DEPARTMENT OF ENERGY

COMPENDIUM OF ENERGY LAWS CIRCULARS AND OTHER ISSUANCES

VOLUME 2

PETROLEUM, COAL AND RENEWABLE ENERGY

FOREWORD

by the Secretary

"Ignorantia juris non excusat"

The Philippine energy sector has undergone significant structural transformations over the years.

Vital up to date developments including policies and programs to guide the government, stakeholders and consumers alike in making informed energy choices is now collaboratively synergized.

The Deparment of Energy (DOE) is proud to present the updated Second Edition of the Compendium of Energy Laws to the public, a comprehensive reference on the various Republic Acts, Protocols and Directives to guide the DOE, its attached agencies especially the upstream and downstream industry about the dynamics of the participation and responsibilities of each energy player.

I commend the invaluable efforts of the DOE-Legal Services and their partners in gathering all these in one compilation.

This publication is tangible proof of the continuing productive growth of meeting the needs of those serviced and those supplying power.

Patriotically, let us explore more ways to raise the quality of life of our Kababayans.

Para sa Lupang Hinirang.

Maraming salamat po.

ALFONSO G. CUSI

PREFACE

by the Supervising Assistant Secretary for Legal Services

The compendium of energy laws, rules, regulations and other issuances is a helpful tool to guide all industry players, relevant government entities, practitioners and the general public. While the Department of Energy (DOE) continues to craft relevant rules and regulations in the exercise of its policy making power, the compendium's density shows the sheer volume of laws, rules and regulations that are existing currently being implemented.

But what seems to be the missing link to fully achieve the common objectives of these issuances? It is the conscious and concerted effort of all stakeholders to at all times act in accord with their respective mandates.

The policy making body, the regulator and all relevant government entities must work in unison and ensure that their duties are faithfully performed. Industry players must fully comply with their corporate, environmental and social obligations without sacrificing compliance with regulatory standards.

At the end of the day, regardless of our affiliation, we are all consumers. Filling the missing link will work to our advantage because if we fail individually, we fail as a whole. A miss is as good as a mile.

This publication is a product of the resourcefulness and hardwork of the DOE Legal Services, and the hope is that this project will serve its avowed purpose of providing everyone the necessary information as to the legal aspect of energy development in the Philippines.

CARON AICITEL E. LASCANO

TABLE OF CONTENTS

Chapter I
Upstream Petroleum Laws, Rules and Regulations

I. PRESIDENTIAL DECREE NO. 87

AMENDING PRESIDENTIAL DECREE NO. 8 ISSUED ON OCTOBER 2, 1972, AND PROMULGATING AN AMENDED ACT TO PROMOTE THE DISCOVERY AND PRODUCTION OF INDIGENOUS PETROLEUM AND APPROPRIATE FUNDS THEREFOR.

WHEREAS, Presidential Decree No. 8 dated October 2, 1972 was issued to promote the discovery and development of the country's indigenous petroleum resources and adopting therefore as part of the law of the land the provisions of Senate Bill No. 531 (An Act to Promote the Discovery, Production of Indigenous Petroleum and Appropriate Funds Therefor);

WHEREAS, it was found necessary for the national interest to amend Senate Bill No. 531 among others things to provide more meaningful incentives to prospective service contractors.

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution as Commander-in-Chief of all the Armed Forces of the Philippines, and pursuant to Proclamation No. 1081, dated September 21,1972, and General Order No. 1, dated September 22,1972, as amended, do hereby amend Presidential Decree No. 8 as follows:

AN ACT TO PROMOTE THE DISCOVERY AND PRODUCTION OF INDIGENOUS PETROLEUM, AND APPROPRIATING FUNDS THEREFOR.

SECTION 1. ***Short title*** – This Act shall be known and may be cited as "THE OIL EXPLORATION AND DEVELOPMENT ACT OF 1972."

SECTION 2. ***Declaration of policy.*** – It is hereby declared to be the policy of the State to hasten the discovery and production of indigenous petroleum through the utilization of government and/or private resources, local and foreign, under the arrangements embodied in this Act which are calculated to yield the maximum benefit to the Filipino people and the revenues to the Philippine Government for use in furtherance of national economic development, and to assure just returns to participating private enterprises, particularly those that will provide the necessary services, financing and technology and fully assume all exploration risks.

SECTION 3. ***Definition of terms.*** - As used in this Act, the following shall have the following respective meanings:

(a) "Petroleum" shall include any mineral oil hydrocarbon gas, bitumen, asphalt, mineral gas and all other similar or naturally associated substances with the exception of coal, peat, bituminous shale and/or other stratified mineral fuel deposits.

(b) "Crude oil" or "crude" means oil in its natural state before the same has been refined or otherwise treated. It does not include oil produced through destructive distillation of coal, bituminous shales or other stratified deposits, either in its national state or after the extraction of water, and sand or other foreign substances therefrom.

(c) "Natural gas" means gas obtained from boreholes and wells and consisting primarily of hydrocarbons.

(d) "Petroleum operations" means searching for and obtaining petroleum within the Philippines through drilling and pressure or suction or the like, and all other operations incidental thereto. It includes the transportation, storage, handling and sale (whether for export or for domestic consumption) of petroleum so obtained but does not include any:.(1) transportation of petroleum outside the Philippines; (2) processing or refining at a refinery; or (3) any transactions in the products so refined.

(e) "Petroleum in commercial quantity" means petroleum in such quantities which will permit its being economically developed as determined by the contractor after taking into consideration the location of the reserves, the depths and number of wells required to be drilled and the transport and terminal facilities needed to exploit the reserves which have been discovered.

(f) "Posted price" refers to the FOB price established by the Contractor in consultation with the Petroleum Board for each grade, gravity and quality of crude oil offered for sale to buyers generally for export at the particular point of export, which price shall be based upon geographical location, and the fair market export values for crude oil of comparable grade, gravity and quality.

(g) "Market Price" shall mean the price which would be realized for petroleum produced under a contract as hereinafter defined if sold in a transaction between independent persons dealing at arm's length in a free market.

(h) "Barrel" means 42 U.S. gallons or 9702 cubic inches at temperature of 60° Fahrenheit. Any reference in this Act to the value of any crude oil at the posted price or market price shall be construed as a reference to the amount obtained by multiplying the number of barrels of that crude oil by the posted price or market price per barrel applicable to that crude oil.

(i) "Crude oil exported" shall include not only crude oil exported as such but also indigenous crude oil refined in the Philippines for export.

(j) "Government" means the Government of the Republic of the Philippines.

(k) "Contractor" means the contractor in a service contract whether acting alone or in consortium with others.

(l) "Contract" refers to a service contract.

(m) "Filipino participation incentive" means the allowance which may be given the Contractor with Filipino participation as provided in Section 28 hereof.

(n) "Philippine corporation" means a corporation organized under Philippine laws at least sixty per cent of the capital of which is owned and held by citizens of the Philippines.

(o) "Affiliate" means (a) a company in which a contractor holds directly or indirectly at least fifty per cent of its outstanding shares entitled to vote; (b) a company which holds directly or indirectly at least fifty percent of the contractor's

outstanding shares entitled to vote; or (c) a company in which at least fifty percent of its share outstanding and entitled to vote are owned by a company which owns directly or indirectly at least fifty percent of the shares outstanding and entitled to vote of the contractor.

(p) "Gross income" means the gross proceeds from the sale of crude, natural gas or casinghead petroleum spirit produced under the contract and sold during the taxable year at posted or market price, as the case may be, and such other income which are incidental to and arising from any one or more of the petroleum operations of the contractor.

(q) "Taxable net income" means the gross income less the deductions allowed in this Act.

(r) "Taxable year" means the calendar or fiscal year of the contractor.

(s) "Casinghead petroleum spirit" means any liquid hydrocarbon obtained from natural gas by separation or by any chemical or physical process.

(t) "Petroleum Board" refers to the Petroleum Board created in Section seventeen of this Act.

(u) "Operating Expenses" means the total expenditures for petroleum operations made by the Contractor both within and without the Philippines as provided in a service contract.

SECTION 4. ***Government may undertake petroleum exploration and production.*** – Subject to the existing private rights, the Government may directly explore for and produce indigenous petroleum. It may also indirectly undertake the same under service contracts as hereinafter provided. These contracts may cover free areas, national reserve areas and/or petroleum reservations, as provided for in the Petroleum Act of 1949, whether on-shore or off-shore. In every case, however, the contractor must be technically competent and financially capable as determined by the Board to undertake the operations required in the contract.

SECTION 5. ***Execution of contract authorized in this Act.*** - Every contract herein authorized shall, subject to the approval of the President, be executed by the Petroleum Board created in this Act, after due public notice pre-qualification and public bidding or concluded through negotiations. In case bids are requested or if requested no bid is submitted or the bids submitted are rejected by the Petroleum Board for being disadvantageous to the Government, the contract may be concluded through negotiation. In opening contract areas and in selecting the best offer for petroleum operations, any of the following alternative procedures may be resorted to by the Petroleum Board, subject to prior approval of the President:

(a) The Petroleum Board may select an area or areas and offer it for bid, specifying the minimum requirements and conditions; or

(b) The Petroleum Board may open for bidding a large area wherein bidders may select integral areas not larger than the maximum provided in this Act. Only the best offer shall be accepted and the selection thereon shall be made by a weighted system of evaluating the different aspects of each bid; or

(c) An area may be selected by an interested party who shall negotiate with the Petroleum Board for a contract under the terms and conditions provided in this Act.

SECTION 6. ***Nature of service contract.*** – In a service contract, service and technology are furnished by the service contractor for

which it shall be entitled to the stipulated service fee while financing is provided by the Government to which all petroleum produced shall belong.

SECTION 7. ***Special stipulation in service contract.*** – Where the Government is unable to finance petroleum exploration operations or in order to induce the contractor to exert the maximum efforts to discover and produce petroleum as soon as possible, the service contract shall stipulate that if the contractor shall furnish services, technology and financing, the proceeds of sale of the petroleum produced under the contract shall be the source of funds for payment of the service fee and the operating expenses due the contractor.

SECTION 8. ***Obligation of contractor in service contract.*** – The arrangement pursuant to the preceding section seven shall be such that the contractor, which may be a consortium, shall undertake, manage and execute petroleum operations. The contract may authorize the contractor to take and dispose of and market either domestically or for export all petroleum produced under the contract subject to supplying the domestic requirements of the Republic of the Philippines on a pro-rata basis. The Government shall oversee the management of the operations contemplated in the contract and in this connection shall require the contractor to:

(a) Provide all necessary services and technology;

(b) Provide the requisite financing;

(c) Perform the exploration work obligations and program prescribed in the agreement between the Government and the Contractor, which may be more but shall not be less than the obligations prescribed in this Act;

(d) Once petroleum in commercial quantity is discovered, operate the field on behalf of the Government in accordance with accepted good oil field practices using modem and scientific methods to enable maximum economic production of petroleum; avoiding hazards to life, health and property; avoiding pollution of air, land and waters; and pursuant to an efficient and economic program of operation;

(e) Assume all exploration risks such that if no petroleum in commercial quantity is discovered and produced, it will not be entitled to reimbursement;

(f) Furnish the Petroleum Board promptly with geological and other information, data and reports which it may require;

(g) Maintain detailed technical records and accounts of its operations;

(h) Conform to regulations regarding, among others, safety, demarcation of agreement acreage and work areas, non-interference with the rights of other petroleum, mineral and natural resources operators;

(i) Maintain all meters and measuring equipment in good order and allow access to these as well as to the exploration and production sites and operations to inspectors authorized by the Petroleum Board;

(j) Allow examiners of the Bureau of Internal Revenue and other representatives authorized by the Petroleum Board full access to their accounts, books and records, for tax and other fiscal purposes; and

(k) Be subject to Philippine income tax. On the other hand, the Petroleum Board shall –

1. On behalf of the Government, reimburse the Contractor for all operating expenses not exceeding seventy percent of the gross proceeds from production in any year: Provided, That if in any year the

operating expenses exceeds seventy per cent of gross proceeds from production, then the unrecorded expenses shall be recovered from the operations of succeeding years.

2. Pay the Contractor a service fee the net amount of which shall not exceed forty percent of the balance of the gross income after deducting the Filipino participation incentive, if any, and all operating expenses recovered pursuant to Section 8 (1) above.

3. Reimbursement of operating expenses and payment of the service fee shall be in such form and manner as provided for in the contract.

SECTION 9. ***Minimum terms and conditions.*** – In addition to those elsewhere provided in this Act, every contract executed in pursuance hereof shall contain the following minimum terms and conditions:

(a) Every contractor shall be obliged to spend in direct prosecution of exploration work and in delineation and development following the discovery of oil in commercial quantity not less than the amounts provided for in the contract between the Government and the contractor and these amounts shall not be less than the total obtained by multiplying the number of hectares covered by the contract by the following amounts for hectare:

Period	On-shore	Of-shore
Year 1	P 3.00	P 3.00
Year 2	3.00	3 00
Year 3	3.00	6.00
Year 4	3.00	6.00
Year 5	3.00	6.00
Year 6	9.00	18.00
Year 7	9.00	18.00
Year 8	9.00	18.00
Year 9	9.00	18.00
Year 10	9.00	18.00

Provided, That if during any contract year the Contractor shall spend more than the amount of money required to be spent, the excess may be credited against the money required to be spent by the Contractor during the succeeding contract years: Provided, further, That in case the same Contractor holds two or more areas under different contracts of service, the total amount of work obligations for exploration required for the initial term of all contracts may be spent within any one or more of them as if they are covered by a single contract of service: Provided, further, That should the Contractor fail to comply with the work obligations provided for in the contract, it shall pay to the Government the amount it should have spent but did not in direct prosecution of its work obligations: *Provided*, finally, That the Contractor shall drill a minimum footage of test wells before the end of periods of time as may be specified in the contract with the Petroleum Board in order to be entitled to the extension of the exploration period for 3 years as provided for in paragraph (e) herein.

(b) In case the contractor renounces or abandons wholly or partly the area covered by his contract within two years from its effective date, it shall in respect of the abandoned area pay the Government the amount it should have spent, but did not, for exploration work during said two years, for which payment, among other obligations, the performance guarantee posted by the contractor shall be answerable.

