



MEMORANDUM NO. **2023-56**

NOV 13 2023

TO : ALL ELECTRIC COOPERATIVES

SUBJECT : NEA Implementing Guidelines to the Department of Energy Department Order No. DO2023-10-0022

I. RATIONALE

The Department of Energy ("DOE") under Republic Act ("RA") No. 7638, or the Department of Energy Act of 1992, is mandated to, among others, ensure a continuous, adequate, and economic supply of energy with the end in view of ultimately achieving self-reliance in the country's energy requirements through the integrated and intensive exploration, production, management, and development of the country's indigenous natural resources.¹ Pursuant to this mandate, the DOE recognized, as it has always recognized, the viability of developing indigenous natural gas in ensuring the Philippines' continuous, adequate, and economic supply of energy.²

The DOE's same mandate was reiterated in RA No. 9136, or the Electric Power Industry Reform Act of 2001 ("EPIRA"), which directed the DOE to develop and update the existing Philippine Energy Plan ("PEP") for the integrated and comprehensive exploration, development, utilization, distribution, and conservation of energy resources, with preferential bias for environment-friendly, indigenous, and low-cost sources of energy.³ Pursuant thereto, the DOE in the 2020-2040 PEP further recognized the role of natural gas as a feasible transitional tool to ultimately transform the Philippines' energy supply as substantially consisting of renewable low-carbon sources.⁴ Particularly, the PEP, as well as the National Renewable Energy Program ("NREP") has made the availability of natural gas a suitable, cleaner, and efficient transition fuel, possessing the natural and technical specifications to balance the variability of RE while maintaining the reliability of the country's power system.⁵ The use of indigenous gas, including the aggregation and blending thereof, would help to reduce dependence on imported fuel sources, the price of which tends to fluctuate in the world market.

In recognition of these long-standing policies, on 15 May 2023, President Ferdinand R. Marcos, Jr. signed the Renewal Agreement for the Malampaya Service Contract No. 38 ("SC 38") with a contract period of fifteen (15) years, or until 22 February 2039, allowing for the continued production of the Malampaya gas field and ensuring that the remaining gas reserves are further explored and utilized. In so doing, President Marcos, Jr. likewise directly supported the aggregation of indigenous natural gas with imported natural gas to enable the stability and expansion of the country's gas market.⁶ President Marcos, Jr. likewise urged the DOE to strictly monitor the implementation of this project.⁷

¹ See Section 2, RA No. 7638.

² See the DOE's Circular No. 95-06-006 entitled "Policy Guidelines on the Overall Development and Utilization of Natural Gas in the Philippines"; see also the Philippine Energy Plan for 1994-2010; see also Executive Order No. 66, s. 2002.

³ See Chapter III, Section 37(b) of RA No. 9136.

⁴ See p. 1 of the PEP, which provides, among others, that "Under its Clean Energy Scenario (CES), the PEP provides for ambitious plans, policies and targets on renewable energy, natural gas, alternative fuels, and energy efficient technologies. To make the country's low carbon energy transformation a reality, x x x"; see also the "Clean Energy Scenario", at p. 2 of the PEP.

⁵ See DOE issued Department Order No. 2023-10-0022.

⁶ "PBBM sees more stable, affordable power supply with expanded Malampaya development, imported LNG blending", available at https://pco.gov.ph/news_releases/pbbm-sees-more-stable-affordable-power-supply-with-expanded-malampaya-development-imported-lng-blending/.

⁷ "Marcos renews Malampaya service contract until 2039, available at <https://www.pna.gov.ph/articles/1201484>.

Thus, the DOE issued Department Order No. 2023-10-0022 ("DOE DO2023-10-0022"), enjoining the National Electrification Administration ("NEA") to (1) establish the necessary rules, guidelines, and methodology to aggregate the demand of Electric Cooperatives ("ECs"), (2) commence the Competitive Selection Process ("CSP") of the ECs' power supply requirements from natural gas-fired power generation facilities, which includes the formulation of the corresponding Terms of Reference ("TOR") and other bidding documents vis-à-vis the plans of ECs, and (3) ensure that the Power Supply Agreements ("PSAs") resulting from the conduct of the said CSPs shall be filed by the individual EC with the winning power supplier/s with the Energy Regulatory Commission ("ERC"). The DOE likewise directed all ECs to comply with the instructions of the NEA pursuant thereto.

