



Republic of the Philippines  
**DEPARTMENT OF ENERGY**

DEPARTMENT CIRCULAR NO. DC 2012-11-0010 *W*

**PROVIDING FOR ADDITIONAL GUIDELINES AND IMPLEMENTING POLICIES FOR RETAIL COMPETITION AND OPEN ACCESS AND AMENDING DEPARTMENT CIRCULAR NO. (DC) 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 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 megawatts (MW), equivalent to 79.56 percent (79.56%) of the total generating capacity of NPC in Luzon and Visayas, thereby breaching the 70 percent (70%) 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 (76.85%) of the total NPC-IPP contracted energy output in Luzon and Visayas.

**WHEREAS**, on 17 June 2011, the DOE issued Department Circular (DC) 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**, the RCOA Steering Committee (RCOA-SC) and its Technical Working Groups (TWG) conducted a series of meetings and consultations with electric power industry stakeholders as well as government agencies for the purpose 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 TWG resolved to endorse to the DOE the following:

- (a) defer the Open Access Date to 26 December 2012;
- (b) integrate the RCOA in the WESM;
- (c) appoint the Philippine Electricity Market Corporation (PEMC) as the Central Registration Body (CRB);
- (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 (SOLR), and membership in the WESM, among others;

**WHEREAS**, on 24 February 2012, Department Circular No. DC2012-02-0002 appointed PEMC as CRB;

**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 ERC issued on 09 May 2012, 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 the ERC, 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:

Date	Venue	Participants
18 July 2012	DOE Headquarters	Manila Electric Company (MERALCO) and Visayan Electric Company (VECO)
19 July 2012	DOE Headquarters	Batangas II Electric Cooperative, Inc. (BATELEC II), Cebu I Electric Cooperative, Inc. (CEBECO I), Cebu II Electric Cooperative, Inc. (CEBECO II) and the

		Philippine Rural Electric Cooperatives Association (PHILRECA)
31 July 2012	Waterfront Hotel, Lahug, Cebu City	Contestable Customers, Generation Companies, and Distribution Utilities in the Visayas Grid
16 August 2012	Holiday Inn Clark, Pampanga	Contestable Customers, Generation Companies, and Distribution Utilities in the Luzon Grid
23 August 2012	DOE Headquarters	Government Entities duly 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**, as a result of the series of public consultations and focused group discussions, the DOE jointly with the ERC, the PEMC and the RCOA-SC, resolved to introduce additional policies and guidelines and provide amendments to the DC2012-05-0005;

**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 RCOA, providing additional policies and amending certain provisions of the DC2012-05-0005:

**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. Coverage.** This Circular shall govern the framework for the RCOA, including 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. Amendments to Section 2 of DC2012-05-0005.**

- 4.1. The following definitions in Section 2 of DC2012-05-0005 are hereby amended, as follows:

xxx xxx xxx

- f) *“Directly Connected Customers”* refer to industrial or bulk electricity end-users, which are directly supplied with electricity by a Generation Company or Power Sector Assets and Management Corporation (PSA/M) or NPC pursuant to Republic Act No. 6395 as amended by Presidential Decree No. 395;

xxx xxx xxx

- 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;

xxx xxx xxx

- 4.2. A new definition is hereby added to Section 2 of Department Circular No. DC2012-05-0005, as follows:

- l) *“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.

- 4.3 All other terms defined under 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) **The 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) **PEMC.** As the designated CRB, PEMC shall perform its mandate pursuant to 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 (ECs) for the RCOA regime and provide the technical, financial and institutional support and assistance necessary in ensuring that the ECs are able to complete and perform their mandates under a competitive environment;
  - (ii) Assist the ECs in educating their respective member-consumers about the implementation of RCOA and its impact on electricity end-users; and
  - (iii) Develop mitigating measure to address any impact on the operations and viability of the ECs resulting from the possible migration of Contestable Customers to their Suppliers.
- (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) Ensure provision of pertinent information necessary for Contestable Customers' transition to RCOA to include, among others, load profile data which shall be provided to Contestable Customers, forty five (45) days prior to Open Access Date to assist them in negotiating for supply contracts with various Suppliers;
- (vi) Continuously review and update respective Distribution Development Plan (DDP) and prepare for the investments necessary to adequately respond to the RCOA requirements;
- (vii) 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; and
- (viii) 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 as declared by the ERC.

During the Transition Period, the following activities, among others, shall take place:

- (a) The DU shall continue to serve Contestable Customers in their respective franchise area;
- (b) Contestable Customers shall start with or continue to negotiate and enter into supply contracts with Suppliers; provided, however, that such supply contract shall only take effect at the end of the Transition Period i.e., the day that immediately follows the end of the sixth month from the Open Access Date;

- (c) The ERC shall continue to evaluate and issue Certificate of Contestability to all eligible Contestable Customers;
- (d) The ERC shall identify DUs that will act as the SOLR services in areas where the franchised DUs were deemed not capable to perform their roles as the default SOLRs;
- (e) The CRB shall begin the registration of Contestable Customers and Suppliers as well as conduct of trainings to the RCOA participants;
- (f) The CRB shall conduct trial operations including mock settlements; and
- (g) The DOE shall spearhead the development and conduct of a comprehensive Information and Education Campaign to all stakeholders on the RCOA and its implementation.

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

One (1) 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 promulgated 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 date.

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.

Further, for purposes of assisting the Contestable Customers in supply contracting, forty five (45) days prior to the Open Access Date, Suppliers shall submit to the CRB, for posting in its website, contracting parameters, to include its general offer terms and conditions such as indicative average contract price offers and scope of services offered.

**Section 9. Directly Connected Customers.** Existing Directly Connected Customers, regardless of their average peak demand 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. Any Directly-Connected Customer, in ensuring its supply requirements, may secure additional energy requirements from a Supplier duly licensed by the ERC, to supplement its current contract with a power generator. As such, a Directly-Connected Customer may have supply contract with a power generator registered in the WESM, and a Supplier of electricity.

**Section 10. Role of Embedded Generation.** The 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. Towards this end, the DOE shall endeavor to develop policies and programs that will encourage Demand Response in coordination with the ERC and industry stakeholders.

**Section 11. Supplier of Last Resort (SOLR).** 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 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, the ERC, prior to the Full RCOA Commercial Operation Date, shall designate another DU which will perform the SOLR function for the affected Contestable Customers. The SOLR may source electricity to be supplied to the Contestable Customers through the WESM or any available source of energy supply. The SOLR shall be allowed to recover their costs attributable to its SOLR services.

Notwithstanding, 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 the Department of Budget and Management (DBM) shall issue supplementary rules on the procurement of electricity supply under the RCOA regime. Prior to Open Access Date, the DOE, DBM and GPPB shall issue a step-by-step procedure that will serve as guide for government entities Considered as Contestable Customers.

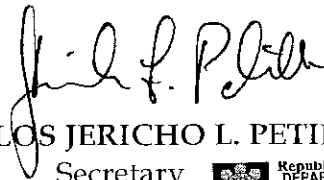
As a general rule, all Government Entities that are either Contestable Customers or Directly Connected Customers shall comply with the requirements of EPIRA and EPIRA-IRR.

**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.** This Circular shall take effect fifteen (15) days following its publication in at least two (2) newspapers of general circulation.

Issued on NOV 28 2012 in Energy Center, Bonifacio Global City, Taguig City.



CARLOS JERICHO L. PETILLA  
Secretary



Republic of the Philippines  
DEPARTMENT OF ENERGY

IN REPLYING PLS CITE:

SOE-JLP-12000306

