



ANNEX A – ABOITIZ POWER ADDITIONAL 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>ARTICLE V – POWER SUPPLY PROCUREMENT PLANNING</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> <ul style="list-style-type: none"> (a) 10-year historical data on peak demand, energy sales and energy purchase; (b) List of existing power supply agreements with corresponding status, expiration period, actual utilization rate; (c) 10-year monthly peak demand forecast and energy sales; (d) Committed energy and demand for CSP; <p>Xxxxx</p>	<p>It will not be realistic to hold the DUs to their submitted forecast supply requirements under the PSPP. There are events which may change the demand supply scenario for the DUs and which may no longer hold such forecasts true.</p> <p>These events include the migration of customers to the contestable market, the Green Energy Option program, the non-realization of demand growth forecasts and force majeure such as major typhoons and earthquakes. These are events that are beyond the control of the DUs and affect their supply requirements over time. It would, thus, be unreasonable to bind it to its submissions under the PSPP.</p>	<p>ARTICLE V – POWER SUPPLY PROCUREMENT PLANNING</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> <ul style="list-style-type: none"> (a) xxxx xxxx (d) Committed <u>Indicative</u> energy <u>and/or</u> demand for CSP; xxxx



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PSA Rules	<p>Section 19. Bid Security – 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) xxxx</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) xxx</p> <p>xxxxx</p>	<p>We believe that the proposed bid security amount is too large. We would like to propose that the Commission gives a free hand to the Distribution Utilities to determine the Bid Security for each of their CSP activities. This way, the DUs can consider other factors and risks that may be present at that point in time which we cannot foresee currently. Moreover, it is also a concern of the DUs if the bid security will be too high that the bidders will already include its costs in the energy fees. Thus, in the end, the consumer may bear the cost of such fees.</p>	<p>Section 19 Bid Security – 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) xxxx</p> <p>(b) The amount <u>shall be determined by the Distribution Utility and indicated in the bid documents. must be equivalent to one year contract cost of the proposed power supply agreement computed using the bid price offered by the bidder;</u></p>
PSA Rules	<p>Section 21. Post Qualification - 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 documents.</p>	<p>In our previously submitted comments, we have said that the post-qualification stage is not necessary as there is already a pre-qualification stage.</p> <p>However, if the Honorable Commission deems that post-qualification should still be part of the process, we would like to propose that post-qualification requirements should only be for the additional</p>	



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	<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 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</p>	<p>requirements, which are not part of the pre-qualification documents.</p> <p>Moreover, to prevent speculations on disqualifications of the bidder due to subjectivity of the process, the post-qualification requirements should be defined at the onset, or the list should already be included in the bidding documents.</p>	



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	be extended by the DU BOD, but in no case shall the aggregate period exceed thirty (30) days.		
PSA Rules	Section 26. Lock-down provision. — 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.	<p>There are instances where the contract needs to be assigned; for example for the purpose of financing the generator, lenders may require as part of the loan documents the assignability of the contract. This may be a huge impact on the borrowing capability of generators if assignability will not be allowed at any instance.</p> <p>Thus, we would like to reiterate that the DU should be given flexibility on what instances it can allow the assignability of contracts.</p>	<p>Section 26. Lock-down provision. — 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.</p> <p><u>Assignability</u> – The DU shall define the allowed instances when the PSA may be assigned by the winning bidder and shall be included in the bidding documents.</p>
PSA Rules	<p>ARTICLE XI. EMERGENCY SUPPLY PROCUREMENT</p> <p>Section 40. Emergency Supply Procurement. — 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</p>	<p>We recommend to include the following circumstances under emergency procurement:</p> <p>(1) Site specific constraints that may affect certain Distribution Utilities; and (2) Possibility of El Nino occurrence. For site specific constraints, these may include congestion events that was not predicted by the DU and/or will only occur on the short-term.</p>	<p>Section 40. Emergency Supply Procurement. — 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</p>



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	<p>efficient operation of the power system.</p> <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>For El Nino, it may only affect certain parts of the grid and the severity of such phenomena is very difficult to predict. El Nino can only be confirmed when it has already started, thus there should be a provision for emergency procurement for the “possibility” of El Nino, and not for its onset already.</p> <p>It was mentioned during the public consultation that PSAs procured under ESP and have commenced delivery, when disapproved by the Commission, shall be required to refund. We would like to request the Commission to reconsider this position considering that at that point, energy (or the service) has already been delivered by the generator. We propose that in case of disapproval, the Commission may use the benchmark rate or NPC TOU rate as basis of the rates for energy already delivered, consistent with current practice.</p> <p>We would like to further request that there be a set time when the Honorable Commission will act on the proposed procurement (i.e., 90 calendar days), so as to limit the risk of the DU and generator in case of disapproval.</p>	<p>definition of a force majeure or fortuitous event, in order to maintain safe, reliable, secure and efficient operation of the power system <u>or events or situations, the happening of which could not have been previously determined with certainty, necessitating the urgent and immediate procurement of supply.</u></p> <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</p>



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			<p>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 notice for Fortuitous Event, or Force Majeure or other events enumerated above 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. <u>The ERC shall act on the same request within _____ days upon the DU submission.</u></p>
PSA Rules	<p>Section 41. Benchmark Rate. — The ERC shall 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</p>	<p>In our comments already submitted, we have proposed that the benchmark rate be only applicable to emergency and negotiated procurement.</p> <p>In our comments under emergency procurement, Article XI Section 40, we noted that there are</p>	



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	<p>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>concerns regarding an ESP procured PSA, which has commenced delivery, but was unfortunately disapproved by the Honorable Commission. We would like to request the Honorable Commission to consider that the rate for energy which has been delivered by the generator (in case of disapproval) be based on the benchmark rate or NPC TOU rate.</p>	
<p>Appendix B Power Supply Agreement Framework</p>	<p>Appendix B provides provisions that are required to be part of every PSA executed by DUs with GenCos.</p>	<p>We would like to reiterate our position that since the Honorable Commission is requiring all generators to follow the PSA framework attached as Appendix B in the PSA Rules, then this should be followed not just by private generators but by government owned generators as well. NPC/PSALM has generators and has bilateral contracts, ancillary services, and sells/trades in the market. We therefore suggest that</p>	



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		the NPC/PSALM should also be required to follow the PSA framework. Currently, the CSEEs of PSALM do not have provisions on replacement power and reduction on capacity, and no breakdown of the PSA rates into fixed, variable and fuel.	