



Republic of the Philippines
DEPARTMENT OF ENERGY
(Kagawaran ng Enerhiya)

DEPARTMENT CIRCULAR NO. DC _____

PRESCRIBING THE REVISED RULES GOVERNING THE REVIEW AND EVALUATION OF DIRECT CONNECTION APPLICATIONS OF INDUSTRIAL, COMMERCIAL AND OTHER QUALIFIED ELECTRICITY END-USERS AND ECOZONE ENTERPRISES

WHEREAS, Republic Act No. 7638, otherwise known as the “Department of Energy Act of 1992” or the Department of Energy (DOE) Charter, mandates the DOE to prepare, integrate, coordinate, supervise and control all plans, programs, projects and activities of the Government relative to energy exploration, development, utilization, distribution and conservation, among others;

WHEREAS, Republic Act No. 9136 otherwise known as the “Electric Power Industry Reform Act of 2001” or EPIRA states that it is the policy of the State to: i) ensure the quality, reliability, security, and affordability of the supply of electric power; ii) 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 and enhance the competitiveness of Philippine products in the global market; iii) protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power; and, iv) encourage the efficient use of energy and other modalities of demand side management;

WHEREAS, Section 37 of the EPIRA mandates the DOE, among other things, to:

- (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 08 May 2014, the Energy Regulatory Commission (ERC) endorsed to the DOE all Direct Connection applications in compliance with the Supreme Court (SC) ruling in the Mactan Electric Company, Inc. (MECO) vs. NPC, etc. (G.R. No. 172960);

WHEREAS, in the above-cited case, the SC ruled that the subject matter of the dispute between MECO and NPC involved the distribution of energy resource, specifically direct supply of electricity which was not within the authority of ERC to resolve nor the Regional Trial Court (RTC) as the jurisdiction over the said dispute belonged to the DOE;

WHEREAS, in compliance with the above-cited SC ruling, the Direct Connection Review and Evaluation Committee (D-REC) was created under the amended Department Order No. 2014-11-019; and

WHEREAS, in order to have an orderly, transparent and timely review and evaluation of applications for direct connection, the D-REC has formulated the House Rules for such purpose.

NOW THEREFORE, for and in consideration of the foregoing, the Department hereby adopts and promulgates these Revised Rules to govern the orderly, transparent and timely review and evaluation by the D-REC of the applications for Direct Connection of Electricity End-users and Ecozone Enterprises.

Section 1. Definition of Terms.

- a. **Applicant** refers to an Electricity End-user or Ecozone Enterprise which submitted application for renewal or approval of new direct connection.
- b. **Contestable Customer** refers to an Electricity End-user or Ecozone Enterprise that belongs to the Contestable Market.
- c. **Directly Connected Customer or DCC** refers to an industrial or bulk electricity end-user, which are supplied through the transmission or sub-transmission assets that are still owned by the National Transmission Corporation (TransCo).
- d. **Direct Connection** refers to an arrangement for the supply of energy to an Electricity End-User or Ecozone Enterprise using the transmission or sub-transmission assets with voltage level requirement beyond the level that can be provided by the Distribution Utility or Ecozone Utility Enterprise where the Electricity End-User or Ecozone Enterprise is located; directly connecting to the grid using facilities that cannot be economically and technically provided by the Distribution Utility or Ecozone Utility Enterprise.
- e. **Direct Connection Review and Evaluation Committee (D-REC)** refers to a committee created under Department Order No. 2014-11-019, as amended.
- f. **Ecozones or “Special Economic Zones” (SEZ)** shall refer to selected areas with highly developed or which have the potential to be developed into agri-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers whose metes and bounds are fixed or delimited by Presidential Proclamations. An Ecozone may contain any or all of the following: industrial estates (IEs), export processing zones (EPZ), free trade zones and tourist/ recreational centers.
- g. **ECOZONE Developer/Operator** refers to a business entity or concern duly registered with and/ or licensed by the PEZA to develop, operate and maintain an ECOZONE or nay or all of the component IE, EPZ, Free Trade Zone or Tourist/Recreational Center and the required infrastructure facilities and utilities such as light and power system, water supply and distribution system, sewerage and drainage system, pollution control devices, communication facilities, paved road network, administration building and other facilities as may be required by the PEZA. The term shall include the PEZA and/or the Local Government Unit when by the themselves or in joint venture with a

qualified private entity, shall act as the Developer/Operator of the ECOZONES. As such, they shall be entitled to the same incentives under Rule XIV of these Rules in accordance with the pertinent provisions of the Act and the Code.

