

**Cebu Chamber of Commerce and Industry, Inc. (CCCI)  
Position Paper**

Issue	Specific Provision Affected	Proposed Amendment	Discussion (Specify Proponent)
<p>Limitation of electricity suppliers to retail electricity supplier (RES)</p>	<p>Section 6 of ERC Resolution No. 16, Series of 2012 (“Transitory Rules”), entitled “A Resolution Adopting the Transitory Rules for the Implementation of Open Access and Retail Competition”</p> <p>DOE Department Circular No. DC 2012-07-0013 (“DC 2012-07-0013) issued on 3 July 2013</p>	<p>CCCI strongly move that the proper government agencies, i.e. ERC and DOE, to take a second look on the RCOA implementation whether it has indeed redounded to the spirit and letter of the EPIRA, to ensure affordability of the supply of electricity. Accordingly, to achieve EPIRA’s objectives, the Contestable Customers should not be exclusively restricted to contract with a RES but should be allowed to look for an electricity supplier, i.e. Generation Companies, IPPs or RES, which offers the best rate and reliable service for the supply of electricity.</p>	<p>To begin with, Section 6.2 of the Transitory Rules provides for a Contestable Customer to enter into a contract for the supply of electricity exclusively with a RES or Local RES.</p> <p>It must be noted, however, that the Department of Energy (“DOE”) in Department Circular No. DC 2012-07-0013 (“DC 2012-07-0013) issued on 3 July 2013, provides that a Contestable Customer may source its electricity supply requirements from the RES, Local RES, and, on its option, directly through the Whole Electricity Spot Market. The said circular also allows Contestable Customers to enter into an RSC with a prospective Generation Company, provided, that the Generation Company is issued a Certificate of Compliance by the ERC and successfully registered as a Trading Participant in the WESM; and provided further, that before the effective date of the RSC, the Generating Company shall have secured a supplier’s license from the ERC.</p> <p>A perusal of the above-quoted section of the Transitory Rules would show that Contestable</p>

**Cebu Chamber of Commerce and Industry, Inc. (CCCI)  
Position Paper**

Issue	Specific Provision Affected	Proposed Amendment	Discussion (Specify Proponent)
			<p>Customers are proscribed from purchasing electricity directly from Generators and/or Independent Power Producers (“IPP”).</p> <p>On the other hand, DC 2012-07-0013 still requires Generation Companies to eventually be a RES prior to the effective date of the RSC. With this restriction, it can therefore be concluded that Contestable Customers are constrained to contract with a RES.</p> <p>It must be noted, that one of the purpose of the EPIRA Law, which conceptualized the RCOA, is to ensure affordability of the supply of electricity. Conversely, RCOA presupposes an open market for the supply of electricity to encourage competition with the end goal of lowering electricity rates. Thus, the EPIRA Law itself provides that the Contestable Market refers to electricity end-users who have a <u>choice of a supplier of electricity</u>, as may be determined by the ERC.</p> <p>Moreover, it has been observed that the electricity rates offered by these RES are far more expensive than those offered by Generation Companies/IPPs that are not RES. Similarly, these RES do not have</p>

**Cebu Chamber of Commerce and Industry, Inc. (CCCI)  
Position Paper**

Issue	Specific Provision Affected	Proposed Amendment	Discussion (Specify Proponent)
			<p>sufficient supply of power to offer to the Contestable Customer. Further, it has been generally observed that Generation Companies are hesitant to secure a supplier's license from the ERC.</p> <p>Of similar importance is the fact that RES in general are just "middleman" who after getting its license to act as RES go and transact business with Generation Companies or IPPs to purchase their power supply. Thereafter, these RES will now sell the power, which they purchased from Generation Companies or IPPs at an added cost, to be shouldered by Contestable Customers.</p>
Option for Contestable Customers to stay with the Captive Market	ERC Resolution No. 11, Series of 2013  DOE Department Circular No. DC 2012-07-0013 ("DC 2012-07-0013) issued on 3 July 2013	CCCI strongly submits that in order to attain the objectives of the EPIRA - RCOA, to have an open market in the supply of electricity, the Contestable Customers should be allowed, as an option, to remain with the Captive Market. The Contestable Customers shall, therefore, be allowed to	<p><b>Cebu Chamber of Commerce and Industry, Inc. (CCCI) Position Paper</b></p> <p>It must be remembered that the Transitory Rules provide for a timeline on when Contestable Customers should enter into an RSC. However, during the Transitory Period of the RCOA, it has been observed by the Contestable Customers that</p>

