The Philippine Independent Power Producers Association (PIPPA) thanks the Commission and the Department for the opportunity to comment on the draft "IMPLEMENTING GUIDELINES OF SECTION 3 OF DEPARTMENT OF ENERGY CIRCULAR NO. DC2015-06-008, "MANDATING ALL DISTRIBUTION UTILITIES TO UNDERGO COMPETITIVE SELECTION PROCESS (CSP) IN SECURING POWER SUPPLY AGREEMENTS (PSA)" ("Draft Implementing Guidelines").

We submit for your consideration, our general observations and suggestions to the Draft Implementing Guidelines in the attached Annex “A”. Our member generators have likewise submitted their own comments to the Draft Implementing Guidelines to the Commission and Department respectively.

PIPPA looks forward to the consideration of our concerns and we commit to be available to discuss any questions or clarifications the Commission and Department may have in the attached comment.

Very truly yours,

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PIPPA GENERAL OBSERVATIONS AND SUGGESTIONS

IMPLEMENTING GUIDELINES OF SECTION 3 OF DEPARTMENT OF ENERGY CIRCULAR NO. DC2015-06-008, "MANDATING ALL DISTRIBUTION UTILITIES TO UNDERGO COMPETITIVE SELECTION PROCESS (CSP) IN SECURING POWER SUPPLY AGREEMENTS (PSA)"

Under the EPIRA, the generation of electric power shall be considered open and competitive. Furthermore, distribution utilities and electric cooperatives have an obligation to supply electricity to its customers in a manner that will impose the least burden (i.e., least cost). These rates being charged to a consumer is subject to ERC approval, the ERC being an independent body mandated to implement the objectives of EPIRA at the same time balancing the best interest of the general public. In the proposed Draft Implementing Guidelines, we observe that there are items that need to be addressed and clarified, particularly the following:

A. Least Cost

The proposed guidelines appear to transfer the obligation of determining least cost to the Third Party, which conflicts with Section 23, Paragraph 3 of the EPIRA Law. While the proposed Draft Implementing Guidelines recognizes the mandate of the DUs to supply electricity to their captive market at least cost, it however empowers the Third Party to influence, if not, determine for the DU, how “least cost” is to be achieved.

For instance, the Third Party has the authority to:

1. impose the contract period that a DU can enter into;
2. require a particular DU to be aggregated with other DUs based on its sole determination;
3. veto the decision of the Aggregated DUs with respect to the timing and volumes of demand or energy it intends to procure; and
4. determine the terms and parameters of the CSP.

These obligations/prerogatives of the Third Party will have a substantial impact on how least cost will be determined, contrary to the mandate of the EPIRA on DUs. It will likewise affect the management prerogatives of the DUs on how to run their business and ensure adequate, efficient and reliable supply of energy to its captive market. The authorities enumerated above take on the nature of a regulatory function, which is the primary responsibility of the ERC. By merely directing a “light handed” review by the ERC, it indicates that the Third Party is given full discretion and power, thereby designating the Honorable Commission to an administrative task in this process. Given this, the probable effect would be that the DUs/ECs, ERC and consumers would be bound to recognize the lowest bid, which is not necessarily the least cost.

B. Third Party

PIPPA notes that there are no clear standards as to how the most qualified Third Party will be determined/chosen amongst other qualified Third Parties. Without parameters for selection and qualification, the entrance of a “third party” may be subject to abuse and gives a wide discretion for selection of entities. PIPPA seeks to ensure that the process of selection will be transparent to the public. PIPPA suggests that the Department and Commission provide for clear parameters in determining the most qualified Third Party prior to implementation.
In addition, the Draft Implementing Guidelines do not provide for safeguards to ensure the independency and impartiality of the Third Party. More importantly, as discussed above, the powers and functions given to the Third Party are by far wide and encompassing. PIPPA observes that these functions already partake the nature of a regulating entity, of which may not be the intent of the Draft Implementing Guidelines. Under the EPIRA, it is the ERC who is given the power to regulate the parties taking into consideration the mandate and objectives of EPIRA. There should be parameters and guidelines in place that the Third Party will be independent and conduct its functions with impartiality.

PIPPA also notes that in the Draft Implementing Guidelines, the remuneration of the Third Party shall be taken out of the energy sales for the first year of implementation of the contracts successfully facilitated and closed by the Third Party. The Third Party’s fee shall be include in the Generation Company’s billings to the Aggregated DUs and shall be remitted by each DU on a monthly basis directly to the Third Party. We seek to clarify if the remuneration of the Third Party will be that of a “pass-through” cost, which will need the approval of the ERC. Under the EPIRA, Retail Rates are to be approved by the ERC after the conduct of public hearings. Specifically, Rule 3, Section 4(d) of the Implementing Rules and Regulations of the EPIRA Law provides that “the ERC, after the conduct of public hearings, shall determine, fix and approve Transmission and Distribution Wheeling Charges, and Retail Rates through an ERC established and enforced methodologies setting the same.” On this matter, PIPPA notes that the proposed payment scheme to the Third Party may likely have tax consequences on the parties.

Lastly, to ensure transparency in the process, the Draft Implementing Guidelines should provide for independent audits to evaluate compliance with rules and regulations set by the Commission and the Department.