(c) Every contract shall provide for the compulsory relinquishment of at least twenty five per cent of the initial area at the end of five years from its effective date and in the event of an extension of the contract from seven to ten years, an additional relinquishment of at least twenty-five per cent of the initial area at the end of seven years from its effective date. But the portion already delineated as production area pursuant to the succeeding paragraph shall not

be taken into account in ascertaining the extent of relinquishment required. Any area renounced or abandoned under Sec. 9(b) above shall be credited against the portion of the area subject to the contract which is required to be surrendered hereunder.

(d) The Contractor shall, from the discovery of petroleum in commercial quantity, delineate the production area within the period agreed upon in the contract.

(e) The exploration period under every contract shall be seven years, extendible for three years if the contractor has not been in default in its exploration work obligations and other obligations after which the contract shall lapse unless Petroleum has been discovered by the end of the tenth year and the contractor for requests a further extension of one year to determine whether it is in commercial quantity, in which event, another extension of one year for exploration may be granted. If Petroleum in commercial quantity has been discovered, the Contractor may retain after the exploration period and during he effectivity of the Contract twelve and one-half per cent of the initial area in addition to the delineated production area: Provided, however, That the contractor shall pay annual rentals on such retained area which shall not be less than ten pesos per hectare or fraction thereof for on-shore areas and not less than twenty pesos as determined by the Petroleum Board per hectare or fraction thereof for off-shore areas: Provided further, that such rentals can be offset against exploration expenditures actually spent on such area.

(f) Where petroleum in commercial quantity is discovered during the exploration period in any area covered by the contract, the contract with respect to said area shall remain in force for production purposes during the balance of the ten year exploration period and for an additional period of twenty-five years, thereafter renewable for a period not exceeding fifteen years under such terms and conditions as may be agreed upon by the parties at the time of renewal.

(g) All materials, equipment, plants and other installations erected or placed on the exploration and/or production area of a movable nature by the contractor shall remain properties of the contractor unless not removed therefrom within one year after the termination of the contract.

(h) The contractor shall be subject to the provisions of laws of general application relating to labor, health, safety, and ecology insofar as they are not in conflict with the provisions otherwise contained in this Act.

(i) Every contract executed in pursuance of this Act shall contain provisions regarding the discovery, production, sale and disposal of natural gas and casinghead petroleum spirit that shall be in line with the rules herein prescribed for crude oil except that:

(1) The market price shall be the basis for tax and all other purposes;

(2) After meeting requirements in secondary recovery operations priority shall be given to supplying prospective demand in the Philippines.

SECTION 10. ***Contract areas.*** - Subject to Section eighteen hereof, a contractor or its affiliate may enter into one or more contracts with the Government. Contracts for off shore areas may cover any portion beneath the Philippine territorial waters or its continental shelf, or portion of the continental slope, terrace or areas which are or may be subject to Philippine jurisdiction: Provided, That for off-shore areas beyond water depths of 200

meters, the Petroleum Board may provide for more liberal terms than that provided for herein with respect to contract areas, exploration period and relinquishment.

SECTION 11. ***Transfer and assignment.*** – The rights and obligations under a contract executed under this Act shall not be assigned or transferred without the prior approval of the Petroleum Board: Provided, That with respect to the transfer or assignment of contractual rights and obligations under this Act to an affiliate of the transferor, the approval thereof by the Petroleum Board shall be automatic, if the transferee is as qualified as the transferor to enter into such contract with the Government: Provided, further, That the affiliate relationships between the original transferor or a company which holds at least fifty per cent of the contractor's outstanding shares entitled to vote and each transferee shall be maintained during the existence of the contract.

SECTION 12. ***Privileges of contractor.*** – The provisions of any law to the contrary notwithstanding, a contract executed under this Act may provide that the contractor shall have the following privileges:

(a) Exemption from all taxes except income tax.

(b) Exemption from payment of tariff duties and compensating tax on the importation of machinery and equipment, and spare parts and all materials required for petroleum operations subject to the conditions that said machinery, equipment, spare parts and materials of comparable price and quality are not manufactured domestically; are directly and actually needed and will be used exclusively by the contractor in its operations or in operations for it by a subcontractor are covered by shipping documents in the name of the contractor to whom the shipment will be delivered direct by the customs authorities; and prior approval of the Petroleum Board was obtained by the contractor before the importation of such machinery, equipment, spare parts and materials which approval shall not be unreasonably withheld: Provided, however, That the contractor or its subcontractor may not sell, transfer or dispose of these machinery, equipment, spare-parts and materials without the prior approval of the Petroleum Board and payment of taxes due the Government: Provided, further, That should the contractor or its subcontractor sell, transfer or dispose of these machinery equipment, spare parts or materials without the prior consent of the Petroleum Board, it shall pay twice the amount of the tax exemption granted: Provided, finally That the Petroleum Board shall allow and approve the sale, transfer, or disposition of the said items without tax if made (1) to another contractor; (2) for reasons of technical obsolescence; or (3) for purposes of replacement to improve and/or expand the operations of the contract;

(c) Exemption upon approval by the Petroleum Board from laws, regulations and/or ordinances restricting the (1) construction, installation, and operation of power plant for the exclusive use of the contractor if no local enterprise can supply within a reasonable period and at reasonable cost the power needed by the contractor in its petroleum operations, (2) exportation of machinery and equipment which were imported solely for its petroleum operation when no longer needed therefor;

(d) Exemption from publication requirements under Republic Act Numbered Five thousand four hundred fifty-five; and the provisions of Republic Act Numbered Sixty one hundred and seventy-three with respect to the exploration, production, exportation or sale or disposition of crude oil discovered and produced in the Philippines;

(e) Exportation of petroleum subject to the prior filling pro-rata of domestic needs as elsewhere provided in this Act;

(f) Entry, upon the sole approval of the Petroleum Board which shall not be unreasonably withheld, of alien technical and specialized personnel (including the immediate members of their families), who may exercise their professions solely for the operations of the contractor as prescribed in its contract with the Government under this Act: Provided, That if the employment or connection of any such alien with contractor ceases, the applicable laws and regulations on immigration shall apply to him and his immediate family: Provided, further, That Filipinos shall be given preference to positions for which they have adequate training: And provided, finally, That the contractor shall adopt and implement a training program for Filipinos along technical or specialized lines, which program shall be reported to the Petroleum Board;

(g) Rights and obligations in any contract concluded pursuant to this Act shall be deemed as essential considerations for the conclusion thereof and shall not be unilaterally changed or impaired; and

(h) The privileges and benefits granted to a contractor under the provisions of this Act together with any applicable obligations shall likewise be made available to concessionaires under the Petroleum Act of 1949 and their authorized contractors and/or service operators, whether local or foreign, if they so elect.

SECTION 13. ***Repatriation of capital and retention of profits abroad.*** – The contractor shall be entitled to

(1) Repatriate over a reasonable period the capital investment actually brought into the country in foreign exchange or other assets and registered with the Central Bank;

(2) Retain abroad all foreign exchange representing proceeds arising from exports accruing to the contractor over and above

(a) the foreign exchange to be converted into pesos in an amount sufficient to cover, or equivalent to, the local costs for administration and operations of the exported crude and

(b) Revenues due the Government on such crude: Provided, however, That the Government and the contractor shall stipulate in the contract the currency in which the Government revenues arising under (b) above are to be paid;

(3) Convert into foreign exchange and remit abroad at prevailing rates no less favorable to Contractor than those available to any other purchaser of foreign currencies, any excess balances of their peso earnings from petroleum production and sale over and above the current working balances they require; and

(4) Convert foreign exchange into Philippine currency for all purposes in connection with its petroleum operations at prevailing rates no less favorable to contractor than those available to any other purchaser of such currency.

SECTION 14. ***Full disclosure of interest in contractor.*** – Interest held in the contractor by domestic mining and petroleum companies and/or the latter's stockholders may be allowed to any extent after full disclosure thereof to, and approved by the Petroleum Board.

SECTION 15. ***Arbitration.*** – The Petroleum Board may stipulate in a contract executed

under this Act that disputes in the implementation thereof between the Government and the contractor may be settled in accordance with generally accepted international arbitration practice.

SECTION 16. ***Performance guarantee.*** – In order to guarantee compliance with the obligations of the contractor in contracts executed under this Act, the contractor shall post a bond or other guarantee of sufficient amount in favor of the Government and with surety or sureties satisfactory to the Petroleum Board, conditioned upon the faithful performance by the contractor of any or all of the obligations under and pursuant to said contracts.

IMPLEMENTING AGENCY

SECTION 17. There is hereby created a Petroleum Board composed of the Secretary of Agriculture and Natural Resources, as Chairman, and the Secretary of Finance, the Secretary of Justice, the Chairman of the Board of Investments, the Governor of the Central Bank, the Secretary of Trade and Tourism and the Director of Mines as members. The Director of Mines shall be its Executive Officer. The Board shall be attached to the National Economic Development Authority.

SECTION 18. ***Functions of Petroleum Board.*** – In accordance with the provisions and objectives of this Act, the Petroleum Board shall:

(a) Define and give public notice when applicable of the areas available for service contract;

(b) Enter into contracts herein authorized with such terms and conditions as may be appropriate under the circumstances including the grant of special allowance: Provided, however, That no depletion allowance shall be granted: Provided, further, That except as provided in Sections twenty-six and twenty-seven hereof, no contract in favor of one contractor and its affiliates shall cover less than fifty thousand nor more than seven hundred and fifty thousand hectares for on-sphere areas, or less than eighty thousand nor more than one million five hundred thousand hectares for off-shore areas: Provided, finally, That in no case shall the annual net revenue or share of the Government, including all taxes paid by or on behalf of the contractor, be less than sixty per cent of the difference between the gross income and the sum of operating expenses and Filipino participation incentive;

(c) Provide for the manner and form of the income tax payment, the reimbursement of operating expenses, the payment of service fee, and payment of Filipino participation incentive allowance, if any, in the service contract;

(d) Make specific proposals to Congress for the grant of subsidy to contractors and petroleum companies at least sixty percent of the capital of which is owned by Philippine citizens, to be derived from the revenue or share that will accrue to the Government in pursuance of this Act;

(e) Undertake intensive studies and researches on oil field practices, procedures, and policies;

(f) Promulgate such rules and regulations as may be necessary and assess charges for services rendered, to implement the intent and provisions of this Act;

(g) Appoint, discipline and remove, and determine the compensation of, its technical staff and other personnel: Provided, That positions which are highly technical or primarily confidential shall not be subject to the Civil Service Laws and Rules, and of the Wage and Position Classification Office;

(h) Within four months after the close of every fiscal year, submit to the President and Legislature an annual report on its activities, with appropriate recommendation; and

(i) Generally, exercise all powers necessary or incidental to attain the objectives of this Act.

TAX PROVISIONS

SECTION 19. ***Imposition of tax.*** – The contractor shall be liable each taxable year for Philippine income tax on income derived from its petroleum operations under its contract of service, computed as provided in Section 20, through 25.

SECTION 20. ***Determination of gross income.*** – The gross income shall consist of:

(a) In respect of crude oil exported, the gross proceeds from the sale of crude oil at the posted price;

(b) In respect of crude oil sold for consumption in the Philippines, the gross income shall consist of the gross proceeds from the sale thereof at market price per barrel;

(c) In respect of natural gas and/or casinghead petroleum exported or sold for consumption in the Philippines the gross income shall consist of the total quantity sold at the prevailing market price thereof; and

(d) Such other income which are incidental to and/or arising from any petroleum operation.

SECTION 21. ***Deductions from gross income.*** - In computing the taxable net income, there shall be allowed as deductions:

(1) Filipino participation incentive; and

(2) Operating expenses reimbursed pursuant to Section 8 (1) which includes amortization and depreciation as provided in Section 22.

SECTION 22. ***Amortization and Depreciation.*** – Intangible exploration costs may be deductible in full; all tangible exploration costs such as capital expenditures and other recoverable capital assets are to be depreciated for a period of ten years.

SECTION 23. ***Deductions not allowed.*** – In ascertaining the taxable net income, no deduction from gross income shall be allowed in respect of any interest or other consideration paid or suffered in respect of the financing of its petroleum operations.

SECTION 24. ***Return and payment of tax.*** – Every party to a service contract shall render to the Petroleum Board a return for each taxable year in duplicate in such form and manner as provided by law setting forth its gross income and the deductions herein allowed. The return shall be filed by the Petroleum Board with the Commissioner of Internal Revenue or his deputies or other persons authorized by him to receive such return within the period specified in the National Internal Revenue Code and the Rules and Regulations promulgated thereunder. Every party to a service contract shall be subject to tax separately on its share of taxable income arising from such contract.

SECTION 25. ***Applicability of the provisions of the National Revenue Code.*** – All provisions of the National Internal Revenue Code and rules and regulations promulgated in relation therewith which are not inconsistent with the provisions of this Act shall be applicable to the Contractor.

SPECIAL PROVISIONS

SECTION 26. ***Option of exploration concessionaires.*** – A holder of a valid and subsisting petroleum exploration concession

under the Petroleum Act of 1949 may, at his option enter into a contract of service under the rules of the Petroleum Act of 1949, subject to constitutional restrictions, with any local or foreign oil company under such terms and conditions as may be agreed upon by the concessionaire and the service contractor. As an alternative the concessionaire may convert his concession into a service contract as provided in this Act through negotiations, with all the rights and privileges herein authorized: Provided, That the contract which may be concluded after said negotiation shall contain at least the minimum terms and conditions provided in this Act and shall take into account terms and conditions more favorable to the Government contained in contracts involving exploration pursuant to this Act: Provided, further, That the exploration period shall commence to run from the, effective date of the original concession, except when the concession has been effective for a period of seven years or more, in which case the contractor shall be required to commence exploratory drilling operations within a period of not exceeding eighteen months from the date of effectivity of the service contract. If the contractor is not in default in the drilling operations as hereunder required, an extension of the exploration period may be granted as provided in Section nine, paragraph (e) of this Act.