**Cebu Chamber of Commerce and Industry, Inc. (CCCI)  
Position Paper**

Issue	Specific Provision Affected	Proposed Amendment	Discussion (Specify Proponent)
		<p>remain with their respective DUs as captive customer, aside from the option of contracting supply of electricity with a RES, Generation Companies or IPPs that are not RES.</p>	<p>they have difficulties getting fixed offers from RES and the rates offered by the available RES are far higher than the rates they are being charged by their respective DU when they were under the Captive Market. The reason given by the RES on the issue why the electricity rates offered to Contestable Customers are higher compared to the rate when they are under the Captive Market is due to the latter's Load Profile and Factor.</p> <p>Load Profile is a measure of the time distribution of an end-user's energy requirements, it represent the pattern of electricity usage of supply market customers. Load Factor is the ratio, expressed as percentage, of the number of kWh supplied during a given period to the number of kWh that would have been supplied had the maximum demand been maintained throughout that period. This term refers to the energy load on a system as compared to its maximum or peak load for a given period. The extent of the end-user's use for the month as compared to its maximum use for that same month is called his "load factor". As observed, Contestable Customers, which have below 100% load factor, or those who do not use electricity for 24 hours, have</p>

**Cebu Chamber of Commerce and Industry, Inc. (CCCI)  
Position Paper**

Issue	Specific Provision Affected	Proposed Amendment	Discussion (Specify Proponent)
			<p>a higher rate of electricity compared to those with a 100% load factor. Simply put, the higher the load factor the lower the electricity rate.</p> <p>Consequently, these Contestable Customers who have low “load factor” should be allowed to continue as customers of their respective DU.</p> <p>At present, the ERC, under Resolution No. 11, Series of 2013, allowed Contestable Customers, who failed to enter an RSC by 25 June 2013, to stay with its current DU until 25 December 2013, or until such time that it is able to find a RES and provided that it informs the DU of such fact before 25 June 2013.</p> <p>Likewise, DC 2012-07-0013 provides that Contestable Customers which have no choice due to absence of acceptable offer from RES or Local RES shall continue to remain with its franchised DU or current service provider and shall be charged based on its existing rates until it is able to secure an RSC. However, those Contestable Customer, who have entered into a RSC with a RES are not permitted to go back to its DU as captive customer.</p>

**Cebu Chamber of Commerce and Industry, Inc. (CCCI)  
Position Paper**

Issue	Specific Provision Affected	Proposed Amendment	Discussion (Specify Proponent)
			<p>As a final note, if the Contestable Customer's option for the supply of their electricity needs will not be limited to RES and will include Generation Companies or IPPs that are not RES, or the option to stay with their respective DU's as captive customer, then it will necessary increase the competition introduced in the supply sector and would ultimately give the Contestable Customers superior electricity at reasonable and affordable rate. In short, the Contestable Customers are now freely empowered to secure power supply from any of the following: a. RES; b. Generation Companies; c. IPPs; and d. DU, as captive customers.</p>
<p>Right of choice to Contestable Customers to be billed either through Single-Billing or Multiple Billing</p>	<p>Distribution Services and Open Access Rules ("DSOAR")  Rules on Customer Switching</p>	<p>CCCI submits that Contestable Customers with two or more electricity suppliers should be given the full opportunity to exercise its right of choice through having the option to choose between single billing and multiple billing in their availment of distribution wheeling services.</p>	<p>We do note that under the Rules on Customer Switching "a single billing policy is initially adopted. The RES or Local RES will thus be contracting with other service providers (i.e. DU for DWS, TransCo for transmission and ancillary services, Market Operator (MO) for WESM transactions) on behalf of its Contestable Customers, except for the Connection Agreement, which shall subsequently be entered into by a Contestable Customer and the</p>

**Cebu Chamber of Commerce and Industry, Inc. (CCCI)  
Position Paper**

Issue	Specific Provision Affected	Proposed Amendment	Discussion (Specify Proponent)
			<p>DU.”</p> <p>Inasmuch as the above provision promotes single-billing policy, the same still recognizes dual Billing option as provided in the Distribution Services and Open Access Rules (“DSOAR”). The rules state that “the dual billing option shall be adopted upon the issuance of an ERC policy relative to this.” Thus, while ERC has not issued any policy yet, end-users must be given a choice to elect either single billing or multiple billing.</p> <p>The DSOAR also provides that, “as an option to the RES, the End use customer of the RES may be billed directly by the DU for DWS.” Thus, in this set-up, the end-user is able to assert favorable terms in its behalf both to the RES and the DU. This is also consistent with the rule in DSOAR that the “RES is fully responsible for determining the billing methods for their customers.” Any charges, therefore, if billed separately, are more transparent as envisioned by the EPIRA. Moreover, the end-user is better assured that it is paying reasonable cost for electricity.</p> <p>In view of the choice given to the Contestable</p>

