



Republic of the Philippines
DEPARTMENT OF ENERGY
(Kagawaran ng Enerhiya)

DEPARTMENT CIRCULAR NO. DC 2023-06-0021 *an*

PRESCRIBING THE POLICY FOR THE MANDATORY CONDUCT OF THE COMPETITIVE SELECTION PROCESS BY THE DISTRIBUTION UTILITIES FOR THE PROCUREMENT OF POWER SUPPLY FOR THEIR CAPTIVE MARKET

WHEREAS, Sections 2 (b) and (c) of Republic Act No. 9136 or the *Electric Power Industry Reform Act of 2001* (EPIRA) declare that it is the policy of the State to ensure the quality, reliability, security and affordability of the supply of electric power, and to ensure the transparent and reasonable prices of electricity in a regime of free and fair competition and full accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market;

WHEREAS, Section 2 (f) of the EPIRA declares that it is also the policy of the State 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 23 of the EPIRA provides that a distribution utility (DU) shall, among others:

- 1) have the obligation to supply electricity in the least cost manner to its Captive Market, subject to the collection of retail rate duly approved by the Energy Regulatory Commission (ERC); and
- 2) prepare and submit to the Department of Energy (DOE) its annual Distribution Development Plan (DDP). In the case of electric cooperatives (ECs), such plan shall be submitted through the National Electrification Administration (NEA);

WHEREAS, Section 37 (p) of the EPIRA mandates the DOE to formulate rules and regulations as may be necessary to implement the objectives of the EPIRA;

WHEREAS, the Supreme Court, in its Decision in *Alyansa Para sa Bagong Pilipinas v. Energy Regulatory Commission, et al.* (G.R. No. 227670, 3 May 2019), reaffirmed the DOE's mandate in Section 37 of the EPIRA, while the ERC, in the exercise of its power and functions under the EPIRA, shall issue and enforce the implementing rules and regulations;

WHEREAS, the DOE issued the following policies related to Competitive Selection Process (CSP) for the procurement of power supply of the DU for the captive customers:

- 1) Department Circular (DC) No. DC2015-06-0008¹ on 11 June 2015;
- 2) DC No. DC2018-02-0003² on 01 February 2018;
- 3) DC No. DC2021-09-0030³ on 24 September 2021; and
- 4) DC No. DC2022-06-0027⁴ on 20 June 2022.

WHEREAS, on 02 March 2021, the DOE issued DC No. DC2021-03-0003⁵, providing the guidelines in the formulation of DDP, which is the program of DUs for managing the distribution system through timely identification of infrastructure requirements and procurement of power supply to ensure the continuity of supply of electric power to end-users at the least cost manner;

WHEREAS, Section 11 of DC No. DC2021-03-0003 provides that the annually submitted DDP of DUs, and thereby accepted by the DOE, will serve as reference by the ERC, in the exercise of its functions under the EPIRA, in the review and approval of the Power Supply Agreements (PSAs) and Capital Expenditures applications of DUs;

WHEREAS, on 22 September 2022, the DOE issued an Advisory to all DUs, ERC and NEA, providing clarification on the implementation of CSP prescribed under DC No. DC2018-02-0003, as amended and supplemented by DC No. DC2021-09-0030, and in consideration of the powers and functions of the DOE and ERC under the EPIRA;

WHEREAS, to ensure efficient, timely and transparent procurement of power supply to the Captive Market, there is a need to streamline the conduct of CSP and the responsibilities of the DOE, ERC, and NEA under the EPIRA that is adaptable and flexible to the needs of the DU;

WHEREAS, the DOE drafted a Circular to address the foregoing concerns, posted the same on the DOE website on 04 April 2023, and subsequently conducted the Public Consultations on 13, 17 and 19 April 2023 to solicit comments and recommendations from the electric power industry stakeholders on the draft DC on CSP Policy;

NOW, THEREFORE, in consideration of the foregoing, the DOE hereby issues this Policy on the conduct of CSP by the DUs.

