until

the year 2021, after which the Project will be transferred to NIA. This notwithstanding, subject to the presence of certain conditions stated therein, the Amended and Restated Casecnan Project Agreement dated 26 June 1995 between NIA and CE Casecnan allows NIA to buy out CE Casecnan from the Project at any time during the Cooperation Period.³

In turn, NIA sells the power generated by the Casecnan Project to the National Power Corporation (NPC)/ Power Sector Assets and Liabilities Management Corporation (PSALM) at a mark-up, by virtue of a Power Purchase Agreement (PPA) between NPC and NIA.⁴

Meanwhile, the EPIRA took effect in 2001, providing for the privatization of the generation, real estate and other disposable assets, as well as IPP contracts, of the NPC.⁵

It is your position that only the NPC is enjoined by the EPIRA "to generate and sell electricity only from the undisposed generation assets and IPP contracts of PSALM and shall not incur any new obligations to purchase power through bilateral contracts with Generation Companies or other suppliers", while it is only PSALM that is mandated "to manage the orderly sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets and IPP contracts".

Your view on the matter is that NIA is not so prohibited by the EPIRA from acquiring generation assets, much less acquiring generation assets already in existence through the exercise of an existing right (i.e., buyout), subject to the conditions therefor, arising from an already existing contract to which it is a party.

You note that the Casecnan Project Agreement was entered into years before

the EPIRA took effect, such that the EPIRA could not have rendered ineffectual the terms, rights and obligations in the then existing Project Agreement — including the buyout provisions — without violating the Constitutional rule on the non-impairment of the obligations of contracts.⁶

Your opinion is that the terms and clauses in these existing contracts, including the buyout provisions therein, were not rendered nugatory by the enactment of the EPIRA as there does not appear to be any inconsistency between EPIRA and the continuing efficacy of the buyout clause of the Casecan Project Agreement.

Hence, this request for legal opinion.

Subject to the discussions below, we are of the opinion that the proposed buyout by the National Irrigation Administration (NIA) of the Casecan Multipurpose Irrigation and Power Project (Casecan Project) may be pursued, notwithstanding the policy declaration of the EPIRA to privatize the National Power Corporation's (NPC) generation assets because, under existing laws, the government is not expressly prohibited from engaging in power generation.

This Department had the occasion to render legal opinion on the issue relating to the privatization policy of the EPIRA. In this Department's unnumbered opinion, dated 14 August 2015, on the issue pertaining to the authority of the DOE, via its agencies/corporations, the Philippine National Oil Company (PNOC) and the PNOC Renewables Corporation (PNOC RC), to engage in power generation within the framework of EPIRA, we had the occasion to state that:

“There is, indeed, no provision of the law which prohibits any of the entities under the DOE apart from the NPC and the PSALM from entering into power generation. This is clear from the EPIRA and the DOE Act. What the

EPIRA does, under Section 47 thereof, is to order the privatization of the NPC and the disposal of its assets by the PSALM, save for a number of assets enumerated therein. This view is buttressed by no less than the fact the EPIRA devotes an entire Chapter 7 to the “Privatization of the Assets of the National Power Corporation”.

In the same light, we however have to completely cast aside the pronouncement in the same unnumbered opinion that:

...while the EPIRA does not expressly refer to DOE or any of its entities when it comes to the privatization thrust of the government, this Department is far from ready to subscribe to the view that the State policy of gradually easing government out of the power generation equation does not extend to the DOE and the entities under it. The DOE Act cannot be more unequivocal in mandating the DOE to develop a Philippine energy program which shall include a policy direction towards the “privatization of government agencies related to energy”. To borrow the words of the PNOC RC the wording of the law makes no distinction, utilizing the far-reaching term “government agencies”. This persuades us that the intention of our law is still toward the full privatization of the sector.

Note that the EPIRA was enacted by Congress to provide a framework for the restructuring of the electric power industry, including the privatization of the assets of National Power Corporation (NPC), the transition to the desired competitive structure, and the definition of the responsibilities of the various government agencies and entities. ⁸ As defined, “restructuring” refers to the process of reorganizing the

electric power industry in order to introduce higher efficiency, greater innovation and End-user choice. It shall be understood as covering a range of alternatives enhancing exposure of the industry to competitive market forces.⁹ "Privatization", on the other hand, refers to the sale, disposition, change and transfer of entire ownership and control of all assets and [independent power producer] contracts from the Government or a government corporation to a private Person or entity.¹⁰

The foregoing provisions considered, we are convinced that the scope of the policy is not merely limited to the sale and disposition of the assets of the NPC and the use of the proceeds thereof to settle its debts. The phrase "including the privatization of the NPC ..." leads to the sole and inescapable conclusion that the privatization of the NPC assets is only a part of the greater objective towards the evolution of the electric power industry into its desired competitive structure. To confine the purpose of the EPIRA to the sale of NPC assets to settle NPC's debts simply undermines the general State policy which the EPIRA seeks to realize.

xxx xxx xxx

Thus, as to the issue on whether PNOG or its subsidiaries may acquire NPC assets for power generation, we still hold the opinion that this would be contrary to the very policy on power generation as embodied in the EPIRA and the DOE Act." (Emphasis supplied)

While it is recognized that the policy and thrust of the EPIRA and DOE Act is to fully

privatize the energy sector, it must be clarified and stressed that under existing laws, the government or its agencies is not prohibited from engaging in power generation. Indeed, there is no provision in the EPIRA or DOE ACT which categorically prohibits any of the entities under the DOE apart from the NPC and the PSALM from engaging in power generation. What the EPIRA mandates is the privatization of NPC's assets, including its IPP contracts.

Section 4 (x) of the EPIRA defines a generation company as any person or entity authorized by the Energy Regulatory Commission to operate facilities used in the generation of electricity. The use of "any" covers both public and private persons or entities. The EPIRA and its IRR do not contain any further prohibition or restriction against the government or any of its agencies (such as the NIA in this case) to enter into power generation or operate facilities used in the generation of electricity.

Moreover, the unnumbered opinion appears to have also overlooked the fact that EPIRA's primordial policy is to ensure and accelerate the total electrification of the country and ensure the quality, reliability, security and affordability of the supply of electric power (Sec. 2 (a) and (b) Declaration of Policy, R.A. No. 9136).

Ancillary to said policies are the following objectives:

- (g) To assure socially and environmentally compatible energy sources and infrastructure;
- (h) To promote the utilization of indigenous and new renewable energy resources in power generation in order to reduce dependence on imported energy;
- (i) To provide for an orderly and transparent privatization of the assets and liabilities of the National Power Corporation (NPC);

The spirit and intent of the law, as motivated by the government's thrust to avoid the recurrence of the power crisis in the 1990's which was exacerbated by NPC's failure to prudently operate and maintain its plants aside from the fact that it continued to wallow in debt, was not to totally prohibit the government to engage in power generation especially in the field of Renewable Energy. Indeed, there is no such prohibitive language in the EPIRA Law or DOE Act.

This intent has become more patent with the forecasted power shortage in the country. As reported by the DOE, in the Luzon Area alone, the projected power deficit is up to 450MW by April 2017 and up to 940MW by March to December 2018. cHDAIS

Finally, there is indeed a need to harmonize the policies of the EPIRA Law with the policy on Renewable Energy's (RE) promotion and development under the Renewable Energy Act of 2008 or R.A. 9513, which declare the State policy to accelerate the exploration and development of renewable energy resources . . . , to achieve self reliance . . . , to reduce the country's dependence on fossil fuels and hereby minimizing the country's exposure to price fluctuation in the international market.

Verily, the Renewable Energy Act of 2008 opens renewable power development to all sectors, be it private or public.

You also contend that even assuming that NIA is similarly enjoined (as is NPC) and mandated (as is PSALM) by the EPIRA, the latter explicitly recognizes the terms, rights and obligations arising, or that may arise, from existing BOT contracts for generation facilities, including provisions therein intended to minimize liabilities of the government, such as the buyout provision.

We agree.

The enactment of the EPIRA could not have rendered nugatory the buyout provision of

The Amended and Restated Casecanan Project Agreement by and between CE Casecanan and NIA, dated 26 June 1995, as to do so will violate the Constitutional rule on the non-impairment of obligations of contract.

The non-impairment of obligations of contract is guaranteed by no less than the 1987 Philippine Constitution, which provides that "[N]o law impairing the obligations of contracts shall be passed."¹¹

In the case of PAGCOR vs. BIR, et al., 12 the Supreme Court En Banc ruled that the non-impairment clause is limited in application to laws that derogate from prior acts or contracts by enlarging, abridging or in any manner changing the intention of the parties. There is impairment if a subsequent law changes the terms of a contract between the parties, imposes new conditions, dispenses, with those agreed upon or withdraws remedies for the enforcement of the rights of the parties. (Emphasis supplied)

Relative thereto, laws existing at the time of the execution of contracts are the ones applicable to such transactions and not later statutes, unless the latter provide that they shall have retroactive effect. Later statutes will not, however, be given retroactive effect if to do so will impair the obligation of contracts, for the Constitution prohibits the enactment of the law impairing the obligation of contracts. Any law which enlarges, abridges, or in any manner changes the intention of the parties necessarily impairs that contract itself. And a statute which authorizes any deviation from the terms of the contract by postponing or accelerating the period of performance which it prescribes, imposing conditions not expressed in the contract, or dispensing with those which are however minute or apparently immaterial in their effect upon the contract, impairs the obligation, and such statute should not therefore be applied retroactively. As between two feasible interpretations of a statute, the court should adopt that which will avoid the impairment of contract.¹³ (Emphasis supplied)

Further, we note that based on Section 7.8 of the said Agreement, any laws or regulations of any Governmental Authority, coming in to effect after the date of execution of this Agreement, as well as the privatization of NPC, in whole or in part, were foreseen as among the change in circumstances that may result to a buyout provided in Article 8.1 of the Agreement, to wit:

“ARTICLE 8

8.1 BUYOUT. If ... (iii) the circumstances set out in Section 2.6 (b), 14.7.18, 15.9.4, 16.14.3, 17 or 14.4.18 arise, ..., NIA shall pay to the Operator the full buyout price specified in Section 8.2 or 8.3, as appropriate, in Dollars, and acquire all the Operator’s right, title, and interest in and to the Project, and thereupon all the Operator’s obligations hereunder shall cease.”

To strengthen our opinion on the matter, Rule 23, Section 8 of the EPIRA-IRR clearly states that buyout provisions to minimize the liabilities of the NPC and the National Government shall be taken into consideration when the IPP contracts assumed by PSALM shall be privatized, to wit:

“Section 8. Privatization of IPP Contracts Assumed by PSALM.—

(a) The IPP contracts assumed by PSALM shall be privatized taking into consideration buyout provisions, Government performance undertakings and possible bilateral renegotiations to minimize the liabilities of the NPC and the National Government. (Emphasis supplied)

Please be guided accordingly

Very truly yours

(SGD.) RICARDO V. PARAS III Chief State Counsel

Footnotes

1. Republic Act No. 9136.
2. Republic Act No. 6957, as amended by Republic Act No. 7718.
3. Article 8, Section 8.1 of the Amended and Restated Casecanan Project Agreement dated 26 June 1995.
4. Undated, According to the First Whereas Clause of the Amendment No. 1 to the Power Purchase Agreement for Casecanan Multi-Purpose Project dated 16 July 2002, the PPA was entered into on 30 June 1995.
5. Republic Act No. 9136, Section 47.
6. Article III Section 10.
7. Chapter V.
8. Section 3, EPIRA.
9. Section 4 (rr), EPIRA.
10. Section 4, EPIRA.
11. Section 10, Article III (Bill of Rights) of the 1987 Constitution.
12. Philippine Amusement and Gaming Corporation (PAGCOR) vs. The Bureau of Internal Revenue (BIR), et al., G.R. No. 172087, dated March 15, 2011.
13. DOJ Opinion No. 93, s. 2003, citing *Yupangco v. Velayo*, 115 SCRA 307; *Philippine Virginia Tobacco Adm. v. Gonzales*, 92 SCRA 172; *U.S. v. Diaz Conde*, 42 Phil. 766.
14. Section 2.6 (b). Responsibilities of the Operator to obtain building, construction, operating and other permits and licenses, etc.
15. Section 7.8 CHANGE IN CIRCUMSTANCES.— In the event that as a result of (a) any laws or regulations of any Governmental Authority, coming in to effect after the date of execution of this Agreement, (b) any such laws or regulations (including any official interpretation thereof which the Operator has relied upon in entering into this Agreement) in force as of the date of this Agreement being amended, modified, or repealed, (c) any approval, permit, license, consent, registration, exemption, or other right granted by any Governmental Authority, is unable to be obtained or is subsequently terminated, withdrawn, rescinded, or amended, or (d) the privatization of NIA or NPC in whole or in part or its reorganization of NIA or NPC (other than as provided in Section 19.1) in the reasonable opinion of the Operator either (i) the operation of the Project is adversely affected or (ii) the interest of the Operator in the Project and/or the Operator’s economic return (net of tax or other fee, charge, deduction, increased compliance cost or other imposition, including, without limitation, any withholding or remittance tax on the payment of dividends) on its investment is reduced, prejudiced, or otherwise adversely affected ..., then the parties hereto shall meet and endeavor to agree on amendments to this Agreement which shall place the Operator in the same position as if such event had not taken place. If after ninety (90) days no such agreement has been reached and provided neither party has invoked Article 20, the provisions of Article 8 (BUYOUT) shall apply. (Emphasis supplied)
16. Compliance with Laws.
17. Revised Timetable.
18. Cooperation Period.

