



Republic of the Philippines
DEPARTMENT OF ENERGY

DEPARTMENT CIRCULAR NO. DC2017-12-0014

**PROVIDING POLICIES ON THE IMPLEMENTATION OF RETAIL COMPETITION
AND OPEN ACCESS (RCOA) FOR RETAIL ELECTRICITY SUPPLIERS (RES) IN
THE PHILIPPINE 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 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 this Circular is necessary to address policy and regulatory gaps resulting from 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. Retail Electricity Suppliers. Retail Electricity Suppliers (RES) are entities licensed by the Energy Regulatory Commission (ERC) to supply electricity to End-users in Contestable Market.

Section 2. Licensing of Retail Electricity Suppliers. Subject to the qualifications set by the ERC in accordance with the EPIRA and its implementing rules, any of the following entities may be considered to become a RES:

- a. A Generation Company or Affiliate thereof;
- b. An Affiliate of a Distribution Utility;
- c. Retail Aggregators;
- d. An IPP Administrator; and
- e. Any Prospective Generation Company. A Prospective Generation Company shall refer to any person or entity which has a power generation project that is undergoing construction or that is planned to be constructed which project is included in the DOE's Power Development Plan (PDP) as committed power project;
- f. Any other Person authorized by the ERC to engage in the selling, brokering or marketing of electricity to the Contestable Market, consistent with the EPIRA and its implementing rules and regulations.

In order to serve the Contestable Customers, individually or as an aggregate demand, these entities shall secure a RES license from the ERC.

Consistent with the EPIRA and its implementing rules and regulations and subject to further qualifications of the ERC, any other persons authorized by the ERC to engage in the selling, brokering or marketing of electricity to the Contestable Customer shall likewise secure a license as RES.

Section 3. Unbundling of the Generation, Distribution and/or Supply. A generation and distribution company engaging in supply business shall functionally and structurally unbundle its businesses, as provided for in RA 9136 and Rule 10 of the rules and regulations to implement Republic Act No. 9136.

Section 4. Distribution Utilities as Local RES. Distribution Utilities (DU) may provide electricity services to CCs within its franchise area as a Local RES, upon authorization from the ERC; Provided, that the DU shall comply with the unbundling provisions of the RA 9136 and Rule 10 of the rules and regulations to implement Republic Act No. 9136.

Section 5. Regulatory Support. For 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 6. 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 7. Repealing Clause. Section 5 (h) of DOE Circular No. DC2015-06-0010 is 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 8. 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



NOV 29 2017