



**ANNEX A – AP COMMENTS TO “RULES GOVERNING THE PROCUREMENT, EXECUTION, AND EVALUATION OF POWER SUPPLY AGREEMENTS ENTERED INTO BY DISTRIBUTION UTILITIES FOR THE SUPPLY OF ELECTRICITY TO THEIR CAPTIVE MARKET”**

Document	Article/Section	AP Clarification/Comments	AP Proposed Changes/Provisions
PSA Rules	<p><b>ARTICLE IV – DEFINITION OF TERMS</b></p> <p>Section 4. As used in these Rules, the following terms shall have the following respective meanings;</p> <p>xxxx</p> <p>(d) <i>“Bids and Awards Committee” or “BAC”</i> refers to the independent committee established in accordance with these Rules to spearhead and manage a DU’s CSP.</p> <p>xxxx</p> <p>(h) <i>“Competitive Selection Process” or “CSP”</i> refers to a process wherein Distribution Utilities, on their own or acting as a group or any other entity defined in these Rules, undertake a transparent and competitive procurement to secure supply of electricity based on the evaluation criteria adopted by the DUs in accordance with the requirements of</p>	<p>Since BAC is mainly composed of employees and officers of the DUs, the the word “independent should be deleted.</p> <p>We would like to seek clarification in the definition of the terms of “CSP”, what is meant by the phrase “any other entity defined in these Rules”? What other entity are required to undertake the CSP under the proposed Rules?</p>	<p><i>“Bids and Awards Committee” or “BAC”</i> refers to the <del>independent</del> committee established in accordance with these Rules to spearhead and manage a DU’s CSP.</p>



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	<p>these Rules.</p> <p>xxxx</p> <p>(m) “<i>Generation Company</i>” shall refer to any person or entity authorized by the ERC to operate facilities used in the generation of electricity.</p> <p>xxxx</p>	<p>We suggest to add “IPP Administrators” in the definition of “Generation Company”. IPP Administrators may not actually operate generation facilities, but they are nonetheless capable of supplying electricity to DUs.</p>	<p>(m) “<i>Generation Company</i>” shall refer to any person or entity authorized by the ERC to operate facilities used in the generation of electricity. <b><u>For purposes of these Rules, IPP Administrators are considered as Generation Company.</u></b></p>
<p>PSA Rules</p>	<p><b>ARTICLE V – POWER SUPPLY PROCUREMENT PLANNING</b></p> <p><i>Section 5. Power Supply Procurement Planning.</i> – Each DU shall annually develop and submit its Power Supply Procurement Plan (PSPP) as part of its Distribution Development Plan to the Department of Energy (DOE).</p> <p>Section 5.1. The PSPP shall contain the following:</p> <p>(a) 10-year historical data on peak demand, energy sales and energy</p>	<ul style="list-style-type: none"> <li>We respectfully suggest that with respect to the energy and demand information that shall be included in the PSPP, the same should only be indicative. By the term “committee,” the DU may be bound by the energy and demand reported under the PSPP and does not consider that supply and demand scenarios are constantly changing and could dispel the need for CSP</li> </ul>	<p><i>Section 5. Power Supply Procurement Planning.</i> – Each DU shall annually develop and submit its Power Supply Procurement Plan (PSPP) as part of its Distribution Development Plan to the Department of Energy (DOE).</p> <p>Section 5.1. The PSPP shall contain the following:</p> <p>(a) 10-year historical data on peak demand, energy sales and energy</p>



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	<p>purchase;</p> <p>(b) List of existing power supply agreements with corresponding status, expiration period, actual utilization rate;</p> <p>(c) 10-year monthly peak demand forecast and energy sales;</p> <p>(d) Committed energy and demand for CSP;</p> <p>(e) Currently approves Subsidized Approved Generation Rate (SAGR) for off-grid DUs to be passed on to consumers;</p> <p>(f) Current supply and demand status of the DU;</p> <p>(g) Indicative schedule for CSP taking into consideration the required construction period in the case of new generation plants; and</p> <p>(h) Current power supply mix and projected 10-year power supply mix to satisfy legal requirements and to meet the projected demand, taking into consideration local development scenarios, plans and market considerations.</p>	<ul style="list-style-type: none"> <li>Use of “and/or” is suggested to give flexibility to DUs whether to state its requirement as energy-based, capacity-based, or both.</li> </ul>	<p>purchase;</p> <p>(b) List of existing power supply agreements with corresponding status, expiration period, actual utilization rate;</p> <p>(c) 10-year monthly peak demand forecast and energy sales;</p> <p>(d) <del>Committed</del> <b>Indicative</b> energy <b>and/or</b> demand for CSP;</p> <p>(e) Currently approves Subsidized Approved Generation Rate (SAGR) for off-grid DUs to be passed on to consumers;</p> <p>(f) Current supply and demand status of the DU;</p> <p>(g) Indicative schedule for CSP taking into consideration the required construction period in the case of new generation plants; and</p> <p>(h) Current power supply mix and projected 10-year power supply mix to satisfy legal requirements and to meet the projected demand, taking into consideration local development scenarios, plans and market considerations.</p>



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	<p>Section 5.2. The facts and projections as declared in the PSPP shall be attested to by the DU’s board of directors through a Board Resolution and/or notarized Secretary’s Certificate and shall be submitted to the DOE for its approval not later than the 15<sup>th</sup> day of March for each year. The DOE approved PSPP shall be published not later than the 30<sup>th</sup> day of March of each year.</p>		
<p>PSA Rules</p>	<p><b>ARTICLE VII – BIDS AND AWARDS COMMITTEE (BAC)</b></p> <p>Section 8. <b>Bids and Awards Committee (BAC)</b> - The DU through its Board of Directors (BOD), shall establish an independent BAC to spearhead and manage the CSP. The BAC shall comply with the policy and procedures in the conduct of CSP, as provided in these Rules. The BAC shall be accountable to for its decision in the conduct of the CSP; Provided however, that the DU shall be responsible for any dispute or litigation arising from the CSP.</p> <p>The DU, through its Board of Directors (BOD), shall designate five (5) members of the BAC with</p>	<ul style="list-style-type: none"> <li>• We would like to seek clarification as to the difference of the TPBAC under the DOE Policy on CSP and the Independent BAC under Section 8, Article VII. Are they one and the same?</li> <li>• If there will be differences between the TPBAC of DOE and the BAC of ERC, how can a DU be compliant to both?</li> <li>• Under Section 8, there are four</li> </ul>	