II. LEGAL BASIS

Pursuant to the President's directive during the renewal of SC 38,⁸ the DOE has issued DOE DO2023-10-0022 enjoining the NEA to facilitate and implement the conduct of a joint CSP for the aggregated demand for the power supply of ECs, which shall be procured from natural gas-fired power generation facilities, using indigenous natural gas as transition fuel.

DOE DO2023-10-0022 was issued pursuant to (1) the DOE's mandate under Section 2 of RA No. 7638, (2) the declared State policy embodied in Section 2 of RA No. 9136; and (3) the powers, functions, and privileges of the NEA under Section 5 of RA No. 10531 or the NEA Reform Act of 2013.

The same DOE DO2023-10-0022 is also consistent with the antecedent DOE Department Circular ("DC") No. DC2023-06-0021, *Prescribing the Policy for the Mandatory Conduct of the Competitive Selection Process by the Distribution Utilities for the Procurement of Power Supply for Their Captive Market* (the "DOE 2023 CSP Policy"), which aimed to streamline the conduct of CSP by the distribution utilities ("DUs"), including ECs, to procure power for their captive market, and must in all significant points be aligned with ERC Resolution No. 16, Series of 2023, or the *Implementing Guidelines for the Procurement, Execution and Evaluation of Power Supply Agreements Entered into by Distribution Utilities for the Supply of Electricity to their Captive Market* (the "ERC 2023 CSP Guidelines").

The Supreme Court in the case of ***Alyansa Para sa Bagong Pilipinas, Inc. (ABP) vs. Energy Regulatory Commission, et al.***, G.R. No. 227670, 3 May 2019, has held that rules and regulations issued pursuant to law by administrative agencies, like the DOE, have the force and effect of law. Further, it is the DOE that issues the rules and regulations to implement the EPIRA, including the implementation of the policy objectives stated in Section 2 thereof.⁹

Parenthetically, Chapter III, Section 37(h) of the EPIRA provides that the DOE exercises supervision and control over all government activities relative to energy projects under Section 2 of RA No. 7638. Chapter VII, Section 59 of the EPIRA provides that the NEA continues to be under the supervision of the DOE and shall exercise its functions under Presidential Decree ("PD") No. 269, as amended by PD No. 1645 and RA No. 10531, insofar as they are consistent with RA No. 9136. The Supreme Court in the case of ***The National Liga Ng Mga Barangay vs. Paredes, et al.***, G.R. No. 130775, 27 September 2004, defines supervision as the power or authority to see that subordinate officers

⁸ See "PBBM sees more stable, affordable power supply with expanded Malampaya development, imported LNG blending", available at https://pco.gov.ph/news_releases/pbbm-sees-more-stable-affordable-power-supply-with-expanded-malampaya-development-imported-lng-blending/.

⁹ See ***Alyansa Para sa Bagong Pilipinas, Inc. (ABP) vs. Energy Regulatory Commission, et al.***, G.R. No. 227670, 3 May 2019.

perform their duties, and to take such action prescribed by law to compel them to do so. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter.

Section 5 of RA 10531 provides, among others, that the NEA, (1) supervises the management and operations of all ECs; (2) provide institutional, financial and technical assistance to ECs upon request of the ECs; and (3) develop, set and enforce institutional and governance standards for the efficient operation of ECs such as, but not limited to, the observance of appropriate procurement procedure, including transparent and competitive bidding. Section 6 of RA 10531 also provides that, pursuant to its authority, the NEA may issue orders, rules and regulations, *motu proprio* or upon petition of third parties, to conduct investigations, referenda and other similar actions on all matters affecting the electric cooperatives.

The Supreme Court in the case of ***Republic of the Philippines vs. Manila Electric Company***, G.R. No. 141314, 9 April 2003, has held that the business and operations of a public utility, such as ECs, are imbued with public interest. "In a very real sense, a *public utility is engaged in public service* -- providing basic commodities and services indispensable to the interest of the general public. For this reason, a public utility submits to the regulation of government authorities and surrenders certain business prerogatives."

Finally, Section 2 of the DOE 2023 CSP Policy provides, among others, that "All power supplied under bilateral contracts shall be procured through CSP, consistent with the latest and duly accepted DDP and posted PSPP."

