

[DOE DEPARTMENT CIRCULAR NO. DC 2005-12-011, December 12, 2005]

PRESCRIBING THE GUIDELINES FOR PARTICIPATION OF QUALIFIED THIRD PARTIES (QTPS) FOR PROVISION OF ELECTRIC SERVICE IN REMOTE AND UNVIABLE AREAS, PURSUANT TO SECTIONS 59 AND 70 OF "THE ELECTRIC POWER INDUSTRY REFORM ACT OF 2001", AND ITS IMPLEMENTING RULES AND REGULATIONS (IRR)

WHEREAS, Section 2 (a) of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" or "EPIRA", declared the policy of the State to ensure and accelerate the total electrification of the country;

WHEREAS, the Department of Energy (DOE) is tasked to develop and manage the electrification of rural and missionary areas nationwide, and to formulate annually a five (5) year Missionary Electrification Development Plan (MEDP) that will identify among others, the additional capacity in existing missionary areas as well as the facilities to be provided in areas not connected to the transmission system;

WHEREAS, Rule 13 (Missionary Electrification) of the Implementing Rules and Regulations (IRR) of "EPIRA" or "EPIRA-IRR," mandates the DOE to issue specific guidelines on how to encourage the inflow of private capital and the manner in which other parties can participate in the projects set forth in the MEDP;

WHEREAS, Section 59 (Alternative Electric Service for Isolated Villages) of the EPIRA recognizes the provision of electric service by Qualified Third Parties (QTPs) in remote and unviable areas that the franchised utility is unable to service;

WHEREAS, pursuant to Section 4(p) of Rule 7 of the EPIRA-IRR, the DOE has issued on 20 February 2004, Department Circular (DC) No. 2004-02-02 "Prescribing Guidelines for the Formulation of Five-Year Distribution Development Plan (DDP)" (DDP Circular) which requires all Distribution Utilities (DUs) to, among others, identify and submit to DOE the list of barangays within their respective franchise areas that are deemed remote, unviable and cannot be provided with electric service within the next three (3) years;

WHEREAS, the DOE has likewise issued Department Circular (DC) No. 2004-06-006 on 18 June 2004 (DOE QTP Qualification Circular), prescribing the qualification criteria for the QTPs that may participate in the provision of electricity to remote and Unviable Areas;

WHEREAS, there is a need to revise and update the qualification criteria and to include the process by which areas shall be selected for the QTP program and for which QTPs will be selected, as set forth in the DOE QTP Qualification Circular;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE FOREGOING PREMISES, the DOE hereby promulgates the following guidelines, expanding and complementing the DOE QTP Qualification Circular for private sector participation in Unviable Areas consistent with the EPIRA and the missionary electrification program of the Government as prescribed in the MEDP.

Section 1. Definition of Terms

(a) "*Department of Energy*" or "*DOE*" refers to the government agency created pursuant to Republic Act No. 7638 whose expanded functions are provided in the Act;

(b) "*Distribution Utility*" or "*DU*" as defined by Section 4(q) of the EPIRA refers to any electric cooperative, private corporation, government-owned utility or existing local government unit which has an exclusive franchise to operate a distribution system in accordance with its franchise and the EPIRA;

(c) "*Energy Regulatory Commission*" or "*ERC*" refers to the independent, quasi-judicial regulatory agency created under Section 38 of EPIRA which shall, among others, promote competition, encourage market development, have exclusive jurisdiction over all cases contesting rates, fees, fines and penalties, as well as fix and approve the Universal Charge imposed on all electricity consumers for purposes provided in the EPIRA;

(d) "*Full Cost Recovery Rate*" or "*FCRR*" shall refer to the rate, expressed in Peso per kilowatt-hour, that recovers the full efficient costs of generating, distributing and supplying electricity. The FCRR must be sufficient to enable the QTP to operate viably

(e) "*Generation Company*" as defined by Rule 4 (ddd) and cross-referenced to Section 70 of the EPIRA IRR refers to any person or entity authorized by the Energy Regulatory Commission to operate facilities used in the generation of electricity;

