

DOE CIRCULAR STEPS INTO AMENDING EPIRA PROVISIONS

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It may not exactly be a legally feasible step, but a proposed Circular of the Department of Energy (DOE) will be stepping into amending some provisions of the Electric Power Industry Reform Act (EPIRA).

In particular, the department is intending to have a more comprehensive judgment call on the crafting of the electricity system's Transmission Development Plan. At the same time, the DOE targets to dip its hand into the regulatory affairs of the industry, primarily those that are of non-pricing stature, such as preparing the electric cooperatives (ECs) into the retail competition and open access (RCOA) phase of the deregulated market.

In the propounded Circular, the DOE stipulated that it has been advancing such amendments in the law "to enhance the inflow of private capital, participation in the attendant risks and broaden the ownership of the power generation, transmission and distribution sectors in order to minimize the financial risk exposure of the national government."

While these would be well-intended goals, the department may nevertheless encounter legal restraint because a mere Circular will not likely be able to amend specific provisions of a legislated act like that of EPIRA.

On transmission planning, the department emphasized that it "shall review and approve the Transmission Development Plan (TDP) to be prepared by the National Transmission Corporation or its buyer or concessionaire in coordination with the electric power industry stakeholders."

And beyond the power vested by EPIRA unto the Energy Regulatory Commission (ERC) on review and approval of the TDP, the DOE-proposed Circular prescribes that the department shall also be given the mandate to approve the plan and integrate such into the Power Development Program (PDP), while the ERC approval "shall correspond only to prudent cost recovery of TransCo or its buyer/concessionaire."

In prepping ECs for retail market competition, it has been specified that the National Electrification Administration (NEA) be assisting the ECs in "developing proposals to DOE regarding policies and regulations of the electric cooperatives such that the same would allow ECs to operate efficiently and be able to recover prudent cost of services and operations, including guarantees and enable ECs to achieve and maintain viability."

The electrification agency shall also be "reviewing and endorsing for DOE's approval the distribution development plan of each containing programs for capital expenditure, full energization of unserved and under-served areas and rehabilitation plan for the ailing ECs."

Further, NEA is mandated to "pursue the total electrification of the country through the electric cooperatives by way of enhancing distribution development," and in the case of the missionary areas, this must be done with the National Power Corporation.

The agency is likewise being directed to "prepare and submit for the DOE's approval an annual report on the performance of the ECs," and "comply with performance standards duly promulgated by the DOE and pertinent government agencies."