

## Schedule of Public Consultations on Retail Competition and Open Access (RCOA) Rules

Area	Venue	Date	Day	
Western Visayas	Iloilo City	Sarabia Manor Hotel	9 October 2012	Tuesday
National Capital Region	Makati City	Dusit Hotel	16 – 17 October 2012	Tuesday, Wednesday
Bicol Region	Naga City	Naga Regent Hotel	19 October 2012	Friday
Southern Tagalog Region	Lipa City, Batangas	Mt. Malarayat Golf & Country Club	30 October 2012	Tuesday
Central Visayas	Cebu City	Marco Polo Hotel	15 November 2012	Thursday
Central Luzon	Clark, Pampanga	Holiday Inn Hotel, Clark	21 November 2012	Wednesday
Northern Luzon	Baguio City	Summer Place Hotel	23 November 2012	Friday
National Capital Region	Mandaluyong City	Legend Villas Hotel	27 – 28 November 2012	Thursday-Friday

Notice is hereby given that the Department of Energy is seeking comments from the power industry stakeholders on its proposed “Retail Rules on Retail Competition and Open Access (RCOA)”. There will be Public Consultations on the scheduled dates. All concerned parties are invited to submit a soft copy of their comments to [rcoadoe@gmail.com](mailto:rcoadoe@gmail.com) or a hard copy thereof at the DOE Main Bldg., PNOCC Complex, Fort Bonifacio, Taguig City. The deadline of comments will be on November 29, 2012.

**DEPARTMENT CIRCULAR NO. DC2012--\_\_\_\_\_**

**PROVIDING FOR ADDITIONAL GUIDELINES AND IMPLEMENTING POLICIES FOR RETAIL COMPETITION AND OPEN ACCESS AND AMENDING DOE DC NO. 2012-05-0005 ENTITLED “PRESCRIBING THE GENERAL POLICIES FOR THE IMPLEMENTATION OF THE RETAIL COMPETITION AND OPEN ACCESS”**

**WHEREAS**, Section 37 of Republic Act No. 9136, otherwise known as “The Electric Power Industry Reform Act of 2001” or “EPIRA,” the Department of Energy (DOE) is mandated to, among other things:

- (a) supervise the restructuring of the electric power industry;
- (b) formulate rules and regulations as may be necessary to implement the objectives of the EPIRA; and
- (c) exercise such other powers as may be necessary or incidental to attain the objectives of the EPIRA;

**WHEREAS**, on 06 June 2011, the Energy Regulatory Commission (ERC) certified the fulfillment of the five (5) pre-conditions for the implementation of the Retail Competition and Open Access (RCOA);

- (a) **Establishment of the Wholesale Electricity Spot Market (WESM).** The WESM started its commercial operation in Luzon on 26 June 2006, while Visayas Grid was integrated in the WESM on 26 December 2010.
- (b) **Approval of unbundled transmission and distribution wheeling charges.** The Energy Regulatory Commission (ERC) approved the unbundled rates of the National Power Corporation (NPC) on 26 March 2002, which includes the transmission tariffs of the National Transmission Corporation (TRANSCO) and the NPC generation tariffs. Likewise, the ERC has rendered its decisions on the various applications unbundling of distribution wheeling charges of distribution utilities.
- (c) **Initial implementation of the cross subsidy removal scheme.** The ERC approved the removal of inter-class cross-subsidies simultaneously with the unbundling of rates application filed by NPC and Distribution Utilities (DUs). Since 2002, the NPC and TRANSCO have completely removed the inter-and intra-grid cross subsidies in their tariffs, while almost all of DUs have completed their cross-subsidy removal process.
- (d) **Privatization of at least seventy (70%) percent of the total capacity of generating assets of NPC in Luzon and Visayas.** Pursuant to its mandate, the Power Sector Assets and Liabilities Management Corporation (PSALM) has privatized a total of nineteen (19) power plants of power plants of

different fuel resources in Luzon and Visayas with a total capacity of 3,222 magawatts (MW), equivalent to 79.56 percent of the total generating capacity of NPC in Luzon and Visayas, thereby breaching the 70 percent condition for RCOA.

- (e) **Transfer of the management and control of at least seventy percent (70%) of the total energy output of power plants under contract with NPC to the IPP Administrators.** PSALM has successfully bid out 3,345.75 MW of NPC-contracted energy outputs with equivalent proceeds of US\$3,228.00 Million. This is equivalent to 76.85 percent of the total NPC-IPP contracted energy output in Luzon and Visayas.

