



DEC 03 2021

Regulatory Advisory No. 2021-003

TO : ALL ELECTRIC COOPERATIVES

SUBJECT : Contract Term Provision for the Power Supply Agreement (PSA) in the EC's Terms of Reference (TOR) for the Competitive Selection Process (CSP)

Relative to the inquiry of the National Electrification Administration (NEA) to the Department of Energy (DOE), dated 10 August 2021, (**Attachment 1**), particularly, on the Contract Term Provision of the PSA as indicated in the Terms of Reference (TOR) for the procurement of power supply by the Electric Cooperatives (ECs) that extends beyond the expiration of the ECs Franchise Registration, the DOE posed its position comprehensively, dated 27 September 2021, for our guidance, (**Attachment 2**), as summarized to wit:

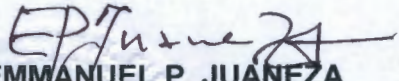
1. The DOE Department Circular No. DC2018-02-0003 (CSP Policy) is silent with respect to the extent of the cooperation period should a Distribution Utility (DU) engage with a power supplier. However, we are guided by the State Policy under Section 2 of the Republic Act No. 9136 or known as Electric Power Industry Reform Act (EPIRA) and Article 1306 of the New Civil Code on the procurement of PSAs and entering into a contract agreement with another party.
2. With this, a DU's franchise, which is the law authorizing the DU to operate electricity services over an area, is deemed part of the draft PSA. The parties to the PSA are bound not only to the terms and conditions therein but likewise to the franchise of the DU – including the period of effectivity of the legislative grant – without prejudice to the parties' liberty to insert provisions they deem fit and necessary. In the end, both parties are responsible for the consequences resulting from the terms and conditions of the PSA.
3. Based on the foregoing, the DOE posits that a DU may procure PSAs with a term beyond its franchise registration. Should the DU endeavor this, the PSA and the TOR should explicitly and clearly contain - in case of the non-renewal of the franchise - the treatment of the PSA and the responsibilities of the contracting parties during the transition, the procedure for the assignment to or amendment of the PSA with the assuming DU, and all other safeguards to avoid any adverse effects on the rate and to maintain the provision of electric power supply in the area. This is in addition to the duties and responsibilities that the Congress may impose upon the assuming DU, as reflected in its franchise, as to PSAs of the supposed previous DU. This feature of the PSA must be presented and discussed with the prospective bidders during the conduct of CSP for their appropriate assessment and appreciation.

4. There is no bar for a DU to procure PSAs effective only within its franchise term, as long as it is acquired within the confines of the CSP Policy and the rate is concluded to be the most economical, competitive and practical despite such short term.

For further clarification, you may contact the NEA-RAO at telephone number (02) 8929-1009 local 180 and/or through e-mail at raonea.gov.ph@gmail.com.

We look forward to your usual cooperation and compliance.

Thank you.


EMMANUEL P. JUANEZA
Administrator *RPA*





10 August 2021

MR. ALFONSO G. CUSI
Secretary
Department of Energy
Energy Center, Rizal Drive
Bonifacio Global City, Taguig City

THROUGH: MR. EMMANUEL P. JUANEZA
Undersecretary

Dear Secretary Cusi:

Greetings from the National Electrification Administration (NEA)!

We are writing in relation to the contract duration of power supply agreements (PSAs) as indicated in the Terms of Reference (TOR) in the procurement of power supply by electric cooperatives (ECs). This concern arose from our observation in our procedural review of TORs where the contract duration goes beyond the life of the EC's franchise.

The position of the Department of Energy (DOE) on this matter is that the contract duration should not go beyond the expiration date of the EC's Certificate of Registration of Franchise because there is no assurance of the franchise being renewed after its expiration date.

While we respect the position of the DOE, we cannot lose sight of an imminent predicament that needs to be immediately addressed - the impact on the rates of electricity resulting from shortened contract periods. This will entail a higher cost for electric rates resulting from shorter contract periods close to or contemporaneous with franchise expiration dates. As a result of this, the Capital Recovery Fee (CRF), as well as the Fixed Operating Maintenance Cost (FOMC), will significantly increase to the detriment of the member-consumer-owners (MCOs) unless a winning bidder's power plant already exists, in which case the issue on high cost of power will be greatly reduced.