- h. **Ecozone Enterprise** refers to an entity or concern within the Ecozone and duly registered by Philippine Economic Zone Authority (PEZA), engaging in manufacturing, services, tourism and any other kind of trade.
- i. **Ecozone Utility Enterprise** shall refer to a business entity or concern within the Ecozone duly registered with and/or franchised/ licensed by the PEZA with or without the incentives provided under Republic Act No. 6957, as amended, (the Build-Operate-Transfer Law) and/or with or without financial exposure on the part of the PEZA, such as contractors/operators of light and power systems, water supply and distribution systems, communications and transportation systems within the ECOZONE and other similar or ancillary activities as may be determined by the Board.
- j. **End-User** refers to any person or entity requiring the supply and delivery of electricity for its own use.
- k. **Subtransmission Assets** - refers to the facilities related to the power delivery service below the transmission voltages and based on the functional assignments of assets including but not limited to the step-down transformers used solely by load customers, associated switchyard/substation, control and protective equipment, reactive compensation equipment to improve customer power factor, overhead lines and the land such facilities/equipment are located. This includes NGCP or its successor in interest assets linking the transmission system and the distribution system which are neither classified as generation nor transmission.

Section 2. General Principles For Direct Connection. The following principles shall be adopted by the D-REC in the review and evaluation of applications for Direct Connections:

- a. The applicant should have at least monthly average peak demand of five (5)MW for the past 12 month period. In the case where the applicant's facility being applied for direct connection is not yet in operation, the applicant should have forecasted monthly peak demand of at least (5)MW. The delivery voltage shall be in accordance with the following transmission voltage:
 - A. 69-230 kilovolts (kV) for Luzon Grid
 - B. 69-138 kV for Visayas Grid
 - C. 69-138 kV for Mindanao Grid
- b. The applicant shall furnish the concerned Distribution Utility a copy of the application submitted to the DOE. The affected Distribution Utility shall be obliged to submit its comments to the DOE within fifteen (15) days from the receipt of the application. The D-REC shall prescribe the technical,

operational and financial capability standards for the Distribution Utilities for purposes of Direct Connection applications.

The requirements provided herein shall not apply to PEZA registered or accredited Ecozone Utility Enterprise.

- c. Any franchised Distribution Utility (DU) which opposes any application shall be accorded adequate and reasonable opportunity to contest an applicant's allegations about the DU's technical and financial capability to serve the quantity and quality of electric power supply required by the applicant.
- d. In all cases, the affected franchised DU shall submit to the DREC-TWG documents and reports for the purpose of thorough evaluation of the DU's capability to serve the applicant. As such, the franchised DU shall sufficiently meet the existing technical and financial standards.
- e. The DOE shall continue to recognize all existing and valid Direct Connection in force at the time of the effectivity of these rules until the expiration of their supply contracts.
- f. Any Power Supply Agreement and Transmission Supply Agreement, whether new or renewed, entered into by the DCC shall be subject to the terms and conditions mutually agreed upon between the parties concerned.
- g. In cases where the sub-transmission facilities to which the Electricity End-user or Ecozone Enterprise is connected has been acquired by the franchised DU, the Electricity End-User or the Ecozone Enterprise shall be subject to payment of wheeling charges duly approved by the ERC.
- h. In the implementation of Retail Competition and Open Access (RCOA), regardless of the threshold level, the DCC having the privilege of direct connection may continue to source its power supply from the PSALM, an SGC, an IPP or an IPPA, subject to payment of applicable wheeling charges, as determined by the ERC, until the expiration of their supply contracts. Provided, however, if at the time of the expiration of its contract with its counterparty, the Electricity End-User or Ecozone Enterprise has a load demand falling within the RCOA threshold level as indicated in the timeline provided by ERC and DOE for that particular expiration year, the same shall be subject to the RCOA rules.
- i. The DOE shall approve any direct connection application if the DU voluntarily allows, by way of executing a Waiver, the direct connection of the Applicant notwithstanding its technical and financial capability.

Section 3. Coverage. The evaluation of applications for direct connection by the D-REC shall only cover the following:

- a. Any existing DCC intending to renew its direct connection arrangements either with PSALM, SGC, IPP, IPPA, including its Service Agreement with the NGCP; and

- b. Any Electricity End-User or Ecozone Enterprise with a load requirement of at least 5 MW intending to secure supply of electricity with PSALM, an SGC, IPP, or an IPPA.