DOJ OPINION NO. 101, s. 2004

November 18, 2004

Secretary Vincent S. Perez, Jr. Department of Energy Energy Center, Merritt Road Fort Bonifacio, Taguig, Metro Manila

Sir :

This refers to your amended request for clarification/reconsideration of this Department's Opinion No. 87, current series, and for confirmation of the following positions adopted by the Power Sector Assets and Liabilities Management Corporation (PSALM):

- a. The award of a concession contract over the National Transmission Corporation (TRANSCO) either through negotiation or limited source bidding, after two failed public biddings, does not violate Section 21 of R.A. No. 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA);
- b. The endorsement by the Joint Congressional Power Commission (JCPC) is not necessary to adopt amendments, revisions to the initial privatization plan already earlier endorsed by the JCPC and approved by the President of the Republic of the Philippines;
- c. The concession awarded over TRANSCO may not include the responsibility of operating the transmission assets of TRANSCO; and
- d. Should the Concessionaire do all aspects of the transmission business, except the operation of the public utility, it is not subject to the ownership restrictions imposed by Section 11, Article XII of the Constitution on entities that operate a public utility.

As mentioned in your earlier request for opinion, which was the subject of Opinion

No. 87, two (2) public biddings for TRANSCO's privatization were held, both of which were declared a failure for the reason that in the first bidding, while more than ten (10) entities submitted their expressions of interest, only one (1) entity, Singapore Power, submitted a pre-qualification proposal, and in the second bidding, only Singapore Power submitted an expression of interest. 2004cdasia

For this reason, you requested for opinion, on behalf of the Board of Directors of PSALM, that the privatization through concession of TRANSCO can be done through negotiation after two failed open and competitive public biddings since it falls under the exceptions from public bidding as set forth in R.A. No. 9184 1, in relation to E.O. No. 109-A 2 and Commission on Audit Circular No. 89-296 3. aHECST

In Opinion No. 87, this Department expressed the view that Section 21 of R.A. No. 9136 provides for the privatization of TRANSCO. As defined in Section 4(pp) of the said law, "privatization" is the "sale, disposition, change and transfer of ownership and control of assets and IPP contracts from the Government or a government corporation to a private person or entity." On the other hand, Section 4 of R.A. No. 9184 expressly provides that it "shall apply to the Procurement of Infrastructure Projects, Goods and Consulting Services, regardless of sources of funds, whether local or foreign, by all branches and instrumentalities of government, its departments, offices and agencies, including government-owned and/or controlled corporations and local government units, . . ." Such being the case, the opinion of the Secretary of Justice, as required under Section 4 of E.O. No. 109-A, is no longer necessary.

However, in the said Opinion, this Department made a suggestion, now the subject of the instant request for clarification/reconsideration, which reads:

. . . taking note of the provision stated in Section 21 of R.A. No. 9136 above-cited, it is suggested that the endorsement of the JCPC and the approval of the President should first be obtained considering that the procedure stated in your request for opinion would necessarily constitute a deviation from that stated in the aforesaid Section of the EPIRA, its Implementing Rules and Regulations, and in the JCPC Resolution mentioned above.

PSALM is of the position that it has complied with the requirement of open competitive bidding under Section 21 4 of the EPIRA and that the phrase “open competitive bidding” refers to a system of procedures for awarding government contracts. Previous statutes involving public bidding, and which authorize negotiations after failed biddings, must therefore be considered when interpreting Section 21 of the EPIRA. To harmonize Section 21 with the pre-existing body of laws on public bidding, the said Section must be interpreted to mean that it allows the award of a concession contract through negotiations after failed biddings. Thus, negotiations and similarly, limited source bidding or selective bidding may be deemed included in the phrase “open competitive bidding” inasmuch as limited source bidding is recognized in various laws as another mode of awarding government contracts.

Moreover, a rigid interpretation of Section 21 results to absurdity. It would be illusory to presume that awards through public bidding will always be successful. To do so would either lead to (1) public bidding in perpetuity, so much so that with respect to the subject concession contract, no award can be had; (2) indefinite deferment of the privatization of TRANSCO until such time when strong indications of a successful bidding are present; or (3) uncertainty in the implementation of the privatization of TRANSCO. All these consequences are costly to the government.

Cited by PSALM as legal bases are Section 4 (Bidding of Construction Projects) of Presidential Decree No. 1594 5, Sections 428 (Acquisition of property by procurement/purchase), 441 (Conditions for negotiated purchase), 503 (Modes of disposal/divestment), 505 (Sale through negotiation), and 536 (Mode of contracting) of the Government Accounting and Auditing Manual (GAAM), Commission on Audit (COA) Circular No. 89-296, Executive Order No. 109-A, R.A. No. 7718 6 and R.A. No. 9184. However, with the exception of Section 503 of the GAAM and COA Circular No. 89-296, all of the provisions of laws relied upon pertain to procurement or acquisition and not to the sale, disposition or transfer of ownership and control.

In this regard, and considering that the two (2) available legal bases above-mentioned are both issuances of the COA, this Department suggests that PSALM coordinate with the said agency. Pursuant to settled practice and precedents, the Secretary of Justice does not render opinion or express any comment on questions involving the interpretation or application of administrative rules and regulations, unless requested by the promulgating agency, since such matters are best left to the determination of the promulgating agency by reason of its familiarity with the intent and purposes of the issuance and the extent of the application thereof.⁷

On the issue of the need for a JCPC endorsement and Presidential approval to institute and implement amendments or revisions to the initial privatization plan already endorsed by the JCPC and approved by the President of the Philippines, PSALM is of the position that said JCPC endorsement and Presidential approval are no longer necessary since under Sections 21 8 and 62 9 of the EPIRA, the same are required only for the initial privatization plan and not for the succeeding amended versions of the same or amendments or revisions thereto.

PSALM submits that the “plan” referred to in Section 21 is the same plan referred to as the initial privatization plan in Section 62 of the EPIRA. As such, the Privatization Plan, though endorsed by the JCPC and approved by the President, may still be amended by PSALM as circumstances warrant, hence the use of the qualifier “initial” in describing the privatization plan.

We concur with PSALM’s position.

It is clear from Section 62 of the EPIRA that only the initial privatization plan needs to be endorsed by the JCPC for Presidential approval. Nowhere in the said provision is a requirement that another endorsement be made should there be a subsequent revision or amendment to the Initial Privatization Plan. However, it must be stressed that the amendments or revisions to be adopted by PSALM to the Initial Privatization Plan must always be in the prudent exercise of its mandate under Section 50 of the EPIRA “to manage the orderly sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets, and IPP contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner”.

Insofar as the third and fourth issues are concerned, PSALM is of the position that although “Concession Contract” is defined under Section 4(g) of the EPIRA as “the award by the government to a qualified private entity of the responsibility for financing, operating, expanding, maintaining and managing specific Government-owned assets”, PSALM, in privatizing TRANSCO by Concession Contract, is granted the option to award to the Concessionaire all aspects of the transmission business, except those that are in the nature of the operation of a public utility. It may opt to require the Concessionaire to finance, expand, maintain and manage the transmission system but the operation of the transmission system would still be performed by TRANSCO and would only be transferred to

the Concessionaire once the latter is granted a franchise by the Congress of the Philippines for the operation of the transmission system.

This is because of Section 21 of the EPIRA which states that “(T)he buyer/concessionaire shall be responsible for the improvement, expansion, operation, and/or maintenance of its transmission assets and the operation of any related business” and Section 11 (a) of Rule 22 of the EPIRA Implementing Rules and Regulations (IRR) which states that “. . . The Buyer or Concessionaire or any other successor-in-interest to TRANSCO shall be responsible for the improvement, expansion, operation or maintenance of the transmission assets and the operation of any related businesses. . . .” TSEAaD

Should the Concessionaire do all aspects of the transmission business, except the operation of the transmission system, it follows that it will not be operating a public utility. Consequently, PSALM is of the view that the Concessionaire should not be bound by the ownership restrictions imposed by Section 11, Article XII of the Constitution on entities that operate a public utility.

Section 11, Article XII of the Philippine Constitution states that:

No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens, nor shall such franchise, certificate or authorization be exclusive in character or for a longer period than fifty Years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common

good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines. (Emphasis supplied)

PSALM also advances the view that since it has been declared as among the policies of the State “(T)o enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and distribution sectors”, it would be incongruous to argue that the EPIRA limits the privatization options of PSALM merely to that of sale or concession wherein the buyer or concessionaire would be responsible for the improvement, expansion, operation and maintenance of the transmission assets. To impose all these responsibilities upon the buyer or concessionaire would unduly limit the opportunity of the Government to offer the TRANSCO assets to interested parties not otherwise interested in the operation of the transmission system and grid due to constitutional limitations, in the event that no other entity is qualified to operate the transmission system and grid due to lack of franchise. The imposition of all responsibilities on the buyer or concessionaire would thus not promote the State policy to enhance the inflow of private capital and broaden the ownership base of the transmission sector.

The answer to the third and fourth issues hinges on whether or not the award of a concession contract over TRANSCO may exclude the responsibility of operating TRANSCO’s transmission assets.

As pointed out by PSALM, there is an apparent discord between Section 4(g) which gives a general definition of a concession contract and Section 21 which deals specifically with

the privatization of TRANSCO. Section 4(g) readily implies that the responsibilities of the concessionaire is not divisible in the sense that all the responsibilities must be included in the concession contract in view of the word “and”. However, Section 21 thereof, in enumerating the responsibilities of the buyer/concessionaire, used “and/or”.

Under the rules on statutory construction, the word “and” is a conjunction pertinently defined as meaning “together with,” “joined with,” “along or together with,” “added to or linked to,” used to conjoin word with word, phrase with phrase, clause with clause.” 10 The term “and/or” means that effect shall be given to both the conjunctive “and” and the disjunctive “or” or that one word or the other may be taken accordingly as one or the other will best effectuate the purpose intended by the legislature as gathered from the whole statute. The term is used to avoid a construction which by the use of the disjunctive “or” alone will exclude the combination of several of the alternatives or by the use of the conjunctive “and” will exclude the efficacy of any one of the alternatives standing alone. 11

In addition, it is a basic rule in statutory construction that where there is a particular or special provision and a general provision in the same statute and the latter in its most comprehensive sense would overrule the former, the particular or special provision must be operative and the general provision must be taken to affect only the other parts of the statute to which it may properly apply. 12

Applied to this case, the operative provision as regards the privatization of TRANSCO is Section 21 since it appears later in the EPIRA and is deemed to qualify Section 4(g) with regard to the scope of responsibilities that the Concessionaire may perform in the concession contract.

Moreover, Section 21 applies specifically to the privatization of TRANSCO, and is

thus the more particular provision. As such, Sections 4(g) and 21, taken together, must be understood to mean that not all the responsibilities of a concessionaire enumerated in the said Sections need to be included in the concession contract. As PSALM submits, those responsibilities that are in the nature of the operation of a public utility need not form part of the concessionaire's responsibilities specified in a concession contract.