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	<p>the following qualifications:</p> <ol style="list-style-type: none"> <li>1) An officer or employee knowledgeable in the technical operations of the DU;</li> <li>2) An officer or employee with knowledge and/or experience with any local or international competitive bidding procedures;</li> <li>3) An officer or employee with accounting or finance background who has knowledge and/or experience on electricity pricing;</li> <li>4) An officer or employee with technical experience and/or background.</li> </ol> <p>Prior to the performance of their duties and responsibilities as member of the BAC, the DU shall provide the BAC members a seminar or training on R.A. 9184, otherwise known as “The Government Procurement Reform Act”.</p> <p>The Chairman and Vice Chairman shall be selected by the members of the BAC. The</p>	<p>qualifications for membership under the independent BAC, but the BAC requires 5 members. Does this mean that there can be 2 members of the BAC with the same qualification?</p> <ul style="list-style-type: none"> <li>• We would like to seek clarification on the difference between qualification 4 and 1 as well as the difference between qualification 4 with the rest of the qualifications.</li> <li>• Any seminar required to be attended by members of the BAC should be focused on the CSP requirements for DUs under the final CSP rules. The seminar will not necessarily be on the requirements under RA 9184 which covers government procurement and which has provisions that are not applicable to and not doable for private DUs. Therefor we suggest that ERC be the one to conduct the seminar</li> </ul>	



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	<p>Chairman shall only vote in case of a tie.</p> <p>The BAC shall notify the ERC of the conduct of the CSP five (5) days before the first publication of the Invitation to Bid and Pre-qualify or Invitation for Comparative Proposals.</p> <p>The BAC shall be responsible for all aspects of the pre-bidding, bidding process and the conduct of the Swiss Challenge. A quorum of the BAC shall be composed of a simple majority of all its members.</p> <p>A decision of the BAC shall require the votes of majority of all members present during the deliberation.</p> <p>The BAC shall submit its report to the ERC regarding its findings and recommendations as part of the pre-filing requirements.</p>		
<b>PSA Rules</b>	<p><i>Section 10. Joint BAC of Aggregated DUs.</i> – Distribution Utilities may choose to aggregate their demand or energy requirements, solely for the purpose of procuring their supply of electricity through a competitive selection</p>	<ul style="list-style-type: none"> <li>We would like to seek clarification if the PSAs will have the same template for all DUs involve in an aggregated scenario?</li> </ul>	



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	<p>process. Provided, however, that individual Power Supply Agreements shall be entered into between the Generation Company and the member DU.</p> <p>In the case of Aggregated DUs, a Joint BAC and its composition including its corresponding BAC-TWG and BAC Secretariat shall be established through a Memorandum of Agreement (MOA). The joint BAC shall have five (5) members who shall come from any of the participating DUs. As such, the Joint BAC shall be composed of the following:</p> <ol style="list-style-type: none"> <li>1) An officer or employee knowledgeable in the technical operations of the DU;</li> <li>2) An officer or employee with knowledge and/or experience with any local or international competitive bidding procedures;</li> <li>3) An officer or employee with accounting or finance background that has knowledge and/or experience on electricity pricing;</li> </ol>	<ul style="list-style-type: none"> <li>• There are 4 qualifications for membership under the Joint BAC, but Joint BAC requires 5 members. Does this mean that there can be 2 members of the Joint BAC with the same qualification?</li> </ul>	



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	<p>4) An officer or employee with engineering technical experience and/or background.</p> <p>The Chair and Vice Chair shall be selected by the members of the Joint BAC. The Chairman shall only vote in case of a tie.</p> <p>A quorum of the Joint BAC shall be composed of a simple majority of all voting members of the Joint BAC.</p> <p>A decision on all questions of the Joint BAC shall require the majority of all the present members of the Joint BAC.</p> <p>The Joint BAC shall submit its report to the ERC regarding their findings and recommendations as part of the pre-filing requirements.</p>		
<p><b>PSA Rules</b></p>	<p><i>Section 12. CSP Observers.</i> – To assure all parties that the CSP conducted in an open, transparent, efficient, and equitable manner, the BAC, Joint BAC shall invite Observers in accordance with these Rules.</p>	<ul style="list-style-type: none"> <li>We would like to suggest that the listing of “CSP Observers” should be recommendatory, not mandatory.</li> </ul>	<p><i>Section 12. CSP Observers.</i> – To assure all parties that the CSP conducted in an open, transparent, efficient, and equitable manner, the BAC, Joint BAC shall invite Observers in accordance with these Rules.</p>





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	<p>The following shall be part of the CSP Observers:</p> <ol style="list-style-type: none"> <li>(1) Representative from DOE;</li> <li>(2) Representative from NEA, in case of ECs</li> <li>(3) Representative from NPC-Small Power Utilities Group (NPC-SPUG), in case of off-grid ECs;</li> <li>(4) Consumer representatives from the Department of Trade and Industry (DTI) – accredited consumer groups; and the Parent Teachers Association (PTAs) endorsed by the provincial federation of PTAs.</li> </ol> <p>The consumer groups and PTAs must be organized, existing and actively operating in the franchise area of the concerned DU/s. The consumer groups to be invited by the concerned DU/s to serve as observers shall not be less than two nor more than 3 groups. The selected consumer group shall only be allowed to send not more than 2 representatives.</p> <p>xxx</p>	<p>Thus, we propose to change “shall” to “may”.</p> <ul style="list-style-type: none"> <li>• We would like to seek clarification on why the PTA is explicitly listed as an observer. Is the PTA a mandatory observer? We would like to kindly suggest that the PTA be just a subset of the consumer group.</li> </ul>	<p>The following <del>shall</del> <u>may</u> be part of the CSP Observers:</p> <ol style="list-style-type: none"> <li>(1) Representative from DOE;</li> <li>(2) Representative from NEA, in case of ECs</li> <li>(3) Representative from NPC-Small Power Utilities Group (NPC-SPUG), in case of off-grid ECs;</li> <li>(4) Consumer representatives from the Department of Trade and Industry (DTI) – accredited consumer groups; <del>and the Parent Teachers Association (PTAs) endorsed by the provincial federation of PTAs.</del></li> </ol> <p>The consumer groups <del>and PTAs</del> must be organized, existing and actively operating in the franchise area of the concerned DU/s. The consumer groups to be invited by the concerned DU/s to serve as observers shall not be less than two nor more than 3 groups. The selected consumer group shall only be allowed to send not more than 2 representatives.</p> <p>xxx</p>
PSA Rules	<b>ARTICLE VIII – COMPETITIVE PUBLIC BIDDING (CPB)</b>	<ul style="list-style-type: none"> <li>• Under Section 13.2, we would like to</li> </ul>	Section 13.2. <b>Terms of Reference</b> – The terms of