Section 4. Applicability of Direct Connection. Direct Connection shall not be granted in any of the following cases:

- a. If the Applicant is already in operation and already being served by a franchised DU at the time of the effectivity of these rules, except in cases where the Applicant presents, for the determination of the D-REC, sufficient proof that the concerned franchised DU fails to satisfy the provisions of Section 9(a) hereof to the concerned Applicant;
- b. Applicants that have been issued Certificate of Contestability by the ERC whether or not currently served by RES; except in cases where the Applicant presents, for the determination of the D-REC, sufficient proof that the concerned franchised DU fails to satisfy the provisions of Section 9(a) hereof;

Existing end-user that has monthly average peak demand below 5MW for the past 12-month period.

- c. Any prospective Electricity End-user or Ecozone Enterprise that intends to connect thru the sub-transmission assets already acquired by the concerned DU/consortium from TransCo. This shall include sub-transmission asset as listed under ERC Resolution No. 4, Series of 2013, entitled "A Resolution Amending Resolution No. 26, Series of 2011".

Section 5. Application for Direct Connection. An Applicant or a DCC seeking approval to avail of or to renew a Direct Connection arrangement shall be guided by the following:

- a. The DCC or the Applicant shall file with the DOE through the D-REC a written application containing and/or enclosing thereto the following information/documents:
 - i. Name and business address including a brief corporate/business profile of the applicant;
 - ii. Location of Applicant's/DCC's installation, plant, or factory for which direct supply is sought, including the nearest NGCP/DU substation, as well as the power demand, delivery voltage, requested schedule for connection, load curve, and other relevant technical information;
 - iii. Certification from the NGCP that the current demand including the five (5) years projected demand can be accommodated by existing transmission facilities, otherwise the customer may be allowed to fund the required infrastructure. Provided, however, that the Electricity End-user or the Ecozone Enterprise shall retain ownership of such dedicated facilities until such time that such facilities are required for

competitive purposes and its ownership shall be transferred to the National Transmission Corporation (TransCo) or its successor-in-interest, or the franchised DU, as applicable, at a fair market price, in accordance with the provisions of the EPIRA;

- iv. Certification of willingness to shoulder the cost of needed connection assets and subtransmission facilities.
- v. Cost Benefit Analysis. Proof that the Direct Connection status will give rise to the continued growth and/or survival of its business and shall result to positive economic impact to the community where the Applicant is located. The analysis shall include among others:
 - 1. Comparative operational or production costs;
 - 2. Capital infusion;
 - 3. Additional employment;
 - 4. Projected taxes or income to the government;
 - 5. Comparative product or service cost;
 - 6. Other measures as applicable (e.g. improvement in infrastructure, export growth, etc.); and
- vi. Such other documents which the D-REC may deem necessary in support of the application.

The application should be addressed to:

The DOE Secretary
Attention: The Chairperson
Direct Connection-Review and Evaluation
Committee
c/o Electric Power Industry Management Bureau
Department of Energy
Energy Center, Rizal Drive
Bonifacio Global City, Taguig City, Metro Manila
Telephone No. 840-2120

The concerned DU shall be copy furnished with the application for direct connection.

- b. The applicant shall pay a corresponding application fee in accordance with the Schedule of Fees and Charges in compliance with Executive Order No. 31. Dated 1 October 2012, and Implementing Rules and Regulations for Executive No. 31, Series of 2012, to cover processing expenses as follows:
 - i. Administrative costs
 - ii. Publication
- c. The concerned DU shall inform the DOE of its action on the application for Direct Connection within thirty (30) calendar days from receipt of the copy of

the application. Otherwise, the D-REC shall consider that the DU has waived its right to file any action on the application.

