



Republic of the Philippines
DEPARTMENT OF ENERGY

DEPARTMENT CIRCULAR NO. DC 2017-12-0013 *JK*

**PROVIDING POLICIES ON THE IMPLEMENTATION OF RETAIL COMPETITION
AND OPEN ACCESS (RCOA) FOR CONTESTABLE CUSTOMERS IN THE
PHILIPPINES ELECTRIC POWER INDUSTRY**

WHEREAS, Section 2 of the Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001 (EPIRA)” declared as the policies of the State the following among others, to wit:

- (a) Ensure the quality, reliability, security and affordability of the supply of electric power;
- (b) 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;
- (c) To enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and distribution sectors; and
- (d) Protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power.

WHEREAS, Section 37 of the EPIRA mandates the Department of Energy (DOE) to, among others, supervise the restructuring of the electric power industry; facilitate and encourage reforms in the structure and operations of distribution utilities for greater efficiency and lower costs; and exercise such other powers as may be necessary or incidental to attain the objectives of the EPIRA;

WHEREAS, as one of the fundamental reforms in the electric industry, Section 31 of the EPIRA mandates the establishment of RCOA which shall be implemented as follows:

- a) Upon the initial implementation of open access, the Energy Regulatory Commission (ERC) shall allow all electricity End-users with a monthly average peak demand of at least one (1) megawatt (MW) for the preceding twelve (12) months to be the contestable market;
- b) Two (2) years thereafter, the threshold level for the contestable market shall be reduced to 750 kilowatts (kW). At this level, Aggregators shall be allowed to supply electricity to end-users whose aggregate demand within a contiguous area is a least 750 kW; and
- c) Subsequently and every year thereafter, the ERC shall evaluate the performance of the market. On the basis of such evaluation, it shall gradually reduce the threshold level until it reaches the household demand level.

WHEREAS, on 21 February 2017, the Supreme Court of the Philippines, acting on the Petition filed by the Philippine Chamber of Commerce and Industry, San Beda College of Alabang, Inc., Ateneo de Manila University, and Riverbanks Development Corporation, issued a Temporary Restraining Order (TRO), enjoining the DOE and ERC from implementing DOE Department Circular DC2015-06-0010 and ERC Resolution

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Nos. 05, 10, 11 and 28, all Series of 2016, which are the rules and regulations implementing the RCOA;

WHEREAS, the DOE and ERC, thru the Office of the Solicitor General, filed a Motion for Reconsideration (MR) before the Supreme Court and prayed to lift the TRO above-mentioned, as well as an Omnibus Motion seeking clarification on the scope and coverage of the TRO, which Motions however, have so far remained unresolved;

WHEREAS, there is a compelling need for the DOE to provide immediate guidance to affected power industry entities in view of the aforementioned cases as various requests for clarification on the implications and effects of the TRO on the pre-existing RCOA processes were received from many of these entities;

WHEREAS, the issuance of the herein Circular is necessary to address policy and regulatory gaps resulting from and consistent with the above-mentioned cases and TRO;

NOW, THEREFORE, for and in consideration of the foregoing, the DOE hereby issues, adopts and promulgates the following policies for the continuous development and implementation of RCOA as embodied in the EPIRA and full attainment of the objectives of the law:

Section 1. Voluntary Participation of Contestable Customers (CC) with Average Peak Demand of 750 kW and above in the Retail Market. Upon the effectivity of this Circular, all CCs with a monthly average peak demand of 750 kW and above, for the preceding 12 months, may participate in the Retail Market. Participation in the Retail Market shall require a Retail Supply Contract (RSC) between a CC and Retail Electricity Supplier (RES) and registration of the RSC in the WESM.

Section 2. Voluntary Participation of Contestable Customers with Average Peak Demand of 500 kW to 749 kW in the Retail Market. By 26 June 2018 or on an earlier date specified by the ERC, all eligible electricity End-users to become CCs with a monthly average peak demand of 500 kW to 749 kW for the preceding 12 months may voluntarily participate in the Retail Market.

Section 3. Voluntary Demand Aggregation. By 26 December 2018 or on an earlier date specified by the ERC, electricity End-users within a contiguous area whose aggregate average peak demand is not less than 500 kW for the preceding 12-month period may aggregate their demand to be part of the Contestable Market and may voluntarily enter into RSC with the Aggregators. Aggregators as defined in the EPIRA, refers to a person or entity, engaged in consolidating electric power demand of End-Users in the Contestable market, for the purpose of purchasing and reselling electricity on a group basis.

Section 4. Regulatory Support. For the proper implementation of the policies set herein, the ERC is hereby enjoined to promulgate the supporting guidelines, including but not limited to, the licensing of the RES and Retail Aggregation: *Provided*, That such guidelines shall specify sanctions and penalties that may be imposed to electric power industry participants for violations of the promulgated policies and guidelines.

Section 5. Responsibilities of Distribution Utilities. For the effective implementation of the policies embodied in this Circular, the Distribution Utilities shall:

- a. Submit to the DOE, the Central Registration Body (CRB) and the ERC, within 30 days from the effectivity of this Circular, the number and list of

- all Electricity End-users with an average demand of 500 kW and above for the preceding 12 month-period, located within their franchise area;
- b. Ensure the dissemination of the policies stated herein to all the affected customers within their franchise area; and
 - c. Continue to allow non-discriminatory access to its distribution network and provide transparent metering services to all Contestable Customers within their franchise area;
 - d. Provide, as may be requested by an electricity End-user, its electricity demand for the preceding 12 months, for purposes of participating in the retail electricity market;
 - e. Ensure compliance to the WESM Rules, Retail Rules, relevant Market Manual, applicable ERC Resolutions and other issuances for the effective implementation of RCOA.

Section 6. Responsibilities of the Philippine Electricity Market Corporation (PEMC). To ensure the entry of Contestable Customers in the RCOA, PEMC shall recommend the appropriate changes to existing systems, processes and guidelines, including but not limited to, the WESM Rules, Retail Rules and Market Manuals. PEMC shall likewise collaborate with the DOE, in the conduct information, education and communication campaign training for the concerned customers.

Section 7. Review and Implementation of RCOA Until It Reaches the Household Demand Level. The DOE and the ERC shall annually review and issue policies, rules and regulations to achieve the full implementation of RCOA until it reaches the household demand level.

Section 8. 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 9. Repealing Clause. Section 4 of DC2012-05-0005, Section 7 of DC2012-11-0010, Section 1, Section 2 of DOE Circular No. DC2015-06-0010 and DOE Circular No. DC2016-04-0004 are hereby repealed or modified accordingly. 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 10. Effectivity. This Circular shall take effect fifteen (15) days following its complete publication in at least two (2) newspapers of general circulation.

Issued on _____ at Energy Center, Bonifacio Global City, Taguig City.


ALFONSO G. CUSI
Secretary



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