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	<p>Section 13. <b>Bidding Documents</b> – The Bidding Documents shall consist of the following:</p> <ul style="list-style-type: none"> <li>(a) Instruction to Bidders;</li> <li>(b) Terms of Reference and other specifications;</li> <li>(c) Pre-qualification Requirements;</li> <li>(d) Form of Acceptance of Bidding Procedures;</li> <li>(e) Form and Amount of Bid Security;</li> <li>(f) Form and Amount of Performance Security and Warranty;</li> <li>(g) Certification or undertaking that the Bidder or his duly authorized representative:               <ul style="list-style-type: none"> <li>i. Attests to the responsibilities of the Bidders.</li> <li>ii. Letter authorizing the BAC or its duly authorized representative(s) to verify any or all of the documents submitted for the eligibility check/post qualification;</li> </ul> </li> <li>(h) Technical and Financial bid Form; and</li> <li>(i) Draft Contract, and General and Special</li> </ul>	<p>kindly suggest that the Contract Period stated in the TOR should not be limited to 10 years. The DU should be allowed to determine its requirements and the parties should be allowed to exercise freedom of contracts.</p> <ul style="list-style-type: none"> <li>• Still under Section 13.2, we would like to seek clarification on what “Other key parameters” mean? If not defined, then it should be deleted since this is just the minimum requirements;</li> <li>• In the Terms of Reference, it should be noted that the type of technology should not be included as a parameter, it is more acceptable to mention if the required supply is RE or conventional, and also the demand requirement (base load, peaking, or mid merit).</li> </ul>	<p>reference shall include the following, but not limited to:</p> <ul style="list-style-type: none"> <li>(a) Required/Contracted Capacity and/or Energy Volumes;</li> <li>(b) Demand Requirement (baseload, mid-merit or peaking);</li> <li>(c) Method of procurement for fuel, if applicable;</li> <li>(d) Cooperation/Contract Period <b>which shall not exceed ten (10) years;</b></li> <li>(e) Tariff Structure;</li> <li>(f) Form of Payment;</li> <li>(g) Penalties; and</li> <li><del>(h) Other key parameters</del></li> </ul>



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	<p>conditions of Contract</p> <p>Section 13.1 <b>Instruction to Bidders</b> – Instruction to Bidders which establishes the Procedures of the Bidding, shall be clear, comprehensive and fair to all bidders.</p> <p>Section 13.2. <b>Terms of Reference</b> – The terms of reference shall include the following, but not limited to:</p> <ul style="list-style-type: none"> <li>(a) Required/Contracted Capacity and/or Energy Volumes;</li> <li>(b) Demand Requirement (baseload, mid-merit or peaking);</li> <li>(c) Method of procurement for fuel, if applicable;</li> <li>(d) Cooperation/Contract Period which shall not exceed ten (10) years;</li> <li>(e) Tariff Structure;</li> <li>(f) Form of Payment;</li> <li>(g) Penalties; and</li> <li>(h) Other key parameters</li> </ul> <p>Section 13.3. <b>Draft Contract</b> – The draft Contract should clearly define the basic and legal</p>		



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	<p>relationship of the parties, their rights and responsibilities. The Draft Contract shall comply with the minimum terms and conditions provided for under the Appendix “B” hereof.</p> <p>Section 13.4. <b>Access to Information</b> – In all stages of the preparation of the Bidding Documents, the DU shall ensure equal access to information. Prior to their official release, no aspect of the Bidding Documents shall be divulged or released to any prospective bidder or any person who has direct or indirect interest in the supply requirement to be procured.</p> <p>No official or employee of the DU, nor shall any Bidder be entitled to, any information regarding the Bidding Process, other than what is contained in the Bidding Documents, as well as the Bidding Procedure outlined in Appendix “A”, Supplemental Bid Bulletins, and in the official announcements of the Bid results.</p>		
PSA Rules	<p>Section 15. <b>Pre-bid Conference</b> – A pre-bid conference shall also be conducted by the concerned DU at least thirty (30) days before the deadline for the submission of bids to clarify any</p>	<p>We would like to suggest that the period for the conduct of pre bid conference be</p>	<p>Section 15. <b>Pre-bid Conference</b> – A pre-bid conference shall also be conducted by the</p>



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	<p>provisions, requirements and/or terms and conditions of the bidding documents and/or any other matter that the prospective bidders may raise.</p> <p>Nothing stated at the pre-id conference shall modify any provisions or terms and conditions of the bidding documents unless such is made as a written amendment thereto by the concerned DU. Any amendments shall be issued by the DU concerned to all bidders within a reasonable time to allow them to consider the same in the preparation of their bids. The notice of amendment in the form of a bid bulletin shall be duly acknowledged by each bidder prior to the submission of its bid and shall be so indicated in the bid. A summary of the pre-bid conference proceedings shall also be issued to all prospective bidders by the DU concerned. Attendance to the pre-bid conference by prospective bidders shall not be mandatory.</p>	<p>reduced to at least ten (10) days before the deadline for the submission of bids. The draft CPB process is mandated to be completed within 6 months. Allowing for a shorter period will give more opportunity for the DU to complete the CPB within the 6-month period.</p>	<p>concerned DU at least <del>thirty (30)</del> <b>ten (10)</b> days before the deadline for the submission of bids to clarify any provisions, requirements and/or terms and conditions of the bidding documents and/or any other matter that the prospective bidders may raise.</p> <p>xxxx</p>
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	<p>Section 16. <b>Submission of Pre-qualification Documents</b> – The DU shall allow prospective bidders at least fifteen (15) days from the last date of publication of the Invitation to Pre-qualify and Bid to prepare their respective pre-qualification documents.</p> <p>Section 16.1. Pre-qualification Requirements – Prequalification requirements shall consist of the ffg criteria</p> <p>xxxx</p> <p>Section 16.2. Pre-qualified and disqualified bidders – The DU, through its BAC or Joint BAC, shall within a period of at least ten (10) days after the deadline set for the submission of the pre-qualification documents determine which among prospective bidders are “pre-qualified” or “disqualified”. Accordingly, the BAC shall duly inform the prospective Project Bidder who have been pre-qualified within five (5) days after approval thereof. Disqualified proponents shall</p>	<p>We would like to note that “Project Bidder” under Section 16.2 is not defined.</p>	



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	likewise be informed stating therein the grounds for their disqualification within the same period.		
<b>PSA Rules</b>	<p>Section 19. <b>Bid Security</b> – Each Bidder shall submit as part of the Second Bid Envelope, a Bid Security in accordance with the following terms and conditions:</p> <p>(a) It is an amount expressed in Philippine Pesos in the form of:</p> <p>I. Cash or cashier’s/manager’s check issued by a Universal or Commercial Bank or any other banks certified by the Bangko Sentral ng Pilipinas (BSP) as authorized to issue such financial instrument.</p> <p>II. Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank: Provided, however, that it shall be</p>	<ul style="list-style-type: none"> <li>• We believe that the proposed bid security amount is too large. We would like to propose that the value should be lower, nominal, and not connected to the value of the contract.</li> <li>• In case of aggregation, which DU or entity would the bid security go?</li> <li>• If the bid security is in the form of bank draft, guarantee or irrevocable letter of credit, the bid security should be drawable on sight to ensure that it may be called on immediately by the DU. [Section 19(a)(ii)]</li> <li>• To clarify, the refusal of the Winning Bidder to execute the Power Supply Agreement or to comply with the requirements for the filing of the Power Supply Agreement for approval</li> </ul>	



