

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

RESOLUTION NO. <sup>13</sup> \_\_\_\_, SERIES OF 2015

**A RESOLUTION DIRECTING ALL DISTRIBUTION UTILITIES (DUs) TO  
CONDUCT A COMPETITIVE SELECTION PROCESS (CSP) IN THE  
PROCUREMENT OF THEIR SUPPLY TO THE CAPTIVE MARKET**

**WHEREAS**, under Section 45 (b) of Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001” (EPIRA) and Rule 11, Section 5 of its Implementing Rules and Regulations (IRR) the Energy Regulatory Commission (ERC) is mandated to review the bilateral power supply contracts entered into by distribution utilities (DUs) whose markets have not reached household demand level;

**WHEREAS**, under Section 25 of the EPIRA and Rule 5, Section 4 (e) of its IRR, the ERC is mandated to regulate the retail rates charged by DUs for the supply of electricity to their captive market based on the principle of full recovery of prudent and reasonable economic costs incurred, or such other principles that will promote efficiency as may be determined by the ERC;

**WHEREAS**, on February 19, 2013, the ERC issued a Notice in ERC Case No. 2013-005 RM, entitled “*In the Matter of the Promulgation of the 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*” (PSA Rules), which was posted on the ERC’s website, directing all interested parties to submit their respective comments on the first draft of the PSA Rules, not later than March 22, 2013;

**WHEREAS**, on various dates, the ERC received comments on the first draft of the PSA Rules from interested parties, namely: a) Cagayan Electric Power and Light Co., Inc. (CEPALCO); b) Visayan Electric Company, Inc. (VECO); c) Quezon Power (Philippines) Ltd. Co., (QPL); d) Power Source Philippines, Inc. (PSPI); e) National Grid Corporation of the Philippines (NGCP); f) Philippine Independent Power Producers Association, Inc. (PIPPA); g) Next Power Consortium, Inc.; h) SN Aboitiz Power Group (SNAP); i) Aboitiz Power Corporation (APC); j) Philippine



Electricity Market Corporation (PEMC); k) Manila Electric Company (MERALCO); l) Department of Energy (DOE); m) Philippine Rural Electric Cooperatives Associations, Inc. (PHILRECA); and n) National Rural Electric Cooperative Association (NRECA);

**WHEREAS**, on October 16, 2013, the ERC issued a Notice of Posting and Publication in the aforementioned case, which was posted on the ERC's website, directing all interested parties to submit their respective comments on the second draft of the PSA Rules and setting the same for public consultations on December 2, 2013 in Pasig City for the Luzon stakeholders and on December 5, 2013 in Cebu City for the Visayas and Mindanao stakeholders;

**WHEREAS**, on various dates, the ERC received comments on the second draft of the PSA Rules from interested parties, namely: a) PHILRECA; b) CEPALCO; c) VECO; d) QPL; e) PSPI; f) NGCP; g) PIPPA; h) Next Power Consortium, Inc.; i) SNAP; j) APC; k) PEMC; l) MERALCO; m) DOE; and n) NRECA;

**WHEREAS**, on January 27, 2014, the ERC issued a Notice of Posting and Public Consultation setting the second draft of the PSA Rules for public consultations on February 18, 20 and 24, 2014 in Davao City, Cebu City and Pasig City for the Mindanao, Visayas and Luzon stakeholders, respectively;

**WHEREAS**, on February 18, 20 and 24, 2014, the ERC conducted public consultations wherein the comments of the interested parties were discussed;

**WHEREAS**, the ERC, likewise, conducted Focus Group Discussions (FGDs) with the stakeholders on April 22 to 24, 2014 in Pasig City, May 6 to 8, 2014 in Cebu City, May 13 to 14, 2014 in Cagayan De Oro City and May 20 to 22, 2014 in Pasig City, to thoroughly discuss major issues in relation to the draft PSA Rules, such as: a) the requirement of Competitive Selection Process (CSP); b) the proposed PSA template; c) the joint filing of PSA applications by the DUs and generation companies (GenCos); and d) the "walk-away" provision in the PSA, and the ERC likewise set the deadline for the submission of additional comments or position papers on May 30, 2014;

**WHEREAS**, on various dates, the ERC received position papers/additional comments from interested parties, namely: a) PIPPA; b)



APC; c) Mindanao Coalition of Power Consumers; and d) Association of Mindanao Rural Electric Cooperatives, Inc. (AMRECO);

