

**Republic of the Philippines**  
**ENERGY REGULATORY COMMISSION**  
**San Miguel Avenue, Pasig City**

**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**

Pursuant to Sections 25 and 45 (b) of Republic Act No. 9136 or "the Act" and Rule 5, Section 4 (e) and Rule 11, Section 5 of the Implementing Rules and Regulations (IRR) of the Act, the Energy Regulatory Commission (ERC) hereby adopts and promulgates these Rules:

**ARTICLE I**

**OBJECTIVES**

These Rules seek:

- (a) To prescribe guidelines on default contractual provisions and minimum standard format for power supply contracting;
- (b) To provide clear and efficient process in contracting power supply;
- (c) To streamline the review and approval process of Power Supply Agreements (PSA);
- (d) To develop expertise of Distribution Utilities (DUs) in the procurement of their power supply;
- (e) To promote transparency in the manner of contracting and accountability among DU officials in-charge of contracting power supply; and
- (f) To promote competition among Generation Companies (GenCos) in providing the best offer of power supply which will ensure reasonable prices of electricity for the DUs' captive market in terms of the generation component of their retail rates.

## ARTICLE II

### GOVERNING PRINCIPLES

The implementation of these Rules shall be governed by the following principles:

- (a) Efficiency in the manner of procurement, and process of evaluation and approval of power supply contracts;
- (b) Transparency in the procurement of electric power supply for the captive market;
- (c) Fair Competition by providing equal opportunity to all eligible Generating Companies to participate in the electric power supply procurement process;
- (d) Adoption of simple procurement process that is adaptable to the advances in modern technology and in accordance to best utility practice;
- (e) Accountability of directors, officers, employees and any other person involved directly and indirectly in the procurement process; and
- (f) Reasonable and competitive pricing of generation rate charge to consumers.

## ARTICLE III

### SCOPE AND APPLICATION

These Rules shall apply to all Distribution Utilities whether on-grid or off-grid and Generation Companies, except those which are expressly excluded under these Rules.

## ARTICLE II

### DEFINITION OF TERMS

As used in these Rules, the following terms shall have the following respective meanings:

- (a) **“Act”** unless otherwise stated, shall refer to Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001”.
- (b) **“Aggregated Demand”** refers to the consolidated level in MW or volume in MWh of electric power of the DUs hourly, daily, monthly, or annual requirement.

- (c) **“Aggregation”** refers to the joint action of the DUs to aggregate their demand or energy requirements to jointly procure for their power supply to achieve economies of scale.
- (d) **“Bids and Awards Committee”** or **“BAC”** refers to the independent committee established in accordance with these Rules to spearhead and manage a DU’s CSP.
- (e) **“Captive Market”** shall refer to electricity end-users who do not have the choice of a supplier of electricity, as may be determined by the ERC in accordance with the Act.
- (f) **“Certificate of Compliance (COC)”** shall refer to the document issued by the ERC to a Generation Company pursuant to the Act, the Implementing Rules and Regulations (IRR) of the Act and the applicable ERC Guidelines.
- (g) **“Competitive Bidding”** refers to a method of procurement which is open to participation by any interested party and consists of the following processes: a) advertisement or publication; b) pre-bid conference; c) pre-qualifications d) bid evaluation; e) post-qualification and f) award of contract.
- (h) **“Competitive Selection Process”** or **“CSP”** refers to a process wherein Distribution Utilities, on their own or acting as a group or any other entity defined in these Rules, undertake a transparent and competitive procurement to secure supply of electricity based on the evaluation criteria adopted by the DUs in accordance with the requirements of these Rules.
- (i) **“Distribution Utility”** shall refer to any electric cooperative, private corporation, government-owned utility or existing local government unit which has an exclusive franchise to operate a distribution system in accordance with its franchise and the Act.
- (j) **“Energy Regulatory Commission”** or **“ERC”** shall refer to the regulatory agency created under Section 38 of the Act.
- (k) **“Force Majeure”** or **“Fortuitous Event”** refers to an extraordinary event which is not foreseen, or which, though foreseen, is inevitable, such event may be produced by two general causes: (1) by nature, such as but not limited to a typhoon, storm, tropical depression, flood, drought, volcanic eruptions, earthquake, tidal, wave, or landslide, and (2) by the act of man, such as but not limited to an act of war, sabotage, blockage, revolution, riot, insurrection, civil commotion, or any violent, or threatening actions;

