



Republic of the Philippines
DEPARTMENT OF ENERGY
(Kagawaran ng Enerhiya)

DEPARTMENT ORDER NO. D02023-06-0018

CREATING THE PERFORMANCE ASSESSMENT AND AUDIT TEAM FOR THE OPERATIONS OF THE TRANSMISSION NETWORK PROVIDER AND SYSTEM OPERATOR (PAAT-TNPSO) AND PROVIDING FOR ITS RESPONSIBILITIES

WHEREAS, Section 19, Article XII of the 1987 Constitution states that the “State shall regulate or prohibit monopolies when the public interest so requires. No combinations in restraint of trade or unfair competition shall be allowed”;

WHEREAS, Section 4 of Republic Act (RA) No. 7638 or the Department of Energy (DOE) Act of 1992 mandates the DOE to prepare, integrate, coordinate, supervise, and control all plans, programs, projects, and activities of the Government relative to energy exploration, development, utilization, distribution, and conservation;

WHEREAS, RA 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA) declares, among others, the policy of the State to ensure the quality, reliability, security, and affordability of the supply of electric power and 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 provides that the DOE is specifically mandated and authorized, among others, to ensure the reliability, quality, and security of supply of electric power, to exercise supervision and control over all government activities relative to energy projects in order to attain the goals embodied in Section 2 of RA 7638, and monitor private sector activities relative to energy projects in order to attain the goals of the restructuring, privatization, and modernization of the electric power sector as provided for under existing laws, and to exercise such other powers as may be necessary or incidental to attain the objectives of the EPIRA;

WHEREAS, Section 37 of the EPIRA further provides that the DOE shall have the power and function to formulate rules and regulations as may be necessary to implement its objectives.

WHEREAS, in *Alyansa Para Sa Bagong Pilipinas v. Energy Regulatory Commission, et al.* (G.R. No. 227670, May 3, 2019), the Supreme Court affirmed the DOE’s power and function to formulate the policies, and to issue rules and regulations to implement the EPIRA, and that rules, regulations, and circulars issued pursuant to the DOE’s rule-making power under the EPIRA have the force and effect of law;

WHEREAS, Sections 9 and 21 of the EPIRA state that the National Transmission Corporation (TRANSCO) or its Buyer/Concessionaire is mandated to, among others, provide open and non-discriminatory access, and ensure and maintain the reliability, adequacy, security, stability, and integrity of the nationwide electrical grid in

accordance with the Philippine Grid Code (PGC) and the Transmission Development Plan (TDP);

WHEREAS, Section 21 of the EPIRA mandates the Concessionaire of TRANSCO to be “responsible for the improvement, expansion, operation, and/or maintenance of its transmission assets and the operation of any related business” and shall “comply with the Grid Code and the TDP as approved”. The same Section provides that the failure of the Concessionaire to “comply with such obligations shall result in the imposition of appropriate sanctions or penalties by the Energy Regulatory Commission (ERC)”;

WHEREAS, Section 9 of the EPIRA stipulates that TRANSCO is mandated to ensure and maintain the reliability, adequacy, security, stability, and integrity of the nationwide electrical grid in accordance with the performance standards for the operations and maintenance of the grid and undertake the preparation of the TDP;

WHEREAS, Section 78 of the EPIRA provides that the implementation of the EPIRA shall not be restrained or enjoined except by an order issued by the Supreme Court of the Philippines;

WHEREAS, Section 46 of the EPIRA states that Congress may, upon recommendation of the DOE and/or the ERC, revoke any franchise or privilege granted to a party who violates the provisions of the EPIRA;

WHEREAS, the ERC, in compliance with its mandate under the EPIRA, promulgated the PGC and the Philippine Distribution Code (PDC), prescribing, among others, the institutional, technical, and financial performance standards that govern the operations of the Transmission Network Provider (TNP) and System Operator (SO);

WHEREAS, Section 3 of RA 11659, titled “An Act Amending Commonwealth Act No. 146, Otherwise Known as the Public Service Act, as Amended”, provides that “all references to the Public Service Commission (PSC) in Commonwealth Act No. 146, as amended, shall pertain to any Administrative Agency to which the powers and duties of the PSC were transferred by subsequent laws, such as but not limited to: xxx Department of Energy (DOE) xxx [and] Energy Regulatory Commission (ERC) xxx”;

