



Republic of the Philippines
DEPARTMENT OF ENERGY

DEPARTMENT CIRCULAR NO. DC 2012-05-0005 ^m

**PRESCRIBING THE GENERAL POLICIES FOR THE IMPLEMENTATION
OF THE RETAIL COMPETITION AND OPEN ACCESS**

WHEREAS, Section 2 (c) of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), declares that it is the policy of the State "[t]o 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";

WHEREAS, Section 37 of the EPIRA provides that the Department of Energy (DOE) is mandated to, among others, supervise the restructuring of the electric power industry, formulate rules and regulations as may be necessary to implement the objectives of the EPIRA, and exercise such other powers as may be necessary or incidental to attain the objectives of the EPIRA;

WHEREAS, Section 31 of the EPIRA provides that the Retail Competition and Open Access (RCOA) shall be implemented not later than three (3) years upon the effectivity of the EPIRA subject to the fulfilment of the five pre-conditions, to wit:

1. Establishment of the wholesale electricity spot market;
2. Approval of unbundled transmission and distribution wheeling charges;
3. Initial implementation of the cross subsidy removal scheme;
4. Privatization of at least seventy (70%) percent of the total capacity of generating assets of National Power Corporation (NPC) in Luzon and Visayas; and
5. 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 Independent Power Producer (IPP) Administrators.

WHEREAS, the above preconditions have been fulfilled as certified by the Energy Regulatory Commission (ERC) in ERC Case No. 2011-004-RM dated 06 June 2011;

WHEREAS, Section 31 further provides that upon the initial implementation of RCOA, the ERC shall allow all electricity end-users with a monthly average peak demand of at least one megawatt (1 MW) for the preceding twelve (12) months to be the Contestable Market. Two (2) years thereafter, the threshold level for the Contestable Market shall be reduced to seven hundred fifty kilowatts (750 kW), where at this level, Aggregators shall be allowed to supply electricity to end-users whose aggregate demand within a contiguous area is at least seven hundred fifty kilowatts (750 kW). Subsequently and every year thereafter, the ERC shall evaluate the performance of the market. On the basis of such evaluation, it shall gradually reduce threshold level until it reaches the household demand level;

WHEREAS, all Generating Companies, Distribution Utilities, Suppliers, Bulk Consumers/end-users and other similar entities authorized by the ERC shall be eligible to become members of the Wholesale Electricity Spot Market (WESM), subject to the compliance with the membership criteria set forth under the WESM Rules;

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," to ensure that the appropriate conditions for the efficient transition to RCOA implementation are in place;

WHEREAS, one of the functions of the RCOA Steering Committee is to "review existing rules and procedures on RCOA, develop and recommend policies to implement systems and processes needed to govern the transaction therein";

WHEREAS, after several deliberations and a careful study, the RCOA Steering Committee recommended the following policies:

1. to integrate the RCOA in the WESM; and
2. to define specific policies to operationalize the RCOA concepts such as customer empowerment or customer choice, the business of supply of electricity, supplier, supplier of last resort, and membership in the WESM, among others.

NOW, THEREFORE, for and in consideration of the foregoing premises, the DOE, in the exercise of its supervisory functions in the implementation of the EPIRA, hereby declares the following:

Section 1. Declaration of Policy. Consistent with the EPIRA, it is hereby declared that the transition to RCOA should promote genuine competition, greater efficiency, customer choice, and the true cost of electricity.

For this purpose, the power of choice of supplier as envisioned in the EPIRA is hereby provided to Contestable Customers (CCs) subject to the rules and regulations herein discussed as well as to subsequent rules and regulations as may be promulgated by the DOE.

Section 2. Definition of Terms. Unless otherwise provided, the terms used in this circular shall have the same meaning as defined in the EPIRA and its Implementing Rules and Regulations (IRR).

- a) "*Contestable Customer*" refers to the electricity end-user who is a part of the Contestable Market.
- b) "*Contestable Market*" refers to the electricity end-users who have a choice of a supplier of electricity, as may be determined by the ERC in accordance with EPIRA.
- c) "*Captive Market*" refers to the electricity end-users who do not have a choice of a supplier of electricity, as may be determined by the ERC in accordance with EPIRA.
- d) "*Central Registration Body*" refers to the entity assigned to undertake the development and management of the required systems and processes and information technology system that shall be capable of handling customer switching and information exchange among retail electricity market participants, as well as the settlement of their transactions in the WESM. The Philippine Electricity Market Corporation (PEMC) was designated as the Central Registration Body (CRB) through DOE Department Circular No. DC 2012-02-0002 dated 24 February 2012 and ERC Resolution No. 15, Series of 2006.
- e) "*Certificate of Eligibility*" refers to the certificate issued by the ERC to a CC to be recognized as such.
- 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 (PSALM) or NPC through Subtransmission Assets.
- g) "*Last Resort Supply Event*" refers to an event when a supplier of a CC fails to provide electricity for reasons caused by a default of the Supplier, including but not limited to: (i) cessation of its operation; (ii) revocation of its license; (iii) non-payment for transmission and distribution services; and (iv)

suspension of its membership in the WESM due to non-compliance to WESM Rules.

- h) *"Open Access Date"* refers to the date determined by the ERC that marks the commencement of the operations of RCOA in the grid/s specified.
- i) *"Supplier"* refers to any person or entity authorized by the ERC to sell, broker, market or aggregate electricity to the end-users.
- j) *"Structural Unbundling"* refers to the separation of different activities through the creation of separate divisions or departments within a single company or, at the option of any Electric Power Industry Participant, a separation into different juridical entities, with a clear separation of accounts between regulated and non-regulated business activities.
- k) *"Functional Unbundling"* refers to the separation of functions into different components, i.e., separation of the wire from the supply functions of a Distribution Utility or separation of the products from the sale of electricity by a Generation Company.

