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| **DOE’s Proposed Provision** | **Comment** | **Proposed Wordings** |
| **PRESCRIBING REVISED GUIDELINES FOR**  **QUALIFIED THIRD PARTY** |  |  |
| **WHEREAS,** Section 2(a) of Republic Act No. 9136 or, the “Electric Power Industry Reform Act of 2001” (EPIRA), declared the policy of the State to ensure and accelerate the total electrification of the country; |  |  |
| **WHEREAS,** Section 23 of the EPIRA states that the Distribution Utilities (DUs) shall provide universal service within their franchise area, over a reasonable time from the requirement thereof, including Unviable Areas, as part of their social obligation, in a manner that shall sustain the economic viability of the utility |  |  |
| **WHEREAS,** Section 59 of the EPIRA authorized the provision of electric services by alternative service providers also known as Qualified Third Parties (QTPs) in remote and Unviable Areas that the franchised DU is unable to service for any reason; |  |  |
| **WHEREAS,** pursuant to Rule 13 of the EPIRA-IRR, the DOE shall issue specific guidelines on how to encourage the inflow of private capital and the manner in which other parties, including DUs and QTPs, can participate in the projects set forth in the Missionary Electrification Development Plan (MEDP); |  |  |
| **WHEREAS,** in compliance with Rule 13 of the EPIRA-IRR, and Section 4 of Rule 14 of the EPIRA-IRR, the DOE issued Department Circular No. 2004-06-006 and Department Circular No. 2005-12-011 on 18 June 2004, and 12 December 2005, respectively, that prescribed the qualification criteria and guidelines for the participation of QTPs in the Unviable Areas; |  |  |
| **WHEREAS,** pursuant to Section 4 of Rule 14 of the EPIRA-IRR, the DOE shall set the criteria to determine the qualifications of third party entities that may participate in providing electricity to remote and Unviable Areas; |  |  |
| **WHEREAS,** Section 12 of Rule 4 of the IRR of Republic Act No. 9513 or the “Renewable Energy Act of 2008” or “RE Act” mandates that NPC-SPUG or its successors-in-interest, DUs concerned, and/or QTPs in off-grid areas shall, in the performance of its mandates to provide missionary electrification, source a minimum percentage of its total annual generation from available renewable energy resources in the areas concerned as determined by DOE; |  |  |
| **WHEREAS,** Section 7 of Rule 2 of the DOE Department Circular No. 2018-08-0024 or the “RPS Off-Grid Rules” mandates all electric power industry participants in Off-Grid and Missionary Areas including the QTPs to generate and/or procure, supply and subsequently maintain a minimum percentage of RE share in their energy portfolio to meet the minimum RE requirement in their area which shall be consistent with the Optimal Supply Mix prescribed in the MEDP; |  |  |
| **WHEREAS,** in order to meet the total electrification target of the Government, there is a need to update and revise the existing guidelines on the participation of QTPs to provide a policy and regulatory environment that is more conducive to the participation of private sector; |  |  |
| **WHEREAS,** the DOE conducted public consultations with stakeholders in NCR, Luzon, Visayas and Mindanao including focused group discussions with the attached agencies to discuss the proposed amendment to the DOE QTP Circulars; |  |  |
| **WHEREFORE,** the DOE hereby promulgates the following guidelines and procedures for the qualification and participation of QTPs in Unviable Areas. |  |  |
| **Section 2. Declaration of Policies.**  It is hereby declared the policy of the DOE that: |  |  |
| 1. All DUs shall endeavour to provide electricity service to all households within their respective franchise areas, including remote and Unviable Areas, in an efficient and sustainable manner consistent with their respective franchises. |  |  |
| 1. Unviable Areas may be transferred to another DU, if any is available, which will provide the service, subject to approval by Energy Regulatory Commission (ERC). |  |  |
| 1. All Unviable Areas, which the DU cannot serve for whatever reason are eligible for support under the Government’s missionary electrification program and are declared open for participation by QTPs. |  |  |