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	<p>confirmed or authenticated by a Universal or Commercial Bank, f issued by a foreign bank.</p> <p>III. In case the bid security is issued by an international bank, said security has to be confirmed and validated by its local branch in the Philippines or by a bank that is duly registered and authorized by the BSP.</p> <p>(b) The amount must be equivalent to one year contract cost of the proposed power supply agreement computed using the bid price offered by the bidder;</p> <p>(c) The Bid Security shall be issued in favor of the DU;</p> <p>(d) The Bid Security shall guarantee that each Bidder complies with its obligation under the Bidding Procedures during the</p>	<p>of the ERC should be grounds for the forfeiture of the Bid Security. [Section 19(d)]</p> <ul style="list-style-type: none"> <li>On the last paragraph of Section 19, we suggest that the execution of the Power Supply Agreement be set earlier than the period for the validity of the Bid Security. In the event that the Winning Bidder fails, without justifiable reason, to execute the Power Supply Agreement before such deadline, this should enable the DU to draw on the Bid Security. This will compel the Winning Bidder to comply with its obligations under the Bidding Procedures and allow the DU a remedy in case of the unjustified failure of the Winning Bidder to so comply.</li> </ul>	





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	<p>Bid Validity Period, or any extension thereof , Refusal of the Winning Bidder to accept the award shall cause the forfeiture of his Bid Security. However, the Bid Security shall not be forfeited should the failure of the Winning Bidder to accept the award and enter into contract caused by force majeure or through no fault of its own;</p> <p>(e) The Bid Security shall be governed by Philippine Law; and</p> <p>(f) The Bid Security shall provide for a contact person and address, telephone number and facsimile of the issuing bank for notification and demand.</p> <p>The Bid Security shall guarantee that each Bidder complies with its obligations under the Bidding Procedures during the Bid Validity Period, or any extension thereof.</p>		



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	<p>A Bid submitted either (i) without the required Bid Security, (ii) in an amount less than the required amount, (iii) whose effectivity will expire prior to the Bid Validity Period, or (iv) which is materially defective, shall be rejected outright and returned to the Bidder.</p> <p>The required Bid Security shall be valid for a reasonable period but in no case beyond one hundred twenty (120) days following the submission of the bids. The execution of the contract shall be made within the period of the validity of the bid security. Bid securities shall be returned to the unsuccessful bidders as soon as the Notice of Award is issued by the DU.</p>		
PSA Rules	Section 21. <b>Post Qualification</b> - The Lowest Calculated Bid (LCB) shall undergo post-qualification in order to determine whether the bidder concerned complies with and is responsive to all the requirements and conditions as specified in the Bidding	<ul style="list-style-type: none"> <li>We would like to seek clarification as to why there is a need for a post-qualification requirement if the lowest calculated bid has already been determined under the evaluation of bids? We recommend the removal of post qualification since its objective</li> </ul>	Suggest to delete Section 21.



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	<p>documents.</p> <p>Within five (5) days after the approval of the Abstract of Bids, the bidder with the LCB should be notified through electronic mail or in writing that the bidder shall undergo post-qualification and submit the post-qualification requirements within five (5) days from receipt of the notice.</p> <p>If the BAC or Joint BAC determines that the bidder with the LCB passes all the criteria for post-qualification, it shall declare the said bid as the Lowest Calculated Responsive Bid (LCRB), and recommend to the DU BOD the award of contract to the said bidder.</p> <p>If, however, the BAC or Joint BAC determines that the bidder with the LCB fails the criteria for post-qualification, it shall immediately notify the said bidder electronically or in writing of its post-disqualification and the grounds for post-disqualification.</p> <p>The post-qualification process shall be</p>	<p>can already be satisfied during pre-qualification and bid evaluation stage.</p> <ul style="list-style-type: none"> <li>• What happens to the lowest calculated bid if it fails to comply with said post qualification requirement?</li> <li>• We would like to seek clarification if the LCB be computed per DU? What if aggregate load? How will LCB be defined?</li> </ul>	



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	<p>completed in not more than fifteen (15) days from determination of the Lowest Calculated Responsive Bid (LCRB). In exceptional cases, the post-qualification period may be extended by the DU BOD, but in no case shall the aggregate period exceed thirty (30) days.</p>		
<p><b>PSA Rules</b></p>	<p>Section 22. <b>Award of Contract</b> - The BAC shall recommend to the DU BOD the award of contract to the Bidder with the Lowest Calculated Responsive Bid (LCRB).</p> <p>To facilitate the approval of the award, the BAC or Joint BAC shall submit the following supporting documents to the DU BOD:</p> <ul style="list-style-type: none"> <li>(a) Resolution of the BAC or Joint BAC recommending the award;</li> <li>(b) Abstract of bids;</li> <li>(c) Other pertinent documents required by existing laws, rules and/or the DU.</li> </ul> <p>Within ten (10) days from receipt of the recommendation of the BAC or Joint BAC, the DU BOD shall approve/disapprove the said</p>	<ul style="list-style-type: none"> <li>• We would like to seek clarification on the necessity of DU Board approval for the award of contract? What happens if the DU BOD disapproves the submission of the BAC? What are the possible grounds for DU Board disapproval?</li> <li>• For joint BAC, what will happen if not all DU BOD involve will approve the submission?</li> </ul>	



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	<p>recommendation. Within the same period provided herein, the BAC or Joint BAC shall notify the losing Bidders of its decision.</p> <p>In the event the DU BOD shall disapprove such recommendation, such disapproval shall be based only on valid, reasonable, and justifiable grounds to be expressed in writing, copy furnished the BAC or Joint BAC.</p>		
<p><b>PSA Rules</b></p>	<p>Section 23. <b>Notice of Award.</b> — In case of approval by the DU BOD, the BAC or Joint BAC shall immediately issue the Notice of Award to the Bidder with the Lowest Calculated Responsive Bid (LCRB). The "Notice of Award", which is issued by the DU, shall indicate, among others, that the winning Project Proponent must submit within twenty (20) days from official receipt of the "Notice of Award" the following:</p> <p>(a) prescribed performance security;            (b) proof of commitment of the required equity contribution, as specified by the DU:</p>	<ul style="list-style-type: none"> <li>We note that there seems to be an inconsistency between the first and second paragraphs of Section 23 with regard to the period within which the Winning Bidder must submit the requirements under the Notice of Award. The first paragraph provides for 20 days from receipt of the Notice of Award for the Winning Bidder to submit the requirements. The second paragraph, on the other hand, provides for 15 days.</li> <li>Letter “c” which is the “proof of firm</li> </ul>	<p>Section 23. <b>Notice of Award.</b> — In case of approval by the DU BOD, the BAC or Joint BAC shall immediately issue the Notice of Award to the Bidder with the Lowest Calculated Responsive Bid (LCRB). The "Notice of Award", which is issued by the DU, shall indicate, among others, that the winning Project Proponent must submit within twenty (20) days from official receipt of the "Notice of Award" the following:</p> <p>(a) prescribed performance security;            (b) proof of commitment of the required equity contribution, as specified by the DU:</p> <p>i. in the case where the Bidder is a</p>



