

Comments/Recommendations on the draft Department Circular

“Amending Certain Provisions of and Supplementing Department Circular No. DC2018-02-0003 on the Competitive Selection Process in the Procurement by the Distribution Utilities of Power Supply Agreement for the Captive Market”

Original Provision	Proposed Revision	Justification/Remarks
<p>“Section 2.1.2 All PSAs shall be procured through CSP, consistent with the latest and duly accepted Distribution Development Plan (DDP) and Power Supply Procurement Plan (PSPP) and consistent with the principles enshrined in Section 1 of DC2018-02-0003, which includes technology neutrality.”</p>	<p>“Section 2.1.2 All PSAs shall be procured through CSP, consistent with the latest and duly accepted Distribution Development Plan (DDP) and Power Supply Procurement Plan (PSPP) and consistent with the principles enshrined in Section 1 of DC2018-02-0003.”</p>	<p>We suggest that the CSP Rules should not expressly mandate all power procurements to comply with the principle of technology neutrality for the following reasons:</p> <ol style="list-style-type: none"> 1. When coupled with a high solicitation size or minimum capacity offer per bidder, a technology neutral CSP can significantly limit the participation of renewable energy players and unduly favor fossil fuel players. <p>It should be considered that mature conventional generation technologies for fossil fuels have a higher power density compared to renewable energy technologies. A coal plant, for instance, can produce more electricity in one square meter of infrastructure compared to a hydroelectric plant or a solar farm. Thus, fossil fuels, by nature of their technology, can be built with larger capacities.</p> <p>The National Renewable Energy Laboratory explains that “in large capacity solicitations, the</p>

		<p>economies of larger fossil-based plants tend to dominate” over renewables.</p> <p>2. It contravenes the policies declared in the Department of Energy Act, which mandates a preferential bias for environment-friendly, indigenous, and low-cost sources of energy; and the Renewable Energy Act, which aims to accelerate the utilization and development of RE technologies and resources.</p> <p>In fact, according to World Bank's study on electricity auction practices in different countries, all-encompassing auctions, or technology neutral CSPs, are seldom used because governments may have policy preferences for particular technologies, like renewable energy, and some renewable energy technologies might find it difficult to compete against fossil fuels. Thus, a technology neutral CSP contravenes existing policies favoring renewable energy.</p> <p>3. To enable distribution utilities to comply with the requirements under the Renewable Portfolio Standards (RPS), Distribution</p>
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<p>“Section 2.2.1.2 Negotiated procurement of emergency power supply; Provided, that the cooperation period of the corresponding Emergency Power Supply Agreement (EPSA) shall not exceed one (1) year and such EPSA shall be filed immediately before the Energy Regulatory Commission (ERC), upon the issuance and within the effectivity of the COE-CSP; Provided also, that the DU shall prove and certify that it has performed all the necessary and required due diligence, and canvassed from at least three (3) generation company for EPSA to address the emergency situation and to avert and mitigate its consequences, and the offers from the available Power Suppliers shall be attached in the request for COE-CSP; Provided further, that the procurement of emergency power supply shall be without any form of subsidy. Provided finally, that the rate shall preferably be lower than the latest ERC approved generation tariff for same or similar technology in comparable areas.”</p>	<p>“Section 2.2.1.2 Negotiated procurement of emergency power supply; Provided, that the cooperation period of the corresponding Emergency Power Supply Agreement (EPSA) shall not exceed one (1) year and such EPSA shall be filed immediately before the Energy Regulatory Commission (ERC), upon the issuance and within the effectivity of the COE-CSP; Provided also, that the DU shall prove and certify that it has performed all the necessary and required due diligence, and canvassed from at least three (3) generation companies, including at least one renewable energy supplier, for EPSA to address the emergency situation and to avert and mitigate its consequences, and the offers from the available Power Suppliers shall be attached in the request for COE-CSP; Provided further, that the procurement of emergency power supply shall be without any form of subsidy. Provided finally, that the rate shall preferably be lower than the latest ERC approved generation tariff in the area, regardless of technology.”</p>	<ol style="list-style-type: none"> 1. Again, to further existing policies that mandate preference to renewable energy, we recommend that the generation company must canvass at least one renewable energy company. 2. Further, to safeguard against abuse of this provision at the cost of electricity consumers, we recommend that the rate for the negotiated emergency power supply should be lower than the latest ERC approved generation tariff across all technologies. Since there are PSAs that last for twenty-five years, some existing power rates have become expensive and no longer competitive to the rates of newer plants. To ensure that consumers are not getting the shorter end of the bargain, it would be better to require a lower rate across all technologies.
<p>“Section 2.2.1.3 Any generating plant to be embedded in the DU, with fuel that is indigenous to the franchise area of the DU, subject to</p>	<p>“Section 2.2.1.3 Any generating plant to be embedded in the DU, provided that it is fueled by renewable energy, and subject to</p>	<p>We recommend that the embedded generating plant should be renewable energy-powered to facilitate compliance with the RPS and the overall policy of the</p>