Other concerns such as the implementation of and compliance with the Renewable Energy Portfolio Standards (RPS) and the entry of embedded generation facilities should also be taken into consideration in determining the duration of the contract as these could significantly aid in lowering the cost of power. After all, the objective of the Competitive Selection Process (CSP) in power supply procurement is to ensure continuous and reliable power supply in the least-cost manner.

We are therefore humbly seeking clarification and guidance from your good Office on the best course of action to take to ensure that harmonizing franchise expirations with shortened contract durations would have no adverse effect on rates and continuity of power supply in the franchise area. Your advice will be our guiding principle in our review of the ECs' submitted documents in similar circumstances that may arise in the future.

Thank you for your unrelenting support to the rural electrification program.

Very truly yours,


EDGARDO R. MASONGSONG
Administrator





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

27 September 2021

DEPUTY ADMINISTRATOR ROSSAN SJ. ROSERO-LEE

Officer-in-Charge
National Electrification Administration
57 NIA Road, Government Center
Diliman, Quezon City 1100

Dear Deputy Administrator Rosero-Lee:

This refers to the National Electrification Administration (NEA) letter to the Department of Energy (DOE) dated 10 August 2021, received by the Electric Power Industry Management Bureau through electronic mail on 17 August 2021, requesting clarification and guidance on the contract term provision for the Power Supply Agreement (PSA) in the Electric Cooperatives Terms of Reference (TOR) for the Competitive Selection Process (CSP) of power supply that extends beyond the expiration of the ECs Franchise Registration.

The DOE Department Circular No. DC2018-02-0003¹ (CSP Policy) is silent with respect to the extent of the cooperation period should a Distribution Utility (DU) engage with a power supplier. However, we are guided by the State Policy under Section 2² of the Republic Act No. 9136 or known as Electric Power Industry Reform Act (EPIRA) and Article 1306 of the New Civil Code on the procurement of PSAs and entering into a contract agreement with another party.

With this, a DU's franchise, which is the law authorizing the DU to operate electricity services over an area, is deemed part of the draft PSA. The parties to the PSA are bound not only to the terms and conditions therein but likewise to the franchise of the DU – including the period of effectivity of the legislative grant – without prejudice to the parties' liberty to insert provisions they deem fit and necessary. In the end, both parties are responsible for the consequences resulting from the terms and conditions of the PSA.

Based on the foregoing, the DOE posits that a DU may procure PSAs with a term beyond its franchise registration. Should the DU endeavor this, the PSA and the TOR should explicitly and clearly contain – in case of the non-renewal of the franchise – the treatment of the PSA and the responsibilities of the contracting parties during the transition, the procedure for the assignment to or amendment of the PSA with the assuming DU, and all other safeguards to avoid any adverse effects on the rate and to

¹ Entitled "Adopting And Prescribing The Policy For The Competitive Selection Process In The Procurement By The Distribution Utilities Of Power Supply Agreement For The Captive Market"

² "Section 2 of the EPIRA declares, among others, that is 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; (iii) enhance the inflow or private capital and broaden the ownership base of the power generation, transmission and distribution sectors; (iv) protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power; and (v) encourage the efficient use of energy and other modalities of demand-side management."

maintain the provision of electric power supply in the area. This is in addition to the duties and responsibilities that the Congress may impose upon the assuming DU, as reflected in its franchise, as to PSAs of the supposed previous DU. This feature of the PSA must be presented and discussed with the prospective bidders during the conduct of CSP for their appropriate assessment and appreciation.

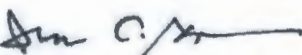
Even more, there is no bar for a DU to procure PSAs effective only within its franchise term, as long as it is acquired within the confines of the CSP Policy and the rate is concluded to be the most economical, competitive and practical despite such short term.

Should you have any clarification, you may communicate with Ms. Madonna M. Naling, Chief of the Power Planning and Development Division, who may be reached at email address doe.csp@gmail.com.

Please be guided accordingly.

Thank you.

Very truly yours,


f **MARIO C. MARASIGAN, CESO III**
Director IV
Officer-in-Charge
Electric Power Industry Management Bureau

cc: *Secretary Alfonso G. Cusi, DOE*
Undersecretary Emmanuel P. Juaneza
Assistant Secretary Redentor E. Delola