



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	Discussion of Comment/s and/or Questions for Clarification	Suggestions / Proposed Change(s)
PSA Rules	Article I/Section 1	The retail rates cited under item (e) must be clarified to be for the captive market.	Insert the words " <u>for captive market</u> " after the word "rates".
PSA Rules	Article II/Section 2	For clarity, the word "consumers" has to be as " <u>consumer under captive market</u> "	
PSA Rules	Article III/Section 3	None.	
PSA Rules	Article IV/Section 4	Inclusion of additional defined terms consistent with DOE Circular No. DC2018-02-0003	Include the following terms with definition similar with the said Department Circular: 1. Distribution Development Plan 2. Emergency Power 3. Grid 4. National Electric Administration 5. Off-grid 6. Power Supply Procurement Plan 7. Replacement Power 8. Subsidized Approved Generation Rate Add: 9. Cooperative Development Authority
PSA Rules	Article V/Section 5.1	DU must indicate if its requirements will be sourced from the spot market	To insert below as additional item (-) Projected demand to be sourced in the spot market
PSA Rules	Article V/Section 5.2	To provide clearer medium where PSPP will be published	Section 5.2 to insert additional phrase at the last sentence, to read: The DOE approved PSPP shall be published not later than the 30 th day of March of each year through electronic publication including e-portals of DOE, NEA, CDM and DU.

PSA Rules	Article V/Section 5.2	Under section 5.2, DU is obligated to publish its PSPP not later than the 30 th day of March of each year. What if the DU does not have any requirement?	To add this sentence after the last sentence, to read – For clarity, only DU with forecasted requirements is required to publish its PSPP.
PSA Rules	Article V/new section	What if the DU's forecasted demand is unlikely to happen the following year that will result in deferment of its procurement plan?	New section to read – 5.3 DU must regularly assess its demand projections in the interest of prudent contracting thus precluding stranded supply contract. By 30 th day of November each year, DU shall inform the DOE that its planned procurement in the following year may unlikely happen based on its revised projections. DU shall provide its load assessment and other justifications to the DOE and NEA, if it is a member-electric cooperative.
PSA Rules	Article VI/Section 6	Since off-grid DU requires endorsements for the Universal Charge and Missionary Electrification, this section shall differentiate the process since on-grid DU is straightforward. The process for off-grid DU shall follow existing DOE policy statements and ERC rules.	
PSA Rules	Article VII/Section 8	There should be provision on the termination of the BAC. It shall only cease once ERC grants its approval to the PSA. Also, membership of BAC shall only be limited up to two consecutive CSP. Subject to the approval of the BOD, a member may be re-nominated only after a break.	
PSA Rules	Article VII/Section 8	There is redundancy in the qualification of the members of the BAC, i.e., item 1) and item 4. Suggest including officer or employee with experience on the market operations and/or legal.	Item 4 to read as – 4) An officer or employee with market operation and/or legal background.
PSA Rules	Article VII/Section 8	As part of NEA's administrative function over the electric cooperatives, it should be privy on the procurement activities and results of its member cooperative.	To insert phrase in the last sentence, to read – The BAC shall submit its report to the ERC and NEA, for its member-electric cooperative or CDM for its member-electric

		This also applies if the electric cooperative belongs to Cooperative Development Authority.	cooperative , regarding its findings and recommendation as part of the pre-filing requirements.
PSA Rules	Article VII/Section 9	There should be provision on the termination of the TWG. It shall automatically cease to function after Notice of Award is issued.	
PSA Rules	Article VII/Section 11	There should be provision on the termination of the BAC. It shall only cease once ERC grants its approval to the PSA. Also, membership of BAC shall only be limited up to two consecutive CSP. Subject to the approval of the BOD, he/she may re-nominated only after a break.	
PSA Rules	Article VII/Section 10	For consistency, the qualification of the member of BAC shall consider officer or employee with background on market operation or legal.	Item 4 to read as – 4) An officer or employee with market operation and/or legal background.
PSA Rules	Article VII/Section 11	There should be provision on the termination of the Joint BAC TWG. It shall automatically cease to function after Notice of Award is issued.	
PSA Rules	Article VII/Section 12	Under the enumeration of CSP Observers, it only specifies NEA for the electric cooperative. What if the electric cooperative is under Cooperative Development Authority?	Item 2 to be amended to read – (2) Representative from NEA, for its member electric cooperative or Cooperative Development Authority, for its member electric cooperative.
PSA Rules	Article VII/Section 12	There should be provision on the termination of the Observer's role under the specific CPS. It shall automatically cease to function after Notice of Award is issued. Also, membership of CSP Observers shall only be limited up to two consecutive CSP.	
PSA Rules	Article VII/Section 13.2	1) To have accurate rate benchmarking among the types of power plant, there should be clearer identification of technology allowed. For example, coal-fired can never be a	Section 13.2 to read as - (a) Required/Contracted Capacity and/or Energy Volumes; (b) Demand Requirements (baseload, mid-merit or peaking);