SECTION 27. ***Alternative option of exploration concessionaire.*** – The concessionaire referred to in the preceding section may form a consortium with another company or companies and jointly enter into a service contract with the Government under this Act, with the right to assign to the consortium, subject to the approval of the Petroleum Board, the area covered by his concession which shall thereupon be governed by the provisions of this Act: Provided, That the voluntary relinquishment of the concession and its assignment, as well as all technical data on the area resulting from studies conducted by the concessionaire subsisting improvement introduced by him thereon, shall be evaluated and given a fair value which may constitute his contribution, wholly or in part, to the consortium: Provided, however, That the exploration period under the new contract shall commence to run from the date of the effectivity of the contract if it covers areas in addition to the assigned areas; otherwise the provisions of the preceding section shall apply: Provided, further, That duly published applications, for exploration concessions or bids therefor already awarded by the Secretary of Agriculture and Natural Resources under the provisions of the Petroleum Act of 1949 shall be recognized and the corresponding deeds of concessions issued accordingly: Provided, finally, That exploration concessions on which the holder thereof failed to perform the three consecutive years the exploration work required under the provisions of the Petroleum Act of 1949, as amended by Republic Act Numbered Five Thousand Eighty-Six shall be considered automatically cancelled.

SECTION 28. ***Filipino Participation Incentive.*** – The contractor under a service contract in which Philippine citizens or corporations have a minimum participating interest of fifteen percent in the contract area may be subject to reasonable conditions imposed by the Petroleum Board be granted by a government subsidy, commensurate with the scope of Filipino participation, i.e., a Filipino participation incentive, not exceeding seven and one-half per cent, which shall be computed by deducting the said allowance from the posted or market price, whichever, is the higher, of crude oil exports produced in the contract area, and from the market price of crude oil produced in the contract area, sold or disposed of for consumption in the Philippines.

SECTION 29. ***Publicity.*** – Negotiation with the Government for the conclusion of a contract under this Act and every contract concluded hereunder shall be given publicity consistent with the best interest of the Government.

SECTION 30. ***Provisions of Petroleum Act applicable.*** – The provisions of the Petroleum Act of 1949, as amended, shall not be applicable to the service contract provided in this Act, except the following Articles:

(a) Article 16, referring to public easements on lands covered by concessions;

(b) Article 17, providing that petroleum operations are subject to existing mining rights, permits, leases and concessions in respect of substances other than petroleum and to existing petroleum rights;

(c) Article 18, referring to the right of the Government to establish reservations or grant mining rights on petroleum concessions;

(d) Article 20, granting exploration and exploitation concessionaires the right to enter private lands covered by their concessions;

(e) Article 21, referring to easement and the exercise of the right of eminent domain over private lands for the purpose of carrying out any work essential to petroleum operations;

(f) Article 22, providing for easements over public land for the purpose of carrying out any work essential to petroleum operations; and

(g) Article 23, which grants concessionaires the right to utilize for any of the work to which the concession relates, timber, water, and clay from any public lands within their concessions.

SECTION 31. ***Preference to Local Labor.*** – The Contractor shall give priority in employment to qualified personnel in the municipality or municipalities or province where the exploration or production operations are located.

SECTION 32. ***Foreign Assistance.*** – Nothing in this Act or of any other law shall preclude the Government of the Republic of the Philippines, through the Petroleum Board or any other proper office or agency, from negotiating or entering into any agreement with any foreign country or government for assistance in terms of equipment, technical know-how and financing for the exploration and production of indigenous crude oil and its by-products.

SECTION 33. ***Funds.*** – To carry out the purpose of this Act, there is hereby appropriated, out of any funds in the National Treasury not otherwise appropriated, the sum of five hundred thousand pesos for the fiscal year nineteen hundred seventy-three. Hereafter, the necessary appropriations shall be included in subsequent General Appropriations Act.

SECTION 34. ***Repealing Clause.*** – All laws, executive orders and regulations inconsistent with the provisions of this Act are hereby repealed, provided that no existing rights shall be prejudiced thereby.

SECTION 35. ***Effectivity date.*** – This Act shall take effect upon its approval.

Done in the City of Manila, this thirty-first day of December, in the year of Our Lord, nineteen hundred and seventy-two.

II. PRESIDENTIAL DECREE NO. 1857

AN ACT GRANTING NEW INCENTIVES TO PETROLEUM SERVICE CONTRACTORS, AND FOR THIS PURPOSE AMENDING CERTAIN SECTIONS OF PRESIDENTIAL DECREE NUMBERED EIGHTY-SEVEN, AS AMENDED, OTHERWISE KNOWN AS "THE OIL EXPLORATION AND DEVELOPMENT ACT OF 1972"

WHEREAS, one of the more important policy decisions in the area of oil and gas exploration and development is the adoption of the service contract system embodied in Presidential Decree NO. 87, as amended, also known and cited as the "Oil Exploration and Development Act of 1972";

WHEREAS, the service contract system which attracted foreign capital and expertise in an area where local resources are not adequate, allows maximum benefits to the Philippine GOVERNMENT and at the same time providing reasonable returns to companies that render financial and technical services and assume all the risk of oil exploration;

WHEREAS, while the results from the implementation of the service contract system has so far been encouraging giving the country several hydrocarbon discoveries and three producing oilfields, it is necessary that we offer improved fiscal and contractual terms to service contractors in order for the Philippines to continue her oil exploration momentum in the light of current worldwide developments that has caused drastic cutbacks in exploration budgets of most exploration companies;

WHEREAS, eight (8) exploratory wells have been drilled so far in waters deepwater than 200 meters or 600 feet, of which two (2) are discoveries, which give deepwater drilling new significance in Philippine petroleum operations;

WHEREAS, there is a need to provide for a new set of incentives to revitalize interest and encourage more drilling activity in our country, with special reference to deepwater oil exploration;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby decree as follows;

SECTION 1. Section three of Presidential Decree numbered Eighty-Seven, is hereby amended by adding, after subparagraph (u) thereof, three new subparagraphs to be known as subparagraphs (v), (w) and (x) to read as follows:

> "(v) "Deepwater Contract" refers to a service contract at least eighty-five percent (85%) of the total contract area are in water depths beyond 200 meters.
>
> "(w) "Deepwater Contractor" means the contractor in a deepwater contract, whether acting alone or in a consortium with others.
>
> "(x) "Deepwater well" refers to a well drilled on water depths beyond 200 meters, whether within or without a deepwater contract."

SECTION 2. Subparagraph (1) of the second paragraph of Section 8 of the same decree is hereby amended to read as follows:

> "(1) On behalf of the Government, reimburse the Contractor for all operating expenses not exceeding

seventy percent (70%) of the gross proceeds from production in any year, Provided, that if in any year, the operating expenses exceed seventy percent (70%) of gross proceeds from production, then the unrecovered expenses shall be recovered from the operations of succeeding years.

"The provisions of Section 21, 22 and 23 hereof to the contrary notwithstanding, reimbursement of all operating expenses of the contractor includes amortization, depreciation and interest as provided hereunder;

"(a) Amortization and Depreciation - Intangible exploration costs may be reimbursed in full. All tangible exploration costs such as capital assets are to be depreciated for a period of five (5) years under the straight-line or double-declining balance method of depreciation at the option of the Contractor."

"(b) Any interest or other paid or suffered in respect of the financing as approved by the Government of its development and production operations, shall be reimbursed to the extent of two-thirds (2/3) of the amount thereof, except interest on loans or indebtedness incurred to finance exploration operations.

SECTION 3. A new section to be known as Section Ten-A, is hereby inserted between sections ten and eleven of the same decree to read as follows:

"***SECTION 10 A. Deepwater Contract, Deepwater CONTRACTOR and Deepwater Well.***

"(a) Cross Recovery Allowed – Subject to cost recovery limitation as provided in the Contract, there shall be allowed the cross recovery of the operating expenses incurred by a deepwater contractor or its affiliate in two or more areas under different deepwater contract and in the drilling of deepwater wells as if they are covered by a single contract.

"(b) Cross Recovery Rules

(1) Year to which Cross Recovery may be carried – Operating expenses incurred preceding the date of production shall be cross recoverable starting on the date of production:

(2) Amount of Cross Recovery

(a) The entire amount of operating expenses incurred within ten (10) years preceding the date of production shall be cross-recoverable;

(b) Operating expenses incurred more than 10 years preceding the date of production shall be reduced by an amount equal to twenty percent (20%) thereof, for each year beyond ten (10) years preceding the date of production.

(3) Time to Avail Incentive – Cross Recovery of operating expenses set forth in this section shall be allowed for a period of ten (10) years from the effectivity of this amendatory decree, unless extended by law.

"(c) Cross Recovery Defined – For purposes of this section, the term "Cross Recovery" means that the operating expenses incurred by a deepwater

contractor or its affiliate in two or more areas under different deepwater contracts and the operating expenses it incurred in the drilling of deepwater wells may be recovered from the gross proceeds resulting from the sale of all petroleum produced within any one or more of the deepwater contracts (or contract where the deepwater well is located), as if they are covered by a single contract.

"(d) Operating Expenses Defined – For purposes of this section, the term "Operating Expenses" means the total expenditures for petroleum operations incurred by the contractor, both within and without the Philippines except administrative items, as provided in the service contract.

"(e) Special Rules

(1) Cross Recovery may be allowed under the service contract in other areas upon the determination and recommendation of the Minister of Energy and subject to the approval by the President, taking into consideration factors such as exploration conditions, high operation cost, location, requirements for transport and terminal facilities.

(2) Cross Recovery shall apply to any corporation authorized to engage in petroleum operations in the Philippines pursuant to a service contact entered into by said corporation and the Bureau of Energy Development for:

(a) Contracts entered into pursuant to this decree, as amended, before the effectivity of this amendatory decree; and

(b) New contracts entered into after the effectivity of this amendatory decree.

"(f) Exploration Period in Deepwater Contract and Deepwater Well Contract – The provisions of subparagraph (e), Section Nine of the Decree shall apply to deepwater contract and deepwater well, except that when petroleum has been discovered by the end of the tenth year in deepwater contract and deepwater well, the deepwater contract or contract for deepwater well shall be further extended to determine whether the discovery is in commercial quantity, in which event, another extension for a period not exceeding five (5) years shall be granted. In the event the deepwater contract or contract for deepwater well shall remain in force for production purpose, the extension period of not exceeding five years shall be credited as part of the initial twenty-five (25)years production term."

SECTION 4. Section twelve of the same decree is hereby amended by adding, after subparagraph (h) thereof, a new subparagraph to be known as subparagraph (I) to read as follows:

"(i) Exemption from the investment requirements of foreign corporations under Section 126 in relation to Section 148 of the Corporation Code of the Philippines."

SECTION 5. The Bureau of Energy Development shall be vested with the authority to promulgate such rules and regulations as may be necessary to implement to provisions of this decree, subject to the approval of the Minister of Energy.

SECTION 6. Any provision of existing general and special laws inconsistent with the provisions of this decree is hereby modified, amended or repealed accordingly.

SECTION 7. This Decree shall take effect upon its approval.

DONE in the City of Manila this 1st day of January in the Year of Our Lord, Nineteen Hundred and Eighty-three.

(SGD.) FERDINAND E. MARCOS
President of the Philippines

III. PRESIDENTIAL DECREE NO. 1459

AUTHORIZING THE SECRETARY OF ENERGY TO ENTER INTO AND CONCLUDE SERVICE CONTRACTS, OR RE-NEGOTIATE AND MODIFY EXISTING CONTRACTS SUBJECT TO CERTAIN LIMITATIONS

WHEREAS, it is the declared policy of the State to promote an accelerated exploration, development, and production of indigenous petroleum resources;

WHEREAS, there is need to re-examine existing contracts and propose modifications thereto under certain conditions in the light of current international developments in oil exploration and development in order to further induce the active participation of service contractors, particularly, foreign companies with management and financial capabilities and technical expertise.

NOW, THEREFORE, I FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby decree and order the following:

SECTION 1. Any provision of law to the contrary notwithstanding, the Secretary of Energy is hereby authorized to enter into petroleum service contracts, or re-negotiate and modify existing ones, upon the approval of the President of the Philippines, subject to the following conditions:

(a) The share of the Government, including all taxes, shall not be less than sixty per cent of the difference between the gross income and the sum of operating expenses and such allowances as the Secretary of Energy may deem proper to grant;

(b) The service contractor must be technically competent and financially capable to undertake the petroleum operations required in the contract; and

(c) The Secretary of Finance shall be consulted on all matters involving revenue.

SECTION 2. This Decree shall take effect immediately.

Done in the City of Manila this 8th day of June, in the year of Our Lord, nineteen hundred and seventy-eight.

IV. PETROLEUM CIRCULARS AND OTHER ISSUANCES

A. BED CIRCULAR NO. 80-06-03

TO: ALL SERVICE CONTRACTORS UNDER PRESIDENTIAL DECREE NO. 87

In the interest of facilitating review and audit of expenses chargeable to cost recovery and in line with the mandated task of the Bureau of Energy Development to oversee petroleum operations, all petroleum service contractors are hereby instructed to observe the following guidelines relative to the Service Contractor's charges to its operating expenses in connection with construction for petroleum development projects, to wit:

I. GENERAL

1. In general, charges to development expenses shall be at competitive prices then prevailing in the market. In addition to price, due consideration shall be given to availability of service, quality and availability of materials, safety and ability to complete the project in a timely manner.

2. For services, materials and/or equipment performed and/or furnished by the parent company or affiliate of the service contractors, charges to operating expenses shall be governed by the pertinent accounting provisions of the service contract.

II. BIDDING

1. Scope

   Except for emergency purchases or in cases wherein there is only one supplier, the following services, materials and/or equipment acquisitions shall be tendered in connection with established industry practice.

   a) Construction and purchase of production and drilling platforms or structures.

   b) Purchase and installation of marine and offshore pipelines.

   c) Purchase and installation of offshore mooring systems.

   d) Purchase or lease of storage and shuttle tankers.

   e) Purchase and installation of processing plant and facilities.

   f) Construction of marine terminals.

   g) Helicopters and fixed wing services.

   h) Supply boats, crew boats, tugs and barges.

2. Invitation to Bid

   The Service contractor is hereby required to secure from the Bureau of Energy Development prior approval of the scope and concept of the project. If such approval is

not received in thirty (30) calendar days, the project shall be deemed approved and the service contractor may proceed. The Bureau of Energy Development will be furnished copies of bid solicitation letters and list of bidders at the time bids are solicited.