Moreover, the use of the term "and/or" in Section 21 of the EPIRA must be interpreted to mean that the buyer or concessionaire may be assigned any or some or all of the responsibilities for the improvement, expansion, operation or maintenance of the transmission assets since this interpretation would promote the achievement of the State policy to enhance the inflow of private capital and broaden the ownership base of the transmission sector.

This modifies this Department's Opinion No. 87, current series, on the matter.

Please be guided accordingly.

Very truly yours,

(SGD.) RAUL M. GONZALES Secretary

Footnotes

1. Government Procurement Reform Act.
2. Amending Executive Order No. 109 Dated May 27, 2002 Prescribing the Rules and Procedures on the Review and Approval of All Government Contracts to Conform with Republic Act No. 9184, Otherwise Known as the Government Procurement Reform Act.
3. Audit Guidelines on the Divestment or Disposal of Property and Other Assets of National Government Agencies and Instrumentalities, Local Government Units and Government-Owned or Controlled Corporations and their Subsidiaries.
4. SEC. 21. TRANSCO Privatization. — . . . The President of the Philippines thereafter shall direct PSALM Corp. to award, in open competitive bidding, the transmission facilities, including grid interconnections and ancillary services to a qualified party either through an outright sale or a concession contract. . . .
5. Prescribing Policies, Guidelines, Rules and Regulations For Government Infrastructure Contracts.
6. An Act Amending Certain Sections of Republic Act No. 6957, Entitled "An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for Other Purposes.
7. Secretary of Justice Opn. No. 29, s. 2003.
8. SEC. 21. TRANSCO Privatization. — Within six (6) months from the effectivity of this Act, the PSALM Corp. shall submit a plan for the endorsement by the Joint Power Commission and the approval of the President of the Philippines.
9. SEC. 62. Joint Congressional Power Commission. —
xxx xxx xxx
The Commission shall, in aid of legislation, perform the following functions, among others:
xxx xxx xxx
(b) Endorse the initial privatization plan within one (1) month from submission of such plan to the Power Commission by PSALM Corp. for approval by the President of the Philippines. . . .
10. Agpalo, Statutory Construction, 2003 edition, p. 206.
11. Ibid.
12. Ibid., p. 256

DOJ OPINION NO. 070, s. 2013

August 12, 2013

Assistant Secretary Raymund A. Acol
Department of Energy Energy Center, Merritt
Rd., Fort Bonifacio, Taguig

Dear Assistant Secretary Acol :

This pertains to your 25 July 2013 letter-request for an opinion as to whether the Philippine National Oil Company-Exploration Corporation (PNOC-EC), a government-owned and controlled corporation (GOCC) classified as a Proprietary Commercial GOCC under the Governance Commission for GOCCs (GCG) rules, may perform the following acts:

1. Legally participate in and be qualified as the winning bidder in the public bidding for the privatization of government owned power plants conducted by the Power Sector Asset Liabilities Management Corporation (PSALM Corp.); and
2. Legally qualify as a power generator without violating RA 9136, the EPIRA law.

The query stems from the mandate of the Department of Energy (DOE) to “ensure the quality, reliability, security and affordability of the supply of electric power” and “to protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power”.

To fulfill these functions in times of brownout, blackouts, and/or critical supply of energy, the DOE proposes the establishment of an “energy security asset”. It is further proposed that the PNOC-EC be the energy asset administrator considering that in its Amended Articles of Incorporation, Board Resolution No. 19, S. ‘98, it is allowed, “to the extent authorized by law, to purchase, create, generate, co-generate, or otherwise acquire, use, sell, transmit, distribute or otherwise dispose of, electric current and electric steam

and water of any kind and description”.

Preliminarily, we state that PNOC EC is the upstream oil, gas and coal subsidiary of the state-owned Philippine National Oil Company (PNOC). It started out as the Exploration Department of PNOC in April 1975, and was eventually incorporated as a PNOC subsidiary and registered with the Philippine Securities and Exchange Commission on 20 April 1976. PNOC EC’s shares of stock are 99.79% owned by the Philippine government through PNOC, with the remaining 0.21% held by public shareholders. 1 EcDATH

After considering the position of the DOE and the EPIRA law, this Department opines that the PNOC-EC cannot legally participate in and be qualified as the winning bidder for the privatization of the government-owned power plants conducted by PSALM Corp. and that it cannot legally qualify as a power generator without violating the EPIRA law because it would run counter to the privatization initiatives which propelled the drafting and passing of said law.

First, one of the chief aims of the EPIRA law is the total privatization of the generation assets, real estate, other disposable assets as well as existing IPP contracts of National Power Corporation (NPC). Pertinent portions in the EPIRA law are quoted as follows:

“SEC. 47. NPC Privatization. — Except for the assets of SPUG, the generation assets, real estate, and other disposable assets as well as IPP contracts of NPC shall be privatized in accordance with this Act. Within six (6) months from the effectivity of this Act, the PSALM Corp. shall submit a plan for the endorsement by the Joint Congressional Power Commission and the approval of the President of the Philippines, on the total privatization of the generation assets, real estate, other disposable assets as well as existing

IPP contracts of NPC and thereafter, implement the same, in accordance with the following guidelines, . . .” (Emphasis ours)

PNOEC is a government-owned and -controlled corporation. Thus, should PNOEC participate in the PSALM Corp. conducted bidding and win government-owned power plants, said power plants would not be privatized.

Second, the privatization of the assets of the NPC would raise needed capital and help settle NPC’s debts, thereby aiding in reducing the country’s consolidated public sector deficit. 2 As mandated in the EPIRA law, the following may be charged against PSALM Corp.:

“SEC. 56. Claims Against the PSALM Corp. — The following shall constitute the claims against the PSALM Corp.:

- “(a) NPC liabilities transferred to the PSALM Corp.;
- “(b) Transfers from the national government;
- “(c) New loans; and
- “(d) NPC stranded contract costs.”

Verily, using government money to buy NPC’s assets would not help ease public sector deficit.

Third, the privatization of NPC’s assets is aimed to encourage greater competition and attract more private-sector investments in the power industry. The resulting competitive power industry will produce lower power rates and a more efficient delivery of electricity supplies to end-users. 3 Again, allowing a government-owned and -controlled corporation to acquire an NPC asset earmarked for privatization would not help in this endeavour.

Fourth, the privatization of NPC’s power plants would allow the government to transfer the costs for the continuous construction, operation, and maintenance of hugely capital intensive power generating plants to the private sector. 4 Should PNOEC be allowed to own power plants, government funds would necessarily be committed to their continuous construction, operation, and maintenance.

Fifth, the Board Resolution amending PNOEC’s Articles of Incorporation was issued in 1998, long before the passage of the EPIRA law. Necessarily, the EPIRA law supersedes said Articles.

Sixth, it appears that the GCG is tasked to closely monitor GOCCs and that a criterion for reorganizing, merging, streamlining, abolishing, or privatizing a GOCC is if it is involved in an activity best carried out by the private sector. 5 Thus, there seems to be a proscription against GOCCs from performing functions for the private sector.

Please be advised accordingly.

Very truly yours,

(SGD.) LEILA M. DE LIMA Secretary

Footnotes

1.<http://www.pnoc-ec.com.ph>.

2.<http://www.psal.gov.ph>.

3.<http://www.doe.gov.ph>.

4.Ibid.

5.SEC. 5. Creation of the Governance Commission for Government-Owned or -Controlled Corporations. — There is hereby created a central advisory, monitoring, and oversight body with authority — to formulate, implement and coordinate policies to be known as the Governance Commission for Government-Owned or -Controlled Corporations, hereinafter referred to as the GCG, which shall be attached to the Office of the President. The GCG shall have the following powers and functions:

(a) Evaluate the performance and determine the relevance of the GOCC, to ascertain whether such GOCC should be reorganized, merged, streamlined, abolished or privatized, in consultation with the department or agency to which a GOCC is attached. For this purpose, the GCG shall be guided by any of the following standards:

xxx xxx xxx

(5) The GOCC is involved in an activity best carried out by the private sector; . .

DOJ OPINION NO. 130, s. 1994

August 31, 1994

Secretary Delfin L. Lazaro Department of Energy PNPC Complex, Merritt Rd. Fort Bonifacio, Makati Metro Manila

Sir :

This has reference to your request for “reconsideration/review” of this Department’s Opinion Nos. 22 and 98, series of 1993, in the light of certain cases filed before the Department of Energy (DOE) and the Energy Regulatory Board (ERB) wherein the essential issue boils down as to which of the said two offices has jurisdiction over “direct electric power connection.” prcd

You state that the summary allegations contained in the petitions focus on specific provisions of the Section 18 of R.A. No. 7638 (“Department of Energy Act of 1992”), and Section 3 of E.O. No. 172 (“Creating the Energy Regulatory Board”), as the pertinent legal bases for ‘determining the government office which has non-price regulatory functions over independent power production and electric energy distribution.’”

In DOJ Opinion No. 22, s. 1993, the issue raised by your Office was whether the non-price regulatory functions of ERB had been transferred to the DOE in view of the enactment of R.A. No. 7638. Resolving the said issue, this Department opined that pursuant to Section 18 of the same law, “only the non-price regulatory functions of ERB under Section 3 of E.O. No. 172 are transferred to the DOE”.

In DOJ Opinion No. 98, s. 1993, your Office alleged that the regulatory functions of ERB “covering independent power production and electricity distribution” under Section 9(e) of P.D. No. 1206, as amended, in relation to Section 14 of E.O. No. 172, had already been repealed by Section 12(c)(1) and (3) of R.A.

No. 7638 upon the principle that in case of irreconcilable inconsistency and repugnancy between two laws, the later enactment shall prevail. This Department, however, ruled that there was no inconsistency on the ground that:

“. . . Section 12(c)(1) and (3) of R.A. No. 7638 speak of the function of the Energy Industry Administration Bureau, an office under the DOE, to assist in the formulation of regulatory, financial and fiscal policies, rules and regulations and to implement and enforce the same relative to operations of both the government and private entities involved in energy resource supply activities such as independent power production and/or oil and petroleum operations. On the other hand, Section 9(e) of P.D. No. 1206 deals with the authority of the Board of Energy (now ERB) to issue Certificate of Public Convenience for operation of electric power utilities, except electric cooperatives which shall continue to be governed by P.D. No. 269, as amended, including the establishment and regulations of areas of operation of particular operators of public utilities and services, and the fixing of standards and specifications in all cases related to the issued Certificate of Public Convenience. The former refers to a policy-making functions of the DOE , assisted in the discharge thereof by the Energy Industry Administration Bureau, while the latter refers to quasi-judicial function of the ERB which requires notice and hearing in the exercise thereof. Very clearly, the two provisions are not inconsistent with each other, but the fact, are reconcilable in the sense that the ERB, in taking action on matters brought before it, must do so consistently with the energy

with the energy regulatory policies promulgated or adopted by the DOE ...”

Clearly, the issue of which between the DOE and ERB has jurisdiction of regulate direct electric power connection had never been raised in the two opinions sought to be considered. Hence, there is nothing to review or reconsider therein. Nonetheless, as you said, in order to settle the said issue once and for all, we shall proceed to consider the same as an issue being raised for the first time.

The pertinent provisions of the law read: R.A. No. 7638

“SEC. 18. Rationalization or Transfer of Functions of Attached or Related Agencies. — The non-price regulatory jurisdiction, powers, and functions of the Energy Regulatory Board as provided for in Section 3 of Executive Order No. 172 are hereby transferred to the Department.

xxx xxx xxx”

(Emphasis supplied)

E.O. No. 172

“SEC. 3. Jurisdiction, Powers and Functions of the Board. — When warranted and only when public necessity requires, the Board may regulate the business of importing, exporting, re-exporting, shipping, transporting, processing, refining, marketing and distributing energy resources. Energy resources means any substance or phenomenon which by itself or in combination with others, or after processing or refining or the application to it of technology, emanates, generates, or causes the emanation or generation of energy, such as but not limited to, petroleum or petroleum products,

coal, marsh gas, methane gas, geothermal and hydroelectric sources of energy, uranium, and other similar radioactive minerals, solar energy, tidal power, as well as non-conventional existing and potential sources.

xxx xxx xxx”

(Emphasis supplied)

In this connection, you theorize that the authority of the ERB under the aforequoted Section 3 of E.O. No. 172 to regulate the business, among others, of “marketing and distributing energy resources” includes the power to regulate “direct electric power connection” upon the ground that the term “energy resources” include “electric energy” and since all the non-price regulatory jurisdiction, powers and functions of the ERB had been transferred to the DOE pursuant to Section 18 of R.A. No. 7638, abovequoted, it follows that DOE, to the exclusion of ERB, has the sole and exclusive jurisdiction to regulate ‘direct electric power connection’ which basically involves direct ‘marketing’ or sale of electricity.