WHEREAS, Section 13 of Commonwealth Act No. 146, as amended by RA 11659, explicitly provides that “Public Utility refers to a public service that operates, manages or controls for public use any of the following: xxx Transmission of Electricity xxx, all concessionaires, joint ventures, and other similar entities that wholly operate, manage or control for public use the sectors above are public utilities”;

WHEREAS, Section 13 of Commonwealth Act No. 146, as amended by RA 11659, also states that the DOE and ERC, as the transferee of the powers and duties of the PSC on matters relating to the energy sector, “shall have jurisdiction and supervision over all public services, including public utilities, and their franchises, equipment, and other properties, and in the exercise of its authority, it shall have the necessary powers and the aid of public force”. Thus, in addition to their powers under EPIRA, the DOE

and ERC are clothed with supervisory and regulatory powers over public utilities, such as the Concessionaire, among others;

WHEREAS, the EPIRA defines the TDP as the program for managing the transmission system through efficient planning for the expansion, upgrading, rehabilitation, repair, and maintenance, as prepared by TRANSCO or its Concessionaire and approved by the DOE. The projects in the approved TDP are to be implemented by TRANSCO or its Concessionaire pursuant to the provisions of EPIRA;

WHEREAS, RA 9511 or An Act Granting the National Grid Corporation of the Philippines (NGCP) a Franchise to Engage in the Business of Conveying or Transmitting Electricity through High Voltage Back-Bone System of Interconnected Transmission Lines, Substations and Related Facilities, and for Other Purposes, explicitly obligates the NGCP, as the franchisee, to operate and maintain at all times, in accordance with industry standards, the transmission system and related facilities, and to modify, improve, and change such system or facilities in such manner and to such extent as the progress in science and improvements in the electric power services may reasonably require;

WHEREAS, the DOE promulgated Department Circular (DC) No. DC2017-05-0008, titled "Providing for the Policies and Guidelines on the Conduct of Performance Assessment and Audit (PAA) for All Power Generation, Transmission and Distribution Systems and Facilities", which mandates the institutionalization of the PAA for the Power Generation, Transmission, and Distribution Systems and Facilities and the adoption of detailed guidelines;

WHEREAS, the DOE promulgated supplemental DC No. DC2017-12-0016, titled "Adopting the Guidelines for the Performance Assessment and Audit of All Power Generation, Transmission and Distribution Systems and Facilities", which outlines the scope, manner, and procedures for the conduct of the PAA for all generation, transmission, and distribution facilities;

NOW THEREFORE, with the above premises considered, pursuant to existing laws, regulations, and codes, to establish a comprehensive and sustainable mechanism to confirm and validate the level of compliance, the DOE hereby adopts the following policies, rules, and guidelines on the conduct of the PAA of the TNP and SO:

Section 1. Guiding Principles. The conduct of the PAA shall be in accordance with the following:

- 1.1 The PAA shall serve to assist Congress and the President of the Philippines in continuously reviewing laws and policies relating to energy;
- 1.2 The PAA shall serve as a basis for the DOE, ERC, and other relevant agencies in developing policies to attain secure, reliable, and affordable supply of electricity;

- 1.3 The PAA shall serve as basis for the DOE or the ERC to recommend to Congress any actions to be taken in respect of the franchise of the TNP and SO, and as basis for Congress to act upon such recommendations;
- 1.4 The PAA may serve as basis for TRANSCO and the Power Sector Assets and Liabilities Management Corporation (PSALM) to assess the performance by the TNP and SO of its obligations under the Concession Agreement dated February 28, 2008, among TRANSCO, PSALM and the TNP and SO;
- 1.5 The PAA shall be conducted in a transparent, and timely manner with results thereof to be used for improving operations and performance, and for evaluating the level of implementation and compliance by the TNP and SO with the TDP;
- 1.6 The PAA shall form part of the industry best practices and compliance of all transmission systems and facilities. All entities identified to be subject of the conduct of the PAA shall ensure their compliance;
- 1.7 The PAA shall provide the basis for the ERC's enforcement of an incentive and penalty system that ensures accountability of the TNP and SO in performing its mandate in ensuring the security and reliability of the grid while allowing non-discriminatory access to all grid users; and
- 1.8 The DOE may authorize any qualified entity to conduct the performance assessment and audit, in accordance with the provisions of this Department Order and other relevant guidelines.