- (l) **“Generation Company”** shall refer to any person or entity authorized by the ERC to operate facilities used in the generation of electricity.
- (m) **“Power Supply Agreement”** shall refer to the agreement, regardless of nomenclature, between a DU and a Generation Company for the supply of capacity and/or energy intended for the DU’s captive market.
- (n) **“Retail Rate”** shall refer to the total price paid by end-users consisting of the charges for generation, transmission, and related ancillary services, distribution, supply and other related charges from electric service.
- (o) **“Solicited Proposals”** refer to project proposals identified by the DUs, wherein the DU selects private partner/s through competitive bidding and bids are solicited through a published Invitation to Prequalify and Bid (ITPB).
- (p) **“Third Party Auctioneer”** or **“TPA”** refers to a team of private individuals or a private corporation duly recognized in the Philippines with experience in competitive bidding and with sufficient knowledge in the electric power industry.
- (q) **“Unsolicited Proposal”** refers to a project proposal submitted by a generation company to provide electric power supply to the DU.

## ARTICLE IV

### PROCUREMENT PROCESS

**Section 1. Modes of Awarding PSA to Generation Company.** – PSA may be awarded to the winning bidder through any of the following modes:

- (a) Competitive bidding in accordance with Section 3;
- (b) Unsolicited proposal in accordance with Section 4;
- (c) Direct negotiation in accordance with Section 3.1;
- (d) Emergency supply procurement in accordance with Section 5; and
- (e) Circumstances falling under Section 15.

**Section 2. Competitive Selection Process.** - A DU shall undertake a transparent and competitive procurement process of their Power Supply Agreements for the supply of electricity to its captive market and its terms of reference shall include the following, but not limited to:

- (a) Required/Contracted Capacity and/or Energy Volumes;
- (b) Generation sources (Hydro, Coal, Natural Gas, Diesel, Renewable Energy and others);
- (c) Method of procurement for fuel, if applicable;
- (d) Cooperation/Contract Period;
- (e) Tariff Structure;
- (f) Form of Payment (Pesos or Foreign Currency Denominated);
- (g) Penalties (if applicable); and
- (h) Other key parameters.

The entire CSP process including the award of contract should be completed within six (6) months from the publication of the invitation to bid. Failure to complete the process within this period shall invalidate the CSP.

**Section 3. Competitive Public Bidding.** The primary mode of procurement under competitive selection process which consists of the following procedures:

- (a) Advertisement or publication in a newspaper of general circulation, once weekly for two (2) consecutive weeks;
- (b) Pre-bid conference shall be held twelve (12) days prior to the deadline of the submission and receipt of bids but not earlier than seven (7) days from publication;
- (c) Pre-qualifications shall be completed within seven (7) days from the deadline for submission of bids;
- (d) Bid opening shall be conducted immediately after the deadline of the submission of bids and shall be opened in the presence of the bidders or their duly authorized representatives;
- (e) Bid Evaluation shall be completed within seven (7) days from the opening of bids;
- (f) Post-qualification, if any must be completed within five (5) days from the receipt by the bidder of the BAC notice that it has the lowest calculated bid; and
- (g) Award of contract.

The Competitive Bidding is deemed successful if the DU receives qualified bid/s from entity/entities with which the DU is not prohibited from entering into a contract for power supply in accordance with Rule 11, Section 5 (b) of the EPIRA IRR.

**Section 3.1. Direct Negotiation.** – Direct negotiation with interested party for the supply of electricity may be made by the DU after at least two (2) failed CSPs. A CSP is considered to have failed when during its conduct, any of the circumstances exist:

- (a) No proposal was received by the DU;
- (b) Offers of prospective suppliers failed to meet the requirements prescribed under the Terms of Reference, as determined by the DU Bids and Awards Committee; and
- (c) No successful negotiation was completed by the DU with the selected bidder.

**Section 4. Unsolicited Proposals (Swiss Challenge).** A type of competitive selection with the following circumstances present:

- (a) There is a form of public procurement. When a Distribution Utility receives an unsolicited bid for the supply of electricity, the DU shall then publish and invite third parties to match or exceed it;
- (b) There is competition. Those who intend to submit their respective counter-proposals will have to submit more competitive offers and the original proponent who submitted the unsolicited proposal can match their offers; and
- (c) There is determination of the better offer. The unsolicited proposal and the submitted offers can be compared to determine which is the better offer.