We cannot agree.

In the resolution of the issue, the alleged jurisdiction of the ERB to regulate ‘direct electric power connection’ must first clearly established and, as indicated above, you seek to do so by an expanded interpretation, of the term “energy resources” found in Section 3 of E.O. No. 172. But this is not accord with the well-established principles governing statutory construction. It is elementary and doctrinal that jurisdiction is given only by law. It is never presumed; it must be conferred by law in words that do not permit of doubt (Pepsi Cola Bottling company v. Martinez, 117 SCRA 578; Lee vs. Presiding judge, 145 SCRA 408, 417).

In the instant case, there is nothing in Section 3 of E.O. No. 172 which confers upon the ERB in clear and categorical terms the jurisdiction to regulate ‘direct electric power connection’. Hence, it cannot be said that the same power had been transferred to the DOE pursuant to Section 18 of R.A. No. 7638. Indeed, how could there be a transfer to power if the power which ought to have been transferred had not been established in the first place.

In this connection, it is noted that the very provision of the U.S. Public Law cited in your letter to support your contention that “marketing and distribution of electric energy” is deemed included in the functions of ERB transferred to DOE pursuant to Section 18 of R.A. No. 7638, in relation to Section 3 of P.D. No. 172, expressly and specifically vests in the Federal Energy Regulatory Commission the ‘establishment, review, and enforcement of rates and charges for the transmission or sale of electric energy . . . and the ‘interconnection . . . of facilities for the generation, transmission, and sale of electric energy (other than emergency interconnection)” (see Sec. 402 [a][1] [B], U.S. Department of Energy Act). This even clearly supports our view that jurisdiction to regulate ‘direct electric power connection” must be “conferred by law in words that do not admit of doubt”.

In fine, we find it relevant to reiterate the pertinent portion of our Opinion No. 22, s. 1993, to wit:

“Clearly, the parameters of the transfer of functions from ERB to DOE pursuant to Section 18, are circumscribed by the provision of Section 3 of E.O. No. 172 alone, so that, if there are other “related” functions of ERB under other provisions of E.O. No. 172 or other energy laws, these “related” functions, which may conceivably refer to what you call “non-power rate powers and functions” of ERB, are clearly not contemplated by Section 18 and are, therefore, not to be deemed included in the transfer of functions from ERB to DOE under the said provision.”

Please be guided accordingly.

Very truly yours,

(SGD.) FRANKLIN M. DRILON Secretary

DOJ OPINION NO. 098, s. 1993

July 26, 1993

Secretary Delfin L. Lazaro Department of Energy PNPC Complex, Merritt Road Fort Bonifacio, Makati Metro Manila

Sir :

This has reference to your request “to be clarified” on certain points concerning our Opinion No. 22, s. 1993, particularly with respect to the following portion of the said Opinion which states, thus:

“It is not quite clear to us what other non-power rate powers and functions you may be referring to in your first query. You have not specified any particular provision of the ERB law (E.O. No. 172) or other pertinent energy laws which, to your mind, might have been affected by the transfer of jurisdiction, powers and functions mandated in Section 18 of R.A. No. 7639. Neither have you specified any specific non-power rate powers and function of EB which, you would think, might have been deemed transferred to DOE alongside the transfer to it of ERB’s ‘non-price regulatory jurisdiction, powers and functions’ pursuant to said Section 18”.

Specifically, you mention Section 12(c) (1) and (3) of R.A. No. 7638 vis-a-vis Section 9(e) of P.D. No. 1206, as amended, which respectively provide, thus:

“SEC. 12. Bureaus and Services. —

xxx xxx xxx

(c) Energy Industry Administration Bureau — (1) assist in the formulation of regulatory policies to encourage and guide the operations of both government and

private entities involved in energy resource supply activities such as independent power production, electricity distribution, as well as the importation, exploration stockpiling, storage, shipping, transportation, refinement, processing, marketing and distribution of all forms of energy and energy products, whether conventional or nonconventional:

xxx xxx xxx

(3) Assist in the formulation of financial and fiscal policies, rules, guidelines, and requirements relative to the operations of entities involved in the supply of energy resources such as oil companies, petroleum product dealers, coal importing and distributing companies, natural gas distributing companies, independent power producers, and all other entities involved in conventional energy supply activities and implement and enforce said policies”. (Emphasis supplied)

“SEC. 9. Board of Energy. - There is hereby created a Board of Energy . . .

The Board shall, after due notice and hearing, exercise the following powers and functions, among others:

xxx xxx xxx

e. Issue Certificates of Public Convenience for the operation of electric power utilities and services, except electric cooperatives which shall continue to be governed by Presidential Decree No. 269, as amended, including the establishment and regulation of areas of operation of particular operators of public power utilities and services, the fixing of standards and specifications in all cases related to the issued Certificate of Public Convenience, and the promulgation

of the rules requiring the operators concerned to install such devices and adopt such procedures as would promote or insure the highest degree of safety and convenience to persons and property". (Emphasis supplied)

You claim that under Section 12(c) (1) and (3) of R.A. No. 7638, DOE is vested with the authority to formulate and enforce regulatory and fiscal policies applicable not only to downstream petroleum operations such as importation, exportation, stockpiling and other related activities but also to operations of both government and private entities involved in other energy resource supply activities such as independent power production and electricity distribution; that on the other hand, you state that the ERB likewise performs the same functions of its predecessor, the Board of Energy, pursuant to Section 9(e) of P.D. No. 1206, as amended in relation to Section 14 of E.O. No. 172; that if ERB shall continue to exercise regulatory functions covering independent power production and electricity distribution and at the same time the DOE shall perform similar functions pursuant to the aforementioned provisions of R.A. No. 7638, the two agencies would be performing overlapping functions "which does not seem to be the intent of the legislature".

You believe, however, that Section 12(c) (1) and (3) of R.A. No. 7638 has repealed Section 9(e) of P.D. No. 1206, as amended, in relation to Section 14 of E.O. No. 172, on the ground that in case of an irreconcilable inconsistency and repugnancy between the two laws, the later enactment shall prevail over the earlier one; and that the intent of the legislature is to confine to ERB only its price and rate fixing functions such that all its non-price, non-rate fixing functions, specifically, the authority to supervise and regulate electric utilities, must go to the DOE.

We do not see any irreconcilable inconsistency and repugnancy between the aforementioned provisions of R.A. No. 7638 and P.D. No.

1206. Section 12(c) (1) and (3) of R.A. No. 7638 speak of the function of the Energy Industry Administration Bureau, an office under the DOE, to assist in the formulation of regulatory, financial and fiscal policies, rules and regulations and to implement and enforce the same relative to the operations of both the government and private entities involved in energy resource supply activities such as independent power production and/or oil and petroleum operations. On the other hand, Section 9(e) of P.D. No. 1206 deals with the authority of the Board of Energy (now ERB) to issue Certificate of Public Convenience for the operation of electric power utilities, except electric cooperatives which shall continue to be governed by P.D. No. 269, as amended, including the establishment and regulation of areas of operation of particular operators of public utilities and services, and the fixing of standards and specifications in all cases related to the issued Certificate of Public Convenience. The former refers to a policy-making function of the DOE, assisted in the discharge thereof by the Energy Industry Administration Bureau, while the latter refers to a quasi-judicial function of the ERB which requires notice and hearing in the exercise thereof. Very clearly the two provisions are not inconsistent with each other, but in fact, are reconcilable in the sense that the ERB, in taking action on matters brought before it, must do so consistently with the energy regulatory policies promulgated or adopted by the DOE. Incidentally, we do not find Section 14 of E.O. No. 172 cited in your letter, relevant to the matter in issue. Said provision refers to the applicability of certain laws which are not in conflict with said E.O. No. 172.

In view whereof, it is our opinion that Section 9(c) of P.D. No. 1206, as amended has not been repealed by Section 12(c) (1) and (3) of R.A. No. 7638.

Please be guided accordingly.

Very truly yours,

(SGD.) FRANKLIN M. DRILON Secretary

DOJ OPINION NO. 022, s. 1993

February 12, 1993

Acting Chairman
Delfin L. Lazaro
Energy Coordinating Council
PNPC Complex, Merritt Road Fort Bonifacio,
Makati Metro Manila

Sir :

This has reference to your request for opinion on the following questions relative to R.A. No. 7638 ("An Act Creating the Department of Energy, Rationalizing the Organization and Functions of Government Agencies Related to Energy, and for Other Purposes"):

- "1. Are the non-power rate powers and functions of the Energy Regulatory Board (ERB) included in the jurisdiction, powers and functions transferred to the Department of Energy?
- "2. May the ERB deputize the National Electrification Commission under the NEA Board of Administrators performing the electric cooperative power rate fixing functions which under the law are now transferred to the former in the meantime the ERB is in the process of organizing its units for the purpose?"

Relative to the first question, you point to Section 18 of R.A. No. 7638 which provides for the transfer of the non-price regulatory functions of the ERB to the Department of Energy (DOE). Said provision reads:

"SEC. 18. Rationalization or Transfer of Functions of Attached or Related Agencies. - The non-price regulatory jurisdiction, powers and functions of the Energy Regulatory Board as provided in Section 3 of Executive

Order No. 172 are hereby transferred to the Department.

The foregoing transfer of powers and functions shall include all applicable funds and appropriations records, equipment, property and such personnel as may be necessary; provided. That, only such amount of funds and appropriations of the Board as well as only the personnel thereof which are completely or primarily involved in the exercise by said Board of its non-price regulatory powers and functions shall be affected by such transfer. prcd

The power of the NPC to determine, fix and prescribe the rates charged to its customers under Section 4 of Republic Act No. 6935, as amended, as well as the power of electric cooperatives to fix rates under Section 16(o), Chapter II of Presidential Decree no. 269, as amended, are hereby transferred to the Energy Regulatory Board. The Board shall exercise its new powers only after due notice and hearing and under the same procedure provided in Executive Order No. 172." (Emphasis supplied).

Section 3 of E.O. No. 172 cited in the first paragraph of Section 18 abovequoted provides:

"SEC 3. Jurisdiction, Powers and Functions of the Board. - When warranted and only when public necessity requires, the Board may regulate the business of importing, exporting, re-exporting, shipping, transporting, processing, refining, marketing and distributing energy resources. Energy resource means any substance or phenomenon which by itself or in combination with others, or after processing or refining or the application to it of

technology, emanates, generates or causes the emanation or generation of energy, such as but not limited to, petroleum or petroleum products, coal, marsh gas, methane gas, geothermal and hydroelectric sources of energy, uranium and other similar radioactive minerals, solar energy, tidal power, as well as non-conventional existing and potential sources.

The Board shall, upon proper notice and hearing, exercise the following, among other powers and functions:

- (a) Fix and regulate the prices of petroleum products;
- (b) Fix and regulate the rate schedule or prices of piped gas to be charged by duly franchised gas companies which distribute gas by means of underground pipe system;
- (c) Fix and regulate the rates of pipeline concessionaires under the provisions of Republic Act No. 387, as amended, otherwise known as the 'Petroleum Act of 1949,' as amended by Presidential Decree No. 1700;
- (d) Regulate the capacities of new refineries or additional capacities of existing refineries and license refineries that may be organized after the issuance of this Executive Order, under such terms and conditions as are consistent with the national interest;
- (e) Whenever the Board has determined that there is a shortage of any petroleum product, or when public interest so requires, it may take such steps

as it may consider necessary, including the temporary adjustment of the levels of prices of petroleum products and the payment to the Oil Price Stabilization Fund created under Presidential Decree No. 1956 by persons or entities engaged in the petroleum industry of such amounts as may be determined by the Board, which will enable the importer to recover its cost of importation”.