- d. Upon receipt of copy of the application, the D-REC Chairperson shall refer the application, within two (2) days from receipt to the D-REC TWG.
 - i. The D-REC TWG shall determine the completeness and authenticity of the documents submitted by the applicant within three (3) working days from receipt of the application, and issue notice to the applicant of the completeness of the supporting documents, or if there are additional information requirements needed to warrant the full evaluation of the application.
 - ii. The D-REC TWG shall commence immediately its technical, financial and legal evaluation of the application in accordance with Section 9 (a) of these rules.
 - iii. The D-REC TWG shall complete its evaluation of the application within forty five (45) working days including conduct of site inspection or field verifications as may be directed by the D-REC. The cost incurred for the conduct of site inspection shall be for the account of the Applicant.
 - iv. The D-REC TWG shall inform the D-REC on the developments of its evaluation on weekly basis until its submission of the final result of the evaluation and recommendation to the D-REC for its approval.
- d. In the conduct of consultations, focus group discussions/and or meetings, as deemed necessary by the D-REC in order to validate all facts relating to the direct connection application, the D-REC Secretariat shall inform the Applicant, the concerned Distribution Utility and other affected entities of the details of the conduct of consultations including the date, time, venue, invited participants and resource persons and other pertinent information relating to the consultations.
- e. In all instances, the D-REC shall approve or deny any application for Direct Connection based on the affected franchised DU's meeting the technical, operational and financial capability standards as prescribed in these rules.
- f. The Electricity End-User or Ecozone Enterprise, which has been granted with approval for Direct Connection, shall submit to D-REC a copy of its Power Supply Contract with PSALM, SGC, IPP, IPPA, and Service Agreements with the NGCP, for monitoring purposes.
- g. The costs of putting up, operating and maintaining all 'dedicated facilities' associated with the power service delivery for new connections may be borne by the Electricity End-User or Ecozone Enterprise. The electricity End-User or the Ecozone Enterprise shall retain ownership of such dedicated facilities until such time that such facilities are required for competitive purposes and its ownership shall be transferred to the TransCo or its successor-in-interest or

the franchised DU, at a fair market price, in accordance with the provisions of the EPIRA.

For purposes of these rules, dedicated facilities shall include all radial transmission lines, substations and associated equipment solely utilized by the Electricity End-User or Ecozone Enterprise to enable power service delivery. Such proposed connection facilities shall be in compliance with existing ERC rules and resolutions including the connection requirements and procedures of NGCP.

The applicant shall inform the DOE of such arrangement and submit copies of pertinent documents on the construction of such facilities including its intent to enter into a PSA with the Generation Company.

- h. Provided that all information and documentary requirements shall have been complied with, the D-REC shall approve or deny any application for new direct connection within forty-five (45) working days from the date of complete submission of documentary requirements, unless otherwise the situation warrants a thorough evaluation and consultation.

Section 6. Renewal of Direct Connection Status. The following shall govern the process for the renewal of Direct Connection Agreements:

- a. The applicant shall advise the D-REC in writing, copy furnished the franchised DU or Ecozone Utility Enterprise, of such intention to renew the contract at least three (3) months before its PSA expires. The applicant shall ensure that the Service Agreements shall have an expiration term similar to the PSA, but not later than the expiration of the franchise of the transmission service provider.
- b. Provided that all required information shall have been complied with, the D-REC shall complete the evaluation and inform the Applicant and concerned DU of its decision to approve or deny any renewal of contract within forty-five (45) working days from the date of submission.
- c. Any Electricity End-User or Ecozone Enterprise which has been granted authority by the D-REC to renew its Direct Connection status but need to upgrade its dedicated facilities due to expansion shall shoulder all costs of putting up, and maintaining the new/upgraded “dedicated facilities” pursuant to the required transmission voltages in the concerned grid. The same facilities shall be turned-over to TransCo or its successor-in-interest when so required in accordance with the provision of the EPIRA.

Section 7. Disapproval/ Termination of Application. The D-REC shall disapprove or terminate the application in the following cases:

- a. Failure of the Applicant or DCC to submit the pertinent documents as required in Section 5 of this Circular;

- b. The Applicant or DCC expressly withdraw in writing its application for whatever reason;
- c. Application for Direct Connection where the concerned DU is deemed technically and financially capable to serve the Applicant. The D-REC shall advise the franchised Distribution Utility to serve the Electricity End-User or Economic Enterprise.
- d. The Applicant which is already within the RCOA threshold regime (Section 2h). The same shall be endorsed by the D-REC to the ERC for the issuance of Certificate of Contestability.
- e. The Applicant load requirement cannot be accommodated by the current load capacity of transmission facilities (lines, transformers and other high voltage devices) unless said Electricity End-user or Ecozone Enterprise is willing to fund the upgrading works at its initial cost subject to the usual regulatory processes and approvals.

Section 8. Transfer of Subtransmission Facilities. Upon the franchised DU's acquisition from the TransCo of the concerned subtransmission facilities to which the DCC is connected, the DU shall assume the responsibility to continuously serve the DCC and shall impose and collect the corresponding wheeling rates as duly approved by the ERC. Provided, however, that the supply arrangement of DCCs should be respected until its expiration, after which, the DCC will then be free to source its supply from any Generation Company or the WESM, and if qualified as a Contestable Customer (CC), to enter into a Retail Supply Contract (RSC) pursuant to the RCOA policies.