Section 3. RCOA Integration into the WESM. Consistent with the definition of Open Access, CCs are hereby allowed the use of the transmission and distribution systems and shall therefore be integrated into the WESM. For this purpose, all CCs shall become members of the WESM as Trading Participant, directly or indirectly, as herein provided.

Section 4. Customer's Choice. Upon Open Access Date, a CC shall be allowed to choose where to source its electricity. For this purpose, a CC can source from a Generation Company, a Supplier, an affiliate of a DU which has constituted itself as a Supplier, or the Supply Business of a Distribution Utility (DU) within its franchise area.

- 4.1. All CCs shall only deal with a supplier of electricity duly licensed by the ERC. This includes DUs that have structurally or functionally unbundled their business into Wire and Supply businesses, duly approved by the ERC.
- 4.2. The ERC shall certify all eligible CCs at least six (6) months prior to the initial implementation of the RCOA. For this purpose, all DUs are hereby mandated to provide DOE, ERC and PEMC the list of CCs including pertinent information, such as but not limited to load profile for the last twelve (12) months, name of customers, among others.

- 4.3. The PEMC is hereby directed to register all eligible CCs certified by the ERC within three (3) months prior to Open Access Date.

Section 5. Supplier of Electricity. All Suppliers duly licensed by the ERC shall register with the PEMC as a WESM direct member Trading Participant. Further, all Suppliers shall provide PEMC with its offer of terms and conditions to the CCs for publication in the PEMC website.

Section 6. Supply Contract. For the initial implementation of the RCOA, Supply Contracts entered into by CCs shall have a minimum term of one (1) year following the WESM billing cycle.

The CCs shall provide the PEMC, the ERC and the DOE copies of the Supply Contracts for reference in the development of rules, guidelines and policies necessary for the effective implementation of RCOA.

Section 7. Directly Connected Customers.

- 7.1. From the effectivity of this Circular, existing Directly Connected Customers (DCCs) must register as a Customer, either as a Direct or Indirect Trading Participant in the WESM.
- 7.2. Upon expiration of the Power Supply Contracts, all DCCs that meet the demand threshold shall be treated as CCs and shall be subject to all the rules and regulations on RCOA.
- 7.3. In case a DCC does not qualify as a CC, it may seek for ERC's approval to be considered as a CC.

Section 8. Embedded Generation.

- 8.1. All embedded generators shall register with PEMC as non-scheduled Generation Company.
- 8.2. Subject to the most beneficial arrangement, the policy for embedded generation shall be developed by the DOE in coordination with relevant stakeholders.

Section 9. Metering.

- 9.1. Except for the DCCs connected to the system operated by NGCP, the DU shall be the Metering Service Provider (MSP) and owner of all billing and the associated metering equipment prior to the implementation of competitive metering services.

- 9.2. The metering requirement for the CC shall be compliant with the WESM metering standards.

Section 10. Supplier of Last Resort. The franchised DU shall act as the Supplier of Last Resort (SOLR) in instances of Last Resort Supply Event. To cover the requirement of the Last Resort Supply Event, the DU-SOLR shall source electricity to be supplied to the CC through WESM or any available supply in the market.

Section 11. Disconnection. In consultation with the various stakeholders, the Disconnection Policy promulgated by the DOE shall be reviewed and amended to reflect the necessary changes considering the integration of RCOA to WESM. The policy shall apply the concept of cross-default disconnection to all DUs, Suppliers and CCs.

Section 12. Customer Switching. CCs shall only be allowed to switch to another supplier every six (6) months from the implementation of the RCOA or upon the entry of the CC into RCOA and shall be made only at the end of the billing period.

Formal Advise/Notification to PEMC of the CCs' intent to exercise the switching shall be done at least one (1) month prior to switching.

Section 13. Protection for Captive Customers.

- 13.1. Consistent with its mandate under the EPIRA, DUs shall secure Supply Contracts in the least cost manner for its Captive Customers.
- 13.2. DU may continue to provide electricity services to CCs within its franchise area as a local Supplier, a separate entity.

Section 14. Billing and Settlement for Contestable Customers. As far as practicable, a single billing policy shall be adopted with the Supplier as the billing entity in-charge of issuing the bills to the CC which reflects all applicable charges. Single billing policy is adopted to minimize impact to current billing arrangements and avoid possible double charging and multiple layers of attendant administrative costs.

Section 15. Regulatory Support on RCOA Policies. The ERC shall ensure the provision of support in the regulatory requirements consistent with the policies set forth under this Circular and in accordance with existing laws and procedures.

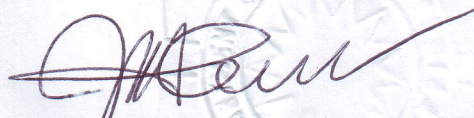
Section 16. Responsibilities of Philippine Electricity Market Corporation. In accordance with the policies set forth in this Circular, the PEMC shall perform its responsibilities and obligations under DC 2012-02-0002 designating it as the CRB.

Section 17. 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 18. Separability Clause. If for any reason, any section or provisions of this Circular is declared unconstitutional or invalid, such parts not affected shall remain in full force and effect.

Section 19. Effectivity. This Circular shall take into effect immediately following its publication in at least two (2) newspapers of general circulation and shall remain in effect until otherwise revoked.

Issued this 9th day of May 2012 in Fort Bonifacio, Taguig City, Metro Manila.


JOSE RENE D. ALMENDRAS

Secretary



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DEPARTMENT OF ENERGY

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