| 1. All QTPs shall adopt the least-cost and most efficient technology options in serving Unviable Areas. Towards this end, preference shall be given to persons or entities that can offer the least-cost technologies with due consideration to RE resources, if available in the area. |  |  |
| 1. The NPC-SPUG shall continue to provide power generation and its associated power delivery systems in unviable areas that are not taken by the QTPs or any other service providers authorized by the ERC. |  |  |
| 1. To encourage investments and private sector participation in Unviable Areas, the DOE shall coordinate with ERC on the setting of the FCRR levels that may be applied in the Unviable Areas. |  |  |
| **Section 3. Scope**  This Circular shall apply to the provision of electricity services in Unviable Areas, which include Unserved and Underserved electricity customers, within the franchise areas of DUs. |  |  |
| **Section 4. Definition of Terms.** |  |  |
| 1. “***Authority to Operate”*** refers to the license to provide electricity services in unviable areas by QTPs. |  |  |
| 1. ***“Competitive Bidding for QTP”*** refers to the process wherein a Qualified Third Party (QTP) is selected through a transparent, open, and competitive bidding to secure, among other, the lowest long-term cost of power and services and the most advantageous implementation schedule. |  |  |
| 1. ***“Department of Energy”*** or ***“DOE”*** refers to the government agency created pursuant to Republic act No. 7638 whose expanded functions are provided in the EPIRA. |  |  |
| 1. ***“Distribution Utility”*** or ***“DU”*** as refers 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 EPIRA. |  |  |
| 1. ***“Electric Cooperative”*** or ***“EC”*** refers to an electric distribution utility organized and registered pursuant to Presidential Decree No. 269, as amended, Republic Act No. 9520 and other related laws. |  |  |
| 1. ***“Energy Regulatory Commission”*** or ***“ERC”*** refers to the independent, quasi-judicial regulatory agency created under Section 38 of EPIRA, which shall, among others, promote competition, encourage market development, have exclusive jurisdiction over all cases contesting rate, fees, fines and penalties, as well as fix and approve the Universal Charge imposed on all electricity consumers for purposes provided in the EPIRA. |  |  |
| 1. "***Full Cost Recovery Rate***" or "***FCRR***" refers to the rate, expressed in Peso per kilowatt-hour, that allows the recovery of the full efficient costs of sustaining the generation, distribution and supply of electricity in Unviable Areas served by QTPs, and other entities as may be authorized by the ERC to serve under the QTP Program. |  |  |
| 1. ***“Missionary Areas”*** refers to an off-grid area that is deemed eligible for missionary electrification subsidy by the DOE by reason that the provision of basic electricity service is not commercially viable. |  |  |
| 1. "***Missionary Electrification***" refers to provision of basic electricity service in Unviable Areas with the ultimate aim of bringing the operations in these areas to viability levels. |  |  |
| 1. "***Missionary Electrification Development Plan***" or "***MEDP***" refers to the five-(5) year plan of the DOE, updated annually, to implement the Government's missionary electrification program including those projects to be funded through the Universal Charge for Missionary Electrification. |  |  |
| 1. "***National Electrification Administration”*** or “***NEA***” refers to the Government agency created under Presidential Decree No. 269, as amended by Republic Act No. 10531 or the “National Electrification Administration (NEA) Reform Act of 2013”. |  |  |
| 1. ***“National Power Corporation - Small Power Utilities Group”*** or ***“NPC-SPUG”*** refers to the functional unit of the NPC created to pursue Missionary Electrification function. |  |  |
| 1. "***Qualified Third Party***" or "***QTP***" refers to the alternative electric service provider duly qualified and authorized by the ERC to serve Unviable Areas pursuant to Section 59 of the EPIRA and Rule 14 of the EPIRA-IRR, and as prescribed in this Circular for the purpose of attaining and accelerating the total electrification of the country. |  |  |