In the case where the DU receives more than one Unsolicited Proposal, the DU may reject all proposal and instead, bid out the project as a solicited proposal. Otherwise, the DU shall evaluate the proposals using a *first in time* approach. Under this approach, the first complete proposal is evaluated and decided upon. The second proposal will be considered only if there first proposal is rejected or during the "invitation for comparative proposals".

**Section 4.1. Swiss Challenge Process.** Once an unsolicited proposal is accepted, the Swiss Challenge is engaged to facilitate a competitive process adopting the following process:

- (a) When an unsolicited proposal is received, the Bids and Awards Committee (BAC) through its Technical Working Group (TWG) shall evaluate within thirty (30) days, the qualification and appropriateness of the proposal. Within this 30-day period, the BAC shall advise the proponent in writing whether it accepts or rejects the proposal. Acceptance means commitment of the DU to submit the proposal for comparative offers by third parties and recognizes the proponent as the "original proponent".
- (b) The bid offer is then published in a newspaper of general circulation, once weekly for two (2) consecutive weeks and opened for counter-offer from third parties under the traditional tendering process, which is outlined in the tender documents.
- (c) During this period, the original unsolicited proposal proponent must also submit a bid bond equivalent to that required in the tender documents for a potential challenger; this bid bond is intended to confirm that the unsolicited proposal proponent has adequate means to execute the project if granted.
- (d) The DUs' BAC shall publish information regarding the original proposal including the original project pricing and specifications.

- (e) When a lower price proposal is submitted and approved, the original unsolicited proposal proponent will have thirty (30) working days to match the price.
- (f) If the original unsolicited proposal proponent does not match the price, then the project is awarded to the lowest priced, qualified bidder of the Swiss Challenge.
- (g) The project will be awarded to the original unsolicited proposal proponent, if the original unsolicited proposal proponent matches the lowest price under the tender. When another proponent submits a lower price proposal and the original proponent matches that price within thirty (30) working days, then the BAC-TWG will identify which proposal has greater technical merit and submit its recommendations to the BAC for disposition.

**Section 5. *Emergency Supply Procurement.*** Emergency Procurement of power supply may be undertaken by the affected DUs due to the occurrence of *Force Majeure*, *Fortuitous event* or other analogous circumstances not specifically enumerated under the definition of a *force majeure* or fortuitous event, in order to maintain safe, reliable, secure and efficient operation of the power system.

The issuance of a Fortuitous Event or Force Majeure notice by the affected DU shall exempt the DU from complying with Section 2 of these Rules, subject to evaluation and final decision of the relevant application, which shall be filed with the ERC within ninety (90) days upon its implementation.

Provided, that the cooperation period of the corresponding PSA shall not exceed one (1) year; Provided further, that the rate shall not be higher than the latest ERC approved generation tariff for same or similar technology in the area.

The DU shall provide Notice to the ERC, the Department of Energy (DOE), the National Electrification Administration (NEA), in the case of ECs and the National Power Corporation (NPC), in case of Off-grid areas, of the exemption within thirty (30) days upon the implementation of the Emergency Supply Procurement.

**Section 6. *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.

The ERC will utilize financial model in calculating the Benchmark Rate. The model inputs, such as capital and operating costs, rates of return and technical parameters will be determined and reviewed on an annual basis by the ERC through a full consultation process.

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.

## **Bids and Awards Committee**

### **Section 7. *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 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.

The DU, through its Board of Directors (BOD), shall designate five (5) members of the BAC with the following qualifications:

- 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 that has knowledge and/or experience on electricity pricing;
- 4) An officer or employee with engineering experience and/or background.

The DU shall provide, prior to the performance of their duties and responsibilities as members of the BAC, a seminar or training on R.A. 9184, otherwise known as "The Government Procurement Reform Act".

Any member of BOD of the DU may only serve as an observer and not as a member of the BAC.

The Chair and Vice Chair shall be selected by the members of the BAC. The Chairman shall only vote in case of a tie.

A quorum of the BAC shall be composed of a simple majority of all voting members of the BAC.

A decision of the BAC shall require the majority of all the voting members of the BAC.