<p>ownership and market-share limitations as provided under relevant laws and issuances, unless it intends to sell generated power outside of the embedded area, in which case, it shall undergo CSP with respect to its excess power. The size of the generation plant shall have a maximum capacity of 10 MW for Luzon and 5 MW for Visayas and Mindanao....”</p>	<p>ownership and market-share limitations as provided under relevant laws and issuances, unless it intends to sell generated power outside of the embedded area, in which case, it shall undergo CSP with respect to its excess power. The size of the generation plant shall have a maximum capacity of 10 MW for Luzon and 5 MW for Visayas and Mindanao....”</p>	<p>Renewable Energy Law to accelerate the utilization and development of RE technologies and resources.</p>
<p>“Section 3.28. ‘Force Majeure’ or ‘Fortuitous Event’ ... This further refers to an event or circumstance generally caused: (1) by nature, such as, but not limited to , fires, floods, typhoons or other catastrophes, or acts of God; and/or (2) by the acts of man, such as, but not limited to, war, national emergencies, revolution, riot, insurrection, civil unrests, or any other similar violent or threatening actions. It may likewise pertain to any analogous event that may relate to a power system emergency that shall affect the continuity of delivery of power by the DUs;”</p>	<p>“Section 3.28. ‘Force Majeure’ or ‘Fortuitous Event’ ... This further refers to an event or circumstance generally caused: (1) by nature, such as, but not limited to, fires, floods, typhoons, epidemics, pandemics, plagues, or other catastrophes, or acts of God; and/or (2) by the acts of man, such as, but not limited to, quarantines, war, national emergencies, revolution, riot, insurrection, civil unrests, or any other similar violent or threatening actions. It may likewise pertain to any analogous event that may relate to a power system emergency that shall affect the continuity of delivery of power by the DUs;”</p>	<p>Although Usec. Marasigan explained during the first public consultation that the DOE acknowledges pandemics, epidemics, quarantines, and plagues as instances of force majeure, GenCos refused to acknowledge this ongoing pandemic as a force majeure which in turn caused power rates to spike. DOE and ERC likewise refused to intervene between GenCos and DUs regarding their disputes concerning force majeure claims.</p> <p>MERALCO confirms that during this pandemic, the force majeure relief saved its customers PHP1.02 billion (USD20.4 million) in total, PHP 129 million (USD2.58 million) in fixed costs for April and PHP 877 million (USD17.54 million) in fixed costs over May. Other electric cooperatives that were not allowed by GenCos to invoke force majeure had increased electricity rates according to IEEFA.</p> <p>We suggest that the DOE, knowing full well that the non-application of the force majeure clause results to increased</p>

		<p>electricity rates, should take a proactive role in protecting the interest of electricity consumers by expressly mentioning these instances of force majeure in Section 3.28.</p> <p>Additionally, the Rules should specifically require the parties to agree on an alternative dispute resolution system for disputes concerning force majeure claims.</p>
<p>“SECTION 5. THIRD PARTY BIDS AND AWARDS COMMITTEE</p> <p>5.1. Third Party Bids and Awards Committee (TPBAC).</p> <p>5.1.2. The DU, through its Board of Directors (BOD), shall declare five (5) members of the TPBAC composed of the following:...”</p>	<p>“SECTION 5. THIRD PARTY BIDS AND AWARDS COMMITTEE</p> <p>5.1. Third Party Bids and Awards Committee (TPBAC).</p> <p>5.1.2. The DU, through its Board of Directors (BOD), shall declare five (5) members of the TPBAC composed of the following:...</p> <p>The members of the TPBAC will be posted in the DU’s website, and DOE or NEA CSP E-based Portal and published in a newspaper of general circulation at least two weeks.”</p>	<p>For transparency purposes and verification whether the members are selected according to the allowed criteria, the DOE and DU should issue a publication of the approved members.</p>
<p>“5.1.2.1. The TPBAC shall be composed of either of the following:”</p> <p>5.1.2.1.1. One DU officer or employee knowledgeable in the technical operations of the DU.</p> <p>5.1.2.1.2. One DU officer or employee, or a person with knowledge and/or experience</p>	<p>“5.1.2.1. The TPBAC shall be composed of either of the following:”</p> <p>5.1.2.1.1. One DU officer or employee knowledgeable in the technical operations of the DU.</p> <p>5.1.2.1.2. One DU officer or employee, or a person with knowledge and/or experience</p>	<p>We recommend that an engineer knowledgeable of power generation technologies be included among the TPBAC composition for a more holistic perspective during the selection process.</p>