Section 2. Creation and designation of representatives for the PAAT-TNPSO.
The PAAT-TNPSO shall be composed of the following:

Chairman : Supervising Undersecretary of the Electric Power Industry Management Bureau (EPIMB)

Vice-Chairman: Supervising Assistant Secretary of EPIMB

Members:

- i. Grid Management Committee (GMC) or interim GMC, as the case may be, with respect to the PGC;
- ii. Philippine Electricity Market Corporation (PEMC), through its Market Surveillance Committee (MSC), with respect to SO-related market interventions;
- iii. PEMC Audit Committee (PAC), with respect to the conduct of Metering Service Provider (MSP) Arrangement Review, in accordance with the Wholesale Electricity Spot Market (WESM) Rules and Market Manuals;

- iv. TRANSCO and PSALM, with respect to the Concession Agreement with the TNP and SO; and
- v. ERC, with respect to the issuances related to the transmission sector and the TDP.

Section 3. Parameters and Standards. In the conduct of the PAA of the TNP and SO, the PAAT-TNPSO or any DOE-authorized entity shall consider the following functional areas that are vital to the operations of the electric power industry participants and have an impact on power systems/facilities and consumers:

Functional Area	Description
Compliance	Parameters which apply certain compliance to obligations on applicable laws, policies, rules, regulations and other issuances on aspects such as reporting, certifications, ownership restrictions, etc.
Planning and Engineering	Parameters on project implementation/delays, TDP, and conduct of the System Impact Study
Environment, Health, and Safety (EHS)	Parameters related to aspects of environmental protection, occupational health and safety, and resiliency
Operational	Parameters related to effective and efficient processes impacting operations of power systems and facilities to include standard compliance to ancillary services requirements among others
Technical	Parameters related to the quality of supply, reliability of the power system, grid safety, and other technical obligations such as those stated in reliability indices
Customer Services	Parameters related to aspects such as performance standards, connection metering and billing, etc. which impact customer services
Information Technology	Parameters related to the adoption of new technologies, cyber security, and process automation to improve efficiency, reliability, and security
Management Effectiveness	Parameters related to corporate governance, ethics, anti-corruption, strategy, and planning

The assessment and audit of the Transmission Operation, System, and Facilities shall be coordinated with the following:

- 3.1 GMC, with respect to the PGC;
- 3.2 PEMC, through its MSC, with respect to the SO-related Market Intervention;
- 3.3 PAC, with respect to the conduct of MSP Arrangement Review, in accordance with the WESM Rules and Market Manuals;

- 3.4 TRANSCO and PSALM, with respect to the Concession Agreement with the TNP and SO; and
- 3.5 The DOE and ERC, with respect to the issuances related to the transmission sector and the TDP.

The PAAT-TNPSO may consult and seek assistance from other relevant agencies which may have administrative and regulatory jurisdiction over the TNP and SO.

Section 4. Period and Frequency. Within six (6) months from the effectivity of this Order, the PAAT-TNPSO or any DOE-authorized entity shall conduct the first PAA of the TNP and SO. Thereafter, the succeeding PAAs shall be executed at least every three (3) years from the conclusion of the first or of the succeeding PAA, as may be applicable, or as may be necessary upon the determination of the DOE.

Section 5. Responsibilities of the PAAT-TNPSO. The PAAT-TNPSO shall perform the following functions and responsibilities:

- 5.1 Within six (6) months from the effectivity of this Order, prepare and implement the PAA plan in accordance with the provisions of this Order and other relevant issuances and implement the same in accordance with generally accepted assessment and audit procedures;
- 5.2 Conduct off-site or on-site audits/inspections of the TNP and SO;
- 5.3 Prepare the field audit methodology prior to the conduct of audit or actual visit to the facilities;
- 5.4 Undertake data gathering and analysis;
- 5.5 Prepare the audit reports for submission to the DOE and the ERC;
- 5.6 Adhere to the existing ethical standards set for auditors and the confidential nature of the audit activities; and
- 5.7 All members shall ensure utmost confidentiality of any information received for the purpose of the PAA.