**Section 8. *BAC Technical Working Group (TWG) and Secretariat.*** - The BOD of the DU shall designate the BAC-TWG and BAC Secretariat, to be headed by a regular or permanent employee of the DU, preferably an officer, to assist the BAC in the performance of its functions.



The BAC-TWG shall be composed of the technical, legal and financial personnel of the DU.

The BAC-TWG shall assist the BAC in the technical components of the CSP, such as development of the Terms of Reference (TOR), eligibility screening, evaluation of bids, and post-qualification.

The BAC-TWG shall submit a report to the ERC regarding their findings and recommendations as part of the pre-filing requirements.

The BAC Secretariat shall provide administrative support to the BAC for this purpose and serve as the keeper of all records and documents relating to all CSPs conducted by the DU.

The BAC Secretariat shall fully document each step of the CSP and prepare and keep written minutes of all the BAC meetings and proceedings.

**Section 9. *Joint BAC of Aggregated DUs.*** – Distribution Utilities may chose to aggregate their demand or energy requirements, solely for the purpose of procuring their supply of electricity through a competitive selection process. Provided, however, that individual Power Supply Agreements shall be entered into between the Generation Company and the member DU.

In the case of Aggregated DUs, a Joint BAC and its composition including its corresponding BAC-TWG and BAC Secretariat shall be established through a Memorandum of Agreement (MOA). The Joint BAC shall have five (5) members, where members will come from any of the participating DUs. As such, the Joint BAC shall be composed of the following:

- (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 that has knowledge and/or experience on electricity pricing;
- (4) An officer or employee with engineering experience and/or background.

The BOD of any of the participating DUs may only serve as an observer and not as member of the Joint BAC.

The Chair and Vice Chair shall be selected by the members of the Joint BAC. The Chairman shall only vote in case of a tie.

A quorum of the Joint BAC shall be composed of a simple majority of all voting members of the Joint BAC.

A decision on all questions of the Joint BAC shall require the majority of all the voting members of the Joint BAC.

**Section 10. *Joint BAC Technical Working Group (TWG) and Secretariat.*** - The BOD of the participating DUs shall designate the Joint BAC-TWG and Joint BAC Secretariat, to be headed by a regular or permanent employee of any of the participating DUs, preferably an officer, to assist the Joint BAC in the performance of its functions.

The Joint BAC-TWG shall be composed of the technical, legal and financial personnel of the participating DUs.

The Joint BAC-TWG shall assist the Joint BAC in the technical components of the CSP, such as development of the Terms of Reference (TOR), eligibility screening, evaluation of bids, and post-qualification.

The Joint BAC-TWG shall submit a report to the ERC regarding their findings and recommendations as part of the pre-filing requirements.

The Joint BAC Secretariat shall provide administrative support to the Joint BAC for this purpose and serve as the keeper of all records and documents relating to all CSPs conducted by the participating DUs.

The Joint BAC Secretariat shall fully document each step of the CSP and prepare and keep written minutes of all the Joint BAC meetings and proceedings.

**Section 11. *Third Party Auctioneer.*** - In lieu of the BAC or the Joint BAC, the DU may opt to engage a Third-Party Auctioneer (TPA) to conduct and manage its CSP in accordance with these Rules. The TPA shall be subject to accreditation by the ERC.

The TPA shall be a team of private individuals or a private corporation duly recognized in the Philippines with experience in competitive bidding and with sufficient knowledge in the electric power industry: Provided, that the TPA is not in any way connected to any electric power industry players.

**Section 12. *CSP Observers.*** - To assure all parties that the CSP is conducted in an open, transparent, efficient and equitable manner, the BAC, Joint BAC or TPA shall invite Observers in accordance with these Rules.

For Grid Areas, an invitation to become Observers shall be extended to the DOE, NEA, in the case of ECs, and Non-Government Organizations (NGOs) and members of the local Chamber of Commerce. For Off-Grid Areas, an invitation shall also be extended to NPC and Private DUs to act as Observers in all of the bidding activities provided in these Rules.

CSP Observers shall be allowed to be present in the proceedings but shall not participate nor have the right to vote. Observers shall be given written and e-mail invitations at least five (5) working days before the date of the procurement stages.

An invitation in writing and e-mail to Observers shall be extended at each of the following stages of the CSP:

- (a) Pre-bid conference;
- (b) Pre-qualification, if any;
- (c) Submission and Opening of Bids;
- (d) Bid Evaluation;
- (e) Negotiations;
- (f) Post-qualifications, if any;
- (g) Awarding; and
- (h) Contract Signing.

