

PIPPA COMMENTS 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”

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<p>PSA Rules</p>	<p>General</p>	<p>Under post-EPIRA, plants that get built are those supported by PSAs or have merchant viability in the WESM. The default market for a plant or a DU is the WESM, unless they have a PSA which allows for bilateral contract quantities to be settled outside the market. A bilateral contract is basically a hedge benefitting both buyers and sellers with business/price stability. In a WESM regime, the merit of a particular PSA lies in the “trade off” between the generation rate volatility indexed on commodity prices and escalation indices, versus the WESM price volatility from market forces and chance events, and its competitiveness in relation to other offers (such as plants of other fuel types).</p> <p>Under the ERC and DOE rules, for the power plants to get a PSA, they have to undergo a Competitive Selection Process. Under the CSP, the generator which offered cheapest price, given the requirements of the DU, will be awarded the Power Supply Agreement (PSA). On this note, PIPPA would then like to clarify how further ERC assessment on the generation tariff will affect the CSP.</p> <div data-bbox="970 1022 1829 1458" data-label="Figure"> <p>Evaluated LCOE Plant Capacity = 600 MW Service Life = 35 years</p> <p>Evaluated All-in Costs Contract Capacity = 40 MW PSA Term = 15 years</p> <p>Legend: LCOE (Red), Contract Price (Blue), Replacement Power (Light Blue), Line Rentals (Green), VAT (Red).</p> <p>CSP is awarded to Bidder A with the lowest all-cost (even if its contract price is higher than Bidder B)</p> </div> <p>Given the chart above, will the ERC disapprove the PSA of Bidder A and instead consider Bidder B. However, from the point of view of the DU, the least-cost for it is Bidder A.</p> <p>At this point, we would like to highlight our position that the CSP should give way to light-handed regulation. The result of the CSP should be respected. We would like to kindly propose to the Honorable Commission that regulation and oversight of the ERC should focus on the process of bidding rather than the rate itself. The review of the Honorable Commission should be limited to the procedural aspect of the Competitive Selection Process. As long as the EC or DU has faithfully complied on the rules of CSP, then ERC should approve the PSA within a given time frame.</p>	
<p>PSA Rules</p>	<p>ARTICLE VII - BIDS AND AWARDS COMMITTEE (BAC)</p> <p>Section 8. Bids and Awards Committee (BAC) - The DU through its Board of Directors (BOD), shall establish an independent BAC to spearhead and manage the CSP. The BAC shall comply with the policy and procedures in the conduct of CSP, as provided in these Rules. The BAC shall be accountable to for its decision in the conduct of the CSP; Provided however, that the DU shall be responsible for any dispute or litigation arising from the CSP.</p> <p>The DU, through its Board of Directors (BOD), shall designate five (5) members of the BAC with the following qualifications:</p> <ol style="list-style-type: none"> 1) An officer or employee knowledgeable in the technical operations of the DU; 2) An officer or employee with knowledge and/or experience with any local or international competitive bidding procedures; 3) An officer or employee with accounting or finance background who has knowledge and/or experience on electricity pricing; 4) An officer or employee with technical experience and/or background. 	<p>We would like to be clarified how the industry participants will be compliant to both the DOE and ERC rules given the difference in the BAC/TPBAC?</p>	



