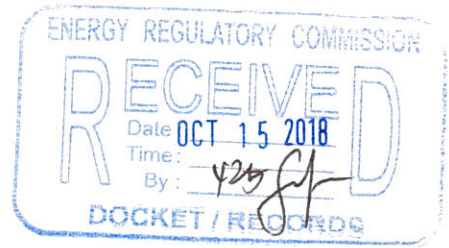


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October 15, 2018

The Honorable Commission
Energy Regulatory Commission
Pasig City, Philippines



Re : ERC Case No. 2018-002 RM
Rules Governing Procurement, Execution,
and Evaluation of Power Supply Agreements

Ladies and Gentlemen:

I am an interested party in the above proceedings being (a) a Meralco customer with Service ID Number 427304160101, and (b) an energy law practitioner with ERC cases involving Power Supply Agreements (PSAs), among other matters.

I learned about the Notice dated September 21, 2018 only last October 13, 2018, setting the case for public consultation today, October 15. I take note of the October 8 deadline for submission of comments, but I seek the liberality of the Honorable Commission in accepting and considering my comments on the proposed *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 (Proposed Rules)*.

Please consider these comments on the Proposed Rules:

1. **Section 4(i)** should expressly exclude PEZA utilities without national franchise and the other requirements that Republic Act No. 9136, or the Electric Power Industry Reform Act of 2001 (EPIRA), impose upon Distribution Utilities (DUs) before they can distribute electricity to end-users.
2. **Section 4(l)** should specify the government body that confirms or declares the existence of the force majeure event.

3. **Section 5** and subsections should limit the purpose of the submission of a DU of its Power Supply Procurement Plan (PSPP) to the Department of Energy (DOE) to notification/coordination only, and not for approval. Section 37(j) of the EPIRA amended Section 5(e) of RA 7638 by removing from the DOE the power to regulate private sector activities and, in turn, limiting its function to monitoring those activities. It is the ERC, not the DOE, that has regulatory power over DUs.
4. **Section 7(a)** on unsolicited proposal is not really an exception to the requirement of a Competitive Selection Process (CSP) in view of Section 28(c) and Section 42. Section 7(a) should therefore be deleted.
5. **Section 8** should clarify whether a duly appointed consultant is allowed to be a member of the Bids and Awards Committee (BAC). A consultant may not be considered an officer or an employee of a DU.
6. **Section 8**, second paragraph, subparagraph (4) may be referring to “[a]n officer or employee with **legal** experience and/or background” and not “with technical experience ...” as this member may be the same person under subparagraph 1. This is the same observation for Section 10, second paragraph, subparagraph (4) in relation to subparagraph (1).
7. **Section 9** should also clarify if a duly appointed consultant of a DU may be a member of the BAC Technical Working Group (TWG).
8. **Section 12** needs an improvement on the terms used (*i.e.*, “open, transparent, efficient, and equitable”) to describe the required conduct of a CSP (“open” and “transparent” may have the same meaning, and “equitable” is ambiguous).
9. **Section 12** should exclude Parent-Teachers Association (PTAs). Their membership is transitory and, by its nature, the association is not constituted for the purposes contemplated by the Proposed Rules.
10. **Section 12** should include, as CSP Observers, the representatives of the local government unit(s) which are within the franchise area of the DU (*e.g.*, representative of the committee on energy of the legislative council).
11. **Section 14** should make it mandatory the publication of the invitation to bid in a local newspaper of local circulation in the affected franchise area.
12. **Section 40** and related provisions on Emergency Supply Procurement should specify that the pre-filing and other requirements for a regular PSA will not apply. The requirements for filing, evaluation, and approval of an emergency/interim PSA should be **summary** in nature (*i.e.*, the proceedings should only require essential documentary requirements,



entail minimal and inexpensive publication requirement [should not require newspaper publication which is very costly], and ensure expeditious approval process).

13. **In general**, the Proposed Rules may need further improvement in matter of form and style.

I hope that the Honorable Commission will consider the above comments.

Thank you.

Very truly yours,


Remigio Michael A. Ancheta II