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	<p>i. in the case where the Bidder is a corporation - e.g., treasurer's affidavit attesting to actual paid-up capital, subscription agreement(s) between a shareholder(s) of the Project Proponent and the Project Proponent itself covering said equity contribution, or shareholders agreement between and amongst two (2) or more shareholders of the Project Proponent undertaking to contribute/subscribe the required equity contribution; or</p> <p>ii. in the case of a consortium - an undertaking of the members thereof to infuse the required equity contribution to the consortium.</p> <p>(c) proof of firm commitments from reputable financial institution to provide</p>	<p>commitments from reputable financial institution to provide sufficient credit lines to cover the total estimated cost of the project”, should not be applicable to existing plants.</p> <ul style="list-style-type: none"> <li>• We would like to seek clarification on requirement “(f) such other conditions imposed by the DU”. What are those other conditions imposed by DUs?</li> <li>• We would like to kindly propose that the validity of performance security should only be up to start of supply.</li> </ul>	<p>corporation - e.g., treasurer's affidavit attesting to actual paid-up capital, subscription agreement(s) between a shareholder(s) of the Project Proponent and the Project Proponent itself covering said equity contribution, or shareholders agreement between and amongst two (2) or more shareholders of the Project Proponent undertaking to contribute/subscribe the required equity contribution; or</p> <p>ii. in the case of a consortium - an undertaking of the members thereof to infuse the required equity contribution to the consortium.</p> <p>(c) proof of firm commitments from reputable financial institution to provide sufficient credit lines to cover the total estimated cost of the project, <b><u>for prospective generation facilities;</u></b></p> <p>(d) in the case of a consortium, the agreement indicating that the members are jointly and severally liable for the obligations of the Project Proponent under the contract;</p> <p>(e) in case a special purpose company (SPC) is</p>



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	<p>sufficient credit lines to cover the total estimated cost of the project;</p> <p>(d) in the case of a consortium, the agreement indicating that the members are jointly and severally liable for the obligations of the Project Proponent under the contract;</p> <p>(e) in case a special purpose company (SPC) is formed for purposes of undertaking the project, proof of registration in accordance with Philippine laws.</p> <p>(f) such other conditions imposed by the DU.</p> <p>Failure to submit the above-listed requirements within the prescribed fifteen (15)-day period will result in confiscation of the bid security. Within five (5) days upon receipt of the foregoing requirements for award, the DU BOD shall determine and notify the winning bidder of its compliance of all the conditions stated in the said notice.</p>		<p>formed for purposes of undertaking the project, proof of registration in accordance with Philippine laws.</p> <p><del>(f) such other conditions imposed by the DU.</del></p> <p>Failure to submit the above-listed requirements within the prescribed <b>twenty (20) fifteen (15)</b>-day period will result in confiscation of the bid security. Within five (5) days upon receipt of the foregoing requirements for award, the DU BOD shall determine and notify the winning bidder of its compliance of all the conditions stated in the said notice.</p> <p>Contract award shall be made within the Bid validity period as herein provided.</p>



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	Contract award shall be made within the Bid validity period as herein provided.		
<b>PSA Rules</b>	<p>Section 25. <b>Execution/Approval of the Contract</b>            – The authorized signatory(ies) of the winning bidder and the DU shall execute and sign the power supply agreement as approved in accordance with Appendix "B", within five (5) days from receipt by the winning bidder of the Notice to Proceed from the DU that all conditions stated in the Notice of Award have been complied with.</p> <p>In the event of refusal, inability or failure of the winning bidder to enter into a contract with the DU within the time provided therefor, the DU concerned shall forfeit its bid security.</p> <p>In case the refusal, inability or failure to enter into a contract is caused by the DU, such failure shall be considered a violation of the instant rules. Accordingly, a Show Cause order shall be issued against the DU. If the refusal, inability or failure to enter into a contract by the DU is</p>	<p>We would like to note that when bid was submitted, it already includes the signed contract, as per Appendix A, procedure of bidding 1-02 (4<sup>th</sup> paragraph). This provision is in conflict with the appendix.</p>	





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	found to be unjustifiable, the concerned DU shall be penalized in accordance with the applicable ERC Rules on Imposition of Penalties.		
PSA Rules	Section 26. <b>Lock-down provision.</b> — The winning bidder shall not be allowed to sell and/or assign the contract to any other entity, except upon ERC's approval and determination of the assignee or buyer's legal, technical and financial eligibility.	We would like to propose that the DU should be given flexibility whether or not it will agree to such assignability of the contract. We believe that if there is no commercial implication, then there is no breach of the contract.	We suggest to delete Section 26.
PSA Rules	<p><b>ARTICLE IX. UNSOLICITED PROPOSAL</b></p> <p>Section 28. <b>Requisites for Unsolicited Proposal.</b> — A DU may accept unsolicited proposals for supply of electricity, provided the following conditions are present:</p> <p>a) Capacity Cap. — The contracted capacity subject of the unsolicited proposal shall not exceed 10% of the DU's total annual peak demand;</p> <p>b) Unsolicited Proposal for Power Supply</p>	<ul style="list-style-type: none"> <li>• We would like to clarify whether a DU refuse to process “unsolicited proposals” submitted to it since there is a first in time approach?</li> <li>• We would like to kindly propose that if offers are not competing (not same demand requirement, etc), then they can be processed in parallel (or independently). As long as the offers satisfies PSPP, then they can be treated as separate.</li> <li>• We suggest removing the cap on the</li> </ul>	



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	<p>may only be accepted after the publication of its PSPP;</p> <p>c) The unsolicited proposal is made public and subjected to competition. — When a Distribution Utility receives an unsolicited proposal for the supply of electricity, the DU shall then publish and invite third parties to match or improve it;</p> <p>d) Original Proponent's right to match. — Those who intend to submit their respective counter-proposals will have to submit more competitive offers and the original proponent who submitted the unsolicited proposal can match their offers; and</p> <p>e) Determination of the better offer. - The unsolicited proposal and the submitted offers can be compared to determine which is the better offer.</p> <p>In the case where the DU receives more than one Unsolicited Proposal, the DU may reject all</p>	<p>capacity which may be subject of the unsolicited proposal. Any proposal should be allowed to cover the real, bona fide requirements of a DU. The cap leads to inefficiency as the DU will have to conduct a separate process for any remaining capacity that it requires.</p>	



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	<p>proposals and instead, subject the project to a Competitive Public Bidding. Otherwise, the DU shall evaluate the proposals using a <i>first in time</i> approach. Under this approach, the first complete proposal is evaluated and decided upon. The second proposal will be considered only if the first proposal is rejected.</p>		
<p><b>PSA Rules</b></p>	<p>Section 30. <b><i>Evaluation and Acceptance of Unsolicited Proposals.</i></b> — The DU shall evaluate of the unsolicited proposal and shall:</p> <ul style="list-style-type: none"> <li>a) Verify the qualifications of the proponent based on the provisions of Section 16 hereof;</li> <li>b) Assess the appropriateness of the proposed contractual terms with the DU's supply requirements, and other peculiarities of the DU's electricity demand;</li> </ul> <p>The DU shall appraise the merits of the proposal, qualify the proponent, and notify the proponent whether it accepts or rejects the proposal within</p>	<p>We would like to seek clarification whether or not unsolicited proposals can also be submitted for aggregated demand?</p>	