<p>with any local or international competitive bidding procedures;</p> <p>5.1.2.1.3. One lawyer; and</p> <p>5.1.2.1.4. One finance officer or accountant that has knowledge on electricity pricing.</p>	<p>with any local or international competitive bidding procedures;</p> <p>5.1.2.1.3. One lawyer; and</p> <p>5.1.2.1.4. One finance officer or accountant that has knowledge on electricity pricing.</p> <p>5.1.2.1.5. One with an engineering background in the field of power generation.</p>	
<p>“5.1.4. For all DUs, the selection process of the representatives of the captive customers to the TPBAC shall be submitted to the DOE for approval. A registered customer of a DU as the case maybe, may qualify as a member of the TPBAC; provided that such person is not directly or indirectly employed by the DU, or has not been engaged by the DU in any capacity within one (1) year from the conduct of the CSP, or is not related, within the fifth degree of consanguinity or affinity, to any director or officer of the DU.”</p>	<p>“5.1.4. For all DUs, the selection process of the representatives of the captive customers to the TPBAC shall be submitted to the DOE for approval. A registered customer of a DU as the case maybe, may qualify as a member of the TPBAC; provided that such person is not directly or indirectly employed by the DU, or has not been engaged by the DU in any capacity within one (1) year from the conduct of the CSP, or is not related, within the fifth degree of consanguinity or affinity, to any director or officer of the DU.</p> <p>5.1.4.1 The representatives shall be selected from a list of nominees nominated by captive consumers. The DU will facilitate the nomination and selection process, and qualification screening of selected representatives.</p> <p>5.1.4.2 The call for nominations will be posted in the DU’s website, and DOE or</p>	<p>To encourage involvement and participation of electricity consumers, the representatives of the captive customers should be selected from the nominees of the captive customers.</p> <p>For transparency purposes and verification whether the members are selected from the list of nominated individuals, the call for nominations and the representatives selected to be a part of the TPBAC should be posted in the DU’s website, and DOE or NEA CSP E-based Portal and published in a newspaper of general circulation.</p>

	NEA CSP E-based Portal and published in a newspaper of general circulation at least two weeks prior to the nominations.”	
<p>“Section 5.2.6. The Secretariat is required to make and keep, as part of the TPBAC/TPA records, a complete and unedited video record during the Pre-Bid Conference and Bid Opening.”</p>	<p>“Section 5.2.6. The Secretariat is required to make and keep, as part of the TPBAC/TPA records, a complete and unedited video record during the Pre-Bid Conference and Bid Opening, which will be made available to any concerned electricity consumer upon request.”</p>	<p>To promote transparency and access to information, we suggest that records and video recordings are made available upon request. Electric consumers have every right to be appraised of the developments during the Pre-Bid Conference and Bid Opening.</p>
<p>(DC 2018-02-0003) “Section 7.2. For Grid Areas, Observers shall be extended to the DOE, ERC and NEA, in the case of ECs. For Off-Grid Areas, an invitation in writing and e-mail shall also be extended to NPC to act as an Observer in all of the bidding activities provided in this Policy.”</p>	<p>“Section 7.2. For Grid Areas, Observers shall be extended to the DOE, ERC and NEA, in the case of ECs. For Off-Grid Areas, an invitation in writing and e-mail shall also be extended to NPC to act as an Observer in all of the bidding activities provided in this Policy. For both Grid and Off-Grid Areas, an invitation to non-governmental organizations with relevant work on the power sector, electricity consumers groups, and other electricity consumers of the DU shall be published in the DU’s website and the DOE CSP E-based Portal.”</p>	<p>In the Government Procurement Reform Act, it is allowed to have observers from a non-governmental organization and private group in the relevant sector.</p> <p>We recommend that non-governmental organizations with relevant work on the power sector, electricity consumers groups, and other electricity consumers of the DU should similarly be allowed to observe the CSP.</p>
<p>“Section 8.1 Preparation of Bid Documents ... 8.1.3.7 Acceptable Form of Bid and Performance of Securities;”</p>	<p>“Section 8.1 Preparation of Bid Documents ... 8.1.3.7 Acceptable Form of Bid and Performance of Securities; Provided, that, if a minimum capacity offer per bidder is set, it should in no case exceed 15 MW.”</p>	<p>Setting a high minimum capacity offer per bidder in a technology neutral CSP can significantly limit the participation of renewable energy players and unduly favor fossil fuel players. It should be considered that mature conventional generation technologies for fossil fuels have a higher power density compared to renewable energy technologies. A coal plant, for instance, can produce more electricity in</p>

one square meter of infrastructure compared to a hydroelectric plant or a solar farm. Thus, fossil fuels, by nature of their technology, can be built with larger capacities.