3. Award

For contracts involving platforms, pipelines, terminals, etc., valued over $500,000, and for helicopter and fixed wing services, supply boats, crew boats, tugs and barges covered under Paragraph II, Sub-paragraphs 1(g) and (h) above, valued over $250,000, the service contractor is required to secure approval of the Bureau of Energy Development prior to awarding the bid. If such approval is not received in ten (10) working days, the bid award shall be deemed approved and service contractor may award the bid. For contracts valued less than $500,000 but more than $250,000 and, for contracts covering Paragraph II, Sub-paragraphs 1(g) and (h) above, valued less than $250,000 but more than $100,000, service contractor is required to provide the Bureau of Energy Development with a copy of bids, summary analysis and basis of awarding bids.

III. EMERGENCY PURCHASES AND SERVICES

Acquisitions of services and/or equipment shall be considered an emergency purchase if the same is urgently needed such that any delay will unduly hamper the progress of the development project and/or subject the service contractor to incurring substantial losses. However, the contractor is required to submit details of emergency purchases within thirty (30) calendar days from the date of purchase on items valued over $250,000 or $100,000 as the case may be per classification under Paragraph II, Sub-paragraph 3 above.

IV. EFFECTIVITY

This Circular shall take effect fifteen (15) days after its publication in the Official Gazette, pursuant to Presidential Decree No. 1603.

June 5, 1980
W. R. DELA PAZ
Acting Director

B. BED CIRCULAR NO. 80-07-05

TO: ALL SERVICE CONTRACTORS UNDER PRESIDENTIAL DECREE NO. 87

Bureau of Energy Development Circular No. 80-06-03 governing services, materials and/or equipment acquisitions of petroleum service contractors provides that this Circular shall take effect fifteen (15) days after publication in the Official Gazette, pursuant to Presidential Decree No. 1603. Please be advised that this Circular is published in the Official Gazette, Vol. 76, No. 23, dated June 9, 1980.

Relatedly, all papers, documents and/or information relating to services, materials and/or equipment acquisitions of the service contractors which under this Circular, particularly Paragraphs 2 and 3 thereof, the service contractor is required to provide or submit to the BED for prior approval, shall be submitted directly to the Oil and Gas Division, Bureau of Energy Development, attention

of Mr. Apollo P. Madrid. The date of receipt by the Oil and Gas Division of these papers, documents and/or information shall be the starting date by which the thirty (30) calendar days or ten (10) working days approval period, as the case may be, will be reckoned.

In the event the BED will require additional information and/or data relating to the scope and concept of the project as mentioned in Paragraph 2 of the Circular, it shall immediately notify the service contractor in writing of any such requirement. The running of the thirty (30) calendar days approval period shall be suspended from the date of receipt by the service contractor of this notice until the date of receipt by the BED of compliance of its requirement.

For your guidance and compliance.

July 18, 1980
W. R. DELA PAZ
Acting Director

C. BUREAU CIRCULAR NO. 83-01-01

TO: ALL SERVICE CONTRACTORS UNDER PRESIDENTIAL DECREE NO. 87

In addition and subject to the guidelines of BED Circular No. 80-06-03 dated June 5, 1980, and in order to encourage and enhance the development of domestic transport services capability to support the logistical requirements of petroleum operations in the Philippines, all petroleum service contractors are hereby enjoined to give preference in awarding contracts, whether negotiated or bidded out, in favor of Philippine-registered tankers, vessels, bulk-carriers, and other watercrafts, including supply boats, crew boats, tugs and barges, to service their transport, support and other related operational requirements under their respective service contracts.

In instances where bidding is required under BED Circular No. 80-06-03, petroleum service contractors shall in all cases include owners of Philippine-registered tankers, vessels, bulk carriers, and other watercrafts, including supply boats, crew boats, tugs and barges, as among those to whom bid solicitation letters are sent for bidding of above-described services. In the event that bids received are reasonably comparable in terms and conditions, and generally meet the specifications of the petroleum service contractor, the award should be made in favor of Philippine-registered tankers, vessels, bulk carriers, and other watercrafts, as the case may be, as against those which are not so registered.

To secure adherence to the foregoing, this Bureau reserves the right to disallow/deny as charges to the operating expenses of petroleum service contractor payments under contracts for services not secured in accordance with this Circular.

This Circular takes effect upon its approval by the Minister of Energy.

Signed this 27th day of December, 1982.

W. R. DELA PAZ
Acting Director

Approved, December 27, 1982

Geronimo Z. Velasco
Minister of Energy

D. OEA CIRCULAR NO. 87-12-003

TO: ALL SERVICE CONTRACTORS RESTORATION OF THE FILIPINO PARTICIPATION INCENTIVE ALLOWANCE

For the guidance of all concerned, the grant of the Filipino Participation Incentive Allowance (FPIA) under PD No. 87, implementation of which was suspended in 1977, has been authorized by the President for a limited period from September 1, 1986 to December 31, 1988.

As provided in Section 28 of PD No. 87, the contractor under the service contract in which Philippine citizens or corporations have a minimum participating interest of fifteen percent (15%) in the contract area may, subject to the reasonable conditions imposed by the Petroleum Board (now the Office of Energy Affairs), be granted a Government subsidy commensurate with the scope of Filipino participation not exceeding seven and one-half percent (7½%), which shall be computed by deducting the said allowance from the posted or market price, whichever is higher, of crude oil exports produced in the contract area, and from the market price of crude oil produced in the contract area, sold or disposed of for assumption in the Philippines.

Consistent with the said authority and in accordance with the said provision, the following schedule of percentage incentive shall be granted under service contracts with requisite qualifying Filipino participation.

Filipino Participation Incentive Allowance

30%	-	above	7½%
27.5%	-	but less than 30%	6½%
25.0%	-	but less than 27.5%	5½%
22.5%	-	but less than 25.0%	4½%
20.0%	-	but less than 22.5%	3½%
17.5%	-	but less than 20.0%	2½%
15.0%	-	but less than 17.5%	1½%
Below 15.0%			0%

This Circular takes effect immediately.

June 5, 1980
WENCESLAO R. DELA PAZ
Officer-in-Charge

1 December 1987
Office of Energy Affairs
Merrit Rd., Fort Bonifacio
Makati, Metro Manila

E. OEA CIRCULAR NO. 89-06-08

TO: ALL PETROLEUM SERVICE CONTRACTORS

Pursuant to the provisions of PD 87, otherwise known as the Oil Exploration and Development Act of 1972, particularly with regard to the disposition of the materials, equipment, plants and other installations erected or placed n the service contract area, the following guidelines are hereby promulgated and is entitled thus:

GUIDELINES ON ABANDONMENT AND RELINQUISHMENT OF ONSHORE AND OFFSHORE PRODUCTION OPERATIONS

Article I.
DEFINITION

1. Abandonment – the act of returning or giving up by Contractor of the delineated production area under a Service Contract to the Government of the Republic of the Philippines represented by the Office of Energy Affairs, before the expiration of the term stipulated in the contract if, in the opinion of the Service Contractor, the continued exploitation of the same is no longer economically or technically feasible.

2. Relinquishment – the act of surrendering the production area under the Service Contract to the Government of the Republic of the Philippines represented by the Office of Energy Affairs, on the termination or expiration of the period set forth in the contract or the period of extension given.

3. Contractor – refers to the Service Contractor or Operator under a Service Contract.

4. Property – refers to all materials, equipment, plants and other installations erected or placed on the production area.

Article II.
ABANDONMENT

SECTION 1. ***Notice of Abandonment.***

If continued exploitation of a production area is no longer economically or technically viable, Contractors shall give written notice to the OEA of its intention to abandon the production area not less than 12 months prior to abandonment. In such event, Contractor shall submit the following documents together with said notice, to wit:

a) An economic analysis and description of the delineated production area, showing in detail the reasons why continued exploitation is uneconomical or technically not feasible;

b) An inventory list of all properties erected or placed on the production area otherwise classified as tangible investments;

c) Detailed abandonment plans and procedures which the Contractor shall undertake and the estimated financial cost it will entail;

SECTION 2. ***Inventory.***

The inventory list to be submitted must contain all the properties erected and/or placed on the production site whether movable or immovable and specifying whether the immovables which have been partially amortized. In case of immovables which have been partially amortized, the date of acquisition thereof, the value of the same, the method of depreciation used and

the remaining useful life of the property shall likewise be specified. On the other hand, if the immovable has been fully amortized, the same must be explicitly stated as well as the property's salvage value, if any.

Within 30 days from receipt of the inventory list, OEA shall audit and inspect the production site to validate the list given by Contractor, the result of which shall accordingly be relayed within 30 days from the termination of such inspection. If OEA does not make any inspection within the period abovestated or Contractor does not dispute the findings made thereon within 30 days from receipt of validation/exception, the inventory list or the validation/exception, as the case may be, shall be deemed admitted. On the other hand, if Contractor does not submit an inventory list, the findings of the OEA shall become conclusive.

SECTION 3. ***Notice of OEA's Action.***

a) Within ninety days from receipt of the notice of abandonment, OEA shall notify CONTRACTOR of its action thereon. If no action is made within the said period, the abandonment is deemed automatically approved.

b) If OEA finds the abandonment scheme unacceptable, it shall give CONTRACTOR thirty (30) days within which to submit an acceptable proposal or correct whatever deficiency there is in the original abandonment scheme.

SECTION 4. ***Disposition of Property.***

In the preparation of plans for abandonment, the following shall be considered:

a) In case of movable property, Contractor shall remove the same from the production area within 12 months from date of approval of abandonment, otherwise title thereto passes to OEA. However, movable property which had been fully amortized belongs to OEA.

b) In case of immovable property, title/ ownership thereto passes to OEA upon approval of the abandonment.

c) If any property is required to be removed from the production site, it shall be at the expense of the Contractor.

SECTION 5. ***Trust Account.***

In all cases of Abandonment/Relinquishment, Contractor shall be obliged to bear the costs of removing all properties in the production area. Moreover, should OEA decide to takeover the operations, the cost to be incurred in removing these shall be deposited by the Contractor under a trust account in favor of OEA.

SECTION 6. ***Approval/Execution of Abandonment.***

Upon approval and ninety (90) days prior to the actual execution of the abandonment plan, OEA shall either:

a) issue Notice to Proceed in accordance with abandonment plan upon CONTRACTOR's written request; or

b) require CONTRACTOR to deposit in a trust account the abandonment cost, in which case CONTRACTOR shall be relieved of its obligation to execute the abandonment plan.

Article III.
RELINQUISHMENT

Twelve (12) months prior to the date of expiration, Contractor must give written notice to OEA that no further extension is sought by Contractor and that it will relinquish the production area upon expiration of the Contract. The reasons for such relinquishment must likewise be expressly stated therein and attaching thereto the documents mentioned in Sec. 1, Art II.

All other provisions relating to abandonment are likewise made applicable to relinquishment except that instead of approval, an acknowledgement of the expiration of the Contract shall be given by OEA.

Article IV.
OBLIGATIONS OF CONTRACTOR

SECTION 1. Pending review and approval/ acknowledgment of OEA of the request for abandonment or relinquishment, Contractor shall observe the following:

a) No pipelines, machinery, platform, pumps and other properties constructed, put up or built and used or employed by the Contractor in the production site shall be sold, removed or transferred from the production area without prior notice to and approval of OEA;

b) Prior notice to and approval of OEA is likewise necessary before any productive well can be plugged except those wells or boreholes which have been previously approved by OEA to be plugged and abandoned; and

c) Contractor must maintain in good repair and condition and fit for further operation during the interim 12-month period, all boreholes and wells except those previously abandoned as authorized by OEA.

SECTION 2. Upon approval/acknowledgment of abandonment/relinquishment, Contractor shall be obliged to do the following:

a) Relinquish and turn over to the OEA all pipelines, platforms, pumps, machinery and other properties constructed, put up or built and used or employed by the Contractor in its operation on the production area and which are at that time necessary for continued production by the OEA or other parties designated in accordance with Sec. 3, Art. II hereof;

b) Effect the transfer to OEA of all productive boreholes or wells drilled by the Contractor in good repair and condition and fit for further working, except such boreholes or wells which have been previously plugged and abandoned as authorized by OEA;

c) Plug some orall production boreholes and wells if required by OEA;

d) Remove or cause to be removed at Contractor's expense from the abandoned or relinquished production area within one year from approval/ acknowledgment, such production equipment and related property as identified by OEA, brought into the area by the Contractor or by any person engaged or concerned in the operations authorized by the Contractor, and

e) The installations in the case of offshore facilities should continue to be lit in accordance with normal regulations following the end of production activity and prior to the completion of any partial or complete removal that may be required.

f) Restore, at Contractor's expense and to the satisfaction of OEA, any or all destruction of land forms, land and marine life which may be affected by the pollution from Contractor's production and/or abandonment operations.

g) Secure a Trust Account in favor of OEA; and

h) Perform such other activities as contained in the detailed plans and procedures submitted by Contractor which have been approved by OEA.

Article V.
EFFECTIVITY

These guidelines shall become effective immediately.

Fort Bonifacio, Makati, Metro Manila, June 28, 1989.

W.R. DELA PAZ
Executive Director

F. OEA CIRCULAR NO. 91-08-03

SUBJECT: ENJOINING ALL PETROLEUM SERVICE CONTRACTORS AND THEIR DRILLING OPERATORS TO STRICTLY OBSERVE THE PROVISIONS OF SECTION 12(f) OF PD 87, AS AMENDED, OTHERWISE KNOWN AS THE "OIL EXPLORATION ACT OF 1972"

The attention of the Office of Energy Affairs (OEA) has been called regarding the practice of some drilling operators under contract by Petroleum Service Contractors in hiring non-Filipinos in the prosecution of their drilling operations when there are locally qualified available workers for the purpose.

This practice may not be consistent with Section 12(f) of Presidential Decree No. 87 which requires that Filipinos shall be given preference to positions for which they are qualified.

Accordingly, in the interest of promoting the development and use of Filipinos expertise in the petroleum exploration and development operations, all service contractors are hereby enjoined to direct their contracted drilling operators performing drilling operations in the Philippines to strictly observe the aforesaid provision of Presidential Decree No. 87.