**WHEREAS**, on 17 June 2011, the DOE issued Department Circular No. DC2011-06-0006 entitled, “Creating the Steering Committee Defining the Policies for the Implementation of Retail Competition and Open Access,” which tasks include among others:

- (a) provide the transition framework for the RCOA implementation; and
- (b) synchronize the preparatory actions towards ensuring the sufficiency of existing rules, infrastructures, and other institutional requirements necessary to achieve the goals of EPIRA;

**WHEREAS**, in pursuit of its mandates, the RCOA Steering Committee and its Technical Working Groups conducted a series of meetings and consultations with relevant stakeholders of electric power industry as well as relevant government agencies for purposes of identifying the attendant issues and challenges that each sector of the industry are facing or may encounter, including assessment of the readiness of the systems and processes to warrant the effective implementation of RCOA;

**WHEREAS**, after series of meetings of the RCOA-SC and its Technical Working Groups (TWGs), the RCOA-SC resolved to endorse to the DOE the following:

- (a) defer the Open Access Date to 26 December 2012;
- (b) integrate the RCOA in the Wholesale Electricity Spot Market;
- (c) appoint the Philippine Electricity Market Corporation as the Central Registration Body;
- (d) define specific policies to operationalize the RCOA concepts such as customer empowerment or customer choice, the business of supply of electricity, Supplier, and Supplier of Last Resort, and membership in the WESM, among others;

**WHEREAS**, on 24 February 2012, the DOE issued Department Circular No. DC 2012-02-0002, which appointed the Philippine Electricity Market Corporation as Central Registration Body;

**WHEREAS**, the DOE as part of its continuing effort to align the policies and regulations that have been put in place, and in consultation with the stakeholders and the Energy Regulatory Commission, issued on 09 May 2012, Department Circular No. DC2012-05-0005, entitled “Prescribing the General Policies for the Implementation of Retail Competition and Open Access”;

**WHEREAS**, the DOE jointly with the RCOA-SC and Energy Regulatory Commission, conducted another round of public consultations and focused group discussions with the stakeholders, with the end view of developing the implementing rules and regulations for the implementation of RCOA, and in order to provide all stakeholders sufficient time to adequately prepare for the eventual transition to RCOA regime:

<b>Date</b>	<b>Venue</b>	<b>Participants</b>
18 July 2012	DOE Headquarters	MERALCO and VECO
19 July 2012	DOE Headquarters	BATELEC II, CEBECO I & CEBECO II and PHILRECA
31 July 2012	Waterfront Hotel, Lahug, Cebu City	Generators, Distribution Utilities, Contestable Customers from Visayas
16 August 2012	Holiday Inn Clark, Pampanga	Luzon Contestable Customers and Distribution Utilities, Generation Companies
23 August 2012	DOE Headquarters	Government Entities Certified Contestable Customers by ERC
03 September 2012	DOE Headquarters	Retail Electricity Suppliers' Association (RESA) and Suppliers
04 September 2012	Legend Hotel, Mandaluyong City	Contestable Customers
05 September 2012	PEZA, Roxas Boulevard, Pasay City	PEZA Economic Zone Locators
05 September 2012	Legend Hotel, Mandaluyong City	Directly Connected Customers

**WHEREAS**, based on the feedbacks and outcomes gathered from the series of public consultations and focused group discussions held, the DOE jointly with the Energy Regulatory Commission (ERC), the Philippine Electricity Market Corporation (PEMC) and the RCOA Steering Committee, resolved to introduce additional policies and guidelines and provide amendments to the Department Circular No. 2012-05-0005;

**NOW, THEREFORE**, for and in consideration of the foregoing, the DOE hereby issues, adopts and promulgates the following additional guidelines and implementing policies for the implementation of Retail Competition and Open Access (RCOA), providing additional policies and introducing amendments to certain provisions of the Department Circular No. DC2012-05-0005, entitled "Prescribing the General Policies for the Implementation of the Retail Competition and Open Access":

**Section 1. Declaration of Policy.**

Consistent with the declared policy of the State under Section 2 of EPIRA, this Circular reiterates the following policies as to their relevance to the RCOA implementation:

- (a) To ensure the quality, reliability, security and affordability of the supply of electric power;

- (b) To ensure fair and non-discriminatory treatment of public and private sector entities in the process of restructuring the electric power industry;
- (c) To assure socially and environmentally compatible energy sources and infrastructure;
- (d) To ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve greater operational and economic efficiency, promote consumer choice and enhance the competitiveness of Philippine products in the global market;
- (e) To protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power; and
- (f) To encourage the efficient use of energy and other modalities of Demand Side Management (DSM).

