

**Aboitiz Power Comments to the Draft Rules Governing the Execution, Review and Evaluation of Power Supply Agreements Entered into by Distribution Utilities for the Supply of Electricity to Captive Market**

Provision	Comment	Proposed Revision
General Comment	We commend the Commission for issuing the draft Rules governing the execution, review and evaluation of PSAs. May we clarify, what should be followed by Generation Companies (GenCos) and Distribution Utilities (DUs) when there is discrepancy between the DOE issued circular and ERC resolution?	
<b>Article II. (f)</b> “Certificate of Compliance (COC)”	We recommend that the definition be consistent with the definition of Certificate of Compliance under ERC Resolution No. 16, series of 2014.	[As stated in Section 4 (e) of ERC Resolution No. 16, series of 2014]
<b>Article II. (q)</b> “Unsolicited Proposal” refers to a project proposal submitted by a <i>generation company</i> to provide electric power supply to the DU.	We recommend the revision as to formatting, considering Generation Company has been defined [Article II (l)]	(q) “Unsolicited Proposal” refers to a project proposal submitted by a <b>Generation Company</b> to provide electric power supply to the DU.
<b>Article IV. Section 4.1 (g)</b> The project will be award to the original unsolicited proposal proponent, if the original unsolicited proposal proponent matches the lowest price under the tender. When <i>another proponent</i> submits a lower price proposal and the original proponent matches that price within thirty (30) working days, then the BAC-TWG will identify which proposal has greater technical merit and submit its recommendations to the BAC for disposition.	Please clarify if “another proponent” refers to a proponent separate from the original unsolicited proposal proponent and the price challenger under Section 4.1 (e). Further, please elucidate if technical merit will only be evaluated in case of price matches.	
<b>Article IV. Section 6.</b> Benchmark Rate – The ERC shall establish a benchmark rate that shall serve as reference price that may be used to assess the	With the benchmark rate calculated using portfolio of efficient new entrant plants, will the Commission forego the evaluation of the PSA rates using the	

Provision	Comment	Proposed Revision
<p>prudency and reasonableness of the PSA price.</p> <p>The ERC will utilize financial model in calculating the Benchmark Rate . . . the ERC through a <i>full consultation process</i>.</p>	<p>actual cost to build and actual O&amp;M of the plant? If not, what will be the weight given to the benchmark rate in the evaluation of the PSA?</p> <p>How many benchmark rates will ERC make?</p> <p>Who may participate in the consultation process? How often will this be conducted?</p>	
<p><b>Article V. Section 4. PSA pricing structure</b></p>	<p>May we be clarified whether the PSA rate shall still be evaluated using cost-based methodology? Kindly note that all PSAs are required to undergo CSP. A CSP similarly is a rate-setting methodology that already reflects the interplay of market forces.</p> <p>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 under Article IV, Section 3.1.</p>	
<p><b>Article V. Section 5. Other Documentary Requirements . . . .</b></p> <p>Provided, that if any of the required documents has been previously submitted to the ERC, a <i>Certification of prior submission</i> shall be issued in lieu thereof,</p>	<p>Please advise if the <i>Certification</i> may also be issued for documents originating from ERC (i.e., Certificates of Compliance).</p>	
<p>Article V. Section 7 ERC Action on the Application. Any PSA submitted to the ERC shall be reviewed as to its “reasonableness” in terms of costs, risk allocation and other contractual terms.</p>	<p>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. We reiterate our suggestion that the review of Applications should be focused on compliance with</p>	