For the information of all concerned, listed hereunder are some positions for which there are qualified Filipinos:

DRILLING CREW	MARINE CREW	CATERING CREW	PRODUCTION
Asst. Driller	Master	Chief Cook/	Prod. Operator
Derrickman	Chief Mate	Steward Cook	Shift Supervisor
Asst. Derrickman	Chief Engr.	2nd Cook	Inst. Technical
Motorman	Bosun	Baker	Inst.
Oiler	AB/	Steward	Supervisor
Mechanic Roughneck/			
Floorman			
Roustabout Welder			
Electrical Crane Operator			
Radio Operator			
Chief Mate Medic			
AB/Seaman			
Materialman Seaman			

For guidance and immediate compliance.
Makati, Metro Manila, 13 August 1991.

W.R. DE LA PAZ
Executive Director

G. OEA CIRCULAR NO. 92-10-05

TO: ALL PETROLEUM SERVICE CONTRACTORS

GRANT OF MAXIMUM SEVEN AND ONE-HALF PERCENT (7-1/2%) FILIPINO PARTCIPATION INCENTIVE ALLOWANCE (FPIA) TO PETROLEUM SERVICE CONRACTORS IN DEEPWATER CONTRACTS

WHEREAS, Sec. 28 o f P.D. No. 87, "An Act to Promote The Discovery and Production of Indigenous Petroleum, And Appropriating Funds Therefor," grants that petroleum service contracts in which Filipino citizens or corporations have a minimum participating interest of fifteen percent (15%) in the contract area may, subject to reasonable conditions imposed by the Office of Energy Affairs (OEA), be granted a government subsidy commensurate with the scope of Filipino participation incentive not exceeding 7½% of the gross proceeds of petroleum sale.

WHEREAS, OEA Circular No. 87-12-003 dated December 1, 1987 provides for a schedule of percentage incentive of FPIA depending on the level of Filipino participation in the service contract which grants a maximum of 7 -½ % allowance for a Filipino participation of 30% and a minimum of 1- ½ % allowance for a 15% Filipino participation.

WHEREAS, it is recognized that petroleum operations in deepwater areas entail greater risks and substantially higher costs which are more than double the expenditures incurred in shallow waters thus discouraging Filipino corporations to participate in such ventures.

WHEREAS, it is the thrust of the government to encourage foreign as well as local corporations to accelerate the petroleum exploration and development of deepwater areas which have been recently proven to be highly prospective through grants of more incentives to interested participants therein.

WHEREFORE, the foregoing premises considered, a maximum of seven and one-half percent (7-½%) Filipino Participation Incentive Allowance (FPIA) is hereby granted to deepwater petroleum service contractors with at least fifteen percent (15) Filipino participation.

This Circular shall take effect immediately.

06 October 1992, Makati, Metro Manila

RUFINO B. BOMASANG
Acting Executive Director

H. OEA CIRCULAR NO. 92-11-06

TO: ALL PETROLEUM SERVICE CONTRACTORS AND SUB CONRACTORS UNDER P.D. 87, AS AMENDED

SUBJECT: GIVING FILIPINO PREFERENCE FOR EMPLOYMENT IN PETROLEUM EXPLORATION

It has been observed that Petroleum Service Contractors and their Sub-Contractors are continuously employing non-Filipinos in the prosecution of their petroleum operations in the country despite the availability of qualified Filipinos.

In this regard, all concerned are hereby reminded that this practice is not consistent with Section 12(f) of Presidential Decree No. 87 which requires that Filipinos shall be given preference to positions for which they are qualified.

In the interest of promoting the development and use of local expertise in petroleum operations, strict adherence to the above provision is hereby enjoined.

Makati, Metro Manila, November 24, 1992

RUFINO B. BOMASANG
Acting Executive Director

I. OEA CIRCULAR NO. 92-11-07

TO: ALL PETROLEUM SERVICE CONTRACTORS

Our attention has been called to the effect that some petroleum service contractors are employing the services of foreign transport companies/operators to support their petroleum operations despite the availability of domestic transport services.

In line with our mandate to oversee petroleum operations and in order to encourage and enhance the development of domestic transport services capability, all petroleum service contractors are hereby reminded of the guidelines under BED Circular No. 83-01-01 (copy attached), enjoining service contractors to give preference in awarding contracts, whether negotiated or bidded out, in favor of Philippine-registered tankers, vessels, bulk carriers and other watercrafts, including supply boats, crew boats, tugs and barges to service their transport, support and other related operational requirements under their respective service contracts.

Similarly, service contractors are hereby enjoined to give preference in awarding contracts to Philippine-registered aircrafts (helicopters or fixed wings) provided the same generally meet the requirements of the contractors.

For strict compliance.

Makati, Metro Manila, November 26, 1992.

RUFINO B. BOMASANG
Active Executive Director.

J. DEPARTMENT CIRCULAR NO. 93-11-09

TO: ALL PETROLEUM EXPLORATION COMPANIES

In the interest of petroleum exploration in the country, all current service contractors as well as geophysical survey contractors shall have exclusive right to the data and information generated during the geophysical survey, drilling, and/or production phase(s) of their operations undertaken pursuant to Presidential Decree No. 87, as amended. Accordingly, said data and information are considered ***CONFIDENTIAL*** and, as such, they may not be made available to any outside parties until such time that the contract has elapsed and the area covering said data and information has been relinquished, in which case, the data and information may be declassified by the Department of Energy and made accessible to any interested party. However, in its effort to promote petroleum exploration in the country, the Department of Energy has the prerogative to use these data, whether classified or declassified in any technical cooperation projects that it is involved in but this shall be done in cooperation and coordination with the current operator.

November 10, 1993

RUFINO B. BOMASANG
Undersecretary

K. DEPARTMENT CIRCULAR NO. 94-01-01

TO: ALL PETROLEUM SERVICE CONTRACTORS

AMENDING OEA CIRCULAR NO. 92-10-05 EXTENDING THE GRANT OF A MAXIMUM SEVEN AND ONE-HALF PERCENT (7- ½%) FILIPINO PARTICIPATION INCENTIVE ALLOWANCE (FPIA) TO DEEPWATER WELL DEVELOPMENT WHETHER WITHIN OR WITHOUT A DEEPWATER CONTRACT

WHEREAS, OEA CIRCULAR NO. 92-10-05 dated October 6, 1992, was issued granting a maximum of seven and one-half percent (7-½%) Filipino Participation Incentive Allowance (FPIA) to Petroleum Service Contractors in Deepwater Contracts, with at least fifteen percent (15%) Filipino participation;

WHEREAS, a number of Service Contracts do not contain provisions for deepwater well development to consider the same as Deepwater Contract although the Service Contractors with a minimum of fifteen percent (15%) Filipino participation actually drill deepwater well on water depths beyond 200 meters;

WHEREAS, it is recognized that petroleum operations in deepwater areas entail greater risks and substantially higher costs which are more than double the expenditures incurred in shallow water thus discouraging Filipino corporations to participate in such ventures.

WHEREAS, it is the thrust of the government to encourage foreign as well as local corporations to accelerate the petroleum exploration and development of deepwater areas which have been recently proven to be highly prospective through grants of more incentives to interested participants therein.

WHEREFORE, the foregoing premises considered, OEA Circular No. 92-10-05 dated October 6, 1992 is hereby amended by extending the grant of a maximum of seven and one-half percent (7- ½%) FPIA to deepwater well development whether within or without a deepwater contract.

This Circular shall take effect immediately.
17 June 1991, Makati, Metro Manila.

DELFIN L. LAZARO
Secretary

L. DEPARTMENT CIRCULAR NO. 94-04-04

GUIDELINES FOR THE FILING OF APPLICATION AND ISSUANCE OF NONEXCLUSIVE GEOPHYSICAL PERMIT (NGP) UNDER PD 87 (PETROLEUM) AS AMENDED

In line with the declared policy of the government to accelerate the exploration, development, exploitation and/or utilization of the country's petroleum resources, the following guidelines are hereby issued for the filing of application and issuance of Nonexclusive Geophysical Permit (NGP) under PD 87 as amended:

1. An NGP applicant shall upon formal submission of the application pay the corresponding processing fee of P30,000.00.

2. After the formal submission of the application including all the requirements, the NGP applicant shall undergo financial and technical evaluation. To qualify however, it must have the same technical and financial qualifications of a Service Contractor, with a minimum working capital of One Million United States Dollars (US$1MM).

3. The allowable area for an NGP application shall not exceed 1.5 million hectares for offshore and 750,000 hectares for onshore.

4. An NGP shall be valid for a period of six (6) months from issuance thereof, without any extension. The permit being nonexclusive shall not preclude the Department of Energy (DOE) from issuing an NGP(s) to one or more applicants over the same area.

5. The DOE shall act on the NGP application within a period of three (3) weeks from the date of complete submission of the requirements.

6. If during the pendency of an NGP application or if an NGP has already been issued and a formal application for a Geophysical Survey and Exploration Contract (GSEC) is filed by another corporation over the same area, the applicant or permittee shall promptly be informed in writing of such an application, with the information that its application may no longer be considered or the pemit shall be considered cancelled unless the applicant/permittee is willing to convert the application/permit into a GSEC application within thirty (30) days from receipt of such information.

7. An NGP may be granted to a GSEC applicant pending the Technical and Financial evaluation of an/or formal negotiations on the GSEC application over the same area, subject to the limitations mentioned under item number 4 above. However, if the NGP shall have elapsed and the GSEC applicant fails to pursue the GSEC application during the effectivity of said permit, then the GSEC application shall likewise be deemed to have elapsed.

The same rule shall apply to a GSEC applicant without an existing NGP, that has not seriously pursued its application for a period of six (6) months from the date of application.

The above provision however shall not apply if the delay in the processing and/or formal negotiations of the GSEC application is not the fault of the applicant.

14 April 1994, Makati, Metro Manila

DELFIN L. LAZARO
Secretary

M. DEPARTMENT CIRCULAR NO. 95-10-008

DIRECTING ALL OPERATORS OF OIL RIGS OR PLATFORMS, POWER PLANTS, OIL TANKERS AND BARGES CARRYING, PRODUCING AND/OR UTILIZING CRUDE OIL-BASED PRODUCTS TO REPORT ALL OIL SPILLS OR ENVIRONMENTAL INCIDENTS TO THE DEPARTMENT OF ENERGY

WHEREAS, under Section 2 (b) of R.A. 7638, known as the "Department of Energy Act of 1992" (the "Act"), it is declared the policy of the State to rationalize, integrate, and coordinate the various programs of the Government towards self-sufficiency and enhanced productivity in power and energy without sacrificing ecological concerns;

WHEREAS, the Department of Energy (DOE) has been mandated under Section 5 (g) of the Act to formulate and implement programs, including a system of providing incentives and penalties, for the judicious and efficient use of energy in all energy-consuming sectors of the economy;

WHEREAS, the DOE and its bureaus are authorized to impose and collect fees, surcharges, fines and penalties under the Act, as provided under Section 21 of the Act;

WHEREAS, pursuant to Sections 12 (b) (7) to (9) of the Act, the DOE has the power to: (a) monitor the implementation of energy projects in coordination with the Department of Environment and Natural Resources to ensure compliance with prescribed environmental standards; (b) recommend appropriate courses of action to resolve major issues which may impede energy project siting or result in adverse environmental impact; and (c) require industrial, commercial, and transport establishments to collect or cause the collection of waste oil for recycling as fuel or lubricating oil;

NOW, THEREFORE, the following guidelines are hereby issued for the information, guidance and implementation of all concerned:

SECTION 1. The owner, agent, lessee, operator or representative of any tanker, barge, ship or facility used in relation to the petroleum and/or energy industries, oil rigs or platforms and power plants carrying and/or utilizing oil and/or other oil-based products shall submit a verbal report, within four(4) hours, and a written report within twenty four (24) hours, to the DOE Secretary through the Environmental Protection and Monitoring Division (EPMD), Energy Industry Administration Bureau (EIAB) or Energy Resource Development Bureau (ERDB), as the case may be, any incident whether accidental or intentional of spill, leak, discharge, disposal of oil and/or oil-based products or hydrocarbon contaminated wastewaters and similar occurrences through the most practicable and fastest means of communication possible.

SECTION 2. In the accomplishment of the report, a truthful description of the incident

shall be made stating time and place of occurrence, nature and volume of product, fluid spilled, leaked, discharged or disposed of, probable cause of the incident, visible impacts and immediate mitigation, remediation and compensation plans or actions implemented by concerned parties.

SECTION 3. Incompleteness of data shall not serve as an acceptable basis for non-reporting of the incident to the DOE. As an explanation, however, lack of sufficient information gathered, so far, within the prescribed time, may be cited.

SECTION 4. The DOE-EPMD with other concerned DOE units will then conduct a thorough, technical and impartial investigation of the direct and indirect causes of the incident and related circumstances. A report on the investigation shall be submitted to the DOE Secretary within fifteen (15) days after said investigation is concluded.

SECTION 5. Failure of the concerned party to submit the required verbal report to the DOE within four (4) hours after the incident of spill, leak, discharge, disposal of oil and/or oil-based products or hydrocarbon contaminated wastewaters or any other violation of this Department Circular shall subject said party to an administrative fine of P 20,000.00 to be paid to the DOE, through the EIAB or ERDB, as the case may be. If no written report is submitted within twenty four (24) hours after the occurrence of said incident the party shall be liable to pay the administrative fine of P 50,000.00 to the DOE, through the EIAB or ERDB, as the case may be. These administrative fines shall be imposed without prejudice to the possible suspension or outright cancellation of the service contract, permit, license, authority or other privileges previously granted by the DOE in favor of the erring party.

SECTION 6. This Department Circular shall take effect fifteen (15) days after its publication in two (2) newspapers of general circulation.

Fort Bonifacio, Metro Manila, October 30, 1995.