**Cebu Chamber of Commerce and Industry, Inc. (CCCI)  
Position Paper**

Issue	Specific Provision Affected	Proposed Amendment	Discussion (Specify Proponent)
			<p>Customers to either select single billing or multiple billing method, CCCI submits that Contestable Customers should be permitted to contract directly with Distribution Utilities for DWS Agreement.</p> <p>Generally, under the DSOAR, Distribution Wheeling Services (“DWS”) are provided by the DU to RES, as such, the RES is the one eligible to enter into a DWS Agreement with the DU. Furthermore, the RES is responsible for all contractual, service, and billing matters related to its end-users including those pertaining to DWS.</p> <p>Notwithstanding the foregoing, <b><u>a RES may opt to have one or more of their end-users contract directly with the DU for DWS.</u></b></p> <p>Although the pertinent rules and regulations require Contestable Customers to enter into an RSC with a RES and thereafter the RES enters into a DWS Agreement with the DU, it is more beneficial and practical not to limit the billing options given to Contestable Customers. Hence, a Contestable Customer must be allowed to transact either directly with the DU for a DWS Agreement or</p>



**Cebu Chamber of Commerce and Industry, Inc. (CCCI)  
Position Paper**

Issue	Specific Provision Affected	Proposed Amendment	Discussion (Specify Proponent)
			<p>through a RES.</p> <p>In fact, this possibility of giving the option to a Contestable Customer to directly contract with the DU is not actually prohibited under any pertinent rules and regulations. The provision on payment in DSOAR even recognizes Contestable Customers' right to directly contract with the DU since the latter is given the right to disconnect the electrical supply, "for failure of the end-user in the contestable market to make payments to a DU <u>when such customer contracts directly with the DU.</u>"</p> <p>It is not submitted, however, that the RES cannot protect the interest of the Contestable Customers when it enters into a DWS Agreement on the latter's behalf. However, it cannot be denied that Contestable Customers, as an end-users, is better served if it can present all its concerns and terms directly to the DU.</p> <p>It is to be noted that DWS Agreement does not only pertain to services for the conveyance of electricity but also to discretionary services, which are customer-specific services for which costs are</p>

**Cebu Chamber of Commerce and Industry, Inc. (CCCI)  
Position Paper**

Issue	Specific Provision Affected	Proposed Amendment	Discussion (Specify Proponent)
			<p>recovered through separately priced rate schedules. In this light, when Contestable Customers directly contracts with its respective DU for DWS agreement, the former can specifically arrange for services which are distinct to such Contestable Customers. Thus, the Contestable Customers and the DU are given more flexibility to agree on terms and conditions pertaining to the customer-specific services and separate priced rate schedules.</p> <p>If EPIRA indeed aims to 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, promote consumer choice and enhance the competitiveness of Philippine products in the global market, then Contestable Customers must be given the option of their preferential billing method.</p>

**Cebu Chamber of Commerce and Industry, Inc. (CCCI)  
Position Paper**

Issue	Specific Provision Affected	Proposed Amendment	Discussion (Specify Proponent)
<p>A Proforma DWS Agreement may not be beneficial to Contestable Customers</p>	<p>ERC Resolution 14, Series of 2013 providing for a proforma DWS Agreement between a RES and a DU</p> <p>The RES shall not modify or allow the modification of the technical specifications without the written consent of the COMPANY. Should the RES or its customer intend to modify said specifications, the RES shall notify the COMPANY no less than thirty (30) business days in advance. Any incremental cost attributable to any modification in the specifications of the RES or its customer shall be made at the sole expense of the RES.</p>	<p>Although the pertinent rules would allow only the RES to contract with the DU on behalf of the former's customers, CCCI submits that Contestable Customers must also be given the same right to directly contract with the DU for DWS Agreement, especially if the Contestable Customers are served by several suppliers.</p>	<p>Although this Resolution calls for the use of the proforma DWS Agreement between a DU and a RES, there is nothing in the said Resolution or in any ERC rules that prohibits Contestable Customers to directly contract with a DU for a DWS Agreement. Moreover, the provisions in DSOAR which recognize the possibility of such direct contract with the DU are not inconsistent with any ERC rules or regulations. With more reason that the right of Contestable Customers to directly contract with the DU for a DWS Agreement be allowed because it is consistent with the policies and objectives of EPIRA.</p>