SECTION 1. GOVERNING PRINCIPLES

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

- 1.1. Transparent, competitive and timely conduct of CSP through wide dissemination of bid opportunities and non-discriminatory participation of all

¹ "Mandating All Distribution Utilities to Undergo Competitive Selection Process (CSP) in Securing Power Supply Agreements (PSA)"

² "Adopting and Prescribing the Policy for the Competitive Selection Process in the Procurement by the Distribution Utilities of Power Supply Agreement for the Captive Market"

³ "Amending Certain Provisions of and Supplementing Department Circular No. DC2018-02-0003 on the Competitive Selection Process in the Procurement by the Distribution Utilities of Power Supply Agreement for the Captive Market"

⁴ "Providing the Guidelines for the Accreditation of Third Party Auctioneer Pursuant to Section 5 of Department Circular No. DC2021-09-0030"

⁵ "Prescribing the Policy and Guidelines for the Formulation of the Distribution Utilities Distribution Development Plan Integrating the Relevant Laws, Policy Issuances, Rules and Regulations"

eligible and qualified Power Suppliers in the conduct by the DUs of their CSP for the procurement of supply of electric power for the Captive Market;

- 1.2. Procurement of all power supply through a competitive process, consistent with the latest and duly accepted DDP and posted Power Supply Procurement Plan (PSPP) of DUs, shall be undertaken at least two (2) years prior to the expiration of PSA or projected increase in demand;
- 1.3. The conduct of CSP shall be considered by the ERC in the determination of the compliance by DU with its obligation to supply its Captive Market in the least cost manner, taking into consideration the quality, affordability, sustainability and reliability of the electric power supply;
- 1.4. Accountability in the procurement process and implementation of the PSAs awarded under the CSP of the DU and Power Supplier;
- 1.5. Encourage the development of greenfield power projects to provide additional power generation capacity, as may be applicable; and
- 1.6. Protect the interest of the general public.

SECTION 2. COVERAGE AND EXCEPTIONS

- 2.1. This Circular shall apply to any DU consistent with the mandate to supply electricity in the least cost manner subject to the collection of retail rate duly approved by the ERC.
- 2.2. Except for circumstances provided under Section 2.3 below, all power supplied under bilateral contracts shall be procured through CSP, consistent with the latest and duly accepted DDP and posted PSPP.
- 2.3. In the following instances, the conduct of CSP shall not be required:
 - 2.3.1. The provision for power supply by the National Power Corporation (NPC) in off-grid areas: (a) prior to and until the entry of New Power Providers (NPP); or (b) in emergency circumstances;
 - 2.3.2. The provision for power supply by the Power Sector Assets and Liabilities Management Corporation (PSALM) through bilateral contracts for the power produced from the undisposed generating assets and contracts with Independent Power Producers;
 - 2.3.3. Power supply procured by any DU exercising the Opt-in Mechanism under the Green Energy Auction Program;
 - 2.3.4. Supply to any DU from any generating plant embedded in its franchise area utilizing renewable energy resources, wherein the contracted capacity of the embedded generation plant/s shall not exceed 10 MW per DU, provided, that this exception shall only apply to the capacity or volumes sold by the embedded generation facility to the host DU, thus, any capacity sold or intended to be sold to customers outside the franchise area of the DU shall not be exempted from compliance with

the CSP requirement; Provided, further, that the DU shall adopt the necessary measures to ensure that the operation of the embedded facility/ies shall not compromise the reliability of its network and the grid, and shall provide the documents that may be required by the ERC for the determination of compliance with such condition;

- 2.3.5. Negotiated procurement of Emergency Power supply wherein the Emergency Power Supply Agreement (EPSA) shall be filed with the ERC within thirty (30) calendar days after the occurrence of the Force Majeure/Fortuitous Events, without need of any prior clearance or certification from the DOE, and shall have a maximum and non-extendible period of one (1) year from its execution. The EPSA shall be immediately implemented to address the emergency, subject to conditions to be defined by the ERC; Provided, that the procurement of emergency power supply shall not be entitled to any form of subsidy; and
- 2.3.6. Off-Grid Areas served or to be served by NPPs with less than 1 MW demand with 24-hour electricity service not covered in Section 2.3.1.

All the above instances are subject to the guidelines to be set by ERC and its determination of the compliance by DU with its obligation to supply electricity in the least cost manner to its Captive Market, taking into consideration the quality, affordability, sustainability and reliability of the electric power supply.

SECTION 3. DEFINITION OF TERMS

- 3.1. **Captive Market** refers to the electricity end-users who do not have the choice of a supplier of electricity, as may be determined by the ERC in accordance with EPIRA.
- 3.2. **Certificate of Conformity** refers to the certificate issued by the DOE or NEA, certifying the consistency of contract quantity and cooperation period in the latest and posted PSPP and Invitation to Bid (ITB) of DUs.
- 3.3. **Competitive Selection Process** or **CSP** refers to the process wherein a Power Supplier or, in the case of Off-Grid Areas, an NPP is selected to supply electric power requirements of a DU through transparent and competitive bidding undertaken by a DU to secure supply of electricity based on the evaluation criteria to achieve least-cost supply to its Captive Market.
- 3.4. **Distribution Development Plan** or **DDP** refers to the program for managing the distribution system through timely identification of infrastructure requirements and procurement of power supply to ensure the continuity, reliability and affordability of electricity service to the consumers, which is prepared by the DU and submitted to the DOE for integration with the Power Development Plan (PDP) and Philippine Energy Plan (PEP). In the case of ECs, such plan shall be submitted through the NEA for review and consolidation.
- 3.5. **Distribution Utility** or **DU** refers to any EC, private corporation, government-owned utility or existing local government unit, with an exclusive franchise or is authorized by law to distribute electricity to end-users.