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	<p>Prior to the performance of their duties and responsibilities as member of the BAC, the DU shall provide the BAC members a seminar or training on R.A. 9184, otherwise known as “The Government Procurement Reform Act”.</p> <p>xxxx</p>		
<p>PSA Rules</p>	<p><i>Section 12. CSP Observers.</i> – To assure all parties that the CSP conducted in an open, transparent, efficient, and equitable manner, the BAC, Joint BAC shall invite Observers in accordance with these Rules.</p> <p>The following shall be part of the CSP Observers:</p> <ol style="list-style-type: none"> (1) Representative from DOE; (2) Representative from NEA, in case of ECs (3) Representative from NPC-Small Power Utilities Group (NPC-SPUG), in case of off-grid ECs; (4) Consumer representatives from the Department of Trade and Industry (DTI) – accredited consumer groups; and the Parent Teachers Association (PTAs) endorsed by the provincial federation of PTAs. <p>The consumer groups and PTAs must be organized, existing and actively operating in the franchise area of the concerned DU/s. The consumer groups to be invited by the concerned DU/s to serve as observers shall not be less than two nor more than 3 groups. The selected consumer group shall only be allowed to send not more than 2 representatives.</p> <p>xxxx</p>	<p>We would like to clarify if the PTA is a consumer group. If so, why is PTA preferred over others?</p>	
<p>PSA Rules</p>	<p>ARTICLE VIII – COMPETITIVE PUBLIC BIDDING (CPB)</p> <p>xxx</p> <p>Section 13.2. Terms of Reference – The terms of reference shall include the following, but not limited to:</p> <ol style="list-style-type: none"> (a) Required/Contracted Capacity and/or Energy Volumes; (b) Demand Requirement (baseload, mid-merit or peaking); (c) Method of procurement for fuel, if applicable; (d) Cooperation/Contract Period which shall not exceed ten (10) years; (e) Tariff Structure; (f) Form of Payment; (g) Penalties; and (h) Other key parameters 	<p>We would like to kindly propose that the DU should be flexible on the term of the contract, depending on what is most beneficial for them. The Rules should not limit their capability to have a contract of more than 10 years. Moreover, most of the new power plants would require long term contracts for it to be constructed. Limiting the contract term to 10-years will also limit the investment for new power projects, which will lead to less supply and competition.</p>	<p>Section 13.2. Terms of Reference – The terms of reference shall include the following, but not limited to:</p> <ol style="list-style-type: none"> (a) Required/Contracted Capacity and/or Energy Volumes; (b) Demand Requirement (baseload, mid-merit or peaking); (c) Method of procurement for fuel, if applicable; (d) Cooperation/Contract Period which shall not exceed ten (10) years; (e) Tariff Structure; (f) Form of Payment; (g) Penalties; and (h) Other key parameters
<p>PSA Rules</p>	<p>Section 21. Post Qualification - The Lowest Calculated Bid (LCB) shall undergo post-qualification in order to determine whether the bidder concerned complies with and is responsive to all the requirements and conditions as specified in the Bidding documents.</p> <p>Within five (5) days after the approval of the Abstract of Bids, the bidder with the LCB should be notified through electronic mail or in writing</p>	<p>We would like to kindly propose that since there is already a pre-qualification, that we already remove post-qualification process.</p>	



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	<p>that the bidder shall undergo post-qualification and submit the post-qualification requirements within five (5) days from receipt of the notice.</p> <p>If the BAC or Joint BAC determines that the bidder with the LCB passes all the criteria for post-qualification, it shall declare the said bid as the Lowest Calculated Responsive Bid (LCRB), and recommend to the DU BOD the award of contract to the said bidder.</p> <p>If, however, the BAC or Joint BAC determines that the bidder with the LCB fails the criteria for post-qualification, it shall immediately notify the said bidder electronically or in writing of its post-disqualification and the grounds for post-disqualification.</p> <p>The post-qualification process shall be completed in not more than fifteen (15) days from determination of the Lowest Calculated Responsive Bid (LCRB). In exceptional cases, the post-qualification period may be extended by the DU BOD, but in no case shall the aggregate period exceed thirty (30) days.</p>		
PSA Rules	<p>Section 41. Benchmark Rate. — The ERC shall establish a benchmark rate that shall serve as reference price that may be used to assess the prudence and reasonableness of the PSA price.</p> <p>The ERC shall utilize a financial model in calculating the Benchmark Rate. The model inputs, such as capital and operating costs, rates of return and technical parameters shall be determined and reviewed on a regular basis by the ERC through a full consultation process.</p> <p>The model will take into account relevant factors such as, but not limited to, the type of contract (financial or physical), the load factor, load shape and location or reference node to calculate the benchmark price for a portfolio of efficient new entrant plants to match the terms of the PSA being assessed.</p> <p>The procedure for calculating and determining the Benchmark Rate shall be subject of a separate resolution to be promulgated by the ERC.</p>	<p>Consistent with our comments above (general comments), we would like to clarify how ERC intends to calculate for the Benchmark Rate. Will this Benchmark Rate be on a per DU assessment? The Benchmark Rate should not be generator specific. It should be technology neutral. Also, what will happen if the resulting price is higher than the Benchmark Rate?</p> <p>Moreover, the Honorable Commission should already consider portfolio pricing of generators. The physical asset (generating unit) should not be relevant to the evaluation of the PSA. It should only be relevant if the requirement is specifically for RE requirement as mandated by other relevant Laws. The CSP should not limit the options to contract on financial basis or portfolio of plants.</p>	
PSA Rules	<p>ARTICLE XII. CIRCUMSTANCES FROM THE CONDUCT OF CSP</p> <p>Section 42. Exemptions. — All PSAs shall be procured through CSP; Provided however, that the following instances shall warrant an exemption from the conduct of CSP:</p> <ul style="list-style-type: none"> a) Any generation project owned by the DU funded by grants or donations. The DU may be allowed to infuse internally generated funds; Provided, that the amount shared by the DU shall not exceed thirty percent (30%) of the total project cost; b) Provision of power supply by any mandated Government Owned and Controlled Corporation (GOCC) for off- 	<p>If PSALM will be exempted from CSP, how will the DU verify that it is contracting in a least-cost manner?</p> <p>PSALM should compete with the other generation companies. Some of the DUs may actually be contracting with PSALM because it will be easier without a CSP, rather than it having the lowest price.</p>	