**Cebu Chamber of Commerce and Industry, Inc. (CCCI)  
Position Paper**

Issue	Specific Provision Affected	Proposed Amendment	Discussion (Specify Proponent)
	<p>The following provisions, thus, need to be reconsidered for</p> <p><b>Section 2. Provision of DWS.</b> Subject to the terms and conditions of this Agreement, and applicable rules and regulations, the COMPANY shall provide DWS to the RES and the latter's customers under the technical specifications as specified in the attached Schedule with the concerned customer.</p>	<p>Reconsider some provisions that may have possible detrimental effects on the part of Contestable Customers. CCCI further submits that the proforma DWS Agreement contains provision that may not be beneficial to Contestable Customers because of the restriction on the parties who may be allowed to contract for DWS Agreement, in this case only a RES and a DU are considered parties to the DWS Agreement.</p>	<p>This provision gives the full discretion to the Company or DU whether to modify or allow the modification of the technical specifications. Thus, if there is a need of modification for the benefit of the Contestable Customers, the RES still needs to secure the written consent of the DU. As such, the DU, if not amenable to the modification can withhold such consent. In the same way, the RES may refuse to allow any modification since any incremental cost is for its sole expense.</p>
<p>A Proforma DWS Agreement may not be beneficial to Contestable Customers</p>	<p><b>Section 5.d (Duties and Responsibilities of RES)</b></p> <p><b>“Be solely responsible for all contractual and billing matters, including disputes, relating to its customer”</b></p>		<p>This responsibility of the RES apparently removes from the Contestable Customers its right to effectively protect its interest in relation to contractual and billing matters. Worse, the Contestable Customer’s legitimate dispute with the DU is handled by the RES.</p> <p>Based on the foregoing, Contestable Customers must first go to the RES for its dispute with the DU, and thereafter the RES resolves the same on the</p>

**Cebu Chamber of Commerce and Industry, Inc. (CCCI)**  
**Position Paper**

Issue	Specific Provision Affected	Proposed Amendment	Discussion (Specify Proponent)
			Contestable Customers' behalf. Although this may seem convenient to Contestable Customers, such bureaucratic practice may be inefficient and ineffective. It cannot be denied that if Contestable Customers are allowed to contract or settle its dispute directly with the DU, then Contestable Customers will have full opportunity to push for terms and conditions which are both reasonable and cost-efficient on their part.
A Proforma DWS Agreement may not be beneficial to Contestable Customers	<b>Section 7. <i>Additional Terms and Conditions.</i></b> Any terms and conditions specifically applicable to the RES' Customer shall be specified in the applicable Schedule with the concerned customer, which shall be considered integral part hereof.		If this provision allows for integration of any terms and conditions specifically applicable to the RES' Customer to be specified in the applicable Schedule, then, Contestable Customers are fully protected when they are allowed to contract and deal with the DU directly for the DWS Agreement itself.
A Proforma DWS Agreement may not be beneficial to Contestable Customers	<b>Section 9. <i>Billing and Payment</i></b> The COMPANY shall bill the RES for all the charges stipulated under this Agreement and the applicable Schedule with the RES' Customer, if any, including		The above provision exemplifies single billing method, where whatever is billed by the DU to the RES, the RES also bills the same to Contestable Customers. This provision however gives the right to dispute any bill only to the RES.  This becomes detrimental because the RES may opt

**Cebu Chamber of Commerce and Industry, Inc. (CCCI)  
Position Paper**

Issue	Specific Provision Affected	Proposed Amendment	Discussion (Specify Proponent)
	<p>any billing adjustment, differential bills and such other charges as may be approved by the ERC. Said bill shall become due and demandable within calendar days from the receipt of said bill by the RES. Any amount unpaid shall be charged with interest at the rate not to exceed 12% per annum from the date the bill was due to be paid.</p> <p>The payment of the interest is in addition to, and not in lieu of, all other rights and remedies otherwise available to the COMPANY. The RES may dispute any bills in writing within thirty (30) calendar days from receipt of the bill. Notwithstanding the foregoing, the RES shall continue to pay the disputed</p>		<p>not to dispute the bill for the reason that it will ultimately bill the same to the particular Contestable Customer anyway. As such, Contestable Customers must also be allowed to dispute the bill given by the DU to the RES since, ultimately, Contestable Customers will also pay for some charges in such bill.</p>

