

**REPUBLIC OF THE PHILIPPINES
ENERGY REGULATORY COMMISSION
SAN MIGUEL AVENUE, PASIG CITY**

**RE: 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**

ERC Case 2018-002 RM

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COMMENT

PHINMA RENEWABLE ENERGY CORPORATION, by counsel, unto this Honorable Commission, hereby submits its Comment to the *“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.”*, and states that:

(1) On 21 September 2018, the Honorable Commission approved for posting in its official website at www.erc.gov.ph 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”* (the “Draft Rules”) and invited interested parties to comment thereon.

(2) Under Section 28 (a), Article IX of the Draft Rules, a Distribution Utility (“DU”) may accept unsolicited proposals for supply of electricity provided that the contracted capacity subject of the unsolicited proposal shall not exceed ten percent (10%) of the DU’s total annual peak demand.

(3) Unsolicited Proposals, when done in a transparent and competitive manner, can just be as effective as the regular buyer-initiated competitive bidding to ensure that the DU supply its captive market in the least cost manner. The Draft Rules recognize that there is more than one way of bringing together a buyer and a seller of electricity to bring about market efficiencies. A Solicited Proposal is one initiated by the DU, where the DU itself solicits bids through a published Invitation to Pre-Qualify and Bid (“ITPB”). On the other hand, the system of Unsolicited Proposal is one initiated by the supply side where project proposals are submitted by the private sector, subject to a Swiss Challenge.

(4) A system that allows both modes of price discovery is clearly superior to one where only one but not the other is allowed. There are matters concerning the supply of electricity where the DU may not have considered, and that the supplier may be in a better position to provide. A generator or supplier may better tailor-fit its proposal to suit the requirements of a particular DU, which would be easier to do if it were not bound by the rigidity of buyer-initiated bid. This is especially true for emerging technologies such as renewable, which not all DUs fully understand and appreciate.

(5) Second, Unsolicited Proposals will be a boon to smaller DUs who are not able to come up with their own ITPB, which is a harsh reality given the technical and financial limitations of smaller DUs. Some DUs, whether by reason of distance, natural barriers, volume and load duration, simply do not attract as many generators as others. An Unsolicited Proposal will enable such DUs to attract generators that it may not normally attract through ITPB.

(6) More importantly, Unsolicited Proposals encourage market efficiency because it provides a separate manner for buyer and seller to interact, which will only redound to the benefit of the consumers. A system where only one side of the demand-supply curve can initiate a transaction will necessarily be less efficient than one where both sides can make offers and acceptance.

(7) Therefore, there is absolutely no basis in law and in fact, to limit Unsolicited Proposals to ten percent (10%) of the DU's annual peak demand. The ten percent (10%) threshold has no basis, is arbitrary and puts smaller DUs at a disadvantage.

(8) There is nothing in the Electric Power Industry Reform Act ("EPIRA") or any other law that limits the supply of electricity to a DU to ten percent (10%) of its peak demand. This Honorable Commission is clothed with the power to promulgate rules and regulations to penalize abuse of market power, cartelization and anti-competitive or discriminatory behaviour. If the cap is a safeguard against market abuse, such a safeguard must be shown to be effective and germane to the purpose for which it was put in place.

(9) There is nothing to be achieved by putting an artificial cap on the volumes that can be subject to unsolicited proposals. If indeed it is believed that both solicited proposals and unsolicited proposals are valid forms of competitive selection processes, then it does not make sense to put such a cap in one and not the other. In fact, the ten percent (10%) cap will only discourage generators from making competitive Unsolicited Proposals to small DUs because it will never realize the volumes necessary to make such proposals feasible. This puts small DUs at a disadvantage when compared

to the larger DUs whose electricity requirements can easily support volumes necessary for generators to make a return notwithstanding a ten percent (10%) cap.

(10) If indeed the cap is meant as a safeguard to prevent abuse, then the solution is to strengthen the system of Unsolicited Proposals to promote transparency and not to put an artificial cap on capacity.

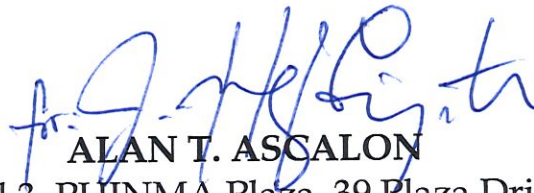
PRAYER

WHEREFORE, premises considered, it is respectfully prayed of this Honorable Commission **TO NOTE and CONSIDER** the instant **Comment** in finalizing 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”*.

Other relief/s just and equitable under the premises are likewise prayed for.

Makati City for Pasig City, 08 October 2018.

By:



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