III. OBJECTIVES

Section 3.1. Pursuant to Section 2.1(a) and (b) of DOE DO2023-10-0022, the NEA shall determine and combine the aggregated demand of ECs, based on existing uncontracted requirements and contracted demand expiring within two (2) years *pursuant to the latest and posted Power Supply Procurement Plan ("PSPP") in the CSP E-based Portal*, to be sourced from natural gas-fired power generation facilities, and that the aggregated demand shall be subjected to the joint conduct of CSP. Provided that these gas-fired power generation facilities shall prioritize the use of indigenous gas, including the aggregation and blending thereof, before utilizing imported Liquefied Natural Gas ("LNG") in order to reduce dependence on imported fuel sources.

Section 3.2. Pursuant to Section 3.1 of DOE DO2023-10-0022, the NEA shall commence the CSP for the procurement of power supply of ECs from natural gas-fired power generation facilities, pursuant to DC No. DC2023-06-0021 and the implementing guidelines of the ERC and the NEA. Further, pursuant to Section 3.2 of DOE DO2023-10-0022, the NEA shall formulate the TOR and other bidding documents required to conduct the CSP.

Section 3.3. Pursuant to Section 3.2 of DOE DO2023-10-0022, the NEA shall ensure that the PSAs resulting from the conduct of the said CSP shall be filed by the individual EC with the winning power supplier/s in the ERC in accordance with the guidelines by the DOE, ERC, and NEA.

IV. SCOPE

Section 4.1. This *Memorandum* shall apply to all ECs throughout the country. For purposes of efficiently implementing the **Objectives** listed in Sections 3.1. – 3.3. hereof, and pursuant to the NEA's mandate under Sections 2.1(a) and 2.2. of DOE DO2023-10-0022, the NEA shall determine which ECs whose demands will be aggregated taking into consideration the directive of the DOE to "*ensure adequate and optimal allocation of*

natural gas for the provision of reliable supply and reasonably priced electric power to complement the variability of RE and achieve the desired targets under the PEP” and ensure that the conduct of the aggregated CSP “shall not result in over-contracting of power supply.”

In order to determine the **initial** composition of the ECs whose demands are to be aggregated, the NEA shall aggregate the capacity requirements of **on-grid ECs serving franchise areas within the Luzon Grid**.

The NEA shall not be precluded from aggregating the capacity requirements of ECs serving other franchise areas, and to conduct the corresponding joint CSP if the circumstances so warrant, pursuant to the intention of DOE DO2023-10-0022.¹⁰

Section 4.2. The NEA may extend or adjust the timelines provided under these *Memorandum* whenever necessary and justified for the proper implementation thereof, subject to the approval of the Secretary of Energy.

Section 4.3. All CSPs to be conducted pursuant to DOE DO2023-10-0022 and this *Memorandum* shall be based on the ECs’ latest and duly accepted Distribution Development Plans (“DDPs”) and PSPPs duly posted on the DOE’s CSP E-based Portal.

V. DATA VERIFICATION AND CONFIRMATION

Section 5.1. With reference to the initial list of ECs as identified in Section 4.1 hereof, the NEA shall determine the aggregated demand of all on-grid Luzon ECs based on their respective existing uncontracted requirements and contracted demand expiring within two (2) years pursuant to their latest and posted PSPP in the DOE’s CSP E-based Portal. The NEA shall likewise determine which of the said uncontracted requirements are already undergoing a CSP.

Section 5.2. Within five (5) days from issuance of this *Memorandum*, the General Managers, Officers-in-Charge, Acting General Managers, or the person designated with the equivalent rank, are required to accomplish the *Certification*, attached as *Annex “A”* hereof, to determine their capacity requirements available for CSP, based on their PSPPs duly posted on the DOE CSP E-based Portal.

Within the same period, the NEA shall establish a Special Bids and Awards Committee (“BAC”) and a Technical Working Group (“TWG”) to conduct the joint CSP required by DOE DO2023-10-0022. The NEA can mobilize the manpower of the on-grid Luzon ECs to conduct the CSP process, as necessary.

Section 5.3. Within five (5) days from the establishment of the NEA BAC and TWG, the NEA shall determine the capacity requirements that shall be subjected to the joint conduct of CSP as required under DOE DO2023-10-0022, and shall formulate the TOR for the CSP.

The NEA BAC and TWG shall formulate the TOR using the *Certification* submitted by the ECs and the latest and posted PSPP. If the ECs fail to timely submit a *Certification*, the NEA shall rely on their latest and posted PSPP.

Section 5.4. Within five (5) days from the formulation of the TOR, the NEA may hold a consultative meeting with the EC representatives to finalize the TOR. Then, the NEA shall finalize the TOR and commence the joint CSP as mandated by DOE DO2023-10-0022.