**Section 2. Objectives.** This Circular is issued with the following objectives:

- (a) To ensure smooth transition to RCOA regime through provision of transparent and reasonable rules and procedures for all sectors of the electric power industry;
- (b) To foster competition in the power generation and supply businesses, while empowering electricity end-users;
- (c) To clearly define the respective responsibilities of each person or entity in so far as implementation of RCOA is concerned;
- (d) To ensure that RCOA shall not result to diminution of service which includes transparency in electricity fees and charges; and
- (e) To ensure protection of electricity end-users particularly those who have no power to choose their electricity suppliers.

**Section 3. Scope of Coverage.**

This Circular is promulgated under the authority of the DOE to formulate, in consultation with relevant government agencies, electric power industry participants, non-government organizations and electricity end-users, such rules and regulations as may be necessary to implement the objectives of EPIRA and EPIRA-IRR. This implementing rules and regulations shall govern the framework for the RCOA, which includes the responsibilities of Electric Power Industry Participants and governmental authorities, such as, but not limited to: the DOE, ERC, PEMC, National Electrification Administration (NEA), National Grid Corporation of the Philippines (NGCP), and DUs.

**Section 4. Definition of Terms.**

The following terms shall have the following respective meanings:

- (a) **Section 2 of Department Circular No. DC2012-05-0005** is hereby amended as follows:

**xxx**

- (f) “**Directly Connected Customers**” refers to industrial or bulk electricity end-users, which are directly supplied with electricity by a Generation Company or Power Sector Assets and Management Corporation (PSALM) or NPC pursuant to Republic Act No. 6395 as amended by Presidential Decree No. 395;
- (g) “**Last Resort Supply Event**” refers to an event when a supplier of a Contestable Customer has defaulted on its obligations or fails to provide electricity based on the following reasons: (i) cessation of its operation; (ii) revocation of its license; (iii) non-payment of transmission and distribution services; (iv) suspension of its membership in the WESM due to non-compliance to WESM Rules and retail market rules to be promulgated consistent with this Circular; and (v) such other grounds that may be specified by the ERC.
- (h) “**Local Supplier**” refers to the non-regulated supply business of a Distribution Utility (DU) catering to the Contestable Customers within its franchise area, duly authorized by the ERC. This shall also include the Philippine Economic Zone Authority (PEZA) and the PEZA-accredited Utility Ecozone Enterprises in the public and private Economic Zones (EZs), respectively.

All other terms defined under DOE Department Circular No. DC2012-05-0005, and other related rules and regulations shall have the same meaning in so far as they are not inconsistent with this Circular.

## **Section 5. Responsibilities of Energy Agencies and Stakeholders.**

Consistent with EPIRA and EPIRA-IRR, the following energy agencies and stakeholders shall have the following responsibilities in so far as the RCOA implementation is concerned:

- (a) **Energy Regulatory Commission (ERC).** In the exercise of its mandate to promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry, the ERC shall perform the following regulatory functions in relation to RCOA:
- (i) Declare Open Access Date;
- (ii) Establish and approve a methodology for setting transmission and distribution wheeling rates for the use of the transmission and distribution system, and for setting retail rates for the Captive Market of a DU;

