



Republic of the Philippines

**ENERGY
REGULATORY
COMMISSION**

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

FDC Misamis Power Corporation

Document	Article / Section	Discussion of Comment/s and/or Questions for Clarification	Suggestions / Proposed Change(s)
GENERAL COMMENT		<p>There is importance in striking balance between regulation and competition. This sweet spot becomes efficient regulation. The regulatory intervention likewise becomes necessary aid in resolving matters we cannot anticipate. In summary:</p> <ol style="list-style-type: none"> 1. PSALM, as generator, should not be exempted in participating alike, for its Time of use rate, without the cost subsidized by the government/end consumers, is not the true cost in generating its electricity; 2. The rules should protect both the DUs and the Generators/Suppliers; and 3. The adoption of the rules does not necessarily make the process of regulation efficient by subjecting the bid amount to ERC evaluation, at the end of the process, rather within the process. 	
PSA Rules	<p>Article I, Objectives Section 1 (e) (e) To promote competition among Generation Companies (GenCos) in providing the best offer of power supply which will ensure least cost of electricity for the DU's captive market in terms of the generation component of their retail rates.</p>	<p>The term "reliability" should be included as an objective in defining the best offer. Also, the "cost" of a power supply is not the sole criteria or determinant for it to be the best choice, hence the term "possible" should be inserted in referring to least cost.</p>	<p>Revise Sub-section (e) to read as follows:</p> <p>(e) To promote competition among Generation Companies (GenCos) in providing the best offer of power supply which will ensure reliability at the least possible cost of electricity for the DU's captive market in terms of the generation component of their retail rates.</p>

PSA Rules	<p>Article IV, Definition of Terms Section 4 (c)</p> <p>"Aggregation" refers to the joint action of the DUs to aggregate their demand xxx</p>	A defined term which may have not used in any Article in these proposed Rules	<p>Take out this term and define "Aggregated DUs" instead as follows:</p> <p>"Aggregated DUs" refers to a group of DUs which have aggregated their demand or energy requirements to jointly procure for their power supply to achieve economies of scale.</p>
PSA Rules	<p>Article IV, Definition of Terms Section 4 (q)</p> <p>"Solicited Proposals" refers to project proposals identified by the DUs, wherein the DU selects private partner/s xxx</p>	A defined term which may have not used in any Article in these proposed Rules	Exclude from the terms defined in Article IV
PSA Rules	Article V, Power Supply Procurement Planning Section 5.2	The DU must be required to post its approved PSPP in its website	
PSA Rules	Article VI, Section 7	Replace "captive market" to "Captive Market" to refer to defined term	"All DUs shall procure their power supply requirements for their Captive Market , through competitive public bidding in accordance with Article VIII hereof, ..."
PSA Rules	<p>Article VII, Bids and Awards Committee Section 8, (Par. 3, Page 7)</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>	This notice requirement should also be prescribed to the Joint BAC of Aggregated DUs referred to in Section 10 of the same Article in the proposed Rules	<p>Insert a paragraph in Section 10 to read as follows:</p> <p>The Joint 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>

PSA Rules	<p>Article VII, Bids and Awards Committee Section 8, (Par. 4, Page 7)</p> <p>The BAC shall be responsible for all aspects of the pre-bidding, bidding process and the conduct of the Swiss Challenge. xxx</p>		<p>Revise the paragraph to read as follows:</p> <p>The BAC shall be responsible for all aspects of the pre-bidding, bidding process and the conduct of the Swiss Challenge <u>in Unsolicited Proposals as referred to in Article IX hereof</u> xxx</p>
PSA Rules	<p>Article VIII, Competitive Public Bidding Section 13.2, Terms of Reference</p> <p>(d) Cooperation/Contract Period which shall not exceed ten (10) years</p>	<p>Putting a cap on the contract period may be too restrictive. Cooperation/Contract Period may need to be longer than 10 years in consideration to the intensive capitalization on power projects that takes longer period to be recovered and high annual maintenance cost. Also, a longer period may be beneficial for both the customer as this ensures competitively optimal rates in the long-term and for the supplier as this ensures recovery of capital.</p>	<p>Revise the referred provision to read as follows:</p> <p>(d) Cooperation/Contract Period which shall not exceed twenty (20) years</p>
PSA Rules	<p>Article VIII, Article VIII, Competitive Public Bidding Section 16, Submission of Pre-Qualification Documents Section 16.1 (d) Technical Capability Information</p>	<p>The Technical Criteria may be too restrictive and will only allow existing/established suppliers to participate. This will prevent potential new investors to participate.</p>	<p>Add the following:</p> <p>Should the bidder not qualify under (i), (ii) and (iii), it should show proof that its personnel have at least 10 years experience in the construction, operation and maintenance of a power plant. Alternatively, the bidder may enter into an agreement with a technical partner with the same experience as (i), (ii) and (iii).</p>