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	<p>grid areas prior to, and until the entry of New Power Providers (NPP) in an area; and</p> <p>c) Provision of power supply by the Power Sector Assets and Liabilities Management (PSALM) Corporation through bilateral contracts for the power produced from the undisposed generating assets and Independent Power Producer (IPP) contracts duly sanctioned by the "Electric Power Industry Reform Act of 2001" or EPIRA as deemed by the DUs.</p>		
PSA Rules	<p>Section 47. ERC Evaluation of the Application. — Any PSA submitted to the ERC for approval shall be reviewed on two (2) levels. The first level is to determine whether the bidding process is in accordance with these rules and to ensure that there are no indications of any form of anticompetitive behavior. The second level is to determine the PSA's "reasonableness" in terms of costs, risk allocation, and other contractual terms.</p> <p>In the event that the bidding process that resulted to the execution of the PSA submitted is found to be non-compliant with these rules, the said PSA shall be dismissed outright and will no longer be evaluated as to its reasonableness.</p> <p>In the exercise of its discretion and based on all the submissions made, the ERC shall determine whether to approve the full pass through or prohibit some or all costs from being passed on to the DU's captive market and whether or not to disapprove or modify certain contractual stipulations of the parties.</p> <p>The ERC's decision and judgment shall be binding on both parties and shall not be rendered ineffective or nugatory by any termination or "walk-away" clause incorporated in the PSA.</p>	<p>As we have commented above, the ERC evaluation process should only focus on the process itself and not the rates. The rate is a result of a competitive process, and should already not be subject to cost-based approach.</p> <p>We would also like to note that the “walk-away” clauses are option for both the gen and DUs if the contract may not be commercially feasible for any of the parties. Thus, we propose that the ERC should not amend parts of the contract, and focus on the process itself.</p>	
PSA Rules	<p>Section 49. PSA Pricing Structure. — The ERC shall determine the reasonable generation cost under the said PSA, taking into account the following fees:</p> <p>a) Capital Recovery Fee (CRF) - a capital-related component to recover the cost of investment over the economic life of the plant together with a reasonable rate of return. In the case of an Independent Power Purchase Agreement, the CRF shall pertain to the recovery of fees paid/payable to NPC to operate the plant. This amount shall include a reasonable amount of return on capital based on an ERC approved WACC.</p> <p>b) O&M Fee - a component to recover operating and maintenance cost. The power plant's O&M cost may be broken down into local and foreign, where the local O&M cost represents locally-denominated plant operating cost, while foreign O&M cost represents maintenance of spare parts, supplies, and all other associated costs that are usually imported.</p>	<p>As we have commented above, the ERC evaluation process should only focus on the process itself and not the rates. The rate is a result of a competitive process, and should already not be subject to cost-based approach.</p> <p>Moreover, it should already consider generation portfolio and/or financial contracts.</p>	<ul style="list-style-type: none"> •



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	<p>1. Fixed O&M — an element to recover fixed operating and maintenance (O&M) costs. This cost is determined by the capacity of the plant, not the level of utilization.</p> <p>2. Variable O&M - an element to recover variable O&M costs and which varies with the amount of electricity generated.</p> <p>c) Fuel Fee - a component to recover fuel costs, if applicable.</p>		
PSA Rules	ARTICLE XVI – FINAL PROVISIONS Section 52. <i>Transitory Clause</i> — All pending PSA applications with the ERC shall not be affected by any new requirement imposed under these Rules.	Further Transitory provisions should be included for the DUs/Gens that are already complying with the DOE Circular on CSP.	