(f) "*Missionary Electrification*" refers to the power generation and associated delivery systems function of NPC-SPUG that shall be funded from the Universal Charge for Missionary Electrification which consists of providing basic electricity service in Unviable Areas with the ultimate aim of bringing the operations in these areas to viability levels, as defined in Rule 4 (ddd) and cross-referenced to Rule 13, Section 1 (a) and (b) of the EPIRA-IRR;

(g) "*Missionary Electrification Development Plan*" or "*MEDP*" refers to the five-(5) year plan of the DOE, updated annually, to implement the Government's missionary electrification program funded through the share in the Universal Charge for Missionary Electrification;

(h) "*Missionary Electrification Subsidy*" refers, for purposes of this Circular, to the funds duly approved by the ERC to cover the difference between the Full Cost Recovery Rate and Subsidized Approved Retail Rate of a Qualified Third Party sourced from the Universal Charge for Missionary Electrification;

(i) "*Person*" refers to a natural or juridical person, as the case may be;

(j) "*Power Sector Asset and Liabilities Management Corporation*" or "*PSALM*" refers to the corporation created pursuant to Section 49 of the EPIRA; (as

defined in Section 4 (oo) of the EPIRA)

(k) "*Qualified Third Party*" or "*QTP*" refers to the alternative electric service provider that meets the standards and chosen in accordance with the process set forth in this Circular, duly qualified and authorized by the ERC to serve Unviable Areas pursuant to Section 59 (Alternative Electric Service for Isolated Villages) of the EPIRA and Rule 14 (Provision of Electricity by Qualified Third Parties) of the EPIRA-IRR;

(l) "*QTP Service Contract*" refers to the agreement, duly approved by the ERC between NPC and the Qualified Third Party defining the latter's responsibilities in providing the service of missionary electrification in Unviable Areas. This agreement shall set the terms and conditions by which the QTP shall provide the service, such as but not limited to the tariff levels, other electric service charges, the applicable performance and service standards required for qualified third party service providers;

(m) "*QTP Service Area*" refers to the geographic area corresponding to the Unviable Area/s where QTP shall provide missionary electrification service;

(n) "*Renewable Energy Resources*" refers to energy resources that do not have an upper limit on the total quantity to be used. Such resources are renewable on a regular basis and the renewable rate is rapid enough to consider available over an indefinite time. These include, among others, biomass, solar, wind, hydro and ocean energy;

(o) "*Subsidized Approved Retail Rate*" or "*SARR*" shall refer to the rate, expressed in Peso per kilowatt-hour, that the ERC has determined to be the maximum that an end-user should pay for power supplied by a QTP. Revenue from the Subsidized Approved Retail Rate combined with the Missionary Electrification Subsidy should put the QTP in the same financial position as if it was able to charge the Full Cost Recovery Rate;

(p) "*Unviable Area*" refers to a geographical area within the franchise area of a Distribution Utility where the immediate extension of distribution line is not feasible, as defined by Rule 4 (ssss) of the EPIRA-IRR. For purposes of this Circular, the term "remote and unviable area" in the EPIRA, EPIRA-IRR or other laws or issuances shall mean "Unviable Area" as defined herein; and,

(q) "*Universal Charge*" refers to the charge, if any, imposed for the recovery of stranded cost and other purposes pursuant to Section 34 of the EPIRA;

(r) "*Universal Charge for Missionary Electrification*" or "*UC-ME*" refers to the portion of the Universal Charge which designated for Missionary Electrification; and

(s) "*Waiver Contract*" refers to the contract entered into between the Distribution Utility and the QTP pursuant to Rule 14 Section 5(a) of the EPIRA IRR wherein the DU transfers the responsibility to service the area described therein. For avoidance of doubt, the franchise of the DU shall not be transferred, abandoned and/or modified with respect to the Unviable Area included therein but only the right to service such area shall be deemed assumed by the QTP.

Section 2. Declaration of Policies

It is hereby declared the policies of the DOE that:

(a) All DUs shall endeavor to provide electricity service to all areas within their respective franchise areas, including remote and unviable areas, in an efficient and sustainable manner consistent with their respective franchises or authorities. Should the DU fail to serve the remote and unviable areas within its franchise area, the same may be opened for private sector participation and included in the QTP program.