Observers shall be allowed access to the following documents upon their request, subject to any confidentiality undertaking:

- (a) minutes of BAC, Joint BAC or TPA meetings;
- (b) abstract of Bids;
- (c) post-qualification summary report;
- (d) video recording of CSP proceedings;
- (e) proposals; and
- (f) Bid Documents and other related documents.

The DU is required to make and keep, as part of the BAC, Joint BAC or TPA records, a complete and unedited video record of the proceedings in cases where no Observer is present.

The absence of Observers will not nullify the CSP proceedings; Provided, that Observers have been duly invited in writing and e-mail within the prescribed period.

**Section 13. *Publication and Posting.*** - The BAC, Joint BAC or TPA shall cause the publication and posting of the Invitation to Bid for the procurement opportunity in accordance with these Rules for the period specified therein.

The BAC, Joint BAC or TPA shall post the Invitation to bid in its website, if there is any, in the DOE E-based portal, and in the NEA website in the case of ECs. The BAC, Joint BAC or TPA shall continuously update the DOE and NEA on the status thereof through their respective E-based portals.

The BAC, Joint BAC or TPA shall likewise ensure that all bid bulletins and related announcements shall be posted at the DOE E-based portal and NEA website, in the case of ECs.

In cases where the DUs encounter problems in posting of the necessary pieces of information in the respective E-based portal, the DUs shall inform the DOE and NEA for assistance in the required posting.

The BAC, Joint BAC or TPA may also opt to, publish the invitation to bid in one (1) local newspaper of local circulation in the region, province, city or municipality indicating the CSP schedules, among other necessary information for the bidders, once weekly for two (2) consecutive weeks.

In addition to publication, the BAC, Joint BAC or TPA shall exert its best effort to disseminate its Invitation to Bid to all GenCos.

**Section 14. *Protest Mechanism and Dispute Resolution.*** - Decision of the BAC, Joint BAC or TPA regarding CSP may be questioned by filing a written request for reconsideration within five (5) working days upon receipt of written notice or publication. The BAC, Joint BAC or TPA shall decide on the request for reconsideration within ten (10) working days from receipt thereof.

In the event, that the request for reconsideration is denied, decisions of the BAC or Joint BAC may be protested in writing to the governing board of the DU, the governing board of the aggregated DUs in accordance with the dispute resolution procedure as provided in their respective Memorandum of Agreement or the duly authorized officer/s of the TPA.

The protest must be filed within seven (7) working days from receipt of the resolution denying its request for reconsideration. A protest shall be made by filing a verified position paper with the governing board of the DU, the governing board of the aggregated DUs or the duly authorized officer/s of the TPA, accompanied by the payment of a non-refundable protest fee which shall be determined by the concerned BAC, Joint BAC or TPA.

The verified position paper shall contain the following information: name of bidder, address, name of project, brief statement of facts, issue to be resolved and such other matters and information pertinent and relevant to the proper resolution of the protest.

The position paper is verified by an affidavit that the affiant has read and understood the contents thereof and that all allegations therein are true and correct of his personal knowledge or based on authentic records. An unverified position paper shall be considered unsigned and produces no legal effect, while non-payment of protest fee will result to the outright dismissal of the protest.

Protests shall be resolved within ten (10) working days from receipt thereof. Decision of the governing board of the DU, the governing board of the aggregated DUs or the duly authorized officer/s of the TPA shall be final. Court action may be resorted to after protests have been resolved with finality.

Any conflict or dispute of any kind between the parties in connection with the implementation of the contract, the parties shall make every effort to first resolve amicably by mutual consultation or shall be submitted to arbitration in the Philippines according to the provisions of Republic Act No. 876 (Arbitration Law) and Republic Act No. 9285 (Alternative Dispute Resolution Act of 2004) or by mutual agreement, the parties may agree in writing to resort to other alternative modes of dispute resolution.

**Section 15. Exemptions.** - All PSAs shall be procured through CSP; Provided however, that the following instances shall warrant an exemption from the conduct of CSP:

- (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 30% of the total project cost;
- (b) Provision of power supply by any mandated Government Owned and Controlled Corporation (GOCC) for off-grid areas prior to, and until the entry of New Power Providers (NPP) in an area; and
- (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.