| 1. "***QTP Service Area***" refers to the unviable area waived by the DU where QTP shall provide missionary electrification service and characterized by an area which is not connected to the main grid and is without 24-hour electricity services. |  |  |
| 1. "***QTP Service Contract”*** **or *“QSC”*** refers to the agreement between the DOE and the QTP, defining the latter’s responsibilities in providing the missionary electrification in Unviable Areas. This Contractshall set the terms and conditions by which the QTP shall provide the service including the applicable performance and service standards, excluding the Full Cost Recovery Rate. |  |  |
| 1. "***Renewable Energy Resources***" refers to energy resources that do not have an upper limit on the total quantity to be used. Such resources are renewable on a regular basis and the renewable rate is rapid enough to consider available over an indefinite time. These include, among others, biomass, solar, wind, hydro and ocean energy. |  |  |
| 1. ***“Underserved Area”*** refers to an area currently served by individual solar home system, microgrids, or distribution utilities where electricity services are less than twenty-four (24) hours daily because of non-implementation of applied capital expense projects, non-compliance with the service parameters of the Philippine Distribution Code, or any other reason, resulting to an overall failing mark based on the latest annual technical evaluation of performance of distribution system in relation to ERC’s imposed targets. |  |  |
| 1. ***“Unserved Area”*** refers to an area with no electricity access, no distribution system lines, no home power systems, or no connection to any microgrid. |  |  |
| 1. “***Unviable Area”*** refers to a remote geographical area within the franchise area of a DU where the immediate extension of the distribution line is not feasible, as defined by Rule 4 (ssss) of the EPIRA-IRR. Areas that are currently served by the DUs but are deemed unviable on account of huge operating costs shall also mean Unviable areas as defined herein. For the purpose of this Circular, huge operating costs mean that the costs on the construction and the daily operations and maintenance of the facility, will affect the entire financial position of the DUs. |  |  |
| **Section 5. DOE.**  The DOE shall be responsible for the following: |  |  |
| 1. Determine and incorporate in the MEDP, the QTP projects for Unviable Areas including the Unserved and the Underserved areas. |  |  |
| 1. Declare unviable areas that are open for the QTP Program. |  |  |
| 1. Oversee the implementation by the DUs of the QTP Program, coordinate the related activities and closely monitor its progress. |  |  |
| 1. In the event that the DUs fail to conduct its Competitive Bidding for QTP within twenty (20) working days from the DOE’s declaration of unviable areas open for the QTP Program or from the direct nomination by the QTP Proponent, the DOE shall conduct the Competitive Bidding. |  |  |
| 1. Issue the eligibility requirements and the template of QSC containing its minimum provisions through its website within twenty (20) working days upon issuance of this Circular. |  |  |
| **Section 6. NEA.**  NEA shall have the following responsibilities: |  |  |
| 1. Evaluate and verify the areas submitted by ECs as remote and unviable and submit its recommendations to the DOE in accordance with this Circular not later than March 15 of each year. |  |  |
| 1. Assist DOE in monitoring the QTP Program, including but not limited to the household electrification in areas under the ECs. |  |  |
| 1. Oversee the conduct of Competitive Bidding by the ECs. |  |  |
| 1. Conduct appropriate information and education drive among ECs to allow private sector participation in the provision of electricity services within ECs franchise areas. |  |  |
| **Section 7. DUs.**  The DUs shall: |  |  |
| 1. Submit the Distribution Development Plan (DDP) together with the Total Electrification Master Plan, including the unviable areas. The DU pursuant to the directive to pursue the total electrification of their franchise areas shall prepare and submit its Comprehensive Total Electrification Master Plan and shall contain detailed inventory of all Unserved, Underserved and unviable areas within their franchise. |  |  |