(b) All areas identified by the DUs to be remote and unviable shall be declared open for QTP participation by the DOE in consultation with and based on the criteria set forth by the National Electrification Administration (NEA). Upon selection and qualification of the QTP to service a particular area, the concerned DUs shall then transfer its rights to said selected and qualified QTP. No fee for the transfer of rights to serve the Unviable Areas shall be paid to the DU.

(c) The participation as a QTP shall be open to any party, including but not limited to private firms, local government units, cooperatives, non-government organizations, generation companies or their subsidiaries or subsidiaries of DUs who has demonstrated the capability and willingness to comply with the relevant technical, financial, and other requirements through a competitive or transparent process. A DU or its subsidiary shall not be qualified to participate as a QTP for the area/s it has waived.

(d) All QTPs shall adopt least-cost and most efficient technology options in serving Un- viable Areas. In determining the QTP, preference shall be given to persons or entities that can offer the least-cost technologies utilizing renewable energy resources.

Section 3. Declaration of Unviable Areas

The DOE hereby adopts the following procedures in the declaration of Unviable Areas:

(a) Classification of Areas. The DU shall classify the unelectrified areas within its franchise between viable and unviable areas. In line with the DDP Circular, the DUs shall comply with the submission of duly accomplished DOE-EPIMB Form No. 03-002 on the list of areas to be waived (attached as Annex "A" *), through DOE - Electric Power Industry Management Bureau (DOE-EPIMB).

(b) NEA Verification. NEA shall verify the basis or justification upon which the DUs have selected or nominated remote and unviable areas within its franchise as part of the QTP program. NEA shall submit its proposed evaluation criteria to the DOE for clearance no later than thirty (30) days from the issuance of this Circular and shall thereafter be published in the NEA Bulletin and DOE website at www.doe.gov.ph for information of all DUs concerned.

(c) Consolidation of List of Areas. The DOE-EPIMB, shall consolidate and make available through publication, the list of Unviable Areas that will be offered to QTPs.

(d) Publication of Unviable Areas. The DOE shall declare and publish the list of Unviable Areas not later than September of every year. The list shall also be

made accessible to the public through posting in the DOE website at www.doe.gov.ph.

(e) If no candidate QTP submitted an EOI in a particular Unviable Area/s, the request for the submission of EOI shall continue to hold for at least two (2) months from the first publication. In the event that no EOI is submitted within this two (2) month period, the DOE shall include the area/s in its other missionary electrification programs.

Section 4. Procedures for Selecting Candidate QTPs

(a) The publication referred to in Section 3(c) shall serve as the call for "Expression of Interest" (EOI) to all interested parties willing to provide electricity services through QTP participation.

(b) Any person or entities who wish to perform the QTP function in a particular Unviable Area/s shall submit to DOE an EOI which shall include the following:

1. Official Letter of Intent;
2. Profile of the Company or Organization;
3. Relevant registration from Securities and Exchange Commission, Department of Trade and Industry, NEA or Cooperative Development Authority, whichever is applicable; and
4. Other relevant and readily available supporting documents.

(c) The DOE-EPIMB shall receive all EOIs and maintain records of all entities who have expressed interests in serving any remote and unviable area on a per service area basis.

(d) This Circular together with the DOE QTP Qualification Circular shall serve as the documents providing the basis for selecting candidate QTPs. On the basis of the criteria for qualification identified in said Circulars, the DOE-EPIMB shall evaluate the capacity of every applicant based on the documents officially submitted and such additional documents in support the application that may be requested by the DOE-EPIMB.

(e) The DOE shall inform in writing all parties who submitted EOI of the results of its evaluation.

(f) Party/ies that meet the set criteria will be recommended to the DOE Secretary for confirmation as candidate QTPs in respect of a particular service area/s as specified in the EOI.

Section 5. Procedure for the Selection of QTP to Serve Unviable Areas

The following rules shall govern the selection of the QTP:

(a) The DOE shall issue the Request for Proposal (RFP) to all candidate QTPs. The RFP shall establish the process of evaluation and selection of QTP for a particular Unviable Area/s.

For each QTP Service Area, the RFP issued by DOE shall contain the following:

- (i) Copy of the Model QTP Service Contract package consisting of the Waiver Contract and Subsidy and Disbursement Agreement (SDA), all duly approved by the ERC;