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	<p>thirty (30) days upon receipt of the complete proposal. Nothing shall preclude the DU from negotiating with the proponent for an improved terms and conditions of the initial proposal. The DU shall indicate in its letter of acceptance the confirmation of the proponent as "original proponent".</p> <p>In case of acceptance, the DU shall endorse the unsolicited proposal and submit all pertinent documentation to the BAC or Joint BAC. At this point, the DU will no longer entertain other similar proposals.</p>		
PSA Rules	Section 33. <b>Posting of Bid Bond by Original Proponent.</b> — On the first day of the publication of the "invitation for comparative proposals", the original proponent shall be required to submit a bid security in the form and in the amount required, following the requirements of Section 19.	We would like to seek clarification as to the difference between Bid Bond and Bid Security?	



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PSA Rules	Section 38. The entire process of Swiss Challenge, including the award of contract, should be completed within nine (9) months from the first publication of the invitation for comparative proposals. Sections 22, 23, 24 and 25 of Article VIII also apply to procurement through unsolicited proposal and Swiss Challenge.	We would like to seek clarification why the period for Swiss Challenge is longer than CBP? We suggest that the period should be less than or equal to CBP.	Section 38. The entire process of Swiss Challenge, including the award of contract, should be completed within <del>nine (9)</del> <b>six (6)</b> months from the first publication of the invitation for comparative proposals. Sections 22, 23, 24 and 25 of Article VIII also apply to procurement through unsolicited proposal and Swiss Challenge.
PSA Rules	<p><b>ARTICLE X. DIRECT NEGOTIATION</b></p> <p>Section 39. <b>Direct Negotiation.</b> — Direct negotiation with an interested party for the supply of electricity may be made by the DU after at least two (2) failed Competitive Public Bidding (CPB) or during an emergency supply situation in accordance with Section 40 hereof.</p> <p>A CPB is considered to have failed when during its conduct, any of the circumstances exists:</p> <ul style="list-style-type: none"> <li>(a) No prospective suppliers have qualified;</li> <li>(b) No proposal was received by the DU;</li> <li>(c) Offers of prospective suppliers failed to meet the requirements prescribed</li> </ul>	We would like to kindly propose to extend the period to six (6) months to give ample time for the parties to iron out the negotiations. The six-month period also aligns with the period to complete the CSP.	<p><b>ARTICLE X. DIRECT NEGOTIATION</b></p> <p>Section 39. <b>Direct Negotiation.</b> — Direct negotiation with an interested party for the supply of electricity may be made by the DU after at least two (2) failed Competitive Public Bidding (CPB) or during an emergency supply situation in accordance with Section 40 hereof.</p> <p>xxxx</p> <p>Section 39.1. The entire process of direct negotiation should be completed within <del>three</del> <b>six (6)</b> <del>(3)</del> months from the time it was determined that there was failure of bidding.</p>



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	<p>under the Terms of Reference, as determined by the BAC or Joint BAC; or</p> <p>(d) In the event of refusal, inability or failure of the winning bidder to enter into a PSA with the DU within the time provided.</p> <p>Section 39.1. The entire process of direct negotiation should be completed within three (3) months from the time it was determined that there was failure of bidding.</p>		
PSA Rules	<p><b>ARTICLE XI. EMERGENCY SUPPLY PROCUREMENT</b></p> <p><i>Section 40. Emergency Supply Procurement.</i> — Emergency Supply Procurement may be undertaken by the affected DUs due to the occurrence of Force Majeure, Fortuitous Event or other analogous circumstances not specifically enumerated under the definition of a force majeure or fortuitous event, in order to maintain safe, reliable, secure and efficient operation of the power system.</p>	<ul style="list-style-type: none"> <li>• We suggest to delete “analogous” to describe the circumstances that will qualify procurement as emergency. The circumstances should simply be unexpected or unforeseen.</li> <li>• We recommend to include as one of the circumstances “in order to maintain grid stability (technical)”</li> <li>• In the absence of a benchmark rate, We recommend the rate to be based on previously approved PSA of the</li> </ul>	<p><i>Section 40. Emergency Supply Procurement.</i> — Emergency Supply Procurement may be undertaken by the affected DUs due to the occurrence of Force Majeure, Fortuitous Event or other <del>analogous</del> circumstances <del>not specifically enumerated under the definition of a force majeure or fortuitous event</del>, in order to maintain safe, reliable, secure and efficient operation of the power system. xxxx</p>



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	<p>Provided, that the cooperation period of such emergency PSA shall not exceed one (1) year; Provided further, that the proposed rate shall not be higher than the latest ERC approved generation tariff for the same or similar technology in the area or the Benchmark rate as established by ERC under Section 41 hereof.</p> <p>The DU shall provide Written Notice to the ERC, the Department of Energy (DOE), the National Electrification Administration (NEA), in the case of ECs and the National Power Corporation (NPC), in case of Off-grid areas, of the exemption within thirty (30) days upon the implementation of the Emergency Supply Procurement.</p> <p>The issuance of a Fortuitous Event or Force Majeure notice by the affected DU shall exempt the DU from complying with Article VI of these Rules, subject to evaluation and final decision of the relevant application, which shall be filed with the ERC within ninety (90) days upon its implementation.</p>	<p>same plant or similarly situated plant.</p> <ul style="list-style-type: none"> <li>We would like to clarify what will happen if the contract already started then there is disapproval?</li> </ul>	
<b>PSA Rules</b>	Section 41. <b>Benchmark Rate.</b> — The ERC shall	<ul style="list-style-type: none"> <li>We would like to seek clarification if</li> </ul>	Suggest to move Section 41. Benchmark Rate to



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	<p>establish a benchmark rate that shall serve as reference price that may be used to assess the prudence and reasonableness of the PSA price.</p> <p>The ERC shall utilize a financial model in calculating the Benchmark Rate. The model inputs, such as capital and operating costs, rates of return and technical parameters shall be determined and reviewed on a regular basis by the ERC through a full consultation process.</p> <p>The model will take into account relevant factors such as, but not limited to, the type of contract (financial or physical), the load factor, load shape and location or reference node to calculate the benchmark price for a portfolio of efficient new entrant plants to match the terms of the PSA being assessed.</p> <p>The procedure for calculating and determining the Benchmark Rate shall be subject of a separate resolution to be promulgated by the ERC.</p>	<p>the benchmark rate is applicable only for emergency supply. We kindly propose that it should only be applicable to emergency supply and negotiated procurement.</p> <ul style="list-style-type: none"> <li>• The procedure for calculating and determining the Benchmark Rate for emergency supply shall be subject of a separate resolution to be promulgated by the ERC. ERC should already be able to release the proposed calculation benchmark rate at the same time as the approval of these rules.</li> <li>• In case there is still no benchmark rate, then prior approved rates of the specific GenCo should be the default benchmark of that specific GenCo.</li> <li>• With the benchmark rate calculated using portfolio of efficient new entrant plants, will the Commission forego the evaluation of the PSA rates using the actual cost to build and actual O&amp;M of the plant? If not, what</li> </ul>	<p>Article XV Filing and Review Procedures and to indicate the applicability of benchmark rates.</p>