| 1. Conduct the Competitive Bidding for the QTPs to serve the Unviable Areas within the timeline provided in this Circular. |  |  |
| 1. Endorse the QSC with the selected QTP to the DOE, in accordance with the template as provided in this Circular. |  |  |
| **Section 8. QTP Proponents.**  The QTP Proponents shall: |  |  |
| 1. Secure the necessary permits and licenses from the relevant government agencies. |  |  |
| 1. Comply with all provisions, including the financial, technical, environmental and other performance standards for the QTP including provision of the Service Contract entered into with the DOE. |  |  |
| **Section 9. QTPs.**  The QTPs shall: |  |  |
| 1. Operate and maintain properly its facilities to provide services in the QTP Service Area in an efficient and sustainable manner. |  |  |
| 1. Comply, as a mandated participant, with the RPS Off-Grid Rules. |  |  |
| 1. Submit quarterly reports to the DOE, NEA and ERC on its financial, technical, and operational performance pursuant to Rule 14 of the EPIRA IRR. The report shall include, among others but not limited to the following: household connections and the number of served connections, as well as relevant operational data such as but not limited to energy generation, energy sales, system losses, collection efficiency and development plans and programs for the service area. |  |  |
| The QTP may apply for an electricity distribution franchise. |  |  |
| **Section 10. NPC-SPUG.**  The NPC-SPUG shall: |  |  |
| 1. Continue to perform missionary electrification by providing power generation and its associated power delivery systems. |  |  |
| 1. Provide the electricity service in areas that are not taken by the QTPs. |  |  |
| The NPC-SPUG may assign the provision of electricity services in the areas under Section 10 (a) and (b) of this Circular thru Competitive Bidding. |  |  |
| **Section 11. Declaration of Unviable Areas.**  The DOE hereby adopts the following procedures in the declaration of Unviable Areas: |  |  |
| 1. Consistent with Section 23 of Republic Act 9136, Section 4 (p) of Rule 7, and other DOE Circulars, the DUs shall include the status of unviable areas in the preparation and submission to DOE, its annual DDP not later than 15th of March of every year for integration to the Power Development Plan (PDP) and Philippine Energy Plan (PEP). For ECs, the preparation and submission to the DOE shall require the verification by the NEA. |  |  |
| 1. All Unviable Areas, which the DU cannot serve for any reason and shall be open for participation by QTPs. |  |  |
| 1. The DOE shall consolidate and make available to the public the list of Unviable Areas within thirty (30) working days upon finalization and posting of the Comprehensive Total Electrification Master Plan. |  |  |
| 1. The DOE shall declare and post in the DOE website the list of Unviable Areas. |  |  |
| **Section 12. Preparation for the conduct of Competitive Bidding.** |  |  |
| 1. The Bid Documents and Terms of Reference (TOR) shall be submitted by the private DU to the DOE within twenty (20) working days after the date of posting of the Unviable Areas. |  |  |
| The ECs, within twenty (20) working days after the date of posting of the Unviable Areas, shall submit the Bid Documents and TOR to the NEA for review and evaluation. Thereafter, the NEA shall endorse the Bid Documents and TOR to the DOE within seven (7) working days. |  |  |
| The DOE, following the existing standards and in accordance with the principles of this Circular, shall approve or disapprove the Bid Documents and the TOR within twenty (20) working days upon receipt of the same from the private DUs and the NEA. |  |  |
| 1. The TOR shall include the following:    1. Invitation to bid;    2. Bidding schedule;    3. Load Profile;    4. Demographic profile of the unviable area including the existing electricity provider;    5. Potential renewable energy resources;    6. Target date of project commissioning;    7. Plan for compliance with the Philippine Small Grid Guidelines particularly N-1;    8. Plan for compliance with the Renewable Portfolio Standard Guidelines of Off-grid Areas;    9. Draft QSC in accordance with the template herein provided. |  |  |
| **Section 13. Bidding.** |  |  |