For example, in Meralco's ongoing technology neutral and greenfield baseload 1,800 MW tender, it mandates a minimum capacity offer of at least 150 MW (net) per bidder. Although technically, renewable energy players with greenfield power plants are allowed to bid, only 12.5% of proposed renewable energy plants have an installed capacity of at least 150 MW. This is significantly lower compared to proposed fossil fuel plants, where 67% have an installed capacity of at least 150MW. In total, over 266 renewable energy players will not be able to bid **unless they nominate a portfolio of power plants with an aggregate capacity of at least 150 MW (net)**. (See Figure 2 of [Preventing Another 20 Years of Coal](#)).

Thus, we recommend removing or reducing significantly the solicitation size or minimum capacity offer per bidder to lower than the lowest average installed capacity of existing power plants based on energy source, which is 18 MW for oil-based power plants. (See Figure 1 of [Preventing Another 20 Years of Coal Policy Brief](#)). **Based on this threshold, we recommend that the minimum capacity offer per bidder should not exceed 15 MW.**

<p>“Section 8.1 Preparation of Bid Documents ...</p> <p>8.1.3.11 Protest Mechanism; and”</p>	<p>“Section 8.1 Preparation of Bid Documents ...</p> <p>8.1.3.11 Protest Mechanism for bidders and electric consumers; and”</p>	<p>Apart from bidders, instructions should also be afforded to electric consumers and other stakeholders. Protest mechanisms should be in place for all stages of the CSP, and electric consumers and other stakeholders must be appraised so they may have the opportunity to raise any concerns and be recognized, and the CSP postponed until all protests are resolved.</p>
<p>“Section 8.2. Review of the TOR, draft Instruction to Bidders, Supplemental Bid Bulletin and other related documents.</p> <p>The DOE shall review the following prior to the issuance of a Certificate of Uploading or NTU for the publication of Invitation to Bid. In the case of ECs, this shall be submitted to the DOE through the NEA, which shall conduct preliminary review and make its recommendations to the DOE:</p> <p>8.2.1. The TOR, if consistent with the CSP Policy; and</p> <p>8.2.2. Draft Instruction to Bidders, if consistent with the final TOR.</p> <p>In the event that agreements are made during the pre-bid conference, the DOE shall review the Supplemental Bid Bulletin, revised TOR, and the CSP schedule, if any, prior to the issuance and publication of such bid bulletin.</p>	<p>“Section 8.2. Review of the TOR, draft Instruction to Bidders, Supplemental Bid Bulletin and other related documents.</p> <p>The DOE or NEA shall review and approve the following prior to the issuance of a Certificate of Uploading or NTU for the publication of Invitation to Bid. In the case of ECs, this shall be submitted to the DOE through the NEA, which shall conduct preliminary review and make its recommendations to the DOE:</p> <p>8.2.1. The TOR, if consistent with the CSP Policy; and</p> <p>8.2.2. Draft Instruction to Bidders, if consistent with the final TOR.</p> <p>8.2.3. Comments from interested parties, which should be received not later than two weeks after a Call for Comments is posted in the DOE or NEA CSP E-based Portal and published in a newspaper of general circulation.</p>	<p>To promote public participation and appraise electric consumers of the content of the bidding documents, a collaborative and holistic review of the bidding documents is needed. We recommend that the DOE or NEA publish a Call for Comments on the TOR and Draft Instructions to Bidders from captive electricity consumers of the DU or EC and the general public prior to the issuance of the Certificate of Uploading or NTU.</p> <p>According to Sec. Cusi, a DU is free to adopt its preferred terms of reference in their respective competitive bidding. In 2019, Sec. Cusi commented on Meralco’s then planned CSP. He mentioned is free to adopt its preferred terms of reference in the competitive bidding for the supply of 1,200 MW. The DOE merely approves the publication of the terms of reference, but not the in terms of content. We recommend that DOE not only reviews the terms of reference, but also provides an official approval of the compliance of the terms of reference to the governing principles and provisions of this Circular.</p>

