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Power Supply Agreements Required to Undergo Competitive Bidding

In relation to the matter on Competitive Selection Process (“CSP”) on generating power supply, the Supreme Court in their special En Banc session on 3 May 2019 ruled that all Power Supply Agreements (“PSA”) submitted by Distribution Utilities (“DU”) on or after 30 June 2015 with the Energy Regulatory Commission (“ERC”) must undergo a CSP.

Implications for business in the Philippines

In light of the country’s liberalised electric power industry as envisioned by the Electric Power Industry Reform Act (“EPIRA”), Philippine policy gears towards deregulation of generation and distribution of electricity. Such policy is expected to yield the delivery of the best services at the least cost to consumers. Consistent with this policy, the Supreme Court reaffirms the fundamental role of the CSP as a mechanism to ensure a fair, reasonable, and cost effective generation charge for consumers, under a transparent power sale mechanism between the generation companies and the DUs. It was designed to protect the consuming public from power rate spikes, pass-on charges, and avert predatory practices.

Significant pronouncements of the Supreme Court

Pursuant to the mandate of the Department of Energy (“DOE”) under the EPIRA, the DOE in 2015 issued DOE Circular No. DC2015-06-0008. The 2015 DOE Circular mandated all DUs to undergo CSP in securing PSAs. The said 2015 DOE Circular became effective on 30 June 2015 after its publication. However, the implementation of the CSP under the 2015 DOE Circular was effectively postponed by the ERC for total of 305 days, from 30 June 2015 to 29 April 2016. In the meantime, PSAs, including some spanning more than 20 years, were submitted for approval with the ERC.

In granting the petition, the Supreme Court ruled the ERC committed grave abuse of discretion when it unilaterally postponed the effectivity of the CSP requirement through various resolutions. The Supreme Court said that the authority of the ERC was limited only to the implementation of the CSP, and that the ERC had no power and authority to postpone the CSP’s application. In other words, the ERC’s delegated authority is limited to implementing CSP in accordance with the 2015 DOE Circular, not postponing CSP so as to freeze CSP for at least 20 years, effectively suspending CSP for one entire generation of Filipinos.

Conclusion

Given the foregoing pronouncement of the Supreme Court, the DOE ensures that it will closely oversee the competitive bidding process to guarantee that the exercise is conducted in an open, transparent, effective, efficient, and equitable manner. As for the ERC, it will work alongside with DOE by enforcing and implementing the relevant policies formulated, as well as all pertinent rules and regulations that are in effect. With this kind of mindset of the relevant regulators, the Philippine power industry is expected to yield the delivery of the best services at the least cost to consumers.

If you have any questions or require any additional information, please contact [Felix Sy](#) or [Donald Onghanseng](#) of Insights Philippines Legal Advisors (a member of ZICO Law).

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