FRANCISCO L. VIRAY
Secretary

N. DEPARTMENT CIRCULAR NO. 96-01-004

OFFSETTING OF RENTALS ON RETAINED AREA UNDER SECTION 9(e) OF P.D. NO. 87 AS AGAINST EXPLORATION EXPENDITURES ACTUALLY SPENT ON SUCH RETAINED AREA

WHEREAS, pursuant to Sections 5(d) and (e) of R.A. No. 7638, the Department of Energy has been mandated to exercise supervision and control over all government activities relative to energy projects and to regulate private sector activities relative to said energy projects;

WHEREAS, the Secretary of the Department of Energy is tasked under Section 7(3) of Chapter 2, Book IV of Executive Order No. 292, known as the "Administrative Code of 1987, " to promulgate rules and regulations necessary to carry out department objectives, policies, functions, plans, program and projects;

WHEREAS, Section 9(e) of P.D. No. 87, which is formally incorporated in all the petroleum Service Contracts, specifically provides that: "If petroleum in commercial quantity has been discovered, the contractor may retain after the exploration period and during the effectivity of the contract twelve and one-half percent (12.5%) of the initial area in addition

to the delineated production area: Provided, however, that the contractor shall pay annual rentals on such retained area which shall not be less than ten pesos (P10.00) per hectare or fraction thereof for onshore areas and not less than twenty pesos (P20.00) as determined by the Petroleum Board (now, Department of Energy) per hectare or fraction thereof for offshore areas: Provided, further, that such rentals can be offset against exploration expenditures actually spent on such area;"

WHEREAS, there is an urgent need to further strengthen and rationalize the implementation of the said Section;

NOW, THEREFORE, the following guidelines are hereby promulgated:

SECTION 1. ***EXPLORATION EXPENDITURES ON 12.5% RETAINED AREA***

In order to determine the expenditures incurred under the retained area, which will be offset against the annual rental due, the Contractor shall submit to the Department of Energy the summary of exploration expenditures actually spent on the said retained area. These exploration expenditures shall be incorporated in the monthly Expenditures Report required under BED Circular No. 81-01-01, and shall consist of the following:

1. Direct Survey Expenditures which shall include all geological and geophysical expenditures incurred in activities such as geological studies, mapping and geophysical prospecting, the various phases of which activities cover data acquisition, data processing, interpretation and restudies.

2. Direct Well Costs which shall include exploration drilling costs such as the cost of preparation for drilling, the cost of drilling, the cost of well servicing and the cost of installing subsurface well equipment up to and including the wellhead. It shall also include the costs of materials installed in connection with drilling equipment and completing a well.

SECTION 2. ***RENTAL DUE***

1. In the event that the annual rental due exceeds the total exploration expenditures as determined under Section 1 above, the Contractor shall remit to the Department of Energy the balance of the rental due after deducting these exploration expenditures, within thirty (30) calendar days after the end of each Calendar Year.

2. In case the total exploration expenditures exceed the annual rental due, the balance of the exploration expenditures shall be cost recoverable.

SECTION 3. ***EFFECTIVITY***

This Circular shall take effect fifteen (15) days after its complete publication in a newspaper of general circulation.

Fort Bonifacio, Metro Manila, l7 January 1996.

FRANCISCO L. VIRAY
Secretary

O. DEPARTMENT CIRCULAR NO. 98-02-003

AMENDING DEPARTMENT CIRCULAR NO. 95-10-008, DIRECTING ALL OPERATORS OF OIL RIGS OR PLATFORMS, POWER PLANTS, OIL TANKERS AND, BARGES CARRYING, PRODUCING AND/OR UTILIZING CRUDE OIL-BASED PRODUCTS TO REPORT ALL OIL SPILLS OR ENVIRONMENTAL INCIDENTS TO THE DEPARTMENT OF ENERGY

SECTION 1. The title is hereby amended to read as follows:

DIRECTING ALL OWNERS, AGENTS, LESSEES, OPERATORS OR REPRESENTATIVES OF PETROLEUM REFINERIES, TERMINALS AND DEPOTS, OIL RIGS OR PLATFORMS, POWER PLANTS, OIL TANKERS AND BARGES HAULING, CARRYING, PRODUCING AND/OR UTILIZING CRUDE OIL-BASED PRODUCTS TO REPORT ALL OIL SPILL INCIDENTS TO THE DEPARTMENT OF ENERGY

SECTION 2. Section 1 is hereby amended to read as follows:

The owner, agent, lessee, operator or representative of any tanker, barge, ship or facility used in relation to the petroleum and/or energy industries, petroleum **refineries, terminals and depots**, oil rigs or platforms and power plants, oil tankers and barges hauling, carrying, **producing** and/or utilizing **crude** oil and/or other oil-based products shall submit a verbal report within **eight (8) hours**, and a written report within **forty eight (48) hours**, to the DOE Secretary through the **Environmental Protection and Monitoring Division (EPMD) during office hours (Telefax No. 844-72-14) otherwise, to the DOE Security Guard (Telephone No. 844-10-21 to 31 loc 278/210) so far as practicable**, on any incident, whether accidental or intentional, of spill, leak, discharge, disposal of oil and/or oil-based products or hydrocarbon contaminated wastewaters and similar occurrences through the most practicable and fastest means of communication possible.

Any third party may file a formal complaint of any such incident of oil spill with the DOE-EPMD. The DOE-EPMD shall require that such complaint shall be verified under oath and accompanied by evidences and documents, if any, showing such incident of oil spill prior to its conduct of investigation of the incident disposal of oil and/or oil-based products or hydrocarbon contaminated wastewaters and similar occurrences through the most practicable and fastest means of communication possible.

SECTION 3. Section 4 is hereby amended to read as follows:

The DOE-EPMD with other concerned DOE units will conduct a thorough, technical and impartial investigation of the direct and indirect causes of the incident. **The EPMD shall submit** a report of its investigation **and recommendations** to the DOE Secretary **and the concerned party** within fifteen (15) days after the conclusion of said investigation. **The EPMD shall conduct a compliance monitoring thirty (30) days after the receipt by the concerned party of its report to ascertain that its recommendations contained in its report have been complied with by the concerned party.**

SECTION 4. Section 5 is hereby amended to read as follows:

Failure of the concerned party to submit the required verbal report to the DOE within **eight (8) hours** after the incident of spill, leak, discharge, disposal of oil and/or oil based products or hydrocarbon contaminated wastewaters or any other violation of this

Department Circular shall subject said party to an administrative fine of P 20,000.00 to be paid to DOE. If no written report is submitted within **forty eight (48) hours** after the occurrence of said incident the party shall be liable to pay an administrative fine of P 50,000.00 to the DOE.

SECTION 5. Section 6 is amended to read as follows:

In case of the failure of the concerned party to file the required verbal or written report, or to comply with the recommendations submitted by EPMD, or to pay the administrative fine, the DOE shall have the right to coordinate with other concerned government agencies for the possible suspension or cancellation of any service contract, permit, license, authority or other privileges previously granted by the DOE **or such other concerned government agencies** to such concerned party.

SECTION 6. A new Section 7 is hereby provided, to read as follows:

This circular shall take effect fifteen (15) days after its publication in two (2) newspapers of general circulation.

FRANCISCO L. VIRAY
Secretary

Fort Bonifacio, Taguig
Metro Manila
February 23, 1998

P. DEPARTMENT CIRCULAR NO. 2000-05-009

ESTABLISHMENT OF A CORRIDOR OF FOCUS AS PART OF THE WINDOW OF OPPORTUNITY FOR PHILIPPINE PETROLEUM EXPLORATION

TO: ALL PETROLEUM SERVICE CONTRACTORS UNDER P.D. 87, AS AMENDED

WHEREAS, offshore areas contribute significant quantities of petroleum production in the ASEAN region and available data in the Department of Energy indicate the high prospectivity for petroleum in the Corridor of Focus as herein defined;

WHEREAS, the existence of substantial petroleum deposits in deepwater areas west of Palawan has been demonstrated with the commercial discovery of natural gas and associated oil in the Malampaya Field within Service Contract No. 38;

WHEREAS, there is a growing need for petroleum in the Philippines and in the region and an evolving regional grid for natural gas;

WHEREAS, in order to harness the full potential of indigenous petroleum and to enhance energy supply, the government shall embark on a campaign to encourage foreign and local investors to explore in areas surrounding the said field and relevant infrastructure;

WHEREAS, the discoveries of substantial petroleum deposits in southwestern Philippines should be sustained in line with efforts to promote the stability of energy supply and prices;

NOW, THEREFORE, premises considered and in order to attain the aforementioned objectives, the following are hereby promulgated:

1. A three (3)-year Window of Opportunity for offshore petroleum exploration in proximity to the Malampaya Field and associated infrastructure, to be known as Corridor of Focus shall be open starting on 16 June 2000 until 15 June 2003.

2. The Corridor of Focus shall specifically include the following geographical areas:

   a) Offshore areas surrounding Palawan
   b) Sulu Sea
   c) Offshore areas surrounding Mindoro

3. During the period of the Window of Opportunity, Petroleum Service Contractors who will participate in work programs in the Corridor of Focus shall have the option to either suspend or transfer work obligations from one existing contract area to any area in the Corridor of Focus, thereby entitling a Petroleum Service Contractor to either suspend or transfer its work obligations for a particular contract year, provided that:

   a) For consortia wherein 10%-50% participating interest of the consortium members explore in the Corridor of Focus, suspension of contractual work obligations shall be allowed;

   b) For consortia wherein more than 50% participating interest of the consortium members explore in the Corridor of Focus, transfer of contractual work obligations shall be allowed;

4. Discount on data fees on available and relevant data and such other fees normally imposed by the Department of Energy for any operator of a Geophysical Survey and Exploration Contract or Service Contract entered into during the Window of Opportunity shall be granted.

5. The Department of Energy shall issue implementing guidelines under this Circular.

Fort Bonifacio, Taguig Metro Manila, 22 May 2000

MARIO V. TIAOQUI
Secretary

Q. PROCLAMATION NO. 72

ESTABLISHING SAFETY AND EXCLUSION ZONES FOR OFFSHORE NATURAL GAS WELLS, FLOWLINES, PLATFORM, PIPELINES, LOADING BUOY AND OTHER RELATED FACILITIES FOR THE MALAMPAYA DEEP WATER GAS-TO-POWER PROJECT OVER CERTAIN WATERS AND SUBMERGED LANDS ADJACENT TO BATANGAS, MINDORO AND PALAWAN

WHEREAS, it is the policy of the State to ensure continuous, adequate and economic supply of energy with the end in view of ultimately achieving self-reliance in the country's energy requirements through the integrated and intensive exploration, production, management and development of the country's indigenous energy resources;

WHEREAS, appraisal and development drilling in the **Malampaya** field has confirmed the presence of recoverable reserves of 3.2 trillion cubic feet of natural gas and 118 million barrels of condensate, while additional volumes of oil-in-place (30 API) in excess of 200 million barrels of which some 30 million barrels are currently estimated to be recoverable are present in an oil rim below the gas;

WHEREAS, the development of indigenous petroleum resources is essential to the long-term stability of fuel and energy prices, as well as to national security and competitiveness;

WHEREAS, it is the Government's policy to promote the role of natural gas into the energy supply mix of the country by creating the conditions for a Philippine Gas Industry that economically serves a broad variety of users, including power plants, industrial, commercial and residential users;

WHEREAS, the proven gas reserves in the Malampaya field can provide clean fuel for up to 3,000 MW of combined cycle power plants for a period of more than 20 years;

WHEREAS, the development of the oil in the Malampaya field, if economically feasible, could translate to an initial production potential of 20,000 to 25,000 barrels per day, with a potential to rise to as high as 50,000 barrels per day by 2003 upon completion of the appropriate production facilities, the latter production being equivalent to 15% of the country's crude oil imports in 1999;

WHEREAS, the Malampaya Deep Water Gas-to-Power Project is the foundation for the new Philippine Gas Industry and will reduce dependence on imported fuel, create employment, as well as generate revenues and foreign exchange savings;

WHEREAS, the Project represents the single largest and most significant investment in the history of Philippine business, with a total private investment portfolio of about US $ 4.8 billion for both the upstream and downstream components;

WHEREAS, the Project includes the following major components: (a) the installation of nine or more development wells and a subsea manifold in offshore Northwest Palawan to bring gas to a shallow-water platform; (b) the construction of a shallow-water platform to process the gas, and to separate and store condensate; (c) the installation of a catenary anchored leg mooring (CALM) buoy that will be used by tankers to lift condensate from the platform; (d) installation of the required flowlines from the wells to the offshore platform and the 504-kilometer pipeline on the seabed to connect the platform to the onshore gas plant in Batangas; (e) the construction of an onshore gas plant to treat and process dry gas prior to sale; (f) the construction of associated pipelines to deliver gas to the buyers; and (g) a potential oil rim development;

WHEREAS, it is in the interest of the State that certain waters, submerged lands, and foreshore areas be reserved as safety and exclusion zones in order: (a) to protect public health, safety and the environment; (b) to secure the Project Infrastructure from damage; and (c) to prevent disruptions in the availability of electricity from the power plants using Malampaya gas

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Philippines, by virtue of the powers vested in me by law and the Constitution, and upon the recommendation of the Secretary of Energy, do hereby establish and reserve the following Exclusion and Safety Zones over certain waters and submerged lands adjacent to Batangas, Mindoro and Palawan more particularly described hereinafter, under the administration of the Department of Energy, for the purpose of developing, exploiting and utilizing indigenous oil, natural gas and associate condensate from the Malampaya Deep Water Gas-to-Power Project ("Project").

(1) An Exclusion Zone in the waters and submerged lands in offshore Northwest Palawan, more particularly described and bounded as follows, shall be for the exclusive use of the Department of Energy and the SC 38 Service Contractor, for the construction, operation and maintenance of the Project facilities:

EXCLUSION ZONE BOUNDARY (REFERRED TO LUZON DATUM, UTM ZONE 50)

LATITUDE (N)	LONGITUDE (E)
11 degrees 40′ 54″	118 degrees 51′ 33″
11 degrees 40′32″	118 degrees 57′ 47″
11 degrees 34′ 38″	119 degrees 04′ 01″
11 degrees 32′ 04″	119 degrees 08′ 28″
11 degrees 31′ 21″	119 degrees 08′ 28″
11 degrees 30′ 24″	119 degrees 08′ 27″
11 degrees 29′ 24″	119 degrees 08′ 27″
11 degrees 33′ 44″	118 degrees 51′ 31″

Commencing thirty (30) days from the date of this Proclamation the following activities are prohibited in the Exclusion Zone without the prior authorization from the Department of Energy and the Department of National Defense and the prior consent of the SC 38 Service Contractor:

(a) Entry of vessels into the Exclusion Zone;

(b) Flying of aircraft below an altitude of 500 meters within one (1) kilometer of the platform and CALM buoy which are to be located within the Exclusion Zone;

(c) Use of and/or dumping of explosives;

(d) Sub-sea activities within the exclusion zone, including but not limited to geophysical surveys, drilling, construction, installation of submarine pipeline and cable; and

(e) All other activities which may pose a potential risk to the Project infrastructure and to public safety within the Exclusion Zone.