		<p>peaking plant and diesel can never be a baseload plant. Suggest to insert item (c).</p> <p>2) In the interest of fair competition, the remaining economic life of the power plant must correspond to the contract period required by the DU. Suggest to insert additional phrase under item (d).</p>	<p>(c) <u>Technology appropriateness (baseload, mid-merit or peaking)</u>;</p> <p>(d) Cooperation/Contract Period which shall not exceed ten (10) years <u>and shall correspond to the economic life of the nominated plant</u>;</p> <p>(e) Tariff Structure;</p> <p>(f) Form of Payment;</p> <p>(g) Penalties; and</p> <p>(h) Other key parameters</p>
PSA Rules	Article VII/Section 14	There are electric cooperatives that are member of Cooperative Development Authority (CDA), thus, CDA must also be cited under this section.	
PSA Rules	Article VII/Section 15	How about when there are many clarifications that are not resolved during the pre-bid conference and that may warrant another pre-bid conference? Is the prescribed time can be adjusted? To follow the prescribed period, does DU provide its reply through issuance of bid bulletin only?	
PSA Rules	Article VII/Section 22	ERC, DOE and NEA, for its member-cooperative, or CDA, for its member-cooperative, shall duly be informed for the disapproval of the DU BOD on BAC's recommendation.	<p>To insert additional phrase in the last sentence, to read –</p> <p>In the event the DU BOD shall disapprove such recommendation, such disapproval shall be based on valid, reasonable, and justifiable grounds to be expressed in writing <u>to ERC, DOE and NEA, for its member-cooperative, or CDA, for its member-cooperative.</u></p>
PSA Rules	Article VIII/Section 13.2	<p>Reads: "(d) Cooperation/Contract Period which shall not exceed ten (10) years;"</p> <p>What is the logic of limiting the cooperation period to ten years? It may also be costlier (e.g., on Capital Recovery Fee) if the cooperation period is shorter.</p>	No limitation should be set on the length of cooperation

PSA Rules	Article VIII/Section 13.3	Annex “B” item 3 refers to the Term or Contract Period specifying a ten (10) year limit	No limitation should be set on the length of cooperation
PSA Rules	Article VIII/Section 26	To include also that the winning bidder will bid its existing and old plant and bridge to its new capacity addition.	Section 26 to read as: The winning bidder shall not be allowed to bridge its bid resource to another and new resource.
PSA Rules	Article VIII/Section 27	Over-contracting leads to stranded contract thus DU must be allowed to defer its CSP. DU decides not to push its CSP on March 30, it should be allowed but with valid and justifiable reasons.	Add last paragraph – In the event the DU found out that its projected demands will not be realized as forecasted and in the interests of avoiding stranded contract, it shall inform the DOE on the 30 th of November that it will not advertise CSP the following year.
PSA Rules	Article IX/Section 28	Item (a) indicates that the contracted capacity subject on the unsolicited proposal shall not exceed 10% of the DU’s total annual peak demand, does this means that requirement allowed is for peak requirement only?	Suggest below – (a) Capacity Cap – The contracted capacity subject of the unsolicited proposal shall not exceed 10% of the DU’s total annual <u>peak demand</u> for its baseload, mid-merit or peak requirements.
PSA Rules	Article IX/Section 28	To be fair among the Gencos, once the DU publishes its PSPP, no unsolicited proposal be allowed as indicated under item (b).	Delete item (b)
PSA Rules	Article X	None.	
PSA Rules	Article XI/Section 40	Apart from the usual FME, Emergency Supply Procurement shall also be allowed when the DU determines the imminent price spikes of its captive market.	To insert in the first paragraph of Section 40, to read – DU shall also seek Emergency Supply Contract if it determines the possible price spikes for its captive market by submitting study to support its assessment.
PSA Rules	Article XII/Section 42	There should be no discrimination in the generation sector. The provision is also anti-competition. This also runs counter with the objectives under Article I, section 1 item e which encourages the competition among Genco as well as Article II, section 2 which provides equal opportunity to all eligible Gencos to participate in the electric power supply procurement processes	Delete item (c) of Section 42.

PSA Rules	Article XIII	None.	
PSA Rules	Article XIV	None.	
PSA Rules	Article XV/Section 47	Since the entered PSA underwent CSP, the Commission should consider that the approval of the PSA is already final, not provisional.	
PSA Rules	Article XV/Section 49(a)	The privatization of legacy plant of NPC also includes plant sans IPP contract thus it should also include such type of privatization.	To insert a phrase under item (a), to read as – (a) Capital Recovery Fee (CRF) – a capital-related component to recover the cost of investment over the economic life of the plant together with reasonable rate of return. In the case of Independent Power Purchase Agreement, the CRF shall pertain to the recovery of fees paid/payable to NPC to operate the plant. <u>In the case of privatization of merchant plants, the CRF shall pertain to the recovery of fees paid/payable to NPC.</u> Amount shall include a reasonable amount of return on capital based on an ERC approved WACC.
PSA Rules	Article XVI	None.	
Appendix A	1-14 Submission of Bids	Since there is two separate envelopes containing “Technical” and “Financial”, the format to be followed shall be amended accordingly, i.e., 1 st envelope contains Technical and 2 nd envelope contains “Financial”	
Appendix A	1-14 Submission of Bids	In case the BAC misses to determine Bidders whose Bids should not be accepted, the BAC shall still conduct the necessary post-qualification.	

Appendix B	Power Supply Agreement Framework	None	
Appendix C	TWG Evaluation Checklist	None	
Appendix D	Formal Observation Report	None	