



Republic of the Philippines
DEPARTMENT OF ENERGY

DEPARTMENT CIRCULAR NO. _____

**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 the Policy of the State among others the following:

- 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), among other things to, 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, pursuant to Section 31 of the EPIRA, RCOA shall be mandated 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 DOE from enforcing DOE Department Circular DC2015-06-0010;

WHEREAS, on 10 March 2017, DOE and ERC, thru the Office of the Solicitor General, filed a Motion for Reconsideration before the Supreme Court and prayed to lift the TRO enjoining the respondents from implementing the assailed issuances;

WHEREAS, various entities sought clarification on the effects of the TROs, specifically the participation of Contestable Customers in the RCOA and the issuance of licenses for Retail Electricity Suppliers (RES);

WHEREAS, the DOE takes cognizance of the need to provide guidance to affected entities and continue the implementation of the key reforms of the EPIRA pending the resolution of the Supreme Court on the aforementioned cases;

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. The Retail Electricity Suppliers (RES) are the entities licensed by the Energy Regulatory Commission (ERC) to supply electricity to End-users in Contestable Market, unless otherwise specified by law.

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 power generation project is undergoing construction or planned its construction that has been included in the DOE's Power Development Plan (PDP).

In order to serve the Contestable Customers, which includes the aggregate demand, these entities shall secure a 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 licensed RES engaged in the generation and distribution sectors of the power industry shall functionally and structurally unbundle its supply business, 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. 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 6. Repealing Clause. All circulars, rules and regulations, or portions thereof, inconsistent with this Circular are hereby repealed or modified accordingly.

Section 7. Effectivity. This Circular shall take effect immediately following its publication in at least two (2) newspapers of general circulation.

Issued on _____ at Energy Center, Bonifacio Global City, Taguig City.

ALFONSO G. CUSI
Secretary