You state that while it is clear from the provision of Section 18 of R.A. No 7638 that the “non-price regulatory jurisdiction, powers and functions of ERB” under Section 13 of E.O. No. 172 are transferred to DOE, it is no clear “whether the non-power rate fixing functions of ERB are also transferred to DOE”. However, you also aver that pertinent provisions of the “DOE law” (i.e. R.A. No. 7638) “appear to vest these powers on DOE”. You cite in particular, Section 2 (“Declaration of Policy”), Section 12(c) (defining the powers of the Energy Industry Administration Bureau), and Section 26 (“Repealing Clause”) of said “DOE law.

It is noted that Section 3 of E.O. No. 172 provides for both non-price and price regulatory jurisdiction, powers and functions of ERB, and that Section 18 of R.A. No. 7638, in express terms, transfers to DOE those “non-price regulatory jurisdiction, powers and functions” of ERB as are provided for in said Section 3.

It is not quite clear to us what other “non-power rate powers and functions” you may be referring to in your first query. You have not specified any particular provision of the ERB law (E.O. No. 172) or other pertinent energy laws which, to your mind, might have been affected by the transfer of jurisdiction, powers and functions mandated in Section 18 of R.A. No. 7638. Neither have you specified any specific “non-power rate powers and functions” of ERB which, you would think,

might have been deemed transferred to DOE alongside the transfer to it of ERB's "non-price regulatory jurisdiction, powers and functions" pursuant to said Section 18. prcd

In any case, we believe that since the provision of Section 18 on the transfer of certain powers and functions from ERB to DOE is clear and unequivocal, and devoid of any ambiguity, in the sense that it categorically refers to "non-price jurisdiction, powers and functions" of ERB under Section 3 of E.O. No. 172, there is no room for interpretation, but only for application, of the law. This is a cardinal rule of statutory construction.

Clearly, the parameters of the transfer of functions from ERB to DOE pursuant to Section 18, are circumscribed by the provision of Section 3 of E.O. No. 172 alone, so that, if there are other "related" functions of ERB under other provisions of E.O. No. 172 or other energy laws, these "related" functions, which may conceivably refer to what you call "non-power rate powers and functions" of ERB, are clearly not contemplated by Section 18 and are, therefore, not to be deemed included in the transfer of function from ERB to DOE under the said provision.

It may be argued that Section 26 of R.A. No. 7638 contains as repealing clause which provides that:

"All laws, presidential decrees, executive orders, rules and regulations or parts thereof, inconsistent with the provisions of this Act, are hereby repealed or modified accordingly by, . . ."

and, therefore, all provisions of E.O. No. 172 and related laws which are inconsistent with the policy, purpose and intent of R.A. No. 7638 are deemed repealed. It has been said, however, that a general repealing clause of such nature does not operate as an express repeal because it fails to identify or designate the act or acts that are intended

to be repealed. Rather, it is a clause which predicates the intended repeal upon the condition that a substantial conflict must be found on existing and prior acts of the same subject matter. Such being the case, the presumption against implied repeals and the rule on strict construction regarding implied repeals apply *ex proprio vigore*. For the legislature is presumed to know the existing laws so that, if repeal of particular or specific laws is intended, the proper step is to so express it. The failure to add a specific repealing clause particularly mentioning the statute to be repealed indicates that the intent was not to repeal any existing law on the matter, unless an irreconcilable inconsistency and repugnancy exists in the terms of the new and the old laws (*Iloilo Palay and Corn Planters Association, Inc. vs. Feliciano*, 13 SCRA 377; *City of Naga vs. Agna*, 71 SCRA 176, cited in *Agpalo, Statutory Construction*, 1993 Edition, pp. 191-192).

In view of the foregoing, it is our opinion that only the non-price regulatory functions of ERB under Section 3 of E.O. No. 172 are transferred to the DOE. all other powers of ERB which are not within the purview of its "non-price regulatory jurisdiction, powers and functions" as defined in Section 3 are not so transferred to DOE and accordingly remain vested in ERB.

Anent the second question on whether the ERB can deputize the National Electrification Commission to discharge the new rate-fixing power devolved to ERB meanwhile that it is in the process of organizing its own unit for the purpose, the pertinent provision is paragraph 3 of Section 18 of R.A. No. 7638 which provides:

"SEC. 18. xxx xxx xxx

xxx xxx xxx

The power of the NPC to determine, fix and prescribe the rates being charged to its customers under

Section 4 of Republic Act No. 6935, as amended, as well as the power of electric cooperatives to fix rates under Section 16(o), Chapter II of Presidential Decree No. 269, as amended, are hereby transferred to the Energy Regulatory Board. The Board shall exercise its new powers only after due notice and hearing and under the same procedure provided in Executive Order No. 172.” (Emphasis supplied.)

Pursuant to the aforementioned provision of Section 18, the rate-fixing power of electric cooperatives under P.D. No. 269 [and of the NPC under R.A. No. 6935] is transferred to ERB. However, unlike in the case of provisions transferring powers and functions from ERB and other government agencies to the DOE which also expressly provide for the transfer of the necessary personnel, funds and equipment (see Sec. 18, pars. 1 and 2 and Sec. 17), there is no similar provision found in the third paragraph of Section 18, which means that no such transfer of personnel, funds or equipment from the electric cooperatives [and the NPC] is intended or authorized. prcd

There is also no provision in Section 18 or elsewhere in R.A. No. 7638 which authorized the ERB to delegate its functions to a deputy, implying that ERB must itself discharge its new function and may not deputize another body or official to discharge such function albeit temporarily. Discretionary powers cannot be delegated. The general rule is that the person vested with judgment and discretion to be exercised on behalf of the public must exercise it in person and, unless expressly or impliedly authorized to do so, cannot delegate it some other person (DOJ Op. No. 96, s. 1985, citing

Mechem, A Treatise on the Law of Public Offices and Officers, Sec. 567). In the case of ERB, Section 18 expressly provides that “the Board [ERB] shall exercise its new powers only after due notice and hearing and under the same procedure provided in Executive Order No. 172”, which clearly indicates the legislative intent to hold ERB directly and primarily responsible for the discharge of its newly-acquired rate-fixing power from the NPC and the electric cooperatives, and negates the existence of power to delegate its performance to a deputy.

This does not mean, however, that ERB cannot employ subordinates to aid it in the discharge of its rate-fixing powers. For it is equally well-settled that an officer who is required to exercise his own judgment and discretion in making an order is not precluded from utilizing, as a matter of practical administrative procedure, the aid of subordinates whom he may direct to investigate, report the facts, and submit the appropriate recommendation in relation to the advisability of the order. Administrative officers having the power to determine certain questions after a hearing may make use of subordinates to hold the hearing and make their determinations upon the report of the subordinates, without violating the principles as to fairness of hearing or delegation of powers (DOJ Op. No. 153, s. 1985, citing authorities).

Based on these premises, your second query is hereby answered in the negative.

Very truly yours,

(SGD.) FRANKLIN M. DRILON Secretary

DOJ OPINION NO. 098, s. 1993

July 26, 1993

Secretary Delfin L. Lazaro
Department of Energy
PNPC Complex, Merritt Road Fort Bonifacio,
Makati Metro Manila

Sir :

This has reference to your request “to be clarified” on certain points concerning our Opinion No. 22, s. 1993, particularly with respect to the following portion of the said Opinion which states, thus:

“It is not quite clear to us what other non-power rate powers and functions you may be referring to in your first query. You have not specified any particular provision of the ERB law (E.O. No. 172) or other pertinent energy laws which, to your mind, might have been affected by the transfer of jurisdiction, powers and functions mandated in Section 18 of R.A. No. 7639. Neither have you specified any specific non-power rate powers and function of EB which, you would think, might have been deemed transferred to DOE alongside the transfer to it of ERB’s ‘non-price regulatory jurisdiction, powers and functions’ pursuant to said Section 18”.

Specifically, you mention Section 12(c) (1) and (3) of R.A. No. 7638 vis-a-vis Section 9(e) of P.D. No. 1206, as amended, which respectively provide, thus:

“SEC. 12. Bureaus and Services. —

xxx xxx xxx

(c) Energy Industry Administration Bureau — (1) assist in the formulation of regulatory policies

to encourage and guide the operations of both government and private entities involved in energy resource supply activities such as independent power production, electricity distribution, as well as the importation, exploration stockpiling, storage, shipping, transportation, refinement, processing, marketing and distribution of all forms of energy and energy products, whether conventional or nonconventional: prcd

xxx xxx xxx

(3) Assist in the formulation of financial and fiscal policies, rules, guidelines, and requirements relative to the operations of entities involved in the supply of energy resources such as oil companies, petroleum product dealers, coal importing and distributing companies, natural gas distributing companies, independent power producers, and all other entities involved in conventional energy supply activities and implement and enforce said policies”. (Emphasis supplied)

“SEC. 9. Board of Energy. - There is hereby created a Board of Energy . . .

The Board shall, after due notice and hearing, exercise the following powers and functions, among others:

xxx xxx xxx

e. Issue Certificates of Public Convenience for the operation of electric power utilities and services, except electric cooperatives which shall continue to be governed by Presidential Decree No. 269, as amended, including the establishment and regulation of areas of operation of particular

operators of public power utilities and services, the fixing of standards and specifications in all cases related to the issued Certificate of Public Convenience, and the promulgation of the rules requiring the operators concerned to install such devices and adopt such procedures as would promote or insure the highest degree of safety and convenience to persons and property". (Emphasis supplied)

You claim that under Section 12(c) (1) and (3) of R.A. No. 7638, DOE is vested with the authority to formulate and enforce regulatory and fiscal policies applicable not only to downstream petroleum operations such as importation, exportation, stockpiling and other related activities but also to operations of both government and private entities involved in other energy resource supply activities such as independent power production and electricity distribution; that on the other hand, you state that the ERB likewise performs the same functions of its predecessor, the Board of Energy, pursuant to Section 9(e) of P.D. No. 1206, as amended in relation to Section 14 of E.O. No. 172; that if ERB shall continue to exercise regulatory functions covering independent power production and electricity distribution and at the same time the DOE shall perform similar functions pursuant to the aforementioned provisions of R.A. No. 7638, the two agencies would be performing overlapping functions "which does not seem to be the intent of the legislature".

You believe, however, that Section 12(c) (1) and (3) of R.A. No. 7638 has repealed Section 9(e) of P.D. No. 1206, as amended, in relation to Section 14 of E.O. No. 172, on the ground that in case of an irreconcilable inconsistency and repugnancy between the two laws, the later enactment shall prevail over the earlier one; and that the intent of the legislature is to confine to ERB only its price and rate fixing functions such that all its non-price, non-rate fixing functions, specifically, the authority to

supervise and regulate electric utilities, must go to the DOE.

We do not see any irreconcilable inconsistency and repugnancy between the aforementioned provisions of R.A. No. 7638 and P.D. No. 1206. Section 12(c) (1) and (3) of R.A. No. 7638 speak of the function of the Energy Industry Administration Bureau, an office under the DOE, to assist in the formulation of regulatory, financial and fiscal policies, rules and regulations and to implement and enforce the same relative to the operations of both the government and private entities involved in energy resource supply activities such as independent power production and/or oil and petroleum operations. On the other hand, Section 9(e) of P.D. No. 1206 deals with the authority of the Board of Energy (now ERB) to issue Certificate of Public Convenience for the operation of electric power utilities, except electric cooperatives which shall continue to be governed by P.D. No. 269, as amended, including the establishment and regulation of areas of operation of particular operators of public utilities and services, and the fixing of standards and specifications in all cases related to the issued Certificate of Public Convenience. The former refers to a policy-making function of the DOE, assisted in the discharge thereof by the Energy Industry Administration Bureau, while the latter refers to a quasi-judicial function of the ERB which requires notice and hearing in the exercise thereof. Very clearly the two provisions are not inconsistent with each other, but in fact, are reconcilable in the sense that the ERB, in taking action on matters brought before it, must do so consistently with the energy regulatory policies promulgated or adopted by the DOE. Incidentally, we do not find Section 14 of E.O. No. 172 cited in your letter, relevant to the matter in issue. Said provision refers to the applicability of certain laws which are not in conflict with said E.O. No. 172.