(2) A Safety Zone in the waters and submerged lands in offshore Palawan, Mindoro and Batangas, and the foreshore area in the vicinity of the onshore gas plant in Batangas, which are within 500 meters on either side of the approximately 504-kilometer long pipeline that will transport Malampaya gas from the offshore platform to the onshore gas plant. The Department of Energy shall register with the Department of Environment and Natural Resources (through the Lands Management Bureau, the Lands Management Service and the National Mapping and Resource Information Authority) a map showing the location of the pipeline.

Commencing thirty (30) days from the date of this Proclamation, the following activities are prohibited within the Safety Zone without the prior authorization from the Department of Energy and the Department of National Defense and the prior consent of the SC 38 Service Contractor:

(a) Trawl fishing or other fishing methods which involve the use of weights, anchors or similar devices on the seabed;

(b) Anchoring;

(c) Use of and/or dumping of explosives;

(d) Drilling, construction or the installation of submarine pipelines or cable; and

(e) All other activities which may pose a potential risk to the Project infrastructure and to public safety within the Safety Zone.

(3) The foregoing restrictions are without prejudice to the rights of parties holding a Geophysical Survey and Exploration Contract (GSEC) or Service Contract (SC) to conduct petroleum operations in the

Safety and/or Exclusion Zone: Provided, however, That at least thirty (30) days notice is given to the SC 38 Service contractor, and the consent of the Department of Energy is obtained, before any petroleum operations are conducted in the Safety and/or Exclusion Zone.

(4) The SC 38 Service Contractor is hereby granted an easement for its Petroleum Operations within the aforementioned Exclusion and Safety Zones.

(5) The Department of Energy and the Department of National Defense, in consultation with other concerned agencies, shall promulgate the rules and operating guidelines to implement and enforce the aforementioned Exclusion and Safety Zones. The following agencies shall support and assist the Department of Energy and Department of National Defense in the administration and enforcement of the aforementioned Exclusion and Safety Zones:

Armed Forces of the Philippines:
Philippine Navy

Department of Agriculture:
Bureau of Fisheries and Aquatic Resources

Department of Environment and Natural Resources

Department of Transportation and Communications:
Air Transportation Office
Maritime Industry Authority
National Telecommunications Commission
Philippine Coast Guard
Philippine Ports Authority

Department of Interior and Local Government
Philippine National Police

This Proclamation shall take effect fifteen (15) days after publication in a newspaper of general circulation.

City of Manila, July 10, 2001.

R. DEPARTMENT CIRCULAR NO. 2003-05-006

AMENDING CERTAIN PROVISIONS OF PETROLEUM BOARD CIRCULAR NOS. 15 AND 2, SERIES OF 1975 AND 1976, RESPECTIVELY, PROVIDING GUIDELINES TO THE FINANCIAL AND TECHNICAL CAPABILITIES OF A VIABLE PETROLEUM EXPLORATION AND PRODUCTION COMPANY

WHEREAS, the former Petroleum Board now Department of Energy issued Circular Nos. 15 and 2, Series of 1975 and 1976, respectively, providing guidelines related primarily to the financial and technical capabilities of a viable petroleum exploration and production company.

WHEREAS, it is necessary to amend certain provisions of the said Circular to make it attuned to the conditions under which it is being implemented and considering that petroleum exploration and production is highly capital intensive.

NOW, THEREFORE, the Department hereby adopts and promulgates the following amendments to certain provisions of Petroleum Board Circular Nos. 15 and 2, Series of 1975 and 1976, respectively:

SECTION 1. The 3rd and 5th Paragraphs of Circular No. 15 is hereby amended to read as follows:

> "Considering that establishing the capitalized value of a company differs in different countries, a company who will engage in onshore

exploration and offshore exploration ventures may be considered as a viable exploration company if the Department is satisfied in the adequacy of its financial resources.

"Likewise, the exploration company should show that it has sufficient resources to meet future requirements."

SECTION 2. Paragraph (a) of Circular No. 2 on the Financial Qualification is hereby amended to read as follows:

"(a) Financial Qualification

"A company to be financially qualified to enter into a service contract must have a minimum working capital equivalent to one hundred percent (100%) of the cost of the firm Work Obligation on the area being applied for. In case of consortium, to qualify, each member's working capital shall be pro-rata based on its participating interest in the service contract. "Working Capital," in the concept of the guidelines, refers to the company's net liquid assets (Liquid Assets less Current Liabilities) consisting primarily of cash, temporary investments, (marketable securities), short-term receivables and deposits, which are free for investment in petroleum operation.

"It is understood that the available working capital should be net of the financial commitment from other existing service contracts. In addition, each consortium member should have an acid-test ratio of 1.5:1 and a debt/equity ratio of 3:1."

SECTION 3. Additional Provisions are hereby inserted between paragraph (c) and the Penultimate paragraph of Petroleum Board Circular No. 2, series of 1976, to read as follows:

"(a) In case of a newly organized subsidiary company which is willing to engage in petroleum operations but its capital is not sufficient to meet the minimum requirement, its parent company shall be required to submit its financial statements and provide support to a subsidiary through a parent guarantee.

"(b) Past exploration expenditures incurred by a contractor shall be included in the new service contract as an operating expense and cost recoverable in case of production subject to the validation of the Department. Such expense however, shall be limited to the past expense relative to the same area subject of the application and participating interest of the contractor. In the event, that the area covered by prior service contract is bigger than the area applied for, such expense shall be pro-rated to effect the actual expenses to be carried in the new service contract."

SECTION 4. Repealing Clause. –

All other circulars, rules and regulations inconsistent with this Department Circular are hereby modified, amended and repealed accordingly.

SECTION 5. Effectivity. –

This Circular shall take effect fifteen (15) days following its publication in a newspaper of general circulation.

Issued this 19th day of May 2003 in Fort Bonifacio, Taguig, Metro Manila.

VINCENT S. PEREZ
Secretary

S. EXECUTIVE ORDER NO. 473

TASKING THE DEPARTMENT OF ENERGY (DOE) TO PURSUE THE IMMEDIATE EXPLORATION, DEVELOPMENT AND PRODUCTION OF CRUDE OIL FROM THE CAMAGO-MALAMPAYA RESERVOIR

WHEREAS, Article XII, Section 2 of the Constitution declares that all minerals, petroleum and other mineral oils, and other natural resources are owned by the State, and that the exploration, development, and utilization of these resources shall be under the full control and supervision of the State;

WHEREAS, on December 1990, the Republic of the Philippines, represented by the Department of Energy ("DOE"), entered into Service Contract No. 38 ("SC 38") and engaged the services of a consortium, today composed of Shell Exploration B.V., Shell Philippines LLC, Chevron Malampaya LLC and PNOC-Exploration Corporation, as Contractor for the exploration, development and production of petroleum resources in an identified area offshore northwest of the province of Palawan;

WHEREAS, on 30 April 1998, the DOE and the SC 38 Contractor jointly declared that the petroleum found in the areas designated as the Camago-Malampaya and San Martin reservoirs are in commercial quantity;

WHEREAS, while the Camago-Malampaya Reservoir is known to contain both natural gas and oil resources, the SC 38 Contractor had expressed its position that it cannot undertake the development of the Camago-Malampaya oil leg since, based on its own evaluation, it is not commercially viable;

WHEREAS, oil exploration and production activities need to be urgently conducted in the Camago-Malampaya Reservoir at this time that extracting the volumes of resources from the oil leg is still possible as the conduct of the activity has not yet been significantly undermined by the continued production of natural gas;

WHEREAS, the increasing prices of oil and petroleum products in the world market also has made it urgent and imperative for the Government to aggressively pursue its energy independence agenda, including the development and production of domestic oil reserves;

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

SECTION 1. ***Lead Agency.*** – The DOE, on behalf of the State, is hereby directed to immediately pursue the exploration, development and production of crude or black oil from the Camago-Malampaya Reservoir, respecting the existing rights of the SC 38 Contractor over the area and with paramount consideration of the national interest.

SECTION 2. ***Integrated Assistance.*** – The DOE shall undertake the above-mentioned activities through the Philippine National Oil Company ("PNOC"), the government corporation mandated to undertake and transact business relative primarily to oil and petroleum operations, or its subsidiaries.

For this purpose, the DOE and PNOC or its designated subsidiary shall at once commence discussions on and define the terms of service for the exploration, development and production of crude or black oil from the Camago-Malampaya Reservoir.

In defining the terms of service thereof, the DOE and PNOC or its designated subsidiary may consult the SC 38 Contractor with the end

in view of optimizing the joint operations of the concerned stakeholders in the production of natural gas and crude or black oil from the Camago-Malampaya Reservoir.

SECTION 3. ***Third Party Participation.*** – The PNOC or its designated subsidiary may, if necessary, engage the participation of third parties in the exploration, development and production of the crude or black oil from the Camago-Malampaya Reservoir, subject to existing nights over the area, the requirements of applicable laws, government rules and regulations and prior approval of the DOE.

SECTION 4. ***Reports.*** – The DOE shall submit regular reports to the President on the progress of its efforts in the implementation of this Executive Order.

SECTION 5. ***Repealing Clause.*** – All other executive issuance, rules and regulations or parts thereof which are inconsistent with the provision of this Executive Order are hereby repealed, amended or modified accordingly.

SECTION 6. ***Separability Clause.*** – If any section or provision of this Executive Order shall be declared unconstitutional or invalid, the other sections or provisions not affected thereby shall remain in full force and effect.

SECTION 7. ***Effectivity.*** – This Executive Order shall take effect immediately following its publication in the Official Gazette or in a newspaper of general circulation.

Done in the City of Manila, this 29th day of November, in the year of Our Lord, Two Thousand and Five.

T. DEPARTMENT ORDER NO. 2006-03-0005

IMPLEMENTING EXECUTIVE ORDER NO. 473 AND CREATING THE OVERSIGHT AND COORDINATION COMMITTEE FOR THE RE-APPRAISAL, DEVELOPMENT AND PRODUCTION OF CRUDE OIL FROM THE CAMAGO-MALAMPAYA OIL LEG (CMOL

WHEREAS, on 29 November 2005, the President issued Executive Order No. 473 ("EO 473") directing "the Department of Energy, on behalf of the State, to immediately pursue the exploration, development and production of crude or black oil from the CMOL, respecting the existing rights of the SC 38 Contractor over the area and with paramount consideration of the national interest"

WHEREAS, EO 473 further provided that the DOE shall undertake the said activities through PNOC or its subsidiaries and, for this purpose, the Parties were directed to at once commence discussion on and define the terms of service for the exploration, development and production of crude or black oil from the CMOL;

WHEREAS, EO 473 also provides that in defining the terms of service, DOE and PNOC/ PNOC subsidiary may consult the SC 38 Contractor with the end in view of optimizing the joint operations for the production of natural gas and crude or black oil from the Camago- Malampaya Reservoir;"

WHEREAS, the DOE and PNOC then immediately commenced discussions for the definition of the terms of service and conducted consultations with Shell Exploration B.V., Shell Philippines LLC, Chevron Malampaya LLC and PNOC-Exploration Corporation, as the Contractor for Service Contract No. 38 ("SC 38"), particularly in relation to the parallel operations for the natural gas and crude oil reserves in the Camago-Malampaya Reservoir;

WHEREAS, on 17 March 2006, the DOE and PNOC executed the Terms of Service ("Service Terms") for the re-appraisal, development and production crude oil from the CMOL;

WHEREAS, in order to ensure proper and effective coordination of the petroleum operations and in the interest of optimizing the operations for the production of natural gas and crude or black oil from the Camago-Malampaya Reservoir pursuant to the Service Terms and the mandate of EO 473, there is a need to set out certain principles and parameters governing the services performed or to be performed by PNOC and the SC 38 Contractor, and create a committee for coordination and information sharing;

NOW, THEREFORE, premises considered, the DOE hereby issues these implementation Instructions to govern the crude oil operations in the CMOL in respect of and to the extent that it affects the natural gas operations in the Camago-Malampaya area.

SECTION 1. ***Scope.*** This Department Order shall apply to: (a) PNOC, or its designated subsidiary pursuant to EO 473, and its Third Party Contractor/s as selected, appointed and approved by the DOE pursuant to the Service Terms, and (b) the SC 38 Contractor.

SECTION 2. ***Principles and parameters.*** Pursuant to Republic Act No. 7638 (as amended); Presidential Decree No. 87 (as amended); Proclamation No. 72, s. 2001; DOE Department Circular Nos. 95-06-006 and 2005-07-006; and EO 473, the following considerations shall be observed for the parallel operations and resolution of issues or concerns arising from the crude oil operations in the CMOL and natural gas operations by the SC 38 Contractor, as defined in the CMOL Terms of Service:

(a) It is the policy of the State to ensure continuous, adequate and economic supply of energy with the end in view of ultimately achieving self-reliance in the country's energy requirements through the integrated and intensive exploration, production, management and development of the country's indigenous energy resources.

(b) The development of indigenous petroleum resources is essential to the long-term stability of fuel and energy prices, as well as to national security and competitiveness.

(c) Among the indigenous petroleum resources, natural gas has been recognized as the most environment-friendly source of energy. To this end, the development of the Philippine natural gas industry shall primarily promote the policy of utilizing indigenous energy resources to stabilize energy prices.

(d) Presently, the uninterrupted operation and production of natural gas from the Malampaya Gas-to-Power Project accounts for twenty-five (25%) of the dependable capacity or about 2,7O0MW of electricity to industrial, commercial and residential end-users in the Luzon Grid and, since 2002, resulted in at least PhP17.3 Billion in revenues for the State.