Section 6. Responsibilities of the TNP and SO. TNP and SO are mandated to ensure their compliance and full participation in the conduct of the PAA:

- 6.1 Provide, within the period prescribed by the PAAT-TNPSO or any DOE-authorized entity, the required data, reports, records, and other information that are deemed necessary for the successful implementation of the PAA activities;
- 6.2 Grant coordinated visitation privileges, guided full accessibility, and unrestricted access to their facilities, data, reports, records, and other information to conduct inspection of facilities for the purpose of verifying

the authenticity of information and reports submitted in compliance with standards;

- 6.3 Allow the conduct of testing or simulations, consistent with industry standards and practices, of any or all aspects of the operations, systems, and facilities;
- 6.4 Assist and provide security to the PAAT-TNPSO or any DOE-authorized entity in the conduct of inspection; and
- 6.5 Comply with all other directives of the PAAT-TNPSO or any DOE-authorized entity pursuant to the objectives of this Order and applicable issuances of the DOE and ERC.

Section 7. Resource Persons. The PAAT-TNPSO may invite other technical Resource Persons, as may be necessary, to assist in the conduct of the PAA.

Section 8. Technical Secretariat. The DOE-EPIMB shall serve as the Technical Secretariat for the PAAT-TNPSO, duly supported by the Legal Services (LS) and Financial Services (FS). For this purpose, the Technical Secretariat shall be comprised of the following support groups:

- 8.1 Database Management Support Group which shall be responsible for gathering, summarizing, and maintaining the data and information needed by the PAAT-TNPSO;
- 8.2 Technical Inspection Support Group which shall be responsible for assisting the PAAT-TNPSO in the formulation and implementation of the PAA Plan, conduct of site inspections and field visits, preparation of status reports and other tasks necessary to effectively carry out the PAA activities; and
- 8.3 Administrative Support Group which shall be responsible for ensuring the provision of administrative support to include arrangements for conduct of meetings and inspections, travel arrangements, logistics, and liquidation of expenses, and the submission of the audit reports to relevant government agencies having oversight authority on the energy sector.

Section 9. Regulatory Support. The ERC, within its mandate and authority, shall extend full assistance and coordination with the PAAT-TNPSO and, if necessary, shall immediately issue or amend the relevant rules and regulations in support of this Order.

Pursuant to its mandate and with due process, as may be necessary, based on the findings of the PAA, the ERC may:

- 9.1 Impose fines and penalties on the TNP and SO, pursuant to its rules of practice and procedure;
- 9.2 Recommend or endorse for appropriate action to other agencies for prosecution and filing of proper charges and imposition of penalties under Section 46 of EPIRA; and/or
- 9.3 Recommend for the undertaking of proper legislative action on the franchise of the TNP and SO in any or all of the following instances:
 - a. Non-compliance with the conduct of regular PAA, as applicable;
 - b. Failure to rectify or address the audit findings within a reasonable period of time as may be determined by the ERC; and
 - c. Other justifiable reasons, as may be identified among the findings of the PAA.

Section 10. No Restraining Order/ Injunction. Pursuant to Section 78 of the EPIRA, nothing herein that implements the EPIRA shall be restrained or enjoined except by an order issued by the Supreme Court of the Philippines.

Section 11. Funding. The budgetary requirements for the implementation of this Order shall be sourced from the DOE budget, subject to applicable accounting rules and regulations.

Section 12. Separability Clause. If any section or provision of this Order is declared unconstitutional or invalid, such parts not affected shall remain in full force and effect.

Section 13. Repealing Clause. All orders and issuances inconsistent with this Order are hereby amended, modified, or superseded accordingly.

Section 14. Effectivity. This Order shall take effect immediately upon its issuance and shall remain in effect until modified or revoked in writing by the undersigned or any competent authority.

Issued this ____ June 2023 at the DOE, Energy Center, Rizal Drive cor. 34th Street, Bonifacio Global City, Taguig City, Metro Manila.


RAPHAEL P.M. LOTILLA
Secretary



JUN 08 2023