



Republic of the Philippines
DEPARTMENT OF ENERGY

DEPARTMENT CIRCULAR NO. DC2005-12-011

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 Unviable 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.

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Section 4. Procedures for Selecting Candidate QTPs

- (a) The publication referred to in Section 3(d) 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;
- (ii) Minimum technical and financial requirements, such as:
 - a. Minimum hours of continuous electricity service;

- b. Type of technology to be used (optional);
 - c. Minimum equity requirements for the project's financial structure; and
 - d. Other measures of project feasibility that may be required by the DOE.
- (iii) Criteria for evaluation of proposals; and
- (iv) Other information deemed necessary by the DOE for a full evaluation of proposals.
- (b) The QTP shall then submit the following:
- (i) Its proposed QTP Service Area naming the specific Unviable Area/s covered by RFP;
 - (ii) Outline of the proposal to specify the data requirements but not limited to the following:
 - a. Proposed details of the electrification solution or technology to be applied for the target area;
 - b. Number of potential and target household connections as well as indicative milestones/schedule of deliverables;
 - c. Proposed institutional and commercial arrangements (i.e., meter reading, billing, collection, disconnection policies and procedures, etc.);
 - d. Expected date of commissioning/commercial operation of the project;
 - e. Proposed FCRR and other charges to end-users; and
 - f. Other information/documents to support the applicant's capability to provide efficient and reliable electricity as well as requirements prescribed in Circular No. 2004-06-006.
 - (iii) Other necessary requirements deemed necessary in the selection process of QTP.
- (c) Each candidate QTP shall be given at least forty-five (45) calendar days from the issuance of the RFP to undertake due diligence and prepare the proposal (Due Diligence Period). Final and detailed proposals shall be submitted to and received by the DOE-EPIMB not later than five (5) working days after the last day of Due Diligence Period.
- (d) The QTP selection process shall be completed within sixty (60) days from receipt of a complete and final proposal and all necessary documents by the candidate QTPs. The DOE shall notify in writing each candidate QTP that submitted proposals of the results of the selection process, indicating therein, as applicable, the particular Unviable Area/s that comprise the QTP Service Area/s.
- (e) The DOE shall advise the candidate QTP to commence the negotiation for the signing of the QTP Service Contract with the NPC-SPUG. The DOE and NEA shall facilitate and assist the candidate QTP in finalizing and signing the Waiver Contract with the concerned DU.

- (f) After the signing of QTP Service Contract and related documents, the DOE shall endorse the candidate QTP with complete requirements to ERC for final qualification and authorization consisting of the issuance of all necessary permits and/or licenses and approval of tariffs to be passed on by the QTP to its end-users in the QTP Service Area.
- (g) In the case there is more than one QTP proposal received to serve a particular area/s, the DOE-EPIMB shall give preference to the proposal that can offer the most number of connections or highest level of electric service at lower cost applicable to a particular Unviable Area/s.
- (h) In the case there is only one QTP proposal received to serve a particular area/s, the DOE-EPIMB shall publish in the DOE website at www.doe.gov.ph for at least one (1) month from the publication date such relevant information on the proposal and invite other entities to match the offer.

Section 6. Rates and Subsidies for Unviable Areas

- (a) For the duration of the term of the QTP Service Contract, the QTP shall be deemed to be performing the missionary electrification service on behalf of NPC-SPUG with respect to the QTP Service Area.
- (b) The DOE through NPC-SPUG consistent with its MEDP, shall petition the ERC to grant a UC-ME subsidy fund for QTPs.
- (c) The QTP shall be eligible for subsidy with respect to its QTP Service Area in the event that the Full Cost Recovery Rate (FCRR) is determined to be higher than the Subsidized Approved Retail Rate (SARR) with respect to said area/s. The difference in the FCRR and the SARR shall be the computed Missionary Electrification Subsidy based on a per connection system.
- (d) Payment or disbursement of UC-ME subsidy shall conform with the ERC-approved guidelines and procedures governing the remittances and disbursements of the Universal Charge developed and managed by the Power Sector Assets and Liabilities Management Corporation (PSALM), and to the subsidy disbursement mechanism to be included in the SDA for ERC approval.
- (e) Every year, the DOE shall incorporate in its MEDP the list of duly authorized QTPs and their corresponding subsidy requirements.

Section 7. Responsibilities of the Qualified Third Party

- (a) Meet the qualification criteria set by the DOE in the RFP;
- (b) Secure from ERC relevant permits and licenses, including authority to charge its rates, in order to commence providing services in its respective area/s;
- (c) Comply with all the provisions, including the financial, technical, environmental and other performance standard of the QTP Service Contract entered into with NPC-SPUG;

- (d) Submit periodic reports to ERC on its financial and technical performance pursuant to Rule 14 of the EPIRA-IRR;
- (e) Operate and maintain its facilities to provide services in the QTP Service Area in an efficient and sustainable manner;
- (f) Submit periodic reports to DOE on the status of its electrification program and the completed number of connections; and
- (g) As applicable and with prior authority from ERC, charge and collect UC from all end-users within the QTP Service Area and remit the same to the DU or the National Transmission Corporation, as the case may be, in accordance with law.

