



NOTICE

TO: POWER GENERATORS & DISTRIBUTION UTILITIES COMPANY AND OTHER CONCERNED PARTIES

SUBJECT: REQUEST FOR COMMENTS ON THE PROPOSED GUIDELINES ON THE PROCEDURES AND USE OF THE REGISTRATION STATEMENT FORM FOR POWER GENERATION & DISTRIBUTION COMPANIES SEEKING TO REGISTER AND OFFER THEIR SECURITIES TO THE PUBLIC AS REQUIRED UNDER THE ELECTRIC POWER INDUSTRY REFORM ACT OF 2001

The Securities and Exchange Commission intends to issue **SEC POWERS** (Securing & Expanding Capital for PowerGen Operators & Wholesale Electricity & Retail Services). Hence, the Commission is inviting generation and distribution companies and their representative to comment and/or provide input to the draft Memorandum Circular.

The draft SEC Memorandum Circular is hereto attached for your reference.

Commenters may submit not later than 24 November 2023, their views, comments, and inputs by email to msrds submission@sec.gov.ph, mgfacun@sec.gov.ph, arbries@sec.gov.ph and mtsposadas@sec.gov.ph

Issued on 16 November 2023.



SEC MEMORANDUM CIRCULAR NO. _____
Series of 2023

TO: ALL CONCERNED

SUBJECT: **Securing & Expanding Capital for PowerGen Operators & Wholesale Electricity & Retail Services (SEC POWERS)**

WHEREAS, Section 2 (d) of Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001 (“EPIRA”) provides that it is the policy of the State to enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and distribution sectors;

WHEREAS, Section 43 (t) of the said law requires generation companies and distribution utilities which are not publicly listed to offer and sell to the public a portion of not less than fifteen percent (15%) of their *common shares of stocks*;

WHEREAS, in the implementation of the foregoing, the Energy Regulatory Commission (“ERC”) issued Resolution No. 04, Series of 2019, amending Resolution No. 9 Series of 2011 which recognizes the various modes of public offering under the Securities Regulation Code (“SRC”) and its Implementing Rules and Regulations (“SRC Rules”) and the listing in the Philippine Stock Exchange;

WHEREAS, the same ERC Resolution mandates conformity with the applicable laws and the existing rules and regulations of the SEC and with the listing rules of the Philippines Stock Exchange;

WHEREAS, Subsection 8.1 of the Securities Regulation Code (“SRC”) prohibits the selling or offering for sale or distribution of securities within the Philippines without a registration statement duly filed with and approved by the Commission;

WHEREAS, Subsection 12.1 of the SRC mandates that securities required to be registered under Subsection 8.1 shall be registered through the filing by the issuer in the main office of the Securities and Exchange Commission (“Commission”) of a sworn registration statement with respect to such securities, in such form and containing such information and documents as the Commission prescribe.

WHEREAS, Subsection 12.6 of the SRC directs the Commission to declare the registration statement effective or rejected within forty-five (45) days after the date of filing of the registration statement;;

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WHEREAS, Section 72.1 of the SRC states that, for purposes of its rules or regulations, the Commission may classify persons, securities and other matters within its jurisdiction, and prescribe different requirements for different classes of persons, securities, or matters.

NOW, THEREFORE, pursuant to the foregoing and other pertinent provisions of the SRC and its Implementing Rules and Regulations, the Commission hereby adopts the following guidelines for a simplified registration of securities for power generation companies (“PowerGen”) and distribution utilities (“DU”) by using the form **SEC POWERS**.

Section 1. Coverage. These guidelines of the filing of the registration statements by power generators and distribution utilities companies which are mandated under the EPIRA and in an ERC Resolution to offer and sell to the public a portion of not less than fifteen percent (15%) of their *common shares of stocks* .

Section 2. Pre-filing activity of the registrant.

- a. All clearances from the pertinent operating departments¹ of the Commission have been secured. The clearance shall include statement with regard to compliance with Rule 54.3. The registrant has already secured from CGFD validation of the qualifications of its independent director/s.
- b. All corporate actions and approval necessary for the Offer must have been secured and completed.
- c. All Certificates Authorizing Registration issued by the Bureau of Internal Revenue has been secured.
- d. Proof that the financial statements have been pre-evaluated by the Office of the General Accountant (“OGA”) in order to determine the following:
 - The Audited Financial Statements (AFS) and Interim Financial Statements (IFS) are in accordance with the periodic presentation as prescribed under Part II, Section 5 of the Revised Rule 68.
 - The Pro-forma financial statements, if applicable, is compliant with Section 9 of the Revised Rule 68.
 - The financial statements are compliant with the age requirements for financial statements prescribed under Part II, Section 5 of the Revised Rule 68.
 - The Parent Company AFS is duly filed and received by the Bureau of Internal Revenue.

Section 3. Audited Financial Statements, Interim Financial Statements, and Other Financial Information.

Registrant shall file with the OGA a copy of the company’s registration statement and Financial Statements.

OGA shall evaluate the financial statements compliance with the financial reporting rules and inform the registrant and MSRD of the result of its evaluation.

¹ Company Registration and Monitoring Department, Corporate Governance and Finance Department, Enforcement and Investors Protection Department and Office of the General Counsel

.OGA shall advise MSRD on the status of the registrant's compliance with its requirements before the registration statement is presented to the Commission En Banc for its consideration.