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		<p>will be the weight given to the benchmark rate in the evaluation of the PSA?</p> <ul style="list-style-type: none"> <li>• How many benchmark rates will ERC make? Who may participate in the consultation process? How often will this be conducted?</li> </ul>	
<p><b>PSA Rules</b></p>	<p><b>ARTICLE XII. CIRCUMSTANCES FROM THE CONDUCT OF CSP</b></p> <p>Section 42. <i>Exemptions.</i> — All PSAs shall be procured through CSP; Provided however, that the following instances shall warrant an exemption from the conduct of CSP:</p> <p>a) Any generation project owned by the DU funded by grants or donations. The DU may be allowed to infuse internally generated funds; Provided, that the amount shared by the DU shall not exceed thirty percent (30%) of the total project cost;</p>	<ul style="list-style-type: none"> <li>• We would like to seek clarification as to why PSALM is exempted from the conduct of the CSP. Are DUs required to source from PSALM? Since power supply procurement by the DUs is supposed to be competitive and transparent, how will the DUs comply with respect to any contract with PSALM?</li> <li>• We would like to seek clarification if the DU is required to estimate allocations from PSALM in the PSPP.</li> <li>• We suggest to include Emergency Supply Procurement in the list for the list to be complete.</li> </ul>	<p><b>ARTICLE XII. CIRCUMSTANCES FROM THE CONDUCT OF CSP</b></p> <p>Section 42. <i>Exemptions.</i> — All PSAs shall be procured through CSP; Provided however, that the following instances shall warrant an exemption from the conduct of CSP:</p> <p>a) Any generation project owned by the DU funded by grants or donations. The DU may be allowed to infuse internally generated funds; Provided, that the amount shared by the DU shall not exceed thirty percent (30%) of the total project cost;</p>



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	<p>b) Provision of power supply by any mandated Government Owned and Controlled Corporation (GOCC) for off-grid areas prior to, and until the entry of New Power Providers (NPP) in an area; and</p> <p>c) Provision of power supply by the Power Sector Assets and Liabilities Management (PSALM) Corporation through bilateral contracts for the power produced from the undisposed generating assets and Independent Power Producer (IPP) contracts duly sanctioned by the "Electric Power Industry Reform Act of 2001" or EPIRA as deemed by the DUs.</p>		<p>b) Provision of power supply by any mandated Government Owned and Controlled Corporation (GOCC) for off-grid areas prior to, and until the entry of New Power Providers (NPP) in an area; and</p> <p><del>e) Provision of power supply by the Power Sector Assets and Liabilities Management (PSALM) Corporation through bilateral contracts for the power produced from the undisposed generating assets and Independent Power Producer (IPP) contracts duly sanctioned by the "Electric Power Industry Reform Act of 2001" or EPIRA as deemed by the DUs.</del></p> <p>d) Emergency Supply Procurement under Article XI</p>
PSA Rules	<b>ARTICLE XIV. DISPUTE RESOLUTION</b>		Section 44. <b>Arbitration.</b> — The parties shall make every effort to first resolve amicably by mutual



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	<p>Section 44. <b>Arbitration.</b> — The parties shall make every effort to first resolve amicably by mutual consultation any conflict or dispute of any kind between them in connection with the implementation of the PSA, otherwise, the dispute shall be submitted to arbitration in the Philippines in accordance with the provisions of Republic Act No. 876 (Arbitration Law) and Republic Act No. 9285 (Alternative Dispute Resolution Act of 2004) or by mutual agreement, the parties may agree in writing to resort to other alternative modes of dispute resolution.</p>	<p>We would like to seek clarification whether this mode of dispute resolution is required to be exhausted before a party can go to the ERC? We note that Section 43(u) of the EPIRA vests in the ERC original and exclusive jurisdiction over all cases involving disputes between and among participants or players in the energy sector.</p>	<p>consultation any conflict or dispute of any kind between them in connection with the implementation of the PSA, otherwise, <u>the parties may agree in writing to resort to other alternative modes of dispute resolution.</u> <del>dispute shall be submitted</del> <u>or submit the dispute</u> to arbitration in the Philippines in accordance with the provisions of Republic Act No. 876 (Arbitration Law) and Republic Act No. 9285 (Alternative Dispute Resolution Act of 2004). <u>This does not preclude the parties from bringing the dispute to the ERC.</u> <del>or by mutual agreement, the parties may agree in writing to resort to other alternative modes of dispute resolution.</del></p>
PSA Rules	<p>Section 47. <b>ERC Evaluation of the Application.</b> — Any PSA submitted to the ERC for approval shall be reviewed on two (2) levels. The first level is to determine whether the bidding process is in accordance with these rules and to ensure that there are no indications of any form of anticompetitive behavior. The second level is to determine the PSA's "reasonableness" in terms of costs, risk allocation, and other contractual terms.</p>	<ul style="list-style-type: none"> <li>• May we be clarified whether the PSA rate shall still be evaluated using cost-based methodology? Please note that the PSAs for approval of the Commission have undergone a CSP. With CSP, it is expected that the DU received the most advantageous offer for its Captive Customers. A CSP similarly is a rate-setting methodology that already reflects the interplay of</li> </ul>	<p>Section 47. <b>ERC Evaluation of the Application.</b> — <del>Any PSA submitted to the ERC for approval shall be reviewed on two (2) levels. The first level</del> <u>The ERC shall</u> is to determine whether the bidding process is in accordance with these rules and to ensure that there are no indications of any form of anticompetitive behavior. <del>The second level is to determine the PSA's "reasonableness" in terms of costs, risk allocation, and other contractual terms.</del></p>