	<p>In the event that agreements are made during the pre-bid conference, the DOE or NEA shall review the Supplemental Bid Bulletin, revised TOR, and the CSP schedule, if any, prior to the issuance and publication of such bid bulletin.”</p>	
<p>“8.3 Publication and Posting The TPBAC/TPA shall cause the posting of the Invitation to Bid for the procurement opportunity in accordance with periods specified in this Circular.”</p>	<p>“8.3 Publication and Posting The TPBAC/TPA shall cause the posting of the Invitation to Bid for the procurement opportunity in accordance with periods specified in this Circular, as a prerequisite activity for the continuation of the bidding process.”</p>	<p>We recommend that there is an express mention that publication and posting (15) days prior must be observed for the bidding process to proceed.</p> <p>The rationale for publication and posting is to inform stakeholders and provide ample time to review the necessary documents.</p>
<p>“8.6.5. The TPBAC/TPA shall proceed to determine the lowest calculated bid, using the valuation criteria prescribed in the Bid Documents.”</p>	<p>8.6.5. The TPBAC/TPA shall proceed to determine the lowest calculated bid, using the valuation criteria prescribed in the Bid Documents, including a bid discount for bid offers from renewable energy GenCos.</p>	<p>A bid discount is a percentage discount applied to the bid submitted by a Bidder for a Contract solely for the purpose of bid comparisons when evaluating the lowest and best bid, or lowest responsible bid. The use of a Bid Discount for bid comparison does not alter the total amount of the bid submitted by a Bidder or the Contract executed based on a bid.¹</p> <p>Bid discounts is also an accepted practice in the Revised Guidelines on the Procurement of Petroleum, Oil, and Lubricant Products as amended by Government Procurement Policy Board (GPPB) Resolution No. 26-2019, where in prospective discounts can be provided for bid prices, while bid price remains fixed for the purposes of payment or the contract.</p>

¹ Law Insider, *Bid Discount*. <https://www.lawinsider.com/dictionary/bid-discount>

		<p>We recommend that bid discounts should also be adopted in the CSP policy in order to incentivize RE bids.</p> <p>A bid discount applied to the RE GenCo's bid price but does not impact the generator's pricing in the supply contract, if awarded to them. This can be used to settle marginal differences between the lowest bids and provide preference to the lowest RE bid.</p> <p>The preference should be for RE to advance the Renewable Energy Act's policy of accelerating the utilization and development of RE technologies and resources. Furthermore, it enables distribution utilities to comply with the requirements under the RPS.</p>
<p>"8.8. Each CSP shall be completed within one hundred eighty (180) calendar days from the time of publication of Invitation to Bid until the filing of the PSA to the ERC."</p>	<p>"8.8. Each CSP shall be completed within one hundred eighty (180) calendar days from the time of publication of Invitation to Bid until the filing of the PSA to the ERC, without any pending protest from stakeholders."</p>	<p>Consumers play an integral role in ensuring transparency and competitiveness in the CSP. Thus, the CSP should not be allowed to proceed if consumers have filed protest/s and raised valid concerns, which remain unresolved.</p>
<p>"B. Alternative Mode of Procurement</p> <p>As a general rule, the DUs shall adopt the Competitive Public Bidding (CSP Proper) prescribed in Section 8 (A) of this Circular in the procurement of PSAs. However, alternative methods of procurement shall be resorted only to new technology that has yet to be commercially operated in the country upon the effectivity of this Circular."</p>		<p>Kindly define here what can be considered as "not yet commercially operated". Given its current definition, does this mean for instance a nuclear power plant can avail of alternative mode of procurement?</p>

<p>“8.10.1.3.5. The proposed generation cost must be lower than the lowest ERC approved generation tariff for same or similar technology in the area;”</p>	<p>“8.10.1.3.5. The proposed generation cost must be lower than the lowest ERC approved generation tariff in the area, regardless of technology;”</p>	<p>Here, the DOE abandons its technology neutral principle and mandates technology-specific comparison of proposed generation cost and the lowest ERC approved generation tariff in the area. This unduly favors expensive fossil fuel technologies which are finding it increasingly difficult to compete against the rapidly reducing costs of renewable energy technologies.</p> <p>In Meralco’s case for instance, Solar Philippines Tarlac Corp.’s provisionally approved 2.99 PhP/kWh generation rate is the lowest rate across all technologies among Meralco’s approved and provisionally approved existing PSAs. The cheapest generation rate from a coal plant and fossil gas plant is 4.6314 PhP/kWh.</p> <p>In order to ensure least cost electricity, Sec. 8.10.1.3.5. should be amended to compare the proposed generation cost to the lowest ERC approved generation tariff in the area, regardless of technology.</p>
<p>“8.10.1.4.2. The DU, through its TPBAC shall commence the evaluation of the USP pursuant to Sections 8.10.1.2 and 8.10.1.3 hereof within fourteen (14) calendar days from date of acknowledgment. The TPBAC shall conduct a preliminary evaluation on the completeness of the USP pursuant to Section 8.10.1.2 and inquire whether or not the USP meets the requirements pursuant to Section 8.10.1.3 hereof.</p>	<p>8.10.1.4.2. The DU, through its TPBAC shall commence the evaluation of the USP pursuant to Sections 8.10.1.2 and 8.10.1.3 hereof within fourteen (14) calendar days from date of acknowledgment. The TPBAC shall conduct a preliminary evaluation on the completeness of the USP pursuant to Section 8.10.1.2 and inquire whether or not the USP meets the requirements pursuant to Section 8.10.1.3 hereof. The TPBAC will</p>	<p>To promote public participation and appraise electric consumers of the content of the USP, a collaborative and holistic review of the bidding documents is needed.</p> <p>Consumers play an integral role in ensuring transparency and competitiveness. The Alternative Mode of Procurement should not be allowed to proceed if there are unresolved concerns and comments.</p>