In view whereof, it is our opinion that Section 9(c) of P.D. No. 1206, as amended has not

been repealed by Section 12(c) (1) and (3) of R.A. No. 7638.

Please be guided accordingly.

Very truly yours,

(SGD.) FRANKLIN M. DRILON
Secretary

DOJ OPINION NO. 012, s. 2016

March 28, 2016

OIC-Assistant Secretary and Chief of Staff
Patrick T. Aquino
Department of Energy
Energy Center, Bonifacio Global City
Taguig City

Dear OIC-Assistant Secretary Aquino :

This refers to your letter dated 15 January 2016, referring to this Department the National Development Company's (NDC) request for confirmation that under Republic Act (R.A.) No. 9136, or the Electric Power Industry Reform Act of 2001 (EPIRA), 1 NDC is allowed to invest in or partner with privately owned companies that are engaged in hydroelectric power generation.

Specifically, NDC wants to be clarified on whether it can undertake to invest in a hydropower project to be located at Tublay, Benguet under the EPIRA Law.

As a backgrounder, you state the following facts:

1. NDC is a government owned and controlled corporation created and existing by virtue of Presidential Decree (P.D.) No. 1648, 2 as amended. It is attached to the Department of Trade and Industry and under its Charter, it is empowered to engage in various commercial and industrial enterprises which may be necessary or contributory to economic development or important to public interest.
2. In 2013, the NDC Board of Directors approved the inclusion of the energy sector as a priority industry in which NDC should invest. Particularly, renewable energy such as hydropower.

3. The same is in response to the forecasted power shortage in the country. As reported by the DOE, in the Luzon area alone, the projected power deficit is up to 450MW by April 2017 and up to 940MW by March to December 2018.
4. The directive is also in line with the Philippine Development Plan (PDP) 2011-2016 which states that government committed a 50.5 (25%) MW from hydropower in the total medium-term commitment of 205 MW from renewal energy based potential power generation capacities. HEITAD
5. Thus, NDC, in partnership with Philippine National Oil Company Renewables Company (PNOC RC) entered into a joint venture for the establishment of 1-MW hydropower project located at Rizal, Nueva Ecija Project testing and commissioning is from December 10, 2015 up to January 10, 2016. Target commercial operation of the project shall be on January 11, 2016.
6. To further augment the country's energy supply, NDC again intends to invest in a hydropower project to be located at Tublay, Benguet. The project is expected to generate around 7.9 MW power.
7. Under the proposed project, two private partners, Basic Energy Corporation and AT Dinum, and NDC shall form a Special Purpose Vehicle (SPV) which shall construct, implement, manage and operate the project.
8. NDC's participation in the project is limited to its 34% equity infusion in the SPV. NDC, itself, will not be engaged and involved in the construction, operation or management of the hydropower project.
9. This project was approved in principle by the NDC Board in its meeting held on December 9, 2015. However, the

Board directed Management to seek a confirmatory opinion from DOE that NDC can undertake this project under the EPIRA Law.

It is the position of NDC that being a minority partner, it can invest in hydropower project to be located at Tublay, Benguet or provide equity to private companies engaged in power generation, without violating the EPIRA Law.

We confirm NDC's position that it can undertake to invest in the hydropower project to be located at Tublay, Benguet or provide equity to privately owned companies engaged in hydroelectric power generation, without violating the EPIRA Law.

In this Department's Opinion No. 5, s. 2016, on a similar issue, particularly on whether the proposed buyout of the Casecan Multipurpose Irrigation and Power Project may be pursued by the National Irrigation Administration, notwithstanding the policy declaration of EPIRA to privatize the National Power Corporation's (NPC) generation assets, we had the occasion to reiterate our legal opinion in this Department's unnumbered opinion, dated 14 August 2015, on the issue relating to the privatization policy of the EPIRA, to wit:

"There is, indeed, no provision of the law which prohibits any of the entities under the DOE apart from the NPC and the PSALM from entering into power generation. This is clear from the EPIRA and the DOE Act. What the EPIRA does, under Section 47 thereof, is to order the privatization of the NPC and the disposal of its assets by the PSALM, save for a number of assets enumerated therein. This view is buttressed by no less than the fact the EPIRA devotes an entire Chapter 3 to the "Privatization of the Assets of the National Power Corporation".

Further, in the said DOJ Opinion No. 5, series of 2016, this Department had the occasion to exhaustively discuss the issue relating to the privatization policy of EPIRA, the permanent portions of which are quoted as follows:

While it is recognized that the policy and thrust of the EPIRA and DOE Act is to fully privatize the energy sector, it must be clarified and stressed that under existing laws, the government or its agencies is not prohibited from engaging in power generation. Indeed, there is no provision in the EPIRA of DOE Act which categorically prohibits any of the entities under the DOE apart from the NPC and the PSALM from engaging in power generation. What the EPIRA mandates is the privatization of NPC's assets, including IPP contracts.

Section 4(x) of the EPIRA defines a generation company as any person or entity authorized by the Energy Regulatory Commission to operate facilities used in the generation of electricity. The use of "any" covers both public and private persons or entities. The EPIRA and its IRR do not contain any further prohibition or restriction against government or any of its agencies (such as the NIA in this case) to enter into power generation or operate facilities used in the generation of electricity.

Moreover, the unnumbered opinion 4 appears to have overlooked the fact that EPIRA's primordial policy is to ensure and accelerate the total electrification of the country and ensure the quality, reliability, security and affordability of the supply of electric power (Sec. 2 (a) and (b) Declaration of Policy, R.A. No. 9136).

Ancillary to said policies are the following objectives:

(g) To assure socially and environmentally compatible energy sources and infrastructure;

(h) To promote the utilization of indigenous and new renewable energy resources in power generation in order to reduce dependence on imported energy;

(i) To provide for an orderly and transparent privatization of the assets and liabilities of the National Power Corporation (NPC);

The spirit and intent of the law, as motivated by the government's thrust to avoid the recurrence of the power crisis in the 1990's which was exacerbated by NPC's failure to prudently operate and maintain its plants aside from the fact that it continued to wallow in debt, was not to totally prohibit the government to engage in power generation especially in the field of Renewable Energy. Indeed, there is no such prohibitive language in the EPIRA Law or DOE Act.

This intent has become more patent with the forecasted power shortage in the country. As reported by the DOE, in the Luzon Area alone, the projected power deficit is up to 450MW by April 2017 and up to 940MW by March to December 2018.

Finally, there is indeed a need to harmonize the policies of the EPIRA Law with the policy on Renewable Energy's (RE) promotion and development under the Renewable Energy Act of 2008 or R.A. 9513, which declare the State policy to accelerate the exploration and development of renewable energy resources . . . , to achieve self reliance . . . , to reduce the

country's dependence on fossil fuels and hereby minimizing the country's exposure to price fluctuation in the international market.

Verily, the Renewable Energy Act of 2008 opens renewable power development to all sectors, be it private or public.

Consequently, DOJ Opinion No. 5, s. 2016, had completely cast aside the following pronouncement in the DOJ unnumbered opinion, dated 14 August 2015, to wit:

... while the EPIRA does not expressly refer to DOE or any of its entities when it comes to the privatization thrust of the government, this Department is far from ready to subscribe to the view that the State policy of gradually easing government out of the power generation equation does not extend to the DOE and the entities under it. The DOE Act cannot be more unequivocal in mandating the DOE to develop a Philippine energy program which shall include a policy direction towards the "privatization of government agencies related to energy". To borrow the words of the PNOC RC, the wording of the law makes no distinction, utilizing the far-reaching term "government agencies". This persuades us that the intention of our law is still toward the full privatization of the sector. ATICcS

Note that the EPIRA was enacted by Congress to provide a framework for the restructuring of the electric power industry, including the privatization of the assets of National Power Corporation (NPC), the transition to the desired competitive structure, and the definition of the responsibilities of the various government agencies and entities. 5 As defined, "restructuring" refers

to the process of reorganizing the electric power industry in order to introduce higher efficiency, greater innovation and End-user choice. It shall be understood as covering a range of alternatives enhancing exposure of the industry to competitive market forces. 6 "Privatization", on the other hand, refers to the sale, disposition, change and transfer of entire ownership and control of all assets and [independent power producer] contracts from the Government or a government corporation to a private Person or entity. 7

The foregoing provisions considered, we are convinced that the scope of the policy is not merely limited to the sale and disposition of the assets of the NPC and the use of the proceeds thereof to settle its debts. The phrase "including the privatization of the NPC..." leads to the sole and inescapable conclusion that the privatization of the NPC assets is only a part of the greater objective towards the evolution of the electric power industry into its desired competitive structure. To confine the purpose of the EPIRA to the sale of NPC assets to settle NPC's debts simply undermines the general State policy which the EPIRA seeks to realize.

xxx xxx xxx

Thus, as to the issue on whether PNOC or its subsidiaries may acquire NPC assets for power generation, we still hold the opinion that this would be contrary to the very policy on power generation as embodied in the EPIRA and the DOE Act." (Emphasis supplied)

Hence, in view of the foregoing, this Department is of the legal opinion that NDC may undertake to invest in the hydropower project to be located at Tublay, Benguet or provide equity to privately owned companies engaged in hydroelectric power generation, without violating the EPIRA Law.

Please be guided accordingly.

Very truly yours,

(SGD.) EMMANUEL L. CAPARAS
Secretary

DOJ OPINION NO. 043, s, 1997

June 17, 1997

The Chairman
Energy Regulatory Board PHILCOMCEN
Building Ortigas Avenue,
Pasig City

Sir :

This has reference to your request for “opinion/clarification on whether the Energy Regulatory Board (ERB) can grant provisional authority to electric cooperatives and NPC (National Power Corporation) upon the filing of an application/petition for rate adjustment”. prcd

You state that Section 8 of Executive Order No. 172 authorizes ERB “to grant provisional relief upon the filing of an application/petition of public utilities . . .”; that Section 18 of Republic Act (not “Presidential Decree” as stated in your letter) No. 7638, otherwise known as the Department of Energy Act of 1992, transfers to the ERB, the rate-fixing powers of the NPC and electric cooperatives under Republic Act No. 6395, as amended, and P.D. No. 269, respectively; and that “while E.O. No 172 authorizes the ERB to grant provisional relief to public and privately-owned utilities upon the filing of an application/petition for rate increase, (R.A.) No. 7638 is silent on the exercise of such power (insofar) as electric cooperatives and NPC are concerned”.

Section 8 of EO No. 172 (“Creating the Energy Regulatory Board”) dated May 8, 1987, provides as follows:

“SECTION 8. Authority to Grant Provisional Relief . — The Board may, upon the filing of an application, petition or complaint or at any stage thereafter and without prior hearing, on the basis of supporting papers duly verified or authenticated, grant provisional relief on motion of a party

Footnotes

1. Republic Act No. 9136.
2. Reorganizing The National Development Company and Establishing a Revised Charter Therefor.
3. Chapter V.
4. Dated 14 August 2015.
5. Section 3, EPIRA.
6. Section 4 (rr), EPIRA.
7. Section 4, EPIRA.

in the case or on its own initiative, without prejudice to a final decision after hearing, should the Board find that the pleadings, together with such affidavits, documents and other evidence which may be submitted in support of the motion, substantially support the provisional order: Provided, That the Board shall immediately schedule and conduct a hearing thereon within thirty (30) days thereafter, upon publication and notice to all affected parties.” (Emphasis supplied.)

On the other hand, Section 18 of R.A. No. 7638 (“Department of Energy Act of 1992”) approved on December 9, 1992, reads as follows:

“SECTION 18. Rationalization or Transfer of Functions of Attached or Related Agencies. — The non-price regulatory jurisdiction, powers, and functions of the Energy Regulatory Board as provided for in Section 3 of Executive Order No 172 are hereby transferred to the Department.

The following transfer of powers and functions shall include all applicable funds and appropriations, records, equipment, property, and such personnel as may be necessary: Provided, That only such amount of funds and appropriations of the Board as well as only the personnel thereof which are completely or primarily involved in the exercise by said Board of its non-price regulatory powers and functions shall be affected by such transfer.