- (iii) Prescribe qualifications and evaluate applications for supply of electricity to the Contestable Market, and for this purpose, issue license to suppliers, metering service providers, and other service providers as may be necessary for the implementation of RCOA;
  - (iv) Upon the initial implementation of RCOA, specify the Contestable Market through the issuance of Certificate of Contestability to electricity end-users with an average twelve months peak demand of one (1) megawatt and above;
  - (v) Evaluate the performance of the market and based on its evaluation, gradually reduce the threshold level for the Contestable Market until it reaches the household demand level;
  - (vi) Determine the appropriate mechanism to mitigate the impact of migration of Contestable Customers in the operation of the DU and its Captive Market;
  - (vii) Ensure customer choice and promote competition, encourage market development, and discourage/penalize abuse of market power, cartelization and any anti-competitive or discriminatory behavior, in order to further the intent of the EPIRA and protect the public interest; and,
  - (viii) Provision of regulatory support on the recoveries of needed investments to support the efficient and effective implementation of RCOA.
- (b) **Philippine Electricity Market Corporation (PEMC).** As the designated Central Registration Body (CRB), PEMC shall perform its mandate pursuant to Department Circular No. DC2012-02-0002 issued on 24 February 2012.
- (c) **National Grid Corporation of the Philippines (NGCP).** As the Concessionaire of the National Transmission Company, NGCP shall, among others:
- (i) Abide by the methodology approved by the ERC for setting transmission wheeling rates upon the implementation of RCOA;
  - (ii) As the System Operator, provide open and non-discriminatory access to its transmission system to all electricity users; and
  - (iii) Ensure reliability and adequacy of transmission system to cater to the RCOA requirements.
- (d) **National Electrification Administration (NEA).** In pursuit of its additional mandates under Section 58 of EPIRA and Rule 3, Section 3 of EPIRA-IRR, the NEA shall undertake among others the following:
- (i) Prepare electric cooperatives for the RCOA regime.
  - (ii) Educate end-users about the implementation of RCOA and its impact on end-users.
- (e) **Distribution Utilities (DUs).**

- (i) Provide open and non-discriminatory access to its distribution system to all electricity end-users, including suppliers;
- (ii) Ensure reliability and adequacy of distribution system to cater to the RCOA requirements;
- (iii) Ensure least-cost supply to electricity end-users as well as transparency in the rates and charges applied to both regulated and competitive services;
- (iv) Perform the role as the default Metering Service Provider (MSP) and ensure compliance with the WESM Rules and Retail Rules to be promulgated by the DOE pursuant to RCOA;
- (v) Continuously review and update respective Distribution Development Plan (DDP) and prepare for the investments necessary to adequately respond to the RCOA requirements;
- (vi) Notify ERC of its intent to recover stranded contract costs submitting thereto an estimate of such obligations, including the present value thereof and such other supporting data as may be required by the ERC;
- (vii) Conduct regular Information and Education Campaign to all electricity end-users particularly the Captive Customers on the RCOA and its impact to the end-users.

#### **Section 6. Transition to RCOA Implementation and Timelines.**

To ensure smooth implementation of RCOA and to prepare all stakeholders, it is hereby prescribed that a Transition Period of six (6) months shall be observed, from the Open Access Date to be declared by the ERC.

During the Transition Period, the following shall take place:

- (a) The DU shall continue to serve Contestable Customers in their respective franchise area.
- (b) Contestable Customers may enter into supply contracts with Suppliers but such shall only take effect at the end of the Transition Period.
- (c) The CRB shall begin the registration of Contestable Customers and Suppliers.
- (d) The CRB shall conduct trial operations.

After the Transition Period prescribed herein and pursuant to the Transitory Rules to be promulgated by the ERC, the full commercial operation of the RCOA, hereinafter referred to as the "Full RCOA Commercial Operation Date" shall take effect.

#### **Section 7. Mandatory Contestability and Customer Choice.**



Consistent with the EPIRA, the RCOA should promote genuine competition, greater efficiency, customer choice, and the true cost of electricity. For this purpose, the power of choice is conferred to Contestable Customers subject to the rules and regulations prescribed herein as well as to subsequent issuances by the DOE.

Accordingly, all Contestable Customers shall be allowed to choose where to source its supply of electricity. For this purpose, any Contestable Customer may source its electricity supply requirements from a Supplier duly licensed by ERC, a Local Supplier duly authorized by ERC to perform such, or through the WESM. In the latter case, the Contestable Customer shall be responsible to manage its registration and compliance with the WESM Rules and Manuals, and managing its own risks as well.

As a general policy, a Contestable Customer can have one Supplier of electricity per Metering Point. Thus, any Contestable Customer may have several contracted Suppliers based on the number of its Metering Points. However, should a Contestable Customer opts to enter into a multiple supply contracts even with only single Metering Point, it shall be allowed, provided arrangements shall be consistent with the Circular and the Retail Rules to be promulgated by the DOE, and ERC rules and regulations.

