



RULES GOVERNING THE EXECUTION, REVIEW, AND EVALUATION OF POWER SUPPLY AGREEMENTS ENTERED INTO BY DISTRIBUTION UTILITIES FOR THE SUPPLY OF ELECTRICITY TO THEIR CAPTIVE MARKET

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Document	Article / Section	Discussion of Comment/s and/or Questions for Clarification	Suggestions / Proposed Change(s)
PSA Rules	Article IV, Section 2	The proposed period to complete the CSP within six months from the date of publication of the invitation to bid is quite short and may limit the number of prospective bidders.	We suggest that the period for the completion of the CSP process be made flexible and allow extension – for at most six months – provided there are valid reasons.
PSA Rules	Article IV, Section 4(a)	As drafted in the proposed rules, the DU would be compelled to publish and invite other parties to challenge an unsolicited proposal even if it has no need for the power supply proposal.	We suggest to reword this section to: xxx. When a Distribution Utility receives an unsolicited bid for the supply of electricity <u>and it meets the requirements of their Power Supply Procurement Plan (PSPP)</u> , the DU shall then publish and invite third parties to match or exceed it.
PSA Rules	Article IV, Section 5	In the proposed rules, the issuance of a Fortuitous Event or Force Majeure to the affected DU shall exempt it from complying with the CSP. Similarly, under the DOE Department Circular No. 2018-02-0003 the DOE's grant of a Certificate of Exemption would authorize the DU to immediately implement the PSA from negotiated procurement of emergency power supply.	We suggest that ERC harmonize this section with the existing DOE Department Circular to avoid confusion.

PSA Rules	Article IV, Section 6	The proposed benchmark rate that will be established by the ERC annually pertains to the price of a portfolio of efficient new entrant plants. This exercise could be of more value and use by the ERC if it establishes a benchmark rate for each type of generation technology that will serve as the reference price for the approval of PSAs. If a particular PSA is priced at or below the benchmark rate, then it should be deemed approved once filed at ERC.	We suggest that the benchmark rate to be established by the ERC should be for each technology type. If a particular PSA is priced at or below the benchmark price, then it should be deemed approved once filed at the ERC. This would provide stability and certainty on the regulatory environment within which the generation companies operate and this would expedite the ERC's approval process of the PSA.
PSA Rules	Article IV, Sections 7, 8 and 9		We suggest that the section on Bids and Awards Committee (BAC), BAC-TWG and Secretariat, and Joint BAC of the proposed rules be harmonized with the existing DOE Department Circular No. 2018-02-0003 specifically on the section pertaining to the Third Party Bids and Awards Committee (TPBAC), TPBAC-TWG and Secretariat, and Joint TPBAC.
PSA Rules	Article V, Section 2 – Joint Application for PSA Approval	Requiring the winning Generation Company as a co-applicant for the approval of the Power Supply Agreement by the Energy Regulatory Commission unduly exposes the Generation Company to its competitors or would-be competitors during the hearing process. This would result to losing its competitiveness in the future competitive bidding activities. Under EPIRA, the generation sector is deregulated and is deemed to be in a competitive business environment such that it needs to protect its proprietary data with utmost confidentiality. Further, being a co-applicant subjects the generation company under the direct jurisdiction of the ERC and is tantamount to re-regulating the	For reasons cited, we propose that the winning Generation Company shall not be obligated as a co-applicant in the application to the ERC for the approval of the power supply agreement.

		generation sector.	
PSA Rules	Article V, Section 2 – Timeline for PSA application at ERC	Due to the numerous documentary requirements needed for the application for the approval of the power supply agreement, especially with the bank certification of long-term loans that would take a while to be accomplished, we suggest that the power supply agreement be submitted to the ERC within sixty (60) days from execution.	
PSA Rules	Article V, Section 7 – ERC Action on the Application	<p>To provide stability in the power industry investments, it is important that the time and cost elements of the project are predictable. Considering the rigid and exhaustive process of the CSP, the Power Supply Agreement Framework and the suggested benchmark rate per generation technology that will be established by the ERC, the PSA between the winning bidder and the DU could be considered as the best deal for the DU's customers.</p> <p>Moreover, while the Commission has the right to exercise its discretion to determine the reasonableness of the rates resulting from the winning bid, the same discretion renders the competitive bidding process futile and unnecessary.</p>	<p>It is suggested that if the subject PSA conforms to:</p> <ol style="list-style-type: none"> 1. Procedures of the Competitive Public Bidding for DU's Power Supply Contracting; 2. The PSA Framework; 3. Requirements for Pre-Filing of Applications for Approval of PSA; and 4. The proposed generation rate is at or below the suggested ERC-established benchmark rate for that corresponding generation technology, <p>then ERC shall approve the PSA, and the corresponding agreed rates, within sixty (60) days upon the submission by the DU.</p>
PSA Rules	Article V, Section 7 – ERC's Decision to be Binding	This proposed provision is very disadvantageous, if not confiscatory, to the Generation Companies. Each company has its own financial parameters to satisfy/hurdle in accordance to its corporate policy	We propose to delete the 3 rd paragraph of Article V, Section 7.

		<p>on investment priorities. Forcing the Generation Company to accept the ERC approved rate even if this substantially falls short of the generation company's hurdle rates is not tenable.</p> <p>Moreover, binding the generation company to the decision of the ERC is tantamount to regulating the generation sector and is against the intent of the Electric Power Industry Reform Act of 2001.</p>	
Appendix B	Element 3 Sub-item 2 and 3 Term of Contract Period	<p>The proposed term of a maximum of ten (10) years contract period of the PSA is not viable for a generation company. Investments in power plants are huge and financial certainty over the economic life of the power plant assets are required from both the project investors and lenders. The recovery of the power plant is normally spread along its economic life and this brings down the fees in the power supply agreement. Removing the limitation in the contract period also provides the flexibility to both parties in terms of project financing and rate impact to customers.</p> <p>Similarly, extensions or renewal in the subject PSA should not be limited to one year; provided that the ERC approves the period and terms of extension.</p>	<p>We suggest deletion of sub-item 2 in the draft.</p> <p>We suggest to revise sub-item 3 as follows:</p> <p>3. The parties' agreement in relation to the extension or renewal of the PSA. The period of renewal <u>and the terms thereof shall be filed and approved by the Commission.</u></p>
Appendix B	Element 13 Reduction of Contract Capacity on account of RCOA		<p>We suggest that the reduction of contract capacity on account of RCOA be made according to the current provisions of Section 1 Article III of ERC Resolution No. 10 Series of 2016 (Revised Rules for Contestability) and Section 4 of DOE Department Circular No. 2015-06-0010 (Providing Policies to Facilitate the Full Implementation of Retail Competition and Open Access in the Philippine</p>

			Electric Power Industry).
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