

Republic of the Philippines
DEPARTMENT OF ENERGY

DEPARTMENT CIRCULAR NO.: 2004-06-006

**PRESCRIBING THE QUALIFICATION CRITERIA FOR THE
QUALIFIED THIRD PARTY PURSUANT TO SECTION 59 OF
“THE ELECTRIC POWER INDUSTRY REFORM ACT OF 2001,”
AND ITS IMPLEMENTING RULES AND REGULATIONS**

WHEREAS, it is the policy of the State to ensure and accelerate the total electrification of the country;

WHEREAS, Section 59 of Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001” or “EPIRA,” has opened to other Qualified Third Parties (QTPs) the provision of electric service in remote and unviable areas that the franchised Distribution Utility is unable to service;

WHEREAS, pursuant to Rule 13 of the Implementing Rules and Regulations (IRR) of “EPIRA” or “EPIRA-IRR,” the Department of Energy (DOE) is tasked to issue specific guidelines on how to encourage the inflow of private capital and the manner whereby other parties can participate in the missionary electrification projects set forth in the Missionary Electrification Development Plan (MEDP);

WHEREAS, pursuant to Rule 14 of the EPIRA-IRR, the DOE shall set the criteria for determining QTPs that may participate in providing electricity to remote and unviable areas which may include financial, technical, environmental, and other indices of performance;

WHEREAS, the DOE deems it appropriate to broaden its approach to rural and missionary electrification through the creation of a market-based environment that is conducive to private sector investment and participation and encourages technology transfer, and research and development;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE FOREGOING PREMISES, the DOE hereby promulgates the following guidelines setting out the qualification criteria for the determination of QTPs that may be authorized

to participate in missionary electrification program of the Government as set out in the EPIRA and its IRRs.

Section 1. Definition of Terms.

Unless the context otherwise indicates, the terms used in this Circular shall have the following meanings:

- (a) “***Distribution Utility***” 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;
- (b) “***Missionary Electrification***” refers to the provision of basic electricity service in unviable areas with the ultimate aim of bringing the operations in these areas to viability levels;
- (c) “***Missionary Electrification Development Plan***” or “***MEDP***” refers to the five-(5) year plan of the DOE, updated annually, to implement missionary electrification program of the Government and serves as basis for the determination by the ERC of the Universal Charge for Missionary Electrification (UC-ME);
- (d) “***Person***” refers to a natural or juridical person, as the case may be;
- (e) “***Qualification Criteria***” refers to the set of financial, technical, and other indices of performance prescribed by the DOE as basis for determining QTP/s to serve Unviable or Waived Area/s;
- (f) “***Qualified Third Party***” or “***QTP***” refers to the alternative electric service provider authorized to serve remote and unviable areas pursuant to Section 59 of the EPIRA and Rule 14 of the EPIRA-IRR;
- (g) “***Unviable Area***” refers to a geographical area within the franchise area of Distribution Utility where immediate extension of distribution line is not feasible; and
- (h) “***Waived Area***” refers to an area within the franchise area of a Distribution Utility declared as unviable and cannot be served for any reason by the Distribution Utilities.

Section 2. Declaration of Policies.

It is hereby declared the policies of the DOE that:

- (a) Any Person who meets the Qualification Criteria set forth in this Circular shall be accredited as a QTP.
- (b) All QTPs shall comply with the technical, financial, reporting, environmental, and other performance standards, which the DOE and/or ERC may prescribe relative to the provision of electricity services to remote and Unviable Areas.
- (c) No Person shall be allowed to serve Waived Areas unless it is first accredited as a QTP by the DOE.

Section 3. Guiding Principles in Accrediting QTPs.

- (a) Any Person, who intends to serve a Waived Area, may apply with the DOE through the Electric Power Industry Management Bureau (EPIMB) for accreditation as a QTP. The DOE shall evaluate an application based on the Qualification Criteria set forth in this Circular.
- (b) DOE may impose upon any Person limitations of its accreditation as a QTP, including limitations as to the size of an area a QTP is allowed to apply to serve (where size will be measured by number of potential customers and/or probable peak demand).

Section 4. Eligibility Criteria for Qualified Third Party.

- (a) ***General***
 - (i) To be accredited as a QTP, a Person must demonstrate that it is financially and technically capable, and of good standing in the business community.
 - (ii) Any Person registered with the Philippine Securities and Exchange Commission which meets the criteria set forth in this Circular may be accredited as a QTP.
 - (iii) Organizations eligible for accreditation may include, without limitation, private firms, Local Government Units, Cooperatives, Non-Government Organizations Generation Companies or its subsidiaries, or subsidiaries of Distribution Utilities.

(b) ***Limitation on Accreditation***

The DOE may restrict the type or size of system that a QTP will be allowed to construct and operate. Such restrictions may include, without limitation, (i) restrictions on the size of system, (ii) restrictions on the location of the system; and (iii) restrictions on the generating technology to be used. Where the size of the system is restricted, such restriction may be expressed in terms of generation capacity, technology, and/or number of connections to be served.