<p>8.10.1.4.3. The TPBAC shall complete the evaluation within twenty-one (21) days and submit its recommendation to the Head of the DU;"</p>	<p>call for comments on the USP, announced to all interested parties.</p> <p>8.10.1.4.3. The TPBAC shall complete the evaluation, gather and resolve comments from all interested parties within twenty-one (21) days, and submit its recommendation to the Head of the DU;"</p>	
<p>"8.10.3.1. After it reviews and finds the TOR including the related documents proper, the DOE shall advise the DU to proceed to prepare tender documents (bid documents) to pave the way for the bidding of comparative proposals, the lowest calculated complying bid of which shall serve as the subject of competitive challenge."</p>	<p>8.10.3.1. As it reviews the TOR including the related documents proper, the DOE shall call for comments from interested parties. Once the review is concluded, the DOE shall provide an official approval of the compliance of the TOR to the governing principles and provisions of this Circular. Only then will the DOE advise the DU to proceed to prepare tender documents (bid documents) to pave the way for the bidding of comparative proposals, the lowest calculated complying bid of which shall serve as the subject of competitive challenge.</p>	<p>To promote public participation and appraise electric consumers of the content of the TOR, a collaborative and holistic review of the bidding documents is needed.</p> <p>In addition, we want to clarify what is considered a comparative bid? What are the parameters for the consideration of comparative bid? In the case of financial bids where one nominates a portfolio of power plants with aggregate capacity, are these considered as a viable comparative bid under the current parameters?</p>
<p>"8.10.3.2.1. The lowest calculated complying comparative proposal shall be declared as the winning comparative proposal.</p> <p>8.10.3.2.2. The DU shall declare the lowest calculated complying bid in fourteen (14) days and shall issue to the owner a Certificate in relation thereto, at the same notifying the OP."</p>	<p>"8.10.3.2.1. The DU shall publish all of the complying bids.</p> <p>8.10.3.2.2. The lowest calculated complying comparative proposal shall be declared as the winning comparative proposal.</p> <p>8.10.3.2.3. The DU shall declare the lowest calculated complying bid in fourteen (14) days and shall issue to the owner a</p>	<p>All complying bids should be published for transparency purposes and to verify the original proposal and comparative bidders that participated.</p>

	Certificate in relation thereto, at the same notifying the OP.”	
(DC 2018-02-0003) “Section 9. Direct Negotiation in Failed CSPs. xxx 9.2 A CSP, after following the process as contemplated in this Policy, is considered failed only when, during its conduct, any of the following circumstances exists: 9.2.1. No proposal was received by the DU; 9.2.2. Only one GenCo submitted an offer; or 9.2.3. Competitive offers of prospective GenCos failed to meet the requirements prescribed in the bid documents.”	“Section 9. Direct Negotiation in Failed CSPs.” (of DC 2018-02-0003) xxx 9.2 A CSP, after following the process as contemplated in this Policy, is considered failed only when, during its conduct, any of the following circumstances exists: 9.2.1. No proposal was received by the DU; 9.2.2. Only one GenCo submitted an offer; 9.2.3. Competitive offers of prospective GenCos failed to meet the requirements prescribed in the bid documents; 9.2.4. There are still unresolved protests after (180) calendar days from the time of publication of the Invitation to Bid; or 9.2.5. Non-compliance with any of the terms of this Circular.”	Section 8.8. of the draft CSP policy states that “Each CSP shall be completed within one hundred eighty (180) calendar days from the time of publication of Invitation to Bid until the filing of the PSA to the ERC.” We recommend that if within that one hundred eighty (180) calendar days, there remains unresolved concerns and protests raised by stakeholders, the CSP should also be considered failed. Consumers’ interests should hold utmost importance and should be addressed immediately by the DU, DOE, or NEA before CSP can proceed further. In case of any other non-compliance with the CSP Circular, this should also result to a failed bidding.
“SECTION 12. REGULATORY SUPPORT...” 12.3. The ERC shall develop rules and procedures to address dispute arising from the conduct of the CSP within 120 days upon the effectivity of this Policy.	“SECTION 12. REGULATORY SUPPORT...” 12.3. The ERC shall develop rules and procedures to address dispute arising from the conduct of the CSP, including disputes from electric consumers and other stakeholders , within 120 days upon the effectivity of this Policy.	Rules and procedures for dispute settlement should be afforded to all stakeholders.
“SECTION 12. REGULATORY SUPPORT...”	“12.8. The ERC shall revise the rules and procedures to review and approve PSAs	Based on the experience of members of the Power for People Coalition, who are