- 3.6. **DOE CSP e-based Portal** refers to the portal in the DOE website, managed by the DOE that shall be used as the primary and centralized source of information regarding all CSP activities of all DUs.
- 3.7. **Emergency Power** refers to the power required by the DU in the event that its actual power supply falls below its load demand due to Force Majeure or Fortuitous Events that are beyond the control of the DU, subject to the final determination by the ERC.
- 3.8. **Force Majeure** or **Fortuitous Event** refers to any extraordinary event not foreseeable or avoidable, or to an event that could not be foreseen, or which, though foreseen, is inevitable and independent of human will or the DU's participation, whether by active intervention, neglect or failure to act.

This further refers to an event or circumstance generally caused: (1) by nature, such as, but not limited to, fires, floods, typhoons or other catastrophes, or acts of God; and/or (2) by the acts of man, such as, but not limited to, war, national emergencies, revolution, riot, insurrection, civil unrest, or any other similar violent or threatening actions.

- 3.9. **Off-Grid Area** refers to an area or system that is not connected to the Grid.
- 3.10. **Power Supplier** refers to a generation company, authorized by ERC, providing supply from a single or portfolio of generating plants.
- 3.11. **Power Supply Procurement Plan** or **PSPP** refers to a DU's plan for the acquisition of a variety of supply-side resources to cost- effectively meet the electricity needs of its customers. The PSPP is an integral part of the DU's DDP.

SECTION 4. COMPETITIVE SELECTION PROCESS

The DU, as the mandated entity, shall have the responsibility to conduct the CSP in accordance with this Policy.

- 4.1. The DU shall prepare and submit the DDP and PSPP in accordance with the applicable and existing guidelines and policies of the DOE. In the case of ECs, their PSPPs and DDPs must be duly reviewed and evaluated by the NEA prior to the endorsement to the DOE.
- 4.2. On or before the 30th of June of each year, the DU, through its authorized representative, shall upload in the DOE CSP e-based Portal the latest and duly accepted PSPP by DOE, subject to approval of posting, which shall be the basis of the DU's conduct of CSP.
- 4.3. Prior to the publication of the ITB of the DUs, the DOE, through the Electric Power Industry Management Bureau (EPIMB), shall issue the Certificate of Conformity in accordance with their latest and duly accepted DDP and posted PSPP. In the case of ECs, the NEA shall issue the Certificate of Conformity, copy furnished the DOE and ERC.

The Certificate of Conformity shall be issued within three (3) working days from the receipt of complete documents, which shall cover the contract quantity and cooperation period.

- 4.4. The DU shall publish the ITB, in compliance with the Certificate of Conformity, which shall be valid for forty-five (45) calendar days from the date of certification.
- 4.5. The ITB, including the Terms of Reference (TOR), all bid bulletins, related announcements, and the results of the CSP including all bid offers in the conduct of the CSP shall be posted by the DU on the DOE CSP e-based Portal.
- 4.6. The conduct of CSP shall be in accordance with this Policy and the implementing guidelines to be issued by the ERC pursuant to Section 6 herein. Likewise, the NEA shall issue guidelines in accordance with the ERC's guidelines as applicable to the ECs.

SECTION 5. RESPONSIBILITY OF THE NATIONAL ELECTRIFICATION ADMINISTRATION

- 5.1. Within thirty (30) days from the issuance of the ERC guidelines, NEA shall issue the CSP guidelines for ECs to support the issuance of the ERC in the conduct of CSP. All processes by NEA that require the issuance of certification under the CSP guidelines shall be under the Energy Virtual One-Stop Shop (EVOSS) System.
- 5.2. ECs with limited capability to undertake CSP may request the NEA to provide the necessary assistance and resources to conduct the same, including, but not limited to, the mobilization of competent manpower of the NEA and other ECs, and if necessary, the involvement of NPC and National Transmission Corporation (TransCo) in Off-Grid Areas, which shall be at no expense to the EC.
- 5.3. Prior to the publication of the ITB of the ECs, the NEA shall issue the Certificate of Conformity, copy furnished the DOE and ERC.
- 5.4. The NEA shall advise all ECs to conduct their CSP not later than two (2) years before the scheduled date indicated in their respective PSPPs.

