



**SENATE**  
**P.S. RES. No. 126**

'19 SEP -9 A9 :18

RECEIVED BY: \_\_\_\_\_

Introduced by Senator WIN GATCHALIAN

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**A RESOLUTION DIRECTING THE SENATE COMMITTEE ON ENERGY TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE IMPLEMENTATION OF THE COMPETITIVE SELECTION PROCESS IN THE PROCUREMENT OF POWER SUPPLY BY DISTRIBUTION UTILITIES AND ITS EFFECT ON ELECTRICITY PRICES**

1 WHEREAS, Section 23 of Republic Act No. 9136, otherwise known as the Electric  
2 Power Industry Reform Act of 2001 (EPIRA) mandates distribution utilities (DUs) to  
3 supply electricity to their captive market in the least cost manner;

4 WHEREAS, the Department of Energy (DOE) issued on 11 June 2015  
5 Department Circular No. DC 2015-06-008, entitled "Mandating all Distribution Utilities  
6 to Undergo Competitive Selection Process in Securing Power Supply Agreements",  
7 which recognizes the importance of requiring all DUs to undergo a Competitive  
8 Selection Process (CSP) to encourage transparency in the power procurement process;

9 WHEREAS, the ERC issued on 4 November 2015 ERC Resolution No. 13 Series  
10 of 2015, entitled "A Resolution Directing All Distribution Utilities to Conduct a  
11 Competitive Selection Process in the Procurement of their Supply to the Captive  
12 Market", which directed DUs to conduct any form of CSP as a prerequisite for ERC  
13 acceptance of power supply agreements (PSAs) for approval;

14 WHEREAS, the ERC issued on 21 March 2016 ERC Resolution No. 1 Series of  
15 2016, entitled "Resolution Clarifying the Effectivity of ERC Resolution No. 13 Series of  
16 2015", which set the commencement of the mandatory compliance with the CSP to  
17 30 April 2016, thereby suspending the effectivity of the CSP from 7 November 2015

18 to 30 April 2016. As a result, cases were filed before the Supreme Court questioning  
19 the validity of the suspension of the CSP implementation;

20 WHEREAS, the National Electrification Administration (NEA) issued on 19  
21 January 2017 Memorandum No. 2017-003 entitled "Policy in the Conduct of  
22 Competitive Selection Process of Electric Cooperatives' Power Supply Agreement",  
23 which required all electric cooperatives (ECs) to submit to NEA review the terms of  
24 reference in their respective CSPs;

25 WHEREAS, the NEA also issued on 28 January 2019 Memorandum No. 2018-  
26 035, entitled "Adoption of the Implementing Rules and Regulation (IRR) of the Policy  
27 in the Conduct of the Competitive Selection Process of the Electric Cooperatives' Power  
28 Supply Agreement." It provides for the most responsive bid to determine PSA price,  
29 and allows public bidding and direct negotiation as modes of procurement;

WHEREAS, the DOE issued on 1 February 2018 Department Circular No. DC  
2018-02-0003, entitled " Adopting and Prescribing the Policy for the Competitive  
Selection Process in the Procurement by the Distribution Utilities of Power Supply  
Agreement for the Captive Market", which mandates a specific form of CSP through  
the creation of a third party bids and awards committee, or the use of a third party  
auctioneer, upon the choice of the DU;

WHEREAS, the ERC issued on 17 April 2018 Draft Rules Governing the  
Procurement, Execution, and Evaluation of Power Supply Agreements Entered into by  
Distribution Utilities for the Supply of Electricity to Their Captive Market, which has  
substantial differences from DOE's most recent circular on CSP. These variances  
include (1) a benchmark rate utilized in the assessment of the PSA price, and (2) swiss  
challenge and unsolicited proposal as additional modes of procurement;

WHEREAS, on 3 May 2019, the Supreme Court (SC) in a decision<sup>1</sup> declared ERC  
Resolution No. 13 Series of 2015 and ERC Resolution No. 1 Series of 2016 as void ab  
initio having been superseded by DOE Department Circular No. DC 2018-02-0003 and  
ordered all PSA applications submitted by the DUs on or after 30 June 2015 to comply  
with the said Department Circular;

WHEREAS, the issuances by the DOE, NEA, and ERC, have notable  
dissimilarities with respect to (1) allowable modes of procurement such as swiss

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<sup>1</sup> G.R. No. 227670. 03 May 2019.



challenge or auction, (2) nature of the bid price whether fixed price, least cost, or most responsive bid, and (3) exemptions from the CSP requirement, among others;

WHEREAS, there is a need to first, harmonize all DOE, ERC, and NEA issuances on the CSP to prevent confusion among industry stakeholders, especially in light of the recent SC decision on the CSP; second, evaluate the effectivity of the various modes of CSP in lowering generation charges passed on to captive customers; and third, as a result of the foregoing, determine the legislative necessity to institutionalize the CSP to ensure regulatory certainty in order attract sufficient power generation investments to meet growing demand;

NOW THEREFORE BE IT RESOLVED, as it is hereby resolved, to direct the Senate Committee on Energy to conduct an inquiry, in aid of legislation, on the implementation of the competitive selection process in the procurement of power supply by distribution utilities and its effect on electricity prices.

Adopted,



**WIN GATCHALIAN**