	<p>to provide electricity consumers of the DU the complete Application for approval of the PSA with Annexes even before filing a Petition for Intervention, to enable electricity consumers to fully prepare their interventions.”</p>	<p>Meralco electricity consumers, they are not provided with a complete copy of the Application for approval of the PSA of the DU and GenCo with Annexes until they are declared an Intervenor. However, to be declared an intervenor, they would have to file a Petition for Intervention. How can electricity consumers fully prepare their interventions if they are not furnished a copy of the entire Application for approval of the PSA with attachments upon request?</p> <p>To accord electricity consumers due process, the CSP Rules should require the ERC to provide electricity consumers with a complete copy of the Application for approval of the PSA with Annexes even prior to filing a Petition for Intervention to enable them to fully prepare their interventions pursuant to their right to due process.</p> <p>We recommend that after Section 12.7., an additional provision be inserted as Section 12.8. to address this issue.</p>
<p>(DC 2018-02-0003) “Section 13. Protest Mechanism and Dispute Resolution</p> <p>13.1. Decision of the TPBAC, Joint TPBAC or TPA at any stage of the CSP may be questioned by filing a written request for reconsideration within (3) calendar days upon receipt of written notice or verbal notification. The TPBAC, Joint TPBAC or TPA shall decided on the request for</p>	<p>“Section 13. Protest Mechanism and Dispute Resolution</p> <p>13.1. Decision of the TPBAC, Joint TPBAC or TPA at any stage of the CSP may be questioned by participating parties, electric consumers and other stakeholders through filing a written request for reconsideration within seven (7) calendar days upon receipt of written notice or verbal notification. The TPBAC,</p>	<p>There should be express mention that the protest mechanism is afforded to all stakeholders. We recommend that the CSP be postponed until all protests are resolved to uphold public interest and consumer rights.</p> <p>Three (3) calendar days to file a written request is far too short. Considering that several weeks are given just to prepare prior to the opening of bids, it stands to</p>

<p>reconsideration within seven (7) days from receipt thereof...”</p>	<p>Joint TPBAC or TPA shall decide on the request for reconsideration within seven (7) days from receipt thereof. The CSP will be postponed regardless of what stage if there are unresolved protest/s.”</p>	<p>reason that stakeholders would need a long period to analyze decisions and developments. The dissemination of the notice alone could be a cause of delay due to the limited means and platforms due to the pandemic. We recommend that filing should be within at least seven (7) calendar days upon receipt of written notice or verbal notification.</p>
<p>ANNEX B STANDARD TEMPLATE FOR TERMS OF REFERENCE (TOR) (Minimum Terms and Conditions) “B. Requirements 2. TERMS OF SUPPLY SERVICES: 2.1 Contract Capacity: Minimum Energy Off-take (if applicable): _____”</p>	<p>“B. Requirements 2. TERMS OF SUPPLY SERVICES: 2.1 Contract Capacity: Minimum Energy Off-take (if applicable, provided that, it shall in no case exceed _____):”</p>	<p>In the wake of the COVID-19 pandemic, the Philippines experienced an unprecedented drop in demand. Due to the minimum energy offtake (MEOT) clause in standard PSAs, which mandates distribution utilities to purchase a minimum percentage of the contracted capacity, many distribution utilities were required to buy contracted capacities even though unutilized by their electricity consumers. Electricity consumers pay the costs of unutilized electricity in these take-or-pay contracts.</p> <p>To reiterate, MERALCO confirms that during this pandemic, the force majeure relief saved its customers PHP1.02 billion (USD20.4 million) in total, PHP 129 million (USD2.58 million) in fixed costs for April and PHP 877 million (USD17.54 million) in fixed costs over May. Other electric cooperatives that were not allowed by GenCos to invoke force majeure had increased electricity rates according to IEEFA.</p> <p>We recommend that the option to state a Minimum Energy Off-take be either</p>