PSA Rules	Article IX, Unsolicited Proposal Section 28, Requisites for Unsolicited Proposal	The provision on Unsolicited Proposals may open the floodgates for suppliers to submit unsolicited proposals. Additional criteria should therefore be put in place to eliminate potential abuse	Propose to include the additional criteria: 1. Renewable Energy embedded within the franchise area of the DU; and 2. New technology.
PSA Rules	Article IX, Unsolicited Proposal Section 27 Par. 3 In the event that the CSP is not completed within the prescribed period, the DU shall submit an explanation under oath stating the circumstances or reasons for the unsuccessful CSP	Specify that the explanation shall be submitted to ERC, copy furnished all involved parties. Should the participation fees/ joining fees of bidders be returned?	Section 27 to be titled Failed CSP Third Paragraph In the event that the CSP is not completed within the prescribed period, the DU shall submit an explanation under oath to ERC, copy furnished all involved parties, stating the circumstances or reasons for the unsuccessful CSP. All fees paid by the prospective bidders shall be returned, without any deduction, within 10 days from the failed CSP, without need of any demand.
PSA Rules	Article XII, Circumstances Exempt From the Conduct of CSP Section 42.	What are the bases in exempting mandated GOCCs and PSALM from the conduct of CSPs? EPIRA ushered in the era of reflecting true cost of service, removing subsidies and free market competition, among others. Exempting these entities to these proposed Rules are contrary to the principles upon which EPIRA was founded. It is anti-competitive, given their rates are highly subsidized by the government and (right now) they offer un-reliable supply which is disadvantageous to the	Delete Article XII, Section 42, par. (c).

		<p>interest of the public.</p> <p>PSALM's TOU rate is not the true cost of electricity. Subsidy by the government/consumers, must be included in the TOU rate.</p>	
PSA Rules	<p>Article XIII, Protest Mechanism Section 43. Protest on Decisions of BAC or Joint BAC</p>	<p>There should no fee which a contesting party would pay if it opts to further make a protest after a request for reconsideration to a Decision of the BAC or Joint BAC has been denied.</p> <p>Alternatively, the protest must already be filed with the ERC.</p> <p>The cost may be imposed if there is no joining fees/ participation fees which are usually non-refundable.</p>	<p>Article XIII PROTEST MECHANISM.</p> <p>Section 43. Protest on Decisions of BAC or Joint BAC. – Decision of the BAC or Joint BAC regarding CSP may be questioned by filing a written request for reconsideration within ten (10) days upon receipt of written notice. The BAC or Joint BAC shall decide on the request for reconsideration within ten (10) days from receipt thereof.</p> <p><u>No fees, charges or amounts shall be assessed and collected for protest, against bidders.</u></p>
PSA Rules	Article XV Section 49	<p>If the winning bid is still subject to ERC review, then parties may be allowed to walk away with full reimbursement of the participation fees/ joining fees, should the ERC - approved rate becomes commercially unfavorable, at the determination of the Winning Bidder.</p>	
PSA Rules	Insert a new Article	<p>Remove phrases in the proposed Rules referring to non-compliance/violations to certain provisions therein and just add a new Article entitled "Violation of the Rules"</p>	<p>Article XVI VIOLATION OF THESE RULES</p> <p>Section 1. Fines and Penalties – Violation of any provision of these Rules shall be subject to the imposition of fines and penalties in accordance with the Rules to Govern the</p>

			Imposition of Administrative Sanctions in the Form of Fines and Penalties Pursuant to Section 46 of Republic Act No. 9136 promulgated by the ERC on May 17, 2002, as amended.
Appendix D		Not referred to in the body of these proposed Rules	Place a reference to this Appendix in Article VII, Bids and Awards Committee, Section 12, CSP Observers