The power of the NPC to determine, fix, and prescribe the rates being charged to its customers under Section 4 of Republic Act No. 6395, as amended, as well as the power of electric cooperatives to fix rates

under Section 16(o), Charter II of Presidential Decree No. 269, as amended, are hereby transferred to the Energy Regulatory Board. The Board shall exercise its new powers only after due notice and hearing and under the same procedure provided for in Executive Order No. 172.” (Emphasis supplied)

In this connection, your Office has expressed the view that —

“ . . . the subject of rate fixing, be it electric cooperative, NPC or public and private utilities is similar. The reason for authorizing a regulator to grant provisional relief is because of the inherent regulatory lag in rate fixing. Unless given this authority, the utilities’ ability to deliver the required services may be impaired to the detriment of the consuming public. aisadc

. . . that the provisions of the two laws respecting the exercise of the powers to determine, fix and prescribe rates are to be uniformly applied under the same rules governing the practice and procedures in ERB. They are held in open and public process following the mandate of due process on notice and hearing.

. . . cases filed involving electric cooperatives and the NPC should not be litigated differently from the rest of the electric utilities.” The view of your Office is well-taken.

Section 18 does not only transfer to the ERB the rate-fixing powers of the electric cooperatives and NPC but it likewise prescribes the manner in which such powers are to be exercised by the ERB, “[t]he [ERB] shall exercise its new powers only after due notice and hearing and under the same procedure provided for in Executive Order No. 172.”

Section 8 of E.O. No. 172, *supra*, expressly authorizes the ERB to grant provisional relief upon the filing of an application, petition or complaint without prior hearing, but without prejudice to a final decision of the ERB after hearing. This provision prescribes a rule of procedure applicable to proceedings before the ERB. The provisional relief contemplated therein is similar to the provisional remedy recognized in the procedural law governing our judicial system for the preservation or protection of the rights or interests of parties litigants during the pendency of the principal action (*Calo vs. Roldan*, 76 Phil. 445). Even in other jurisdictions, the term provisional remedy is “chiefly used in the codes of practice” (*Snavely v. Abbot Buggy Co.*, 36 Kan. 106, 12 p 522).

In view of the express language of Section 18 of R.A. No. 7638 that the ERB shall exercise its new powers “under the same procedure provided for in Executive Order No. 172”, it is believed that the ERB may grant provisional relief, which is a procedural remedy recognized in E.O. No. 172, in cases involving the NPC and the electric cooperatives.

A doubt may have been entertained as to whether the ERB may indeed grant provisional relief in cases falling under Section 18 in view of the fact that while Section 18 requires the ERB to follow the procedure in E.O. No. 172, it is in the same breath required to exercise its new powers “only after due notice and hearing”. Under Section 8 of E.O. No. 172, which, we say, is a rule of procedure, the ERB may grant provisional relief “without prior hearing”.

We reiterate that the ERB may grant provisional relief in those cases transferred to it under Section 18. The requirement of “notice and hearing” alluded to in Section 18 refers to a final decision of the ERB, and not to the grant of provisional relief which is merely temporary and which, by express provision of Section 8 of E.O. No. 172, may be granted without prior hearing, but subject “to a final

decision [of the ERB] after hearing”.

We believe that the provision of Section 18 which provides that the rate-fixing powers of the NPC and the ERB which were transferred to the ERB shall be exercised by the ERB “only after due notice and hearing”, is meant to stress the need for notice and hearing in rate cases involving the NPC and the electric cooperatives, which requirement is not expressly provided for in Section 4 of R.A. No. 6395 which defines NPC’s rate-fixing power, nor in Section 6(o) of P.D. No. 269 which grants to electric cooperatives a similar authority. This provision is intended to standardize the practice in rate cases before the ERB and this is clear from the language of Section 18 which adopts the same procedure governing rate cases under E.O. No. 172.

It is useful to mention that the authority of the ERB, and its predecessors Board of Energy (BOE) and Public Service Commission (PSC) to grant provisional relief without prior hearing has been upheld by the Supreme Court in several cases. In *Citizens Alliance for Consumer Protection vs. Energy Regulatory Board* (162 SCRA 521), the Supreme Court held that under Section 8 of E.O. No. 172, the ERB “is authorized in appropriate cases to grant provisional relief, whether on its own initiative or on motion of a party, either (1) upon filing of an application, petition or complaint; or (2) at any stage thereafter and without need of prior hearing, subject, however, to conducting a hearing thereon within thirty (30) days thereafter. Issuance of an order granting such provisional relief must rest upon substantial evidence and is without prejudice, however, to rendition of a final decision after hearing” (at p. 535). In *Bautista vs. Board of Energy* (169 SCRA 167), the Supreme Court ruled that when the Board of Energy provisionally authorized private respondent MERALCO’s application for a rate increase without hearing, it merely exercised a prerogative granted to it by law. In the earlier case of *Republic vs. Medina* (41 SCRA 644), the Supreme Court categorically

stated that the Public Service Commission in the exercise of its jurisdiction over rate cases "is empowered to approve provisional rates even without a hearing".

There is no denial of due process when the ERB (formerly BOE and PSC) grants provisional relief without prior hearing. It was observed in *Matienzo vs. BOT* (162 SCRA 1) that the temporary nature of the provisional authority and the fact that the primary application shall be given a full hearing are the safeguards against the abuse of such power.

All told, we believe that when Section 18 of R.A. No. 7638 provides that the new powers of ERB shall be exercised "only after due notice and hearing and under the same procedure provided for in Executive order No. 172", the intention, as earlier stated, is to standardize the rules for all rate cases involving public utilities whether it be the NPC under Section 4 of R.A. No. 6359, or the electric cooperatives under Section 6(o) of P.D. No. 269, or other utility companies regulated by the ERB under E.O. No. 172. This conclusion is clearly deducible from the provision of Section 18 itself which has consolidated the rate-fixing powers of the NPC and the electric cooperatives in the ERB and which, in turn is mandated to exercise its new powers "only after due notice and hearing and under the same procedure provided for in Executive Order No. 172" similar to the way it is handling rate cases filed under E.O. No. 172. cdt

Please be guided accordingly.

Very truly yours,

(SGD.) TEOFISTO T. GUINGONA, JR.
Secretary

National Power Corporation

Banked Gas (A.O.381)

DOJ OPINION NO. 046, s. 2009

September 25, 2009

Secretary Angelo T. Reyes
Department of Energy
Energy Centre, Merritt Road,
Taguig, Metro Manila

Sir :

This refers to your request for opinion on (1) whether the Government, through the DOE, with the conformity of the DOF, can sell its Banked Gas which it acquired by way of subrogation, to another government entity, the Philippine National Oil Company ("PNOC"), and (2) if in the affirmative, whether the DOE Secretary and the DOF Secretary may execute the Deed of Sale without need of a new presidential directive.

You state that the Government, through the DOE, was subrogated to the rights over the Banked Gas from the Camago-Malampaya Northwest Palawan reservoir as a result of its paying for it by allowing the sellers of the natural gas to draw on the 60% net Government share in the revenues from the Malampaya service contract.

As a background, on 11 December 1990, the Philippine Government, through the Office of Energy Affairs (now the DOE), and Shell Exploration B.V. and Occidental Philippines, Inc., (assignors of interest of Shell Philippines Exploration B.V., Shell Philippines Exploration B.V., Shell Philippines LLC, Chevron Malampaya LLC, and PNOC Exploration Corporation) (the "Contractors") entered into Service Contract No. 38 ("SC 38"). This granted the Contractors the right to explore, extract, transport, and sell mineral oil and other substances from the Camago-Malampaya service contract area. Under said SC 38 and a Memorandum of Clarification

among the same parties, the RoP is to receive 60% of the net proceeds from the sale of the Petroleum Products (including natural gas) which the Philippine government may receive in kind (the “Net Government Share”).

On 30 December 1997, the National Power Corporation (“NPC”), as the buyer, and the Contractors, as the sellers, entered into an Agreement for the Sale and Purchase of Natural Gas (the “GSPA”) for the sale of natural gas produced under SC 38 to be primarily used by NPC for the Ilijan Power Plant. The GSPA provides, among others, that NPC shall be supplied a minimum volume of natural gas which NPC is bound to pay regardless of whether such volume was actually needed or taken by it (the “Take-or-Pay Gas”). TICDSc

On 17 February 1998, then President Fidel V. Ramos issued Administrative Order No. 381 (“AO 381”) authorizing the Philippine government’s guarantee of NPC’s financial obligations under the GSPA. As part of the guarantee, the DOE was authorized to pay for the portion of the Take-or-Pay Gas not actually received or utilized by NPC (the “Shortfall”) through deductions from the Net Government Share.

On 30 March 1998, pursuant to AO 381, the Philippine government, through the DOE, NPC, and the Contractors, entered into a Support, Assignment and Payment Agreement (the “SAPA”). Article IV, Section 1 of the SAPA provides that the Philippine government shall be subrogated to all of NPC’s entitlements over the Annual Deficiencies (defined in the GSPA as the “part of the Take-or-Pay Quantity not taken and paid for in such Past Contract Year”) which the DOE had paid from the sources specified in AO 381, including the Net Government Share. As provided in the SAPA and AO 381, the DOE paid for the Shortfall from the Net Government Share. The total Shortfall paid by the DOE is referred to as the “Banked Gas”. The Banked Gas is currently stored in the Camago-Malampaya Reservoir.

You further state that the SAPA also provided, in Section 2 of Article IV, that the Philippine government and NPC shall agree on the terms and conditions of the subrogation; that it is on this basis that the Philippine government, through the DOE, NPC, and PSALM (as successor-in-interest to NPC’s assets and liabilities under EPIRA) are now proposing to enter into a Memorandum of Agreement to clarify the terms and conditions of such subrogation.

On the other hand, it is on the basis of the SAPA, AO 381, and the provisions of the Civil Code of the Philippines on subrogation that the Philippine government, through the DOE and the Department of Finance (DOF), are now proposing to enter into a Deed of Sale with the PNOC with respect to the subject Banked Gas. Meanwhile, PNOC is in need of the Banked Gas to support its project of developing indigenous sources of energy and supply natural gas to its Batangas-Manila (BATMAN) and Batangas-Cavite (BATCAVE) pipeline projects. aESICD

We answer in the affirmative and confirm that based on the law and on the contractual agreements entered into, the Government, through the DOE and with the conformity of the DOF, has the right to sell the subject Banked Gas to PNOC.

Article IV of the SAPA explicitly provides:

“Section 1. The Government shall be subrogated to NPC’s entitlements with respect to all annual deficiencies (i.e., the Banked Gas) arising under clause 9 of the GSPA that have been paid for (a) using the Net Government Share, (b) using funds from the Account, or (c) under the Performance Undertaking.”

This subrogation right of the Government through the DOE is affirmed in Administrative Order 381, which insofar as pertinent expressly provides as follows:

“WHEREAS, to support the development of the Natural Gas Project, the National Government through the DOE, has agreed, with the conformity of the DOF, to provide assistance to the National Power Corporation (“NPC”) by utilizing the Net Government Share to satisfy the Take-or-Pay Quantity (“TOPQ”) provisions of the GSPA in respect of the part of such TOPQ that is in excess of NPC’s Planned Generation Consumption . . . in consideration of the DOE’s being subrogated to NPC’s right to recover the Annual Deficiencies to be supplied by the Sellers under Clause 9 of the GSPA.”

Having confirmed the subrogation rights, the right of Government to sell the Banked Gas is a function of its ownership thereof. Article 1303 of the Civil Code provides:

“Subrogation transfers to the person subrogated the credit with all the rights thereto appertaining either against the debtor or against third persons, be they guarantors or possessors of mortgages, subject to stipulation in a conventional subrogation.” HSTAcI

All the attributes of ownership are therefore present with the Government and accordingly it can perform any acts of ownership over the subject which includes the right to sell as provided under Article 428 of the Civil Code which states that:

“The owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.”

Further, the Administrative Order 381 authorizes the DOE and the DOF to enter into any agreement for the purposes of implementing the provisions of the order, to wit:

“Section 9. The DOF, the DOE and NPC are hereby authorized to enter into any agreements necessary to implement the provisions of this Order.”