### **Section 8. Supply Contract and Customer Switching.**

After the Transition Period and during the initial year of the RCOA implementation, all Contestable Customers shall have supply contracts with a minimum term of one (1) year with a Supplier. Notwithstanding, CCs shall be allowed to switch to a new supplier six (6) months after the Full Commercial Operation Date, provided, further that any or all outstanding obligations of either party to the other party is fully settled.

One year after the Full RCOA Commercial Operation Date, the Contestable Customers and Suppliers shall have the flexibility on the duration of their supply contracts and shall undertake switching in accordance with the Retail Rules to be issued by the DOE and consistent with the manual of procedures adopted by the CRB.

In such case, the switching shall take effect at the beginning of the WESM billing month, while formal advice/notification to the CRB of the Contestable Customer's intent to exercise the switching shall be done at least one (1) month prior to switching.

The Suppliers shall provide the DOE, ERC and CRB with copies of their supply contracts for purposes of monitoring, policy development, formulation of necessary rules, and guidelines for the effective implementation of RCOA.

### **Section 9. Directly Connected Customers.**

Existing Directly Connected Customers, regardless of their average peak demands for the last twelve (12) months from the effective date of this Circular, shall register with PEMC either as a Direct or Indirect Customer Trading Participant in the WESM. Existing supply contracts between Directly-Connected Customers and the Generators prior to Open Access Date shall not be affected by reason of the implementation of RCOA and as such shall there be diminution of services.

All Directly-Connected Customers shall therefore be considered Contestable Customers and shall secure Certificate of Contestability from the ERC. Notwithstanding this, a DCC shall have the additional option of securing its energy requirements straight from a generator or from a Supplier duly licensed by the ERC.

#### **Section 10. Role of Embedded Generation.**

The Philippine Electricity Market Corporation (PEMC) shall register embedded generators in accordance with the WESM Rules and relevant market manuals. Subject to the most beneficial arrangement, the policy for embedded generation shall be developed by the DOE in coordination with relevant stakeholders, as part of the government's effort to make any supply available in the grid. Therefore, the DOE shall endeavor to develop programs that will encourage Demand Response Program in coordination with the ERC.

**Section 11. Supplier of Last Resort.** In the event that the Supplier is not able to perform its obligations to its Contestable Customers consistent with this Circular, the franchised DU shall act as the Supplier of Last Resort (SOLR) in the Last Resort Supply Event as defined in this Circular. However, should the franchised DU is deemed not capable to perform the SOLR service, **two (2) months prior** to the Full Commercial Operation Date, the ERC shall designate the DU which will serve as SOLR for the affected CCs in the non-capable DU's franchise area. The SOLR may source electricity to be supplied to the CC through the WESM or any available source of energy supply.

Towards this end, the ERC shall design a mechanism to prevent the occurrence of a Last Resort Supply Event, which may include, among others, adequate due diligence on the technical and financial capability, and other parameters used in the issuance of Supplier License. The CRB, on the other hand, shall issue timely notification of Suppliers' compliance with the prudential requirement pursuant to the WESM Rules.

#### **Section 12. Government Entities as Contestable Customers.**

In cognizance of government entities that are considered as Contestable Customers, the DOE in coordination with the Government Procurement Policy Board (GPPB) and Department of Budget and Management (DBM) shall issue supplementary rules on the procurement of electricity supply under the RCOA regime. Therefore, prior to Open Access Date, a step-by-step procedure that will serve as guide to such government entities shall be issued.

As a general rule, all Government Entities that are either Contestable Customers or Directly Connected Customers shall comply with the requirements of Republic Act No. 9184 and its Implementing Rules and Regulations.

#### **Section 13. Separability Clause.**

If any section or provision of this Circular is declared invalid, the other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

#### **Section 14. Repealing Clause.**

Except insofar as may be manifestly inconsistent herewith, nothing in this Circular shall be construed as to repeal any of the mechanisms already existing or responsibilities already provided for under existing rules.

**Section 15. Effectivity and Publication.**

This Circular shall take effect fifteen (15) days following its publication in at least two (2) newspapers of general circulation and shall remain in effect until otherwise revoked.

Issued this \_\_\_\_\_ day of October 2012 in Fort Bonifacio, Taguig City, Metro Manila, Philippines.

**JOSE RENE D. ALMENDRAS**  
Secretary