Section 9. Capability Evaluation of Franchised Distribution Utility. The following guidelines and procedures shall apply in determining the capability of the franchised DU to satisfy the requirement of the Applicant:

- a. New Applications

For the D-REC's evaluation if the franchised DU or the Ecozone Utility Enterprise is capable to meet the requirements of the applicant, the franchised DU or the Ecozone Utility Enterprise shall submit the following operational data requirements pertaining to the past three (3) years immediately preceding the year of the application for Direct Connection:

TECHNICAL/OPERATIONAL

- i. System operating map (single line diagram) indicating the voltage level and load carried at each points;
- ii. Details of power supply agreements with Generation Companies, list of embedded generators, load forecast, contracted capacity, duration, other terms such as outage allowances, replacement power supply provision,

Distribution facility's expansion plan and copies of application to ERC for capital cost recovery (medium-and/or long term), as provided on Distribution Development Plan (DDP);

- iii. Rates per supply agreement and rate schedule per customer class;
- iv. Distribution Reliability Reports and Performance Targets; Technical and Non-Technical System Loss against applicable System Loss Cap; Distribution Utility Use against Approved Distribution Utility Use Allowance; and Copy of Target vs. evaluated Customer Service Performance, in compliance with the distribution code;
- v. Cost benefit analysis showing the advantages to DU or to the Ecozone Utility Enterprise of having the applicant as customer, which may include improvement in the distribution costs, load profile and other benefits that will result to lower electricity rates in the DU's franchise area;

FINANCIAL

- vi. Copy of audited Financial Statements for the two (2) most recent 12 months period and Projected Cash Flow Statements for 5 years
- vii. Certification from the Market Operator that it has sufficiently complied with the WESM prudential requirements and has not received any notice of default;
- viii. Certification of good credit standing with power supplier and transmission service provider;
- ix. To measure liquidity: (ability to meet financial obligations as they become due).
 - a. Current ratio. A liquidity ratio that measures a company's ability to pay short-term liabilities with its current assets. This ratio should not be less than 1. This shall be calculated by dividing the current assets over current liabilities. Or
 - b. Quick Ratio. A liquidity ratio that measures the ability of a company to pay its current liabilities when they become due with only quick assets. Quick assets are current assets that can be converted to cash within 90 days or in a short term. This ratio should not be less than 1:1. This shall be calculated by adding cash, cash equivalents, short-term investments and current receivables then dividing them by current liabilities.
- x. To measure solvency. (Ability to pay long-term obligations or the ability to sustain operations indefinitely by comparing the debt levels with equity, assets and earnings).
 - a. Debt Ratio: This ratio should not be more than 50%. This is calculated by dividing total liabilities by total assets.

- b. Debt-to-Equity Ratio: Measures the number of times the shareholders' capital has been leveraged by the use of debt. This is calculated by dividing total liabilities by total equity.
 - xi. To measure profitability. This analysis focuses on the relationship between revenues and expenses and on the level of profits relative to the size of investment in the business.
 - xii. A positive net margin and return on assets. The positive net margin shall be calculated as the percentage of revenue remaining after all operating expenses, interest, taxes and preferred stock dividends have been deducted from a company's total revenue. Return on assets should be calculated as net profit margin divide be total assets.
 - xiii. Other documents and records relevant to support its compliance to technical and financial capability criteria set herein.
- b. Applications for Renewal

If the franchised DU or Ecozone Utility Enterprise opts to contest the renewal of direct connection application of the Electricity End-User or Ecozone Enterprise within its franchise area, it shall submit the operational data requirements pertaining to the past three (3) years immediately preceding the year of application as provided in Section 9(a).

The D-REC shall then evaluate the capability of the franchised DU or Ecozone Utility Enterprise to meet the requirement of the Applicant.

Section 10. Connection and Disconnection Protocol of DCCs.

The Philippine Electricity Market Corporation (PEMC) and the NGCP shall draft a protocol on the connection and disconnection of DCCs, consistent with DOE Department Circular Nos. DC2010-05-0006 and DC 2010-08-0010.

Section 11. Other Provisions.

These rules shall be amended, replaced or repealed in due time as may be deemed necessary by the DOE to rationalize availment by Electricity End-user or Ecozone Enterprise of Direct Connection and as an electric power industry move toward an increasingly competitive industry structure.

Section 12. Effectivity. This Circular shall take effect after fifteen (15) days upon its publication in two (2) newspapers of general circulation.

All previous pertinent orders, resolutions or memorandum circulars inconsistent herewith are hereby amended or repealed accordingly.

Issued at Energy Center, Rizal Drive, Bonifacio Global City, Taguig City on _____2018.

ALFONSO G. CUSI
Secretary