**Cebu Chamber of Commerce and Industry, Inc. (CCCI)  
Position Paper**

Issue	Specific Provision Affected	Proposed Amendment	Discussion (Specify Proponent)
	<p>bills without deductions or any offset and shall not be an excuse or ground for the RES to delay payment of succeeding bills or to unilaterally deduct any amount therefrom. The COMPANY shall endeavour to resolve any disputed bills within 30 calendar days from its receipt of the written complaint by the RES.</p>		
<p>A Proforma DWS Agreement may not be beneficial to Contestable Customers</p>	<p><b>Section 11. <i>Disconnection of Service of RES' Customers.</i></b></p> <p>a. RES fails to pay the DWS charges, or any adjusted or differential bills or such other charges stipulated in this Agreement, on the due date, in part or in whole;</p> <p>c. When the RES has not</p>		<p>The above provision allows the DU to disconnect the services supplied to the Contestable Customers because of acts attributable to the RES. The Contestable Customers suffer the consequences of the acts of the RES, which the customers do not have any control.</p>

**Cebu Chamber of Commerce and Industry, Inc. (CCCI)  
Position Paper**

Issue	Specific Provision Affected	Proposed Amendment	Discussion (Specify Proponent)
	<p>complied with any of the provisions of the DSOAR, PDC, other applicable laws, including any amendments thereon;</p> <p>d. In case of non-payment by the RES of its customer's final bill, or balance thereof, as a captive customer, in case of the latter's initial transfer from the captive to the contestable market; as well as the customer's final bill, in case of regular switching.</p> <p>e. Violation of any of the terms and conditions of this Agreement by the RES;</p>		
<p>A Proforma DWS Agreement may not be beneficial to Contestable Customers</p>	<p>Section 12. Disconnection of the RES' customer- upon request of the RES.</p> <p>c. <b>Customer Protest.</b> The RES shall be</p>		<p>This provision renders Contestable Customers powerless over the DU. Since the DWS Agreement is between the RES and the DU, Contestable Customers are eventually deprived of their right to</p>



**Cebu Chamber of Commerce and Industry, Inc. (CCCI)  
Position Paper**

Issue	Specific Provision Affected	Proposed Amendment	Discussion (Specify Proponent)
	held solely liable for, and shall defend and hold the COMPANY free and harmless against, any protest, claims or damages by the RES' Customer to the disconnection made by the COMPANY under this Section.		protest or claim against the DU. Limiting Contestable Customers to raise their protests or claims only to the RES, and the RES is duty-bound to defend the DU is unquestionably detrimental to the Contestable Customers' interest. Their legitimate claims against the DU may be barred by the RES itself, since if the RES eventually allows the Contestable Customers' claims against the DU, the RES will be liable to the DU for violation of such free and harmless clause.
A Proforma DWS Agreement may not be beneficial to Contestable Customers	<b>Section 20. Amendment/Modification of Agreement.</b> This Agreement, including the applicable Schedule with the RES' Customer, constitutes the sole and entire agreement between the PARTIES and supersedes all previous arrangements or agreements in respect of the subject-matter of this Agreement. <b>No amendments of this Agreement or the applicable Schedule with the RES' Customer, or consent to any departure therefrom,</b>		This provision again leaves to the discretion of the "parties" – the RES and the DU – the terms and conditions of the agreement. Thus, any legitimate concern of the Contestable Customers which eventually calls for the modification of the agreement may not be properly addressed if any of the "parties" refuse to confirm the same in writing.

**Cebu Chamber of Commerce and Industry, Inc. (CCCI)  
Position Paper**

Issue	Specific Provision Affected	Proposed Amendment	Discussion (Specify Proponent)
	<p>shall in any way be of any force or effect unless confirmed in writing and signed by the PARTIES. If necessary, such amendment or departure shall be effective only upon approval by the ERC. The failure of any Party, at any time, to require performance of any provision hereof shall in no manner affect the right to enforce the same at a later time. No waiver by any Party of the breach of any term or covenant contained in this Agreement, whether by conduct or otherwise, shall be deemed to be construed as a further or continuing waiver of such breach or waiver of the breach of any other term or covenant, unless such waiver is in writing.</p>		