		<p>removed completely or reduced significantly. If reduced significantly, we recommend that it should not exceed 15 MW</p>
<p>“B. Requirements 3. COST AND TARIFF STRUCTURE”</p>	<p>“B. Requirements 3. COST AND TARIFF STRUCTURE</p> <p>3.1 The bidder shall provide a straight energy price in its bid proposal.”</p>	<p>We recommend that a straight energy price be mandated for all TORs, and all required details in this section be adjusted accordingly.</p> <p>Under a two-part tariff structure, comprising of fixed costs (capital recovery fee, and operations and maintenance) and variable costs (operations and maintenance, and fuel cost), coal generation rates can fluctuate to as high 32.4475 PhP/kWh (Therma Luzon Inc.’s Pagbilao Coal Plant). For other coal plants, the generation rates peaked at 28.4416 PhP/kWh (Quezon Power Phils Ltd. Co.’s Mauban Coal plant) and 7.4203 PhP/kWh (SMEC’s Sual Coal Plant). (See Figure 5 of Preventing Another 20 Years of Coal Policy Brief)</p> <p>A direct comparison of the actual generation rates from the same coal plant but under different PSAs clearly illustrates the straight energy price as a more favorable structure for electricity consumers. Meralco’s 2012-2019 PSA with SMEC’s Sual Coal Plant had a two-part tariff structure, while its 2019-2029 PSA with the same generation company and coal power plant had a straight energy price. From January 2019 until October 2020, the previous PSA charged a generation rate as high as 7.4203</p>

		<p>PhP/kWh while the current PSA charged between 3.8913-4.1496 PhP/kWh. (See Figure 6 of Preventing Another 20 Years of Coal Policy Brief)</p>
<p>“B. Requirements 5. OUTAGE ALLOWANCE”</p>	<p>“B. Requirements 5. 100% Supply Availability</p> <p>5.1 No outage allowance shall be provided to the power supplier.</p> <p>5.2 The power supplier shall guarantee 100% supply availability.”</p>	<p>We recommend removing outage allowance for all TORs, and all required details in this section be adjusted accordingly.</p> <p>Forced outages are part of the reimbursable cost charged to end-users. As IEEFA pointed out, in one instance of an unplanned coal-fired power plant outage due to boiler tube leaks, the Meralco generation charge of Php 3.44 per kilowatt-hour increased to Php 9.10 per kWh.</p> <p>However, in the 1,200 MW and 500 MW tenders, Meralco required a 100% guaranteed supply availability. Power players operating various technologies utilizing coal, fossil gas, solar, hydroelectric, and geothermal resources submitted bids despite the lack of any outage allowance. All the winning bidders were able to guarantee 100% supply availability, regardless of the performance of their nominated plants.</p> <p>Since power players utilizing different energy sources were able to win bids in a TOR which requires 100% supply availability, this proves that power players can assume the risk of outages. Instead of passing on these risk to consumer, we recommend that the CSP Rules should</p>

<p>"B. Requirements 7. FORCE MAJEURE ...</p> <p>7.2 Arrangements in case of any force majeure shall be agreed upon by parties and shall form part of the PSA.</p> <p>7.3 There will be no payment of any capacity fee in case of outage during any force majeure."</p>	<p>"B. Requirements 7. FORCE MAJEURE ...</p> <p>7.2 Arrangements, including but not limited to alternative dispute settlement system, in case of any force majeure shall be agreed upon by parties and shall form part of the PSA.</p> <p>7.3 There will be no payment of any capacity fee in case of outage during any force majeure.</p> <p>7.4 There will be no payment of Minimum Energy Offtake, if any, in case of decrease of energy demand during any force majeure."</p>	<p>now mandate that all power players to guarantee 100% supply availability.</p> <p>Requiring an alternative dispute settlement system for force majeure claims will ensure that disputes are expeditiously settled and the interest of electricity consumers are protected.</p>
<p>"B. Requirements 10. REDUCTION OF CONTRACT CAPACITY"</p> <p>10.1 The reduction of contract capacity shall be allowed in case of <i>(please check if applicable)</i>:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Loss of captive customers due to Retail Competition and Open Access (for on-grid areas only) <input type="checkbox"/> Reduction of demand of the DU due to special circumstances beyond its control 	<p>"B. Requirements 10. REDUCTION OF CONTRACT CAPACITY</p> <p>10.1 The reduction of contract capacity shall be allowed in case of <i>(please check if applicable)</i>:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Loss of captive customers due to Retail Competition and Open Access (for on-grid areas only) <input type="checkbox"/> Reduction of demand of the DU due to special circumstances beyond its control <input type="checkbox"/> Reduction of demand of the DU due to the Renewable Energy Law, and other laws and legal requirements. 	<p>While there is an option for transfer of contract capacity, no option is provided to reduce contract capacity, which is also called a carve out clause.</p> <p>We recommend that an additional clause be added to insert a carve-out clause.</p>