SEC MEMORANDUM CIRCULAR NO. 4
Series of 2024

TO: ALL CONCERNED

SUBJECT: **S**ecuring & **E**xpanding **C**apital for
PowerGen **O**perators & **W**holesale **E**lectricity & **R**etail **S**ervices
(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, Section 2 of the SRC declares that it is the policy of the State, among others to promote the development of the Philippine capital market and encourage the widest participation of ownership in enterprises, enhance the democratization of wealth;

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, Subsection 28.1 of the SRC mandates that no person shall engage in the business of buying or selling securities in the Philippines as a broker or dealer, or act as a salesman, or an associated person of any broker or dealer unless registered as such with the Commission;

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**") companies by using the form **SEC POWERS** under the jurisdiction of the Markets and Securities Regulation Department (the "MSRD") or the "Department").

Section 1. Coverage. These are the guidelines for the filing of the registration statements by PowerGen and DU companies which are mandated under the EPIRA and in an ERC Resolution No. 09, Series of 2011, as amended by ERC Resolution No. 04, Series of 2019 *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 activities of the registrant. All clearances from the pertinent operating departments[1] of the Commission shall be secured and/or completed prior to the filing of a registration statement with the Department:

2.1 All corporate actions and approval necessary for the Offer are completed and secure a Certificate of Good Standing from the Company Registration and Monitoring Department ("CRMD").

2.2 A validation of the qualifications and non-disqualifications of its independent directors[2] and compliance with website template[3] from the Corporate Governance and Finance Department ("CGFD").

2.3 A Certificate of no pending case from the Office of the General Counsel ("OGC") and Enforcement and Investors Protection Department ("EIPD").

2.4 A Pre-Evaluation Clearance from the Office of the General Accountant ("OGA").

Section 3. 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.

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[1] Company Registration and Monitoring Department (CRMD), Corporate Governance and Finance Department (CGFD), Enforcement and Investors Protection Department (EIPD) and Office of the General Counsel (OGC) to be submitted within 20-days after MSRD issuance of comment letter.

[2] Rule 38.6 Qualification and Disqualification

[3] SEC Memorandum Circular No. 11, Series of 2014

Section 4. OGA Review.

4.1 Pre-evaluation Process. Registrant shall present to the OGA its financial statements for pre-evaluation in order to determine basic compliance with the Revised Rule 68, such as but not limited to:

4.1.1 The periodic presentation of the AFS[4] and IFS as prescribed under Part II, Section 5.

4.1.2 The prescribed age requirements under Part II, Section 5.

If compliant/acceptable, OGA shall issue the pre-evaluation clearance to be submitted to the MSRD.

4.2 AFS Review Proper. AFS/IFS review shall commence upon submission of any proof of payment of registration fee made. The OGA shall review in details compliance with the Revised SRC Rule 68 and Philippine Financial Reporting Standards (PFRS).

4.3 The OGA shall inform the registrant of the result of its evaluation[5] through the issuance of a Comment and Response Sheet ("CRS") wherein the registrant shall respond and submit the same within five (5) days from the receipt of the CRS. Failure to comply within the given period shall be deemed as accepted and the result of its evaluation will be referred to the MSRD.

4.4 Request for conference from the registrant shall only be allowed once.

4.5 In case of identified *material missatatements* that would warrant the re-issuance of financial statements, the OGA shall immediately notify the registrant, the CRMD and the MSRD of the said misstatement without prejudice to any penalty that may be imposed due to deficiencies or deviation found.

4.6 CRMD shall prepare an assessment letter and registrant shall pay the penalty assessed by CRMD including any violation of the RCC and SEC guidelines on reportorial requirements. Failure to comply, would result in the suspension of the review by MSRD until payment of the fees and other dues collectible is made[6].

Section 5. Documentary Filing Requirements. The registrant shall send digital copies to msrdsubmission@sec.gov.ph in word and PDF format of the following for initial review of the Department.

5.1 OGA Pre-Evaluation Clearance Form

5.2 SEC POWERS Submission Checklist

5.3 Form SEC POWERS and Prospectus; and

5.4 All required Exhibits.

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[4] Audited Financial Statements

[5] Compliance with financial reporting rules

[6] Rule 54.3 2015 SRC Rules - Enforcement of Administrative Sanction

Section 6. Compliance with Registration. If the application is accepted for processing by the Department, registrant shall submit two (2) sets of hard copies of all documents required under Section 5 above and shall:

6.1 Request for a copy of the Payment Assessment Form (PAF);

6.2 Pay[7] the assessed registration and other fees, either via the Electronic System for Payment to SEC (eSPAYSEC) or over the counter payment thru any branch of Landbank of the Philippines;

6.3 Scan and email to msrdsubmission@sec.gov.ph digital copies of any proof of payment made as soon as available, to initiate the start of the 45-day review period, otherwise, processing will be held in abeyance until payment is made.

6.4 Secure from the Department a copy of the Notice of Filing of the Registration Statement signed by the Director of MSRD[8] and immediately cause the publication in two (2) newspapers of general circulation in the Philippines for two (2) consecutive weeks and submit copies of Affidavit of Publication as soon as available;

6.5 Immediately upload digital copy of the Prospectus in the company's official website.

6.6 Any request for confidential treatment and/or Exemptive Relief, shall be simultaneously filed with the registration statement (if applicable).