In case an EC is unable to complete the CSP one (1) year before said scheduled date as indicated in its PSPP, the NEA shall undertake or continue the CSP on behalf of the EC. For this purpose, the NEA can mobilize its own manpower complement and structure, the manpower of the EC itself, as well as those of other ECs to undertake the CSP process, as necessary.

- 5.5. Before the NEA approves the Board Resolution (BR) of the EC for the signing of the PSA, the EC shall submit to the NEA a report on the entire CSP process, duly signed and sworn to by the General Manager of the EC and the members

of its Board of Directors approving such BR. No PSA should be submitted to the ERC for approval without the NEA-approved BR.

This requirement does not apply to CSPs undertaken by NEA on behalf of the EC. In such instance, the report on the conduct of the entire CSP process shall be prepared by the NEA and submitted to the ERC as part of the PSA application.

- 5.6. Pursuant to its oversight and supervisory functions over ECs, the NEA may review, modify, or nullify any CSP conducted by ECs that violates the DOE's CSP Policy, the implementing guidelines issued by the ERC and NEA, and the general principles of transparency, competitiveness, and accountability.

SECTION 6. REGULATORY SUPPORT

The ERC shall provide the following regulatory support:

- 6.1. Within forty-five (45) days from the effectivity of this Policy, issue the implementing guidelines in the conduct of CSP and evaluation of PSAs resulting from the CSP of DUs. In cases under Section 2.3, the ERC may include CSP in the procurement of equipment and other capital expenditures.
- 6.2. Issue guidelines in the approval of pending and new EPSAs, which take into account reasonable and technology or plant-specific price comparators.
- 6.3. Prescribe a PSA template, which shall indicate the minimum requirements and prescribed parameters to be incorporated by the DU in the preparation of TOR.
- 6.4. Review all PSAs and determine the compliance by the DU with its obligation to supply its Captive Market in the least cost manner, taking into consideration the quality, affordability, sustainability and reliability of the electric power supply. Such review shall likewise cover the compliance by the DU with the CSP policy applicable at that time it was filed, and the related requirements pursuant to pertinent ERC rules and guidelines.
- 6.5. In the exercise of its powers and functions under the EPIRA, establish and impose fines and/or penalties for non-compliance of electric power industry participants to support the enforcement of this Policy.

SECTION 7. TRANSITORY PROVISION

- 7.1. All DUs that will commence their CSP activities without issued Certificate of Posting (COP) upon the effectivity of the ERC guidelines shall undertake the CSP in accordance with this Policy.
- 7.2. All DUs with ongoing CSP activities and have been issued with COP prior to the effectivity of this Policy shall continue to observe the CSP Policy in accordance with DC No. DC2018-02-0003, as amended and supplemented by DC No. DC2021-09-0030.

All COP issued by the DOE, and Notice to Proceed by the NEA, shall be valid for forty-five (45) calendar days from the date of issuance of COP.

- 7.3. All applications for Certificate of Exemption from the conduct of CSP and Third Party Bids and Awards Committee (TPBAC)/Joint TPBAC Selection Process pending before the DOE prior the effectivity of this Policy, shall be reviewed by the DOE pursuant to DC No. DC2018-02-0003, as amended and supplemented by DC No. DC2021-09-0030.
- 7.4. All PSAs procured and executed shall be reviewed and evaluated in accordance with the CSP Policy applicable at the time of their filing in the ERC. The DU and the Supplier for such PSA shall file the necessary documents and evidence as to the manner of the competitive and transparent procurement conducted for such PSA, as may be required by the ERC.

For Suppliers who have already delivered and supplied energy to their contracted DU, they shall be paid pursuant to the rate contained in the final approval of the ERC.

SECTION 8. REPEALING CLAUSE

DC Nos. DC2015-06-0008, DC2018-02-0003, DC2021-09-0030 and DC2022-06-0027 are hereby repealed upon the effectivity of the ERC guidelines relative to this Circular.

All other rules and regulations, or any portion thereof, that are inconsistent with this Circular are likewise repealed or modified accordingly.

SECTION 9. SEPARABILITY CLAUSE

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

SECTION 10. EFFECTIVITY

This Circular shall take effect fifteen (15) calendar days upon its publication in at least two (2) newspapers of general circulation. A copy of this Circular shall be filed with the University of the Philippines Law Center — Office of National Administrative Register (UPLC-ONAR).

Issued this ___ day of June 2023 at the DOE, Energy Center, Rizal Drive cor. 34th St., Bonifacio Global City, Taguig City.


RAPHAEL P.M. LOTILLA
Secretary



JUN 30 2023