Section 8. Responsibilities of a Distribution Utility in Areas served by the Qualified Third Party

- (a) Extend assistance to the QTP serving a QTP Service Area within its franchise; such assistance to include but not be limited to securing the necessary rights of way, site acquisition, and coordination with concerned local agencies.
- (b) Finalize and execute a Waiver Contract with the QTP with respect to the Unviable Area/s within its franchise.

Section 9. Responsibilities of NPC-SPUG

- (a) Ensure that the QTP shall serve its respective QTP Service Area by providing adequate and reliable electric service and performing in accordance with the standards set in the QTP Service Contract.
- (b) Review, finalize and execute the QTP Service Contract and Subsidy Disbursement Agreement with the selected QTP, in accordance with this Circular and ERC Guidelines on QTP.
- (c) Apply with the ERC for the approval of the SARR and the Missionary Electrification Subsidy.
- (d) Submit periodic reports to ERC on QTP performance relative to its compliance with the terms of QTP Service Contract and ERC guidelines.
- (e) Submit periodic reports to ERC and PSALM on the disbursement and utilization of the UC-ME.
- (f) Unless otherwise provided in the MEDP or an alternative arrangement with the affected DU, act as the service provider of last resort in case the QTP fails to fulfill its obligations to serve the areas awarded to the QTP.

Section 10. Responsibilities of DOE

- (a) Monitor rate of electrification for each QTP Service Area.

- (b) Conduct the QTP selection process, in coordination with the Technical Working Group formed pursuant to Section 12 herein, in accordance with this Circular and the RFP.
- (c) Determine and incorporate in the MEDP the QTP projects and corresponding UC-ME requirements, if any, in payment of the Missionary Electrification Subsidy.

Section 11. Responsibilities of NEA

- (a) Establish the criteria for verification of areas submitted or nominated by the DUs as remote and unviable areas for clearance by the DOE, in accordance with Section 3(b) of this Circular.
- (b) Evaluate and verify the areas submitted by DUs as remote and unviable and submit its recommendations to the DOE in accordance with Section 3 of this Circular.
- (c) Assist the DOE in monitoring of the rate of electrification by the QTP of the different QTP Service Areas.

Section 12. Miscellaneous Provisions

- (a) The DOE shall form a Technical Working Group composed of representatives from DOE, NPC-SPUG, NEA, and PSALM to conduct, among others, the evaluation of proposals and recommend thereafter the candidate QTP to serve the Unviable Areas.
- (b) The DOE shall inform the ERC in writing of any significant variations between the executed QTP Service Contract and related agreements and the ERC pre-approved Model QTP Service Contract and related agreements.
- (c) The DOE shall assist NPC-SPUG in the preparation of the latter's proposal to ERC for approval a uniform Subsidized Approved Retail Rate for the purpose of determining the corresponding amount of Missionary Electrification Subsidy that each QTP shall be entitled to receive from NPC-SPUG.
- (d) To encourage investments and private sector participation in Unviable Area/s, the DOE shall coordinate with the ERC on the appropriate rate setting methodology that will provide for the QTPs full cost recovery of the investments incurred or to be incurred including the cost to cover their operation in the QTP Service Areas.
- (e) Consistent with Section 1(d) of Rule 13 of the EPIRA-IRR, the DOE shall include in the preparation of MEDP all the electrification projects to be undertaken by the QTPs in Unviable Areas for possible subsidy allocation to be funded through UC-ME.
- (f) The DOE, in consultation with the Technical Working Group, shall adopt a transition mechanism to govern existing waived areas and community-based organizations and provide for the inclusion of the same in the QTP program. For this purpose:
 - (i) Areas that are currently served by the DUs but are deemed unviable on account of huge operating costs may be offered by the concerned DUs for

inclusion in the list of Unviable Areas or to be clustered with the Unviable Areas for inclusion QTP Program.

- (ii) Subject to any guidelines that the ERC may issue, private sector-driven or community-based electrification projects which do not require subsidy from the UC-ME may proceed with the service provided that the proponents/operators shall notify the DOE within three (3) months from the Effective Date of this Circular.

Section 13. Repealing Clause

All pertinent issuances, circulars and memoranda inconsistent with this Circular are hereby amended or repealed accordingly.

Section 14. Saving Clause

- (a) If for any reason, any provision of this instrument/circular is declared unconstitutional or invalid, the other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.
- (b) The implementation of this Circular shall not exempt the parties from existing government rules and regulations, and applicable government agency circulars or issuances.

Section 15. Effectivity.

This Circular shall take effect within fifteen (15) days upon publication in newspaper of general circulation.



RAPHAEL P.M. LOTILLA
Secretary

Fort Bonifacio, Taguig City, Metro Manila, Philippines, 12 DEC. 2005.