Anent your second query on whether the DOE Secretary and the DOF Secretary can execute a Deed of Sale without need of a new presidential directive, we reply likewise in the affirmative. As earlier stated, Administrative Order (AO) 381, in conjunction with Article IV of the SAPA, the DOE and the DOF are specifically authorized to enter into any agreements to implement the SAPA. Moreover, Section 10 of the same AO expressly provides that the DOF and DOE shall have joint primary jurisdiction over any issue or controversy which may arise from the interpretation of the Order and of other inter-agency agreements which may be executed pursuant thereto. It should be noted that the DOE and the DOF act through its respective Secretaries. Under the Administrative Code, the authority and responsibility for the exercise of the mandate of the Department and for the discharge of its powers and functions are vested in the Secretary who shall have supervision and control of the Department.

In the light of the foregoing, and considering that the provisions of Administrative Order 381, in conjunction with Sections 6 and 7, Chapter 2, Book IV of the Administrative Code are explicit and clear, we are of the view that the DOE Secretary and the DOF Secretary may execute the Deed of Sale without need of a new presidential directive. cDlaAS

Please be guided accordingly.

Very truly yours,

(SGD.) AGNES VST DEVANADERA
Acting Secretary

DOJ OPINION NO. 047, s. 2009

September 28, 2009

Secretary Angelo T. Reyes
Department of Energy
Energy Centre, Merritt Road,
Taguig, Metro Manila

Sir:

This refers to your supplemental letter 1 requesting for opinion on the following issues:

- 1) Whether or not Administrative Order No. 381 (AO 381) and the Support Assignment and Payment Agreement (SAPA) authorize the Department of Energy (DOE) to sell the Banked Gas considering that it appears that the spirit behind the said issuances/documents pertain only to guaranteeing the payment of the "Shortfall";
- 2) Whether or not the DOE, which is merely a conduit of the government share in the Malampaya Natural Gas, can sell the Banked Gas without presidential approval; and
- 3) Past transactions involving the utilization of government share in the Malampaya proceeds were covered by presidential approvals. Is the sale of the Banked Gas any different from these past transactions? HACaSc

You state that AO 381 and the SAPA are documents which guarantee and support the obligation of National Power Corporation (NPC) to the Service Contract 38 (SC 38) Consortium and do not in any way mention any authority of the DOE to sell the Banked Gas; that the government share of the sale of the Malampaya natural gas forms part of Special Fund 151 under Presidential Decree No. 910 which is directly remitted to the Bureau of Treasury; that the DOE merely acts as a conduit and does not have any

authority to use the net government share without presidential approval; that in past transactions, the use of the government share in the sale of the Malampaya natural gas were covered by presidential approvals; that considering that the money used to pay for the Banked Gas forms part of Special Fund 151, it necessarily follows that it is owned by the national government and any disposition thereof may necessitate presidential approval.

In addition, you further request for opinion on the legality of the attached draft Memorandum of Agreement among the DOE, NPC, and the Power Sector Assets and Liabilities Management Corporation (PSALM Corp.), as well as the draft Deed of Sale between DOE and the Philippine National Oil Company (PNOC).

We shall discuss your queries in seriatim.

Anent your first query, we are of the opinion that AO 381 and the SAPA authorize the DOE to sell the Banked Gas which the Government of the Republic of the Philippines (the Government) acquired by way of subrogation.

Under AO 381 and the SAPA, the Government, by virtue of the subrogation recognized therein, became the owner of the Banked Gas. As discussed in our opinion dated 25 September 2009, all the attributes of ownership vest with the Government. 2 As owner, this necessarily carries with it the right to sell the Banked Gas. It bears highlighting that Section 9 of AO 381 is couched in a broad language which explicitly mandates the DOE, with the conformity of the Department of Finance (DOF), to enter into any agreements to carry out the provision of AO 381. Thus, the term "any agreement" necessarily includes any form of agreement or contract which may be entered into to exercise the owner's right to sell its asset or property. To our mind, implementing the provisions of AO 381 is not limited to actions pertaining only to the guarantee of the payment of the Shortfall.

As a matter of fact, the SAPA was executed pursuant to AO 381 such that upon drawing on the Net Government Share 3 to pay for the Shortfall, the Government, by virtue of legal subrogation agreed upon under the SAPA, became the owner of the Banked Gas (Article 1302 of the Civil Code). Thus, the letter and the spirit of AO 381 give subrogation rights to the Government and grant all other rights attendant to being an owner, including the right to sell, and the authority for DOE to sell, with the conformity of DOF. HESICT

As regards your second query, we note that, as discussed above, the DOE has the authority to sell the Banked Gas and, therefore, there is no need for further presidential approval. This proceeds from the fact that AO 381, as implemented by the SAPA, provides for such presidential imprimatur.

Regarding your third query, we opine that the transaction on hand relative to the sale of the Banked Gas does not involve utilization and disbursement of the government share in the Malampaya proceeds. The sale of said Banked Gas can be equated to an exchange of Banked Gas for cash thereby generating revenue in favor of the Government. It is worthy to note that there is no expenditure involved in the sale of the Banked Gas. Stated otherwise, if the past transactions involved situations which are not in the nature of an asset exchange for cash, specific authority from the President may be needed.

In addition to the foregoing, the pronouncement of the Supreme Court in a case involving a government to government transaction is apropos.

It bears stressing that in the transactions in question, no private parties were involved; only government agencies: the Office of a Regional Division of the DECS on the one hand, and three government schools of arts and trades or vocational institutions, on

the other, as contracting parties, and other Identified Government schools as beneficiaries. There is no claim or pretense that any unauthorized commissions or rebates were given to any person, or that any part of the stipulated price went to or was destined for any individual, public officer or private party. Now, if the price were higher than might otherwise have been expected, this would no doubt be to the advantage of the manufacturing school, a government institution; on the other hand, if the price were less than that expected, this would be to the benefit of the requisitioning agency, a government agency. In either case, the government schools to which desks were to be turned over would be the beneficiaries. Under these circumstances, the Government did not stand to lose; it could not be otherwise prejudiced.⁴

With regard to your additional query regarding the legality of the proposed MOA among the DOE, NPC, and PSALM Corporation, as well as the proposed Deed of Sale between the DOE and PNOC, all with regard to the Banked Gas, we defer any opinion on this matter to your legal counsel as provided in your charter i.e., the Office of the Solicitor General (OSG). However, a reading of Section 10 of AO 381 provides that the DOF and the DOE shall have joint primary jurisdiction over any issue or controversy relating to any inter-agency agreements, the proposed MOA and the Deed of Sale, the valuation of the Banked Gas, included. AaSCTD

Please be guided accordingly.

Very truly yours,

(SGD.) AGNES VST DEVANADERA
Acting Secretary

Footnotes

1. This request supplements the request for opinion of Department of Energy Secretary Angelo T. Reyes dated 25 September 2009 regarding the authority of the DOE to negotiate, sign, execute and conclude an agreement to sell the Philippine Government's Banked Gas to the Philippine National Oil Company. The discussions in our reply to Secretary Reyes contained in our opinion dated 25 September 2009 form an integral part of this opinion.
2. See Articles 428 and 1303, Civil Code of the Philippines.
3. As defined in the Ilijan Agreement for the Sale and Purchase of Natural Gas (GSPA).
4. *Andres v. COA*, G.R. No. 94476, promulgated 26 September 1991; Underscoring supplied. ||| (Authority of the Department of Energy to Sell the Banked Gas, DOJ Opinion No. 047, s. 2009, [September 28, 2009])

DOJ OPINION NO. 048, s. 2009

September 28, 2009

Honorable Angelo T. Reyes
Chairman
Philippine National Oil Company PNOC
Building 6, Energy Center Merritt Road,
Fort Santiago Taguig City,
Philippines

Dear Sir:

We write in response to your request dated September 28, 2009 seeking our legal opinion with regard to the authority of the Philippine National Oil Company (PNOC) to disburse funds other than for those provided in Republic Act No. 9524 or the General Appropriations Act of 2009 (2009 GAA) in line with the decision of PNOC to purchase Banked Gas from the Department of Energy.

As a background, a general appropriation law (such as the 2009 GAA) is passed annually and it is intended to provide for the financial operations of the entire government during one fiscal period. 1 The 2009 GAA provides, among others, for the allowable expenditures, including those for capital outlay, for the 2009 fiscal year of the Government, its departments, agencies and attached corporations, such as PNOC.

It is a declared policy of the government to provide GOCCs with the flexibility in carrying out its purposes. Such flexibility is evident in various laws and regulations such as Executive Order No. 518 or the Government Corporate Budget (EO 518).

Under EO 518, the operating budgets of GOCCs are required to be submitted to the President for approval. 2 However, EO 518 also provides for a system of budget flexibility for GOCCs whereby supplemental budgets may also be proposed if supported by adequate funding sources. 3 In lieu of a system of supplemental budgets, the President may approve a flexible

budget system for individual GOCCs which allow automatic changes in expenditure level to accompany changes in revenue, raw material or other direct expenses. The President may also delegate to the governing board of each GOCC the authority to change allocations within limits and under such conditions as he may specify.⁴ TcCEDs

The Supreme Court has also had the occasion to acknowledge the government's policy of granting flexibility to GOCCs, stating that "[t]he separate personality allows a GOCC to hold and possess properties in its own name and, thus, permit greater independence and flexibility in its operations".⁵ Subsequently, the Supreme Court reiterated the flexibility granted to GOCCs, recognizing that a declared government policy is for "affording flexibility to government-owned and controlled corporations (GOCCs) to allow them to generate more revenue for national development . . ."⁶

A reading of the pertinent portions of 2009 GAA show that PNOC, as a GOCC, is given the budget flexibility to augment its budgetary requirements. In support of this, Special Provision 1 of the 2009 GAA states that PNOC is authorized to "realign programs and projects, reallocate the corresponding budgetary requirements . . . as well as augment the requirements which may arise from factors beyond PNOC's control".⁷ Among those causes listed in the 2009 GAA of possible factors that would allow augmentation would be a change in programs or projects.⁸ Thus, it would seem that PNOC, as a GOCC, is allowed by the 2009 GAA itself to augment or increase its budgeted expenditures when there are changes in its programs and projects for the current year.

Parenthetically, we note that Special Provision 3 of the 2009 GAA also provides that PNOC may supplement its expenditures beyond its operating budget for the payment of monetary claims, tax deficiency assessments, and damages if ordered

in certain judicial proceedings specified therein.⁹ This provision is in consonance with the flexibility of GOCCs to augment its expenditures beyond the operating budget. However, it cannot be said that this flexibility of augmentation is restricted to the described judicial proceedings, otherwise, it will render redundant and meaningless the authority of PNOC to "augment the requirement which may arise from factors beyond the PNOC's control" stated in Special Provision 1 of the same 2009 GAA.

It is worth noting that EO 518 provides a definition of "internally generated funds" of GOCCs. These are funds obtained from net revenues, funds arising from depreciation provisions, income from investment in securities, sale of corporate property, and other transactions performed in the course of corporate activity. A reading of the definition will clearly show that internally generated funds are funds that are not derived or sourced from "national budgetary support".

Taking the foregoing discussion together with the fact that GOCCs, such as PNOC, are granted budget flexibility in terms of the national budgetary support (either through direct outlays or guarantees) as clearly authorized by RA 9524 (2009 GAA), PNOC should be provided with even more flexibility with respect to the augmentation from its internally generated funds to support the changes its programs or projects.

In light of the foregoing discussion, we are of the opinion that PNOC is authorized to augment its budgetary expenditures by allocating internally generated funds to purchase the Banked Gas from the Department of Energy.

Very truly yours,

(SGD.) AGNES VST DEVANADERA
Acting Secretary

Footnotes

1. Justice Antonio E.B. Nachura, Outline Reviewer in Political Law, 2009, p. 272.
2. E.O. No. 518, 6.
3. *Id.*
4. *Id.*
5. National Development Company v. Cebu City, *supra*.
6. Vda. De Urbano v. Government Service Insurance System, G.R. No. 137904, October 19, 2001.
7. 2009 General Appropriations Act, Special Provision 1.
8. *Id.*
9. *Id.*, at Special Provision 3.

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