## ARTICLE V

### REQUIREMENTS AND REVIEW PROCEDURES

**Section 1. Regulatory Power.** - The ERC, in the exercise of its power and functions under the EPIRA may establish additional guidelines and impose existing fines/and or penalties for non-compliance of electric power industry participants to support the enforcement of these Rules.

**Section 2. Filing of the PSA** – The PSA shall be a joint responsibility by the generation company and the DU. Following the execution of the PSA, the parties thereto shall file with the ERC, within thirty (30) days therefrom, a joint application for the approval of said PSA and for the determination of the reasonable generation costs that the DU can recover from its captive market as part of its retail rate.

The application for approval of the PSA shall be accompanied by the following supporting documents:

- (a) The duly signed PSA;

- (b) All details on the procurement process used by the DU leading to the selection of the Generation Company including the terms of reference used by the DU, and the proposals received by the DU;
- (c) A sworn certification by the DU that a public bidding was conducted; and
- (d) Other information that ERC shall require during the approval process.

**Section 3. Review of the ERC** – ERC's evaluation of the PSA and the generation rate will be based on its satisfaction of the following:

- (a) That the PSA was awarded in accordance with the prescribed procurement process prescribed under Appendix "A" of these Rules, as applicable;
- (b) That the PSA guarantees suppliers' compliance with the required technical, environmental and financial standards set out in the bid documents; and
- (c) That the PSA have substantially complied with the PSA Framework under *Appendix "B"* that accords the parties with equitable rights and that the risks associated with the supply of electricity such as those pertaining to the tariff structure, economic indices, foreign exchange fluctuations, volatility of fuel prices and the like are efficiently allocated between the parties.

**Section 4. PSA Pricing Structure.** The ERC shall determine the reasonable generation cost under the said PSA, taking into account the following fees:

- (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 approve WACC.
- (b) **O&M Fee** - a component to recover operating and maintenance cost. The power plant 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.
  - (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.
  - (2) Variable O&M - an element to recover variable O&M costs and which varies with the amount of electricity generated.
- (c) **Fuel Fee** - a component to recover fuel costs, if applicable.

**Section 5. *Other Documentary Requirements*** – In addition to the requirements under Section 2 hereof, the following supporting documents are required to be attached as listed in Appendix “C”.

Provided, that if any of the required documents has been previously submitted to the ERC, a *Certification of prior submission* shall be issued in lieu thereof, by the Applicant stating such fact and the date the document was submitted. Provided further, that there are no amendments to said documents.

**Section 6. *Procedural Requirements*** – Prior to the filing with the ERC of the application referred to in the preceding section, the parties shall comply with Section 4 (e), Rule 3 of the IRR of the Act and Rule 6 of the ERC Rules of Practice and Procedure. Any application that fails to comply with the above requirements shall not be accepted. The application shall be treated as a rate case and the procedure applicable to rate cases shall be observed.

**Section 7. *ERC Action on the Application*** – Any PSA submitted to the ERC shall be reviewed as to its “reasonableness” in terms of costs, risk allocation, and other contractual terms.

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 energy 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.

The ERC’s decision and judgment shall bind both parties and shall not be rendered ineffective or nugatory by any termination or “walk-away” clause incorporated in the PSA.

## ARTICLE VI

### FINAL PROVISIONS

**Section 1. *Transitory Clause*** – All pending PSA applications with the ERC shall not be affected by any new requirement imposed under these Rules.

**Section 2. *Exception Clause*** – Where good cause appears, the ERC may allow an exception from any provisions of these Rules if such exception is found to be in the public interest and is not contrary to law or any other related rules and regulations.

**Section 3. *Separability Clause*** – If for any reason, any part or section of these Rules is declared unconstitutional or invalid, the other parts or

sections hereof which are not affected thereby shall continue to be in full force and effect.

**Section 4. *Repealing Clause*** – The pertinent provisions of other ERC rules or guidelines inconsistent herewith are hereby repealed or modified accordingly.

**Section 5. *Effectivity*** – These Rules shall take effect on the 15<sup>th</sup> day following its publication in a newspaper of general circulation or in the Official Gazette.

Pasig City, \_\_\_\_\_ 2018.

loc/ajmo/fghd

bcc/ebc/rdc/rav