(c) ***Technical Criteria***

- (i) To be accredited as a QTP, an interested Person must demonstrate that it has the technical skills and capacity to operate a power generation facility and/or an electric power distribution system for public supply.
- (ii) In order to demonstrate the required skills and capacity, applicants must provide:
 - (1) Full details of the technical skills and experience of the key management team responsible for the operation of the system. These details should include relevant technical and business management qualifications as well as full descriptions of experience relevant to the technical and commercial operation of electric power generation and supply systems.
 - (2) Details of the proposed arrangements for the acquisition, training and contracting of the necessary expertise that the applicant does not possess at the time of application.
 - (3) Details of how the applicant proposes to design, construct, operate, and maintain the generation and associated distribution system to be used in its operations, including its proposed plans for dealing with major operating contingencies such as a failure of its generating plant or a major fault on its distribution system.
 - (4) Details of the procedures that the applicant proposes to put in place for the billing to and collection of payment from customers and maintain accounting records of its commercial operations. An undertaking that the applicant will allow DOE and/or ERC to open its accounting records relating to its operations, when necessary.

- (5) A statement certifying that the applicant intends to design, construct, operate and maintain its generation and distribution systems in full compliance with the relevant requirements prescribed under the applicable laws including EPIRA and its attendant rules and regulations.

In addition to the above mandatory information requirements an applicant may provide additional supporting documents, such as evidence indicating experience in related areas and operation of other utility or infrastructure businesses. The DOE may, at its discretion, take such information into account when deciding whether or not to approve the application, or whether or not to impose a limitation on accreditation in accordance with Section 4(b) of this Circular.

(d) ***Financial Criteria***

- (i) To be accredited as a QTP, an interested Person must demonstrate that it has the financial capacity to finance a power generation facility and electric power distribution system of the size likely to be required for the operations. The DOE may impose a limitation, in accordance with Section 4(b) of this Circular, on the size of system that the applicant may install and operate, consistent with its financial capacity.
- (ii) Proof of financial capacity may include, among others:
 - (1) Evidence of the total net assets of the organization;
 - (2) A letter of credit or letter of intent to invest from a bank or another organization provided that the DOE is satisfied that the other party has adequate financial capacity and indeed has the intent to invest or provide credit;
 - (3) The most recent annual report or financial accounts of the applicant duly certified as correct by a registered auditor or accountant; and
 - (4) Proof of adequate insurance coverage and compliance with all Philippine labor laws.
- (iii) Any Person, which cannot meet the financial criteria outlined above, may be accredited if they can demonstrate to DOE the capacity to finance a system of the proposed size.

Factors, which DOE would consider, would include:

- (1) History of operating profitably a generation, distribution or other utility business of comparable size.
- (2) History of developing infrastructure projects of similar size.
- (3) A letter of testimonial from a reputable financial institution attesting that the Applicant and/or members of the consortium are banking with them, that they are in good financial standing and that they have adequate resources.
- (4) Other clear indications of ability to access the required finance.

(e) ***Good Standing***

Any interested Person seeking accreditation may be accredited if they can demonstrate to DOE the capacity to finance a system of a size likely to be authorized for the provision of electric service to Waived Area/s and was able to submit proof that it is in good standing with the business community in which it operates.

Factors, which could lead DOE to determine that an organization is not in good standing may include:

- (i) The involvement in the proposed key management team or in a management position in the organization of anyone who:
 - (1) Is an undischarged bankrupt;
 - (2) Has been convicted of any crime involving fraud or dishonesty committed in the last ten (10) years; and
 - (3) Has been successfully sued for fraud, breach of director's duties or any similar action.
- (ii) Being currently suspended or blacklisted by NPC, or by any other government agency, whether in its capacity as an individual or partnership or corporation or as a member of a joint venture or consortium.

- (iii) Has a negative slippage of more than fifteen (15) percent in any of its on-going contracts with the Government, NPC or any electric utility or generation companies, or record of unsatisfactory past performance particularly non compliance with contract terms, plans and specifications, defective workmanship, abandonment of work and similar deficiencies.

(f) **Local Enterprises and Renewable Technologies.**

Consistent with Government policies in relation to the development of local enterprises and renewable technologies, DOE will encourage local enterprises and organizations with expertise in renewable technologies to operate as QTPs. Such local enterprises and organizations may be given limited accreditation in accordance with Section 4(b) of this Circular, consistent with the extent to which they demonstrate technical, financial capacity and good standing criteria.

Section 5. Repealing Clause.

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

Section 6. Saving Clause.

- (a) If for any reason, any provision of this 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 complying with applicable laws and government rules and regulations.

Section 7. Effectivity.

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

(Sgd.)
VICENTE S. PÉREZ, JR.
Secretary

Fort Bonifacio, Taguig
Metro Manila, Philippines
18 June 2004.