Section 4. Simplified Form for Registration – PowerGen and DU seeking to register their common shares with the Commission may use the special form **SEC POWERS** in lieu of the current SEC Form 12-1, as amended, *provided*, that:

- 4.1 The registrant is yet to become a publicly listed company;
- 4.2 The application is made to comply with the minimum level of share ownership by the public as set under the EPIRA;

Section 5. Documentary Filing Requirements. The registrant shall submit two (2) sets of hard copies and email digital copies of the following to msrdsubmission@sec.gov.ph in word and PDF format:

- 5.1 SEC POWERS Submission Checklist;
- 5.2 Form SEC POWERS;
- 5.3 Statement of Management Responsibility on the Financial Statements;
- 5.4 Audited Financial Statement and/or Audited Interim Financial Statements;
- 5.5 Exhibits as required under Annex C, as amended of Rule 12 of the SRC; and
- 5.6 Authorization letter from registrant designating a representative through whom all dealings with the Commission regarding the application shall be coursed.

Section 6. Review of Financial Statements. The registrant shall file with the Office of the General Accountant a copy of form SEC POWERS, Statement of Management Responsibility on the Financial Statement ("SMR") and Financial Statements for its review and to determine compliance with the Revised Rule 68 of the SRC and other relevant accounting rules.

Section 7. Compliance with Application. Upon filing the registration statement, the registrant shall comply with the following:

- 7.1 Pay² the required registration fee and submit proof of payment made as soon as available;
- 7.2 Immediately cause the publication of the Notice of Filing of the Registration Statement signed by the Director of MSRD;
- 7.3 Upload copy of the registration statement and any amendment thereto in the company's website.

Section 8. Reportorial Requirements. After effectivity of registration statement, registrant all submit digital copies and upload in its website:

² Review of application shall commence on the date of payment of registration fee

- 8.1 a monthly report on the number of shares sold during the month and a running balance of the total amount raised since the start of the offer;
- 8.2 reports required under Rule 17 of 2015 SRC Rules (“SRC IRR”) to ictdsubmission@sec.gov.ph and msrdsubmission@sec.gov.ph;
- 8.3 reports required under Section 177 of the Revised Corporation Code to efast.sec.gov.ph.
- 8.4 Certificate of no derogatory record

Section 9. Delayed and Continuous Offering and Sale – Securities which are intended to be issued in tranches at more than one instance, may be offered on a continuous or delayed offering for a period not exceeding three (3) years from the effective date of the initial shelf registration statement under which they are offered and sold. For subsequent offering, registrant shall:

- 9.1 File an updated form SEC POWERS;
- 9.2 Pay the registration fee within seven (7) business days prior to commencement of the offer/sale base on the total registration fee payable per tranche of issuance and proportional to the issue value.

Section 10. Eligibility Requirements. Subsequent offering after the initial tranche can only be made if:

- 10.1 The registration statement remains effective;
- 10.2 The registration statement is not subject to suspension or revocation orders under Section 13 or 15 of the SRC;
- 10.3 The registrant has timely filed reports required under Section 8 hereof;
- 10.4 The registrant or any of its directors or officers is not the subject of an administrative sanction under SRC Rule 54 in connection with an offering or any other SRC violations which is deemed by the Commission as necessary in the interest of the public and protection of investors.

Section 11. Underwriting Requirement for Registered Securities. A registrant corporation shall engage an underwriter unless the Commission allows the non-engagement of such underwriter in case the registrant is able to demonstrate that it has the ability to sell all or substantially all of its securities to the public.

The registrant shall provide a comprehensive discussion on the use of any fintech in relation to the offer, sale and distribution of its shares to the public. The Commission may require additional information on the technical aspects, among others, of said fintech.

Section 12. Incorporation by Reference. The registration statement may incorporate by reference information about the issuer, from its previously filed reports and after the initial tranche offering (shelf registration statements) effectivity *provided*; such information is readily available and downloadable from its official website.

Section 13. Forty-Five (45) Day Review Period. The Commission shall review and declare the registration statement effective or rejected within forty-five (45) days after the date of filing with MSRDC, in accordance with the requirements of the SRC and other pertinent issuances of the Commission.

Section 14. Requirements for Financial Information and Disclosures. -The registrant shall provide the required financial information and disclosures in accordance with the Revised SRC Rule 68 and the Philippine Financial Reporting Standards and other relevant issuances of the Commission.

Pursuant further to the same Revised SRC Rule 68, the registrant company, through its Board of Directors or Audit Committee, if applicable, shall determine and ensure itself of the independence and competence of the company's external auditor.

Section 15. Requirement on Minimum Public Ownership. -Notwithstanding the requirements on minimum public offering under SEC Memorandum Circular No. 13, Series of 2017, PowerGen and DU companies shall be allowed to register their shares of stocks in compliance with the minimum level of public ownership as set by the Energy Regulatory Commission;

Section 16. Other Applicable Requirements. - All other existing requirements under the SRC and the Revised Corporation Code (RCC) and their implementing rules and regulations, and other applicable laws, rules and regulations, circulars and orders of the Commission shall be strictly complied with by PowerGen and DU companies with registered securities.

Section 17. Approval of Application. Upon compliance with the requirements, the department shall issue an Order of Registration and/or Permit to Sell Securities.

Section 18. Rejection of Application. An Order of Rejection shall be issued if the registrant failed to fully comply with the requirements, or is found to be in violation of any of the provisions of the SRC and its IRR.

Section 19. Penalty Clause - Any violation of the requirements and conditions set herein, the SRC, its implementing rules and regulations, as amended, other laws, rules and regulations, circulars and orders of the Commission shall be dealt with and penalized accordingly.

Section 20. Effectivity - This Memorandum Circular shall take effect immediately after its publication in two (2) newspapers of general circulation in the Philippines.

Makati City, Philippines

16 November 2023

EMILIO B. AQUINO
Chairperson