| 1. The invitation to bid shall be:    1. Advertised by the concerned DU at least once in a newspaper of general circulation and local newspaper;    2. Published continuously in the website of the DOE, NEA and the concerned DU for fifteen (15) consecutive calendar days;    3. Posted at any conspicuous places within the concerned EC’s franchise area for fifteen (15) consecutive calendar days upon publication. |  |  |
| In case the DU fails to conduct the Competitive Bidding for QTP within twenty (20) working days from the declaration of the DOE of the Unviable Areas, the DOE shall conduct the Competitive Bidding. |  |  |
| 1. A QTP proponent shall submit its bid proposal on or before the date indicated in the Invitation to Bid, which must not be later than sixty (60) working days from the publication and posting of the Invitation to Bid. |  |  |
| A QTP proponent may submit a nomination for QTP operation in its area of interest not covered by a Competitive Bidding process, which shall be subjected to Price Challenge. |  |  |
| 1. A bid that fails to meet all requirements in the Invitation to Bid shall not be considered. The first part of the bid shall undergo a pass/fail criteria based on financial, technical and legal qualifications, while the second part shall consider the lowest price. |  |  |
| 1. The Competitive Bidding for QTP is deemed successful when it receives at least one (1) qualified bid. Thereafter, the qualified QTP proponent shall be subjected to a post-qualification process within ten (10) working days. |  |  |
| 1. The DU or the DOE shall conclude the selection of the QTP within forty (40) working days and issue the Notice of Award. |  |  |
| 1. DUs shall inform the DOE, and in the case of the ECs, the NEA and the DOE, on the result of the bidding conducted. In case of two (2) failed biddings, the DOE shall endorse to the NPC-SPUG the unviable areas. |  |  |
| 1. The DU shall submit to the DOE, and in the case of the ECs, the NEA and the DOE, all updates on the Competitive Bidding for QTP in unviable areas, which shall be posted in the DOE website. |  |  |
| 1. The DOE and the selected QTP shall execute the QSC within ten (10) working days after the conduct of successful bidding, in accordance with the template provided herein. |  |  |
| **Section 14. Filing with the ERC.**  The QTP shall file an application with the ERC for the Authority to Operate which shall include the QTP FCRR. |  |  |
| **Section 15. Tariff and FCRR Determination.**  The ERC shall determine the appropriate tariff rate for all customer classes to be served by the QTP and its FCRR. |  |  |
| **Section 16. Subsidy.**  The provision of financial support to eligible consumers in QTP Service Areas shall be in accordance with any policy and program on rationalization of subsidies as provided for in Rule 10 of Department Circular No. DC2019-01-0001, otherwise known as the “Prescribing Omnibus Guidelines on Enhancing Off-Grid Power Development and Operation”. |  |  |
| **Section 17. Transitory Provision.**  This Circular shall be applied prospectively and shall not cover all pending QTP applications. |  |  |
| **Section 18. Regulatory Support.**  The ERC shall provide the necessary regulations to support achievement of a harmonized and effective implementation of this Circular and to ensure that the QTP is providing adequate and reliable electricity service and performing in accordance with the standards set in the QSC for the Unviable Area. |  |  |
| **Section 19. Repealing Clause.**  Department Circulars DC 2004-06-006 and DC 2005-12-011 are hereby amended or repealed accordingly. |  |  |
| **Section 20. Separability Clause.**   1. If for any reason, any provision of this instrument/circular is declared unconstitutional or invalid, the other parts or provisions hereof which are not affected thereby shall be continue to be in full force and effect. 2. The implementation of this Circular shall not exempt the parties from existing government rules and regulations, and applicable government agency circulars or issuances. |  |  |
| **Section 21. Effectivity.**  This Circular shall take effect after fifteen (15) days after publication in two (2) newspapers of general circulation and certified true copies thereof shall be filed with the University of the Philippines Law Center. |  |  |