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	<p>In the event that the bidding process that resulted to the execution of the PSA submitted is found to be non-compliant with these rules, the said PSA shall be dismissed outright and will no longer be evaluated as to its reasonableness.</p> <p>In the exercise of its discretion and based on all the submissions made, the ERC shall determine whether to approve the full pass through or prohibit some or all costs from being passed on to the DU's captive market and whether or not to disapprove or modify certain contractual stipulations of the parties.</p> <p>The ERC's decision and judgment shall be binding on both parties and shall not be rendered ineffective or nugatory by any termination or "walk-away" clause incorporated in the PSA.</p>	<p>market forces. Given this, we suggest that the evaluation should be focused on compliance with the CSP process. Review of the PSA pricing structure would be more appropriate for directly negotiated procurements.</p> <ul style="list-style-type: none"> <li>• Moreover, the CSP should not be limited to physical supply of the plant. Rather it should as well be open to financial or/and portfolio supply. The costs parameters for evaluating rates for physical supply is not be applicable to financial or portfolio supply.</li> <li>• For directly negotiated procurement and emergency supply procurement, ERC may employ benchmark rate to review the acceptability of the agreed PSA rates. The PSA rate is automatically approved if it is within the benchmark rate. This mechanism is similar to what is applied to NPC/PSALM CSEEs where the rate is pre-determined based on the previously approved NPC Basic Generation Charge and the rate is</li> </ul>	<p>In the event that the bidding process that resulted to the execution of the PSA submitted is found to be non-compliant with these rules, the said PSA shall be dismissed outright and will no longer be evaluated as to its reasonableness.</p> <p><b><u>In the event of a negotiated purchase or Emergency Supply Procurement</u> <del>In the exercise of its discretion and based on all the submissions made,</del> the ERC shall determine whether to approve the full pass through or prohibit some or all costs from being passed on to the DU's captive market <del>and whether or not to disapprove or modify certain contractual stipulations of the parties.</del></b></p> <p><del>The ERC's decision and judgment shall be binding on both parties and shall not be rendered ineffective or nugatory by any termination or "walk-away" clause incorporated in the PSA.</del></p>



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		<p>applicable to prospective CSEEs of PSALM.</p> <ul style="list-style-type: none"><li>• Termination or “walk-away” clauses are usually incorporated in PSAs to allow both parties to withdraw from a contractual obligation. This prohibition will be in violation of the parties’ freedom to contract. Without the termination or walk-away clauses, suppliers would be forced to supply electricity at a rate which is not commercially viable to support its operations. This also creates market distortions since suppliers are selling at a rate that was not agreed by the supplier and the DU, which was arrived at through a CSP.</li></ul>	



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PSA Rules	<p>Section 48. <b>Review of the ERC.</b> — ERC's evaluation of the PSA's proposed generation rate will be based on its satisfaction of the following:</p> <ul style="list-style-type: none"> <li>a) That the PSA guarantees suppliers' compliance with the required technical, environmental and financial standards set out in the bid documents;</li> <li>b) That the PSA have complied with the minimum terms and conditions embodied in the PSA Framework under Appendix "B";</li> <li>c) That the PSA accords the parties with equitable rights; and</li> </ul> <p>That the risks associated with the supply of electricity such as those pertaining to the tariff structure, economic indices, foreign exchange fluctuations, volatility of fuel prices and the like are efficiently allocated between the parties.</p>	<ul style="list-style-type: none"> <li>• Clarification is kindly sought as to how the ERC will evaluate whether there is efficient allocation of risks between the parties? Would the Honorable Commission provide an example?</li> <li>• We would like to kindly reiterate our comment above that evaluation should focus on the process and not the rates. Result of CSP should be respected as the result would already take into account market forces.</li> </ul>	Suggest to delete Section 48.
PSA Rules	Section 49. <b>PSA Pricing Structure.</b> — The ERC shall determine the reasonable generation cost under the said PSA, taking into account the	We would like to kindly reiterate our comment above that evaluation should focus on the process and not the rates. Result of CSP should be respected as the result would already take into account	Suggest to delete Section 49.



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	<p>following fees:</p> <ul style="list-style-type: none"> <li>a) Capital Recovery Fee (CRF) - a capital-related component to recover the cost of investment over the economic life of the plant together with a reasonable rate of return. In the case of an Independent Power Purchase Agreement, the CRF shall pertain to the recovery of fees paid/payable to NPC to operate the plant. This amount shall include a reasonable amount of return on capital based on an ERC approved WACC.</li> <li>b) O&amp;M Fee - a component to recover operating and maintenance cost. The power plant's O&amp;M cost may be broken down into local and foreign, where the local O&amp;M cost represents locally-denominated plant operating cost, while foreign O&amp;M cost represents maintenance of spare parts, supplies, and all other associated costs that are</li> </ul>	<p>market forces.</p> <p>Moreover, the contracting of the DUs should not be limited to physical contracts, rather should also consider financial and portfolio contracting.</p>	



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	<p>usually imported.</p> <ol style="list-style-type: none"> <li>1. Fixed O&amp;M — an element to recover fixed operating and maintenance (O&amp;M) costs. This cost is determined by the capacity of the plant, not the level of utilization.</li> <li>2. Variable O&amp;M - an element to recover variable O&amp;M costs and which varies with the amount of electricity generated.</li> </ol> <p>c) Fuel Fee - a component to recover fuel costs, if applicable.</p>		
PSA Rules	<p><b>ARTICLE XVI – FINAL PROVISIONS</b></p> <p>Section 52. <b>Transitory Clause</b> — All pending PSA applications with the ERC shall not be affected by any new requirement imposed under these Rules.</p> <p>Section 53. <b>Exception Clause</b> — Where good cause appears, the ERC may allow an exception from any provisions of these Rules if such exception is found to be in the public interest</p>	<ul style="list-style-type: none"> <li>• May we seek clarification as to whether or not PSA application currently going through CSP will be included in the transition clause.</li> <li>• We kindly suggest that PSAs which have already undergone CSP under existing rules of the ERC and the DOE (but have yet to be filed with the ERC) be unaffected by the proposed rules.</li> </ul>	<p>Section 52. <b>Transitory Clause</b> — <u>All supply requirements undergoing CSP and PSAs executed after the conduct of a CSP pursuant to rules prior to the effectivity of these Resolution, as well as all pending PSAs with the ERC shall not be affected by any new requirement imposed under these Rules.</u></p>





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	<p>and is not contrary to law or any other related rules and regulations.</p> <p>Section 54. <b>Separability Clause</b> — If for any reason, any part or section of these Rules is declared unconstitutional or invalid, the other parts or sections hereof which are not affected thereby shall continue to be in full force and effect.</p> <p>Section 55. <b>Repealing Clause</b> — The pertinent provisions of other ERC rules or guidelines inconsistent herewith are hereby repealed or modified accordingly.</p> <p>Section 56. <b>Effectivity</b> — These Rules shall take effect on the 15th day following its publication in a newspaper of general circulation or in the Official Gazette.</p>	<p>There are already costs and effort spent by the DUs in complying with these existing rules and it will be a huge burden to the DUs to repeat the process in order to comply with the new requirements under the proposed rules.</p>	
<p><b>Appendix B          Power Supply          Agreement          Framework</b></p>	<p>Appendix B provides provisions that are required to be part of every PSA executed by DUs with GenCos.</p>	<p>NPC/PSALM are considered generators as well. They are qualified entities who contract bilateral contracts, ancillary services, and sells/trades in the market. For parity, we suggest that the NPC/PSALM should also be required to follow the PSA framework. Currently, the CSEEs of PSALM does not have provision on replacement</p>	



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		power, reduction on capacity and no breakdown of the PSA rates into fixed, variable and fuel.	