6.7 In case of registration under Shelf Registration, submit letter of undertaking to pay the remaining registration fee not later than thirty (30) business days prior to the expiry of the three (3) year reckoned from the date of the effectivity of the registration statement.

Section 7. 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:

7.1 File an updated Prospectus

7.2 Pay the assessed registration fee within seven (7) business days prior to commencement of the offer/sale based on the total registration fee payable per tranche of issuance and proportional to the issue value as required under Section 6.7 above.

7.3 Submit a Certification of no material change as prescribed in Annex "**A**".

Section 8. Eligibility Requirements. Subsequent offering after the initial tranche can only be allowed if:

8.1 The registration statement remains effective.

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[7] Review of application shall commence on the date of payment of registration fee

[8] Annex "B"

8.2 The registration statement is not subject to suspension or revocation orders under Section 13 or 15 of the SRC.

8.3 The registrant has timely filed reports required under *Section 16* hereof.

8.4 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.

8.5 No application for registration or amendment thereof, or request for exemptive relief or for reconsideration, or other similar request shall be accepted by the Department unless the payment of the fees and other dues collectible is made.

Section 9. 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 10. Requirement on Minimum Public Offering on Initial Public Offering. 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 public ownership as set by the Energy Regulatory Commission in compliance with the relevant provisions of the SRC and its Implementing Rules and Regulations.

Section 11. Underwriting Requirement and Plan of Distribution. A registrant corporation shall engage an underwriter in the public distribution or offering of the registered shares.

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, it shall submit not later than five (5) days before the actual filing of the registration statement, a justification letter providing details on how the shares will be sold or offer subject to the Commission consideration if it may allow the non-engagement of an underwriter.

Section 12. 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 13. Forty-five (45) Day Review Period. The Commission shall review and declare the registration statement effective or reject the same within forty-five (45) days after the date of filing with MSRD, in accordance with the requirements of the SRC, RCC, and other pertinent issuances of the Commission.

13.1 The forty-five (45) day period shall reckon on the date of payment of the assessed registration fee.

13.2 Within fifteen (15) days, the Department shall issue a comment letter outlining the findings, issues, and deficiencies identified in the documents submitted. The Department shall set a meeting with the registrant that shall take place within five (5) days from the issuance of the comment letter to discuss the findings, if necessary.

13.3 Within twenty (20) days from the issuance of the comment letter, the registrant shall submit its compliance by filing:

13.3.1 An updated Prospectus and any other documents in compliance with the comments of the Department.

13.3.2 A letter-reply specifying its responses to the comments

13.3.3 A certified list of the changes made in the updated Prospectus

13.3.4 All clearances required under Section 2.1 to 2.4 hereof (if applicable).

13.4 Should the registrant wish to request a meeting with the Department, it shall submit a written request at least two (2) days before the proposed date and within the twenty (20) days period. The request shall specify the agenda and include any materials that shall be presented in the meeting.

13.5 Not later than the forty-fifth (45th) day, the Department shall present before the Commission En Banc the registrant's application for its consideration based on the available information, compliance, and submission.

13.7 The Department shall immediately communicate to the registrant the decision of the Commission En Banc.

Section 14. Approval of Application. Upon favorable consideration by the Commission En Banc of the registrant registration statement, the Department shall issue a pre-effective letter stating the conditions to be complied with.

Upon compliance with the requirements the department shall issue an Order of Registration and/or Permit to Sell Securities to the Public.

The sale of the securities via public offering shall commence within ten (10) business days from the date of the effectivity of the registration statement[9] and shall continue until the end of the offering period or until the sale is terminated by the Issuer. If the sale is not commenced within ten (10) business days, the RS shall be cancelled and all fees paid thereon forfeited.

A written notification of completion or termination of the offering shall be filed by the Issuer with the Department within three (3) business days from such completion or termination, and the notice shall state the number of securities sold.

Section 15. Rejection of Application. If the registration statement is on its face incomplete or inaccurate in any material respect or includes any untrue statement of a material fact required to be stated therein or necessary to make the statement not misleading, the Commission may reject such registration statement and refuse registration.

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 RCC, SRC and its IRR and the registration fee is forfeited in favor of the Commission.

[9] In case the Commission renders the RS effective sooner than forty-five (45) days, the Commission can determine a later RS effectivity date to accommodate the book-building or other price setting mechanism that the Issuer might have.

Section 16. Reportorial Requirements. After the effectivity of the registration statement, the registrant shall submit digital copies to ictdsubmission@sec.gov.ph and msrdsubmission@sec.gov.ph and upload the same in its website:

16.1 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 under SEC Form 17-C.

16.2 reports required under Rule 17[10] of 2015 SRC Rules ("SRC IRR").

16.3 reports required under Section 23[11] of SRC IRR.

16.4 reports required under Section 177[12] of the Revised Corporation Code to efast.sec.gov.ph

Section 17. Penalty Clause - Any violation of the requirements and conditions set herein, the RCC, 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 18. Effectivity - This Memorandum Circular shall take effect immediately after its publication in two (2) newspapers of general circulation in the Philippines.

Makati City, Philippines

15 February 2024

EMILIO B. AQUINO
Chairperson

[10] Annual Report (SEC Form 17-A), Quarterly Report (SEC Form 17-Q) and Current Report (SEC Form 17-C)

[11] Reports to be filed by Directors, Officers and Principal Stockholders

[12] Audited Financial Statements, General Information Sheet, Director appraisal or performance report and the standards or criteria used to assess each director