**WHEREAS**, Article III of the draft PSA Rules requires the DU to undertake a transparent and competitive selection process before contracting for the supply of electricity to its captive market;

**WHEREAS**, in October 2014, the DOE issued for comments its draft Circular on the proposed Demand Aggregation and Supply Auctioning Policy (DASAP);

**WHEREAS**, in the proposed DASAP, all DUs will be mandated to comply with the auction requirement prescribed therein and other rules and guidelines as may be prescribed in the implementation of the DASAP;

**WHEREAS**, by reason of the issuance of the DASAP and pending the finalization thereof, the ERC held in abeyance its action on ERC Case No. 2013-005 RM and final approval of the draft PSA Rules;

**WHEREAS**, on June 11, 2015, the Department of Energy (DOE) issued Department Circular No. DC2015-06-008, *Mandating All Distribution Utilities to Undergo Competitive Selection Process (CSP) in Securing Power Supply Agreements (PSA)*;

**WHEREAS**, on October 20, 2015, the DOE and the ERC approved the issuance of a Joint Resolution embodying their agreement on the CSP, particularly, that the ERC shall issue the appropriate regulations requiring the DUs to undertake a CSP for the PSAs they will enter into for the supply to their captive markets;

**WHEREAS**, the ERC and the DOE are convinced that there is an advantage to be gained by having a CSP in place, in terms of ensuring transparency in the DUs' supply procurement and providing opportunities to elicit the best price offers and other PSA terms and conditions from suppliers;

**NOW, THEREFORE**, pursuant to its mandate under Republic Act No. 9136, the ERC **RESOLVES**, as it is hereby **RESOLVED**, to adopt the following:

**Section 1. Award of PSA to Generation Company.** – A PSA shall be awarded to the winning Generation Company following a successful transparent and competitive selection process or by Direct Negotiation as

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provided in Section 3 below. A CSP is successful if the DU receives at least two (2) qualified bids from 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 2. Competitive Selection Process.** - Pending the issuance by the ERC of a prescribed CSP, a DU may adopt any accepted form of CSP. At a minimum, the terms of reference to be used by the DU shall include the following:

- (a) Required/Contracted Capacity and/or Energy Volumes.
- (b) Generation sources (Hydro, Coal, Natural Gas, Diesel and others).
- (c) Method of procurement for fuel, if applicable.
- (d) Cooperation/Contract Period.
- (e) Tariff Structure unbundled to Capacity Fees, Variable and Fixed Operating and Maintenance (O&M) Fee, Fuel Fee and others, including the derivation of each component. Base Fee adjustment formula, if any.
- (f) Form of Payment (Pesos or Foreign Currency Denominated).
- (g) Penalties (if applicable).
- (h) If applicable, details regarding any transmission projects or Grid connection projects necessary to complement the proposed generation capacity, including identification of the parties that will develop and/or own such facilities, any costs related to such projects and specification of the parties responsible for recovery of any cost related to such projects; and
- (i) Other key parameters.

**Section 3. 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 failed when during its conduct, any of the following circumstances exists:

- a. No proposal was received by the DU;
- b. Only one supplier submitted an offer; and
- c. Competitive offers of prospective suppliers failed to meet the requirements prescribed under the Terms of Reference, as determined by the DU Bids and Awards Committee.




**Section 4. Applicability.** – The CSP requirement herein mandated shall not apply to PSAs already filed with the ERC as of the effectivity of this Resolution. For PSAs already executed but are not yet filed or for those that are still in the process of negotiation, the concerned DUs are directed to comply with the CSP requirement before their PSA applications will be accepted by the ERC.

This Resolution shall take effect immediately following its publication in a newspaper of general circulation in the Philippines.

Let copies of this Resolution be furnished the University of the Philippines Law Center-Office of the National Administrative Register (UPLC-ONAR), Department of Energy (DOE), Philippine Electric Power Operators Association, Inc. (PEPOA), Philippine Rural Electric Cooperatives Association, Inc. (PHILRECA) and all DUs and GenCos.

**Pasig City, 20 October 2015.**

  
**JOSE VICENTE B. SALAZAR**  
Chairman

**ERC**  
Office of the Chairman



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**ALFREDO J. NON**  
Commissioner

(On Official Travel)  
**GLORIA VICTORIA C. YAP-TARUC**  
Commissioner

  
**JOSEFINA PATRICIA A. MAGPALE-ASIRIT**  
Commissioner

  
**GERONIMO D. STA. ANA**  
Commissioner

  
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