Provision	Comment	Proposed Revision
	the CSP requirements.	
<p>Article V. Section 7 ERC Action on the Application.</p> <p>xxx The ERC's decision and judgment shall bind both parties and shall not rendered ineffective or nugatory by any termination or "walk-away" clause incorporated in the PSA.</p>	<p>Termination or "walk-away" clauses are usually incorporated in PSAs to allow both parties to withdraw from a contractual obligation. This prohibition may be in violation of the parties' freedom to contract.</p> <p>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.</p>	
<p>Article V. Section 7 ERC Action on the Application.</p>	<p>ERC should set out timeline to be strictly followed i.e., follow the schedule that hearing should be conducted within a specific period from filing of the application. ERC must see to it that final approvals should be released after a specific period from application and must not be later than the expiration of the PSA.</p>	
<p>Appendix A. Procedures of the Competitive Public Bidding for Distribution Utility's (DUs) Power Supply Contracting.</p> <p>1-12 Bid Security (b) The amount must be equivalent to __percent (__%) of the estimated project cost.</p>	<p>Power plant projects are capital intensive. Having the Bid Security pegged at percentage of project cost makes the Bid Security high and prohibitive for suppliers to join the bidding.</p> <p>As an example: Project Cost – PhP 20B Bid Security %– 0.1% Amount of Bid Security – PhP 20M</p>	<p>1-12 Bid Security (b) The amount is <b>PhP 500,000.</b></p>

Provision	Comment	Proposed Revision
	<p>This becomes worse if the power plant has several customers which is the usual case. As an example:</p> <p>Bid Security of PhP20M x 5 customers = PhP100M</p> <p>Also, the purpose of a Bid Security is to discourage nuisance parties in joining the bid process.</p> <p>We suggest that the Bid Security should be a fixed amount per transaction.</p>	
<p>Appendix A. Public Bidding for Distribution Utility's (DUs) Power Supply Contracting.</p> <p>1-23 Performance Bond. The Winning Bidder is required to post Performance Bond under each PSA in the amount equivalent to ___% of the Project Cost directly to the DU in the form of cash or manager's/cashier's check.</p>	<p>Power plant projects are capital intensive. Having the Performance Bond pegged at percentage of project cost makes the Performance Bond high and prohibitive for suppliers to join the CSP.</p> <p>We suggest that the Performance Bond be calculated based on the estimated monthly transaction amount.</p> <p>In addition, may we recommend that Performance Bond may be in the form of cash, manager's/cashier's check or Letter of Credit.</p>	<p>1-23 Performance Bond. The Winning Bidder is required to post Performance Bond under each PSA in the amount <b>PhP[ ]</b> equivalent to ___% of the estimated one month bill <del>of the Project Cost</del> directly to the DU in the form of cash, manager's/cashier's check <u>or</u> <b>Letter of Credit.</b></p>

Provision	Comment	Proposed Revision
<p>Appendix B. Power Supply Agreement Framework</p> <p>Term or Contract Period</p> <p>2. Term of contract period of the PSA. The term of the PSA should not exceed ten (10) years.</p>	<p>May we know the reason for the imposition for PSAs to have contract term not exceeding 10 years? May we suggest that parties should be allowed to negotiate and agree on mutually acceptable terms of the PSA.</p>	<p>2. Term of contract period of the PSA. The term of the PSA <del>should not exceed ten (10) years as agreed upon</del> <b><u>by the parties.</u></b></p>
<p>Appendix C. General Information and Requirements for the Pre-filing of Applications for Approval of PSA</p>	<p>We suggest simplification of the application process including submission of documents. We suggest deletion of the following:</p> <p>Annex U – Certification by PSALM/NPC whether Transition Supply Contract (TSC) capacity and energy is expected to be available during the contractual period. Rationale: NPC/PSALM has limited capacity to supply. Also, having the CSP already implies that the current supply of DU is insufficient.</p> <p>Annex AB Executive Summary Rationale: The application already provides for the salient features of the PSA. Also, the details of the rates was also asked in Annex AB2.</p> <p>Annex W and AB2 item 6 requirement are the same both referring to rate impact simulation.</p> <p>Annex AC Cash Flow can be contained in Annex AB2 Item 2 Financial Model.</p> <p>Please clarify the purpose of requiring the</p>	

<b>Provision</b>	<b>Comment</b>	<b>Proposed Revision</b>
	documents under <b>Annex AD</b> . We believe that these are not necessary considering there is a fuel efficiency cap.	