¹⁰ See Section 1 of DOE DO2023-10-0022.

After the transmittal of the finalized TOR to the ECs, their respective Board of Directors shall issue a Board Resolution and transmit the same to the NEA, incorporating the following stipulations:

- a. Recognizing that NEA has the authority to conduct the joint CSP pursuant to DOE DO2023-10-0022;
- b. Authorizing the NEA to perform on their behalf all acts necessary and appropriate in the implementation and furtherance of the DOE DO2023-10-0022 and the conduct of the CSP, such as, but not limited to, preparing Bidding Documents, holding of pre-bid conference/s, answering queries of bidders, evaluating bid submissions, subjecting the bids to a post-qualification process, and issuing of a notice of award;
- c. Appointing a representative to assist the NEA, as necessary, in the conduct of the CSP, preparation of bidding documents, and other related matters; and
- d. Authorizing the EC's General Manager, Officers-in-Charge, Acting General Managers (as the case may be) and/or the EC Board President to execute the PSA resulting from the conduct of the said CSP.

Section 5.5. The NEA shall undertake a similar process for the conduct of CSP as intended by DOE DO2023-10-0022, pursuant to the DOE 2023 CSP Policy, the ERC 2023 CSP Guidelines, and the implementing guidelines of the NEA.

VI. CONDUCT OF CSP

Section 6.1. The NEA shall formulate the TOR, prepare the necessary bidding documents, and commence the CSP in accordance with DOE DO2023-10-0022, DOE 2023 CSP Policy, and the implementing guidelines of the ERC and the NEA.

Section 6.2. The CSP for the aggregated capacity requirements of ECs pursuant DOE DO2023-10-0022 shall be grouped together by lots taking into consideration the following factors:

- a. The EC's latest categorization and rating as determined by the NEA;
- b. The capacity and energy requirements per EC;
- c. The appropriate contract term based on the EC's latest and duly accepted DDP and posted PSPP; and
- d. Other considerations which the NEA may deem necessary.

Section 6.3. With reference to the filing of the PSA with the ERC, the EC and winning bidder/s shall comply with the timelines, deadlines, and requirements under Article VII (i.e., *PSA Application*) of the ERC 2023 CSP Guidelines and the DOE 2023 CSP Policy. The NEA shall strictly monitor the ECs' compliance with the said filing requirements.

Section 6.4. The NEA shall endeavor to accomplish the first (1st) round of CSP by the end of the first (1st) quarter of 2024.

VII. MISCELLANEOUS PROVISIONS

Section 7.1. If any provision or part of a provision of this *Memorandum* is declared invalid or unconstitutional by a court of competent jurisdiction, all other provisions or parts of the provision not affected thereby shall continue in full force and effect.

Section 7.2. All prior rules, regulations or guidelines, or portions thereof, issued by the NEA that are inconsistent with this *Memorandum* are hereby repealed or modified accordingly.

Section 7.3. Any EC or its director, officer or employee thereof which fails to adhere or performs an act in violation of this *Memorandum* shall be subject to the administrative penalties imposable by the NEA under existing laws, rules and regulations, without prejudice to any civil and/or criminal liabilities which may be warranted.

Section 7.4. The NEA may issue additional guidelines or introduce modifications herein in order to amend or supplement specific provisions as the need arises.

Section 7.5. This *Memorandum* shall take effect immediately upon its issuance and shall remain in effect until otherwise revoked.


ANTONIO MARIANO C. ALMEDA
NEA Administrator



CERTIFICATION

I, **[NAME OF GENERAL MANAGER]** hereby certify the following information based on the latest and posted Power Supply Procurement Plan (“PSPP”) in the CSP E-based Portal of [name of EC]:

A. Annual Demand Information (Actual and Forecasted)

Year	Baseload (MW)	Intermediate (MW)	Peaking (MW)	Annual Energy (MWh)	Load Factor (%)
2023 (Actual)					
2024 (Forecast)					
2025 (Forecast)					
2026 (Forecast)					
2027 (Forecast)					
Kindly continue the list, as appropriate					

B. Power Supply Agreements, including EPSA – Contracted and Pending

Supplier (Gen Co)	ERC Case No.	Type (Baseload/ Mid-merit/ Peaking)	Contracted Quantity	PSA Start	PSA End

(Name and Signature)
(Date)