



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 VIII, Section 13.2(d)	The proposed Terms of Reference specifies that the cooperation/contract period shall not exceed ten (10) years. This proposed limitation only creates uncertainty with regards to the full recovery of investments in power projects, especially for large plants. Given this uncertainty, investors/lenders would require a higher rate of return/interest rate, thus making it more costly for consumers. The recovery of the power plant is best spread along its economic life to bring down the fees in the power supply agreement.	(d) Cooperation/Contract Period which shall not exceed twenty (20) years, depending on the type of generating facility.
PSA Rules	Article VIII, Section 16.1(c)(ii)	For the pre-qualification stage, bidders are proposed to be required to submit details of equity and financing plan indicating the capital structure and source of funds with supporting documents. We suggest that examples of these “supporting documents” be provided in the rules.	

PSA Rules	Article VIII, Section 19(b)	The proposed amount for the bid security – equivalent to one-year contract cost – is quite a large amount and could preclude medium-sized companies from joining the CSP. Further, this adds a sizable amount of money that would eventually be recovered from the DU's customers.	We suggest that the bid security be reduced to one-month contract cost for reasons cited.
PSA Rules	Article VIII, Section 21		We suggest that the submission of requirements for post-qualification be made after ten (10) days from receipt of notice.
PSA Rules	Article VIII, Section 25		We suggest that the PSA shall be executed and signed within thirty (30) days from receipt of Notice to Proceed instead of five (5) days as proposed.
PSA Rules	Article IX, Section 28(a)	We seek the reasoning of limiting unsolicited proposal to only 10% of a DU's annual peak demand. We believe this is counter-productive to the power industry as (1) gestation period for putting up power plants will be unnecessarily prolonged by the timing for the CSP of individual utilities and (2) DUs would miss out opportunities to supply its base requirement of a cheaper alternate offer from unsolicited proposal.	We suggest that unsolicited proposal will not be limited to 10% of a DU's annual peak demand to provide flexibility in power sourcing and contracting.
PSA Rules	Article XI, Section 41	The proposed benchmark rate that will be established by the ERC 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 or at least be load/supply profile-based (baseload, intermediate or peaking power). 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 XV, Section 46	<p>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 generation sector.</p>	<p>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.</p>
PSA Rules	Article XV, Section 47	<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</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</p>

		competitive bidding process futile and unnecessary.	by the DU.
PSA Rules	Article XV, Section 47 – ERC’s Decision to be Binding	<p>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 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>	We suggest that if the ERC decision is not favorable to a certain party, both parties may re-negotiate to come up with mutually acceptable re-negotiated rates and terms and apply the same for approval. Otherwise, both parties may agree to terminate the contract.
Appendix B	Element 3 Discussion Item #2 and #3 Term of Contract Period	<p>The proposed Terms of Reference specifies that the cooperation/contract period shall not exceed ten (10) years. This proposed limitation only creates uncertainty with regards to the full recovery of investments in power projects, especially for large plants. Given this uncertainty, investors/lenders would require a higher rate of return/interest rate, thus making it more costly for consumers. The recovery of the power plant is best spread along its economic life to bring down the fees in the power supply agreement.</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. The DU’s customers could potentially</p>	<p>We suggest that sub-item 2 in the draft be revised as follows:</p> <p>Cooperation/Contract Period which shall not exceed twenty (20) years, depending on the type of generating facility.</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>

		miss the opportunity of the lower-priced energy that the present supplier provides if the renewal/extension would be limited to one year only.	
Appendix B	Element Item 8 Provision on Transmission and Interconnection	For clarity, we suggest to insert “ancillary services” on the 3 rd paragraph as costs to be borne by buyer.	We suggest to revise as follows: “The Buyer shall bear all costs of such transmission service, including line rental charges <u>and ancillary services</u> , from the Delivery Point up to the...
Appendix B	Element 13 Reduction of Contract Capacity on account of RCOA		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 Electric Power Industry).