(e) Natural gas produced under SC 38 is also earmarked for non-power 'uses, particularly as alternative fuel for motor vehicles. For instance, one of the key components of the natural gas vehicle program for public transport (NGVPPT), pursuant to Executive Order No. 290, issued on 24 February 2004, is the supply of compressed natural gas (CNG) through indigenous gas resources such as gas from Malampaya.

(f) At present, the Philippines imports almost all of its domestic oil requirements and about fifty (50%) of its oil-based products requirements. In 2004, the Philippines net oil import bill of 126 million barrels amounted to US$4.57 Billion.

(g) Initial DOE studies indicated that the CMOL contains estimated recoverable oil resources of 33 million barrels.

(h) In view of increasing prices of imported oil and petroleum products and the position of the SC 38 Contractor that it will not undertake the development of the Cit/IOL, the President, under EO 473, mandated the development and production of crude oil from the CMOL by the DOE, through PNOC. '

(i) The SC 38 Contractor, pursuant to PD 87 and SC 38, shall retain its exclusive rights to explore, develop and produce all petroleum within the SC 38 contract area, including any solution gas or gas produced from the crude oil, but excluding the crude oil from the CMOL.

(j) As provided further in EO 473, to undertake the activities herein required, PNOC or its designated subsidiary may, as necessary, engage the participation of third parties in the exploration, development and production of the crude or black oil from the Camago-Malampaya Reservoir, subject to the requirements of applicable laws and with prior approval of the DOE.

SECTION 3. ***Creation of the Oversight and Coordination Committee.*** There is hereby created an Oversight and Coordination Committee (the "Committee") that shall meet regularly to ensure efficient, timely and effective coordination in the implementation of the operations of PNOC and the SC 38 Contractor. Immediately upon the effectivity of the Service Terms:

(a) The Committee shall provide a venue for cooperative efforts to avoid one Petroleum operation adversely affecting the other and, to the extent necessary, provide inputs and recommendations to the DOE Secretary for any suspension of operations or adoption of other risk-mitigation measures that ensure optimal value of the Petroleum resources for the State.

(b) In resolving issues or preparing recommendations to the DOE Secretary, the Committee shall be guided by the principles set forth in Section 2 of this Department Order.

(c) Unless otherwise provided in an agreement amongst the DOE, PNOC and the SC 38 Contractor, the DOE shall prescribe the Committees scope of coordination and information-sharing, schedule and venue of meetings, and procedure for resolution of issues.

(d) The Committee shall be composed of the following:

Chair DOE, represented by the Undersecretary in charge of the Energy Resources Development Bureau (ERDB) or, as his alternate, the Director of ERDB

Members

One (1) representative each from the members of the SC 38 consortium

One (1) representative from PNOC

One (1) representative each from PNOC's Third Party Contractor/s, as the case may be

*Each representative may designate an alternate. The Chair and each member of the Committee may bring staff or consultant/s in meetings, as necessary, provided that only the named representative (or his alternate, as the case may be) shall be issued notices and recognized in meetings.

SECTION 4. ***Standard of Operations.*** Each of the SC 38 Contractor and PNOC, including PNOC's Third Party Participant/s, as the case may be, shall adhere to the highest standards of efficiency and safety in conducting their

respective operations in accordance with internationally accepted oil and gas field practices.

(a) Notwithstanding any reporting schedule or procedure provided by the Committee created in Section 3 above, PNOC shall immediately report to the DOE any activity, event or action in its crude oil operations in the CMOL that may be reasonably expected to impede or have an adverse or negative effect in the natural gas operations by the SC 38 Contractor. In the same manner, the SC 38 Contractor shall immediately report to the DOE any activity, event or action in its natural gas operations that may be reasonably expected to impede or have an adverse or negative effect in the crude oil operations in the CMOL.

(b) Such report shall be provided in writing unless the urgency of the matter require that an advance notice by telephone, facsimile or electronic mail be made to prevent or mitigate the expected effect; in which case, the verbal notice shall be confirmed in writing as soon as practicable.

(c) For information purposes, a copy of the report or a similar verbal notice given to the DOE in the above sub-clauses shall simultaneously be provided by PNOC to the SC 38 Contractor, or the SC 38 Contractor to PNOC.

(d) Should the DOE determine that the activity, event or action subject of the notice or report above requires a temporary suspension of either the crude oil or natural gas operation to prevent impeding the operations or any adverse effect on the other, the DOE shall: (i) immediately inform PNOC and the SC 38 Contractor accordingly of any temporary suspension, and (ii) within such reasonable time thereafter to be determined by the Committee and communicated to the DOE not later than the commencement of On-site Crude Oil Operations, convene the Committee to determine such other measures to prevent or mitigate the expected adverse effect, including adjustments in the respective operations of PNOC and the SC 38 Contractor.

(e) In determining the need for temporary suspension of operations, the DOE shall be guided by the principles enunciated in Section 2 above.

(f) Nothing in this Section shall limit or prevent the DOE, PNOC and the SC 38 Contractor from agreeing on or adopting such other measures that will prevent any adverse effect on operations or will allow each of the natural gas and crude oil operations to proceed unhampered.

SECTION 5. ***Effectivity and term.*** This Department Order shall take effect fifteen (15) days after its publication in the Official Gazette or the National Administrative Register. It shall remain in effect until otherwise revoked by the DOE Secretary, provided that revocation or repeal cannot take place earlier than the termination or expiration of the CMOL Service Terms.

SECTION 6. ***No amendment or repeal of existing laws.*** Nothing in this Department Order shall be construed to amend, supplant, or repeal any of the mechanisms or institutions already existing or responsibilities already allocated and provided for under any existing law, rule or contract. However, to the extent necessary, previous issuances by this Department in relation to the subject matter herein shall be deemed amended accordingly.

Fort Bonifacio, Taguig, Metro Manila, 20 March 2006

RAPHAEL M. LOTILLA
Secretary

U. EXECUTIVE ORDER NO 556

AMENDING EXECUTIVE ORDER NO. 473 AND REQUIRING THE EXPLORATION,DEVELOPMENT AND PRODUCTION OF CRUDE OIL FROM THE CAMAGO-MALAMPAYA RESERVOIR TO BE UNDERTAKEN THROUGH BIDDING

WHEREAS, Executive Order no. 473 tasked the Department of Energy (DOE) to pursue the immediate exploration, development and production of crude oil from the Camago-Malampaya Reservoir;

WHEREAS, transparency is a government policy;

WHEREAS, it is government policy to bid out projects unless only one qualified bidder emerges from a published invitation to bid;

NOW, THEREFORE, I GLORIA MACAPAGAL-ARROYO, President of the Philippines, by virtue of the powers vested in me by law, do hereby order:

Section 1. There shall be no "farm-in" or "farm-out" contracts awarded by any government agency, including the Philippine National Oil Company (PNOC), including the contract for the exploration, development and production of crude oil from the Camago-Malampaya Reservoir.

Section 2. All government agencies, including the PNOC, shall follow a strict bidding procedure in forging partnership with interested parties, including the Camago-Malampaya Reservoir venture.

Section 3. The corporate identity and of any partner tapped by any government agency, including the PNOC, must be beyond question.

Section 4. The paid-up capital of any partner tapped by any government agency, including the PNOC, must clearly show financial capability to undertake the subject venture;

Section 5. No government agency, including the PNOC, may enter into a contract with a company registered in a jurisdiction know to be a haven for a money laundering;

Section 6. All government agencies, including the PNOC may award a contract, including the Camago-Malamapaya Reservoir venture, only to a true principal group and not to a trader/ broker.

Section 7. Any and all negotiations or arrangements entered into by any government agency, including the PNOC, which violate this Executive Order, shall be immediately discontinued or cancelled.

Section 8. All other executive issuances, rules and regulations or parts thereof, including Executive Order 473, which are inconsistent with the provision of this Executive Order are hereby repealed, amended or modified accordingly.

Section 9. This Executive Order shall take effect immediately following its publication in the Official Gazette or in a newspaper of general circulation.

Done in the City of Manila, this 17th day of June in the year of Our Lord, Two Thousand and Six.

GLORIA MACAPAGAL-ARROYO
By the President:

EDUARDO R. ERMITA
Executive Secretary

V. DEPARTMENT CIRCULAR NO. 2007-04-0003

PRESCRIBING THE GUIDELINES AND PROCEDURES FOR THE TRANSFER OF RIGHTS AND OBLIGATIONS IN PETROLEUM SERVICE CONTRACTS UNDER PRESIDENTIAL DECREE NO. 87, AS AMENDED

WHEREAS, Section 11 of Presidential Decree No. 87 ("PD 87"), as amended, provides that the rights and obligations under a petroleum service contract shall not be assigned or transferred without the prior approval of the Department of Energy (DOE);

WHEREAS, the DOE fully recognizes that in petroleum exploration, development and production projects, an existing service contractor may transfer or assign wholly or partly its rights, interest and obligations to another entity which can contribute both financial resources and technical expertise in undertaking the obligations under the service contract, and in the process, spread the risks thereon;

WHEREAS, with the huge investment and technical expertise required in petroleum exploration, development and production projects, these transfers and assignments prove to be effective arrangements in enabling parties to pool their financial resources and technical expertise together to jointly undertake such projects;

WHEREAS, there is a need to rationalize transfers or assignments of rights and obligations in petroleum service contracts to ensure that the assignees or transferees possess the requisite financial capability, legal qualification and technical expertise and experience to undertake obligations and commitments under such service contracts;

NOW, THEREFORE, in consideration of the foregoing premises, the following guidelines and procedures shall be observed for the transfer or assignment of rights and obligations in petroleum service contracts executed under PD 87, as amended:

SECTION 1. Transfer or assignment of rights and obligations. – The rights and obligations under a petroleum service contract executed under PD 87, as amended, shall not be assigned or transferred without the prior approval of the DOE: Provided, That the transfer or assignment of contractual rights and obligations in service contracts to an affiliate of the transferor or assignor shall be automatic, if the transferee or assignee is as qualified as the transferor or assignor to enter into such contract with the government: Provided, further, That the affiliate relationships between the original transferor/assignor or a company which holds at least fifty percent of the contractor's outstanding shares entitled to vote, and each transferee/assignee shall be maintained during the existence of the service contract.

SECTION 2. Procedure for transfer or assignment of rights and obligations under Service Contracts. – All requests for approval of transfer or assignment of rights and obligations under a petroleum service contract shall be in writing, signed by an authorized officer or representative of the service contractor and addressed to and filed with the Office of the DOE Undersecretary in charge of the Energy Resource Development Bureau ("ERDB"), together with the following documents and/or information:

(a) History of Service Contract

   i. Effective date of service contract;

   ii. Original parties involved and extent of participating interest;

   iii. Subsequent changes or variation in the service contract, if any; and

iv. Work accomplishments/updates on on-going activities.

(b) Proposal for Transfer or Assignment

i. Extent of interest that is the subject of the assignment or transfer;

ii. Reasons for the assignment to establish basis, reasonableness and urgency of the matter (e.g., financial constraints, logistics issues, etc.);

iii. Approval of the respective Board of Directors of the transferor/assignor and transferee/assignee.

(c) Technical Justification of the Transfer or Assignment

i. Implications of the proposed transfer and assignment; On current Work Program, if any;

ii. Revised detailed Work Program and budget with specific timetable for each phase of the Work Program, if any; and

iii. Benefits and technical advantages in fulfilling work commitments under the service contract.

(d) Duly executed Deed of Assignment or Transfer

(e) Documents evidencing financial, legal and technical qualification of the prospective transferee or assignee

(1) Financial Qualification

i. Audited financial statements and annual reports for the last three (3) years; and

ii. Particulars of financial resources available to the prospective transferee or assignee including capital, credit facilities and guarantees to undertake its obligations under the service contract.

(2) Legal Qualification

i. Certified copy of Articles of Incorporation;

ii. Certified copy of the corporate by-laws;

iii. SEC Registration Certificate; and

iv. Certified copy of the latest general information sheet submitted to the Securities and Exchange Commission.

(3) Technical Documentation

i. Technical and industrial qualifications, eligibilities and work related experiences of the prospective assignee/transferee and its officers and employees; and

ii. Technical and industrial resources available to the prospective assignee/ transferee for the exploration, development and production of petroleum resources, if applicable, depending on the participation of the prospective assignee/transferee in the service contract.

The DOE may require submission of additional information/documents. Furthermore, any prospective assignee/transferee organized and incorporated in a foreign country shall submit documents equivalent to the above, issued by the appropriate governing body and duly authorized by the Philippine consulate, in the area where it is organized or holds principal office.

SECTION 3. Within ten (10) working days from the DOE's receipt of the formal request for approval of the transfer or assignment, together with the complete set of documents, unless such period is extended by requiring further evaluation/information, the Contracts Division, Petroleum Resource Development Division and Compliance Division shall complete their legal, technical and financial evaluations on the qualification of the prospective assignee/transferee and issue a memorandum to the ERDB Director on the result of the evaluations.

SECTION 4. Within three (3) working days from receipt of the memorandum on the legal, technical and financial evaluation, unless such period is extended by requiring further evaluation/information, the ERDB Director shall issue a memorandum to the Undersecretary in charge of the ERDB, through the Assistant Secretary, on the result of the evaluation, indicating among others, the following:

(a) Background of the Service Contract;

(b) Proposal and justification for the transfer of rights and obligations;

(c) Result of the legal, technical and financial evaluation; and

(d) Recommendation for approval or denial of the request.

SECTION 5. Within three (3) working days from the receipt of the ERDB Director's memorandum, unless such period is extended by requiring further evaluation, the Undersecretary shall advise the Secretary of his recommendations, through a memorandum, on the proposed transfer of rights and obligations under the service contract.

SECTION 6. Within five (5) working days from the Office of the Secretary's receipt of the Undersecretary's memorandum, unless such period is extended by requiring additional information, the service contractor shall be informed in writing of the Secretary's decision on the transfer or assignment of rights and obligations under the service contract.

SECTION 7. If for any reason any section or provision of this Circular is declared unconstitutional or invalid, such parts not affected shall remain in full force and effect.

SECTION 8. This Circular shall take into effect fifteen (15) days after publication in two (2) newspapers of general circulation and shall remain in effect until otherwise revoked.

Issued this 23rd day of March 2007 in Fort Bonifacio, Taguig City, Metro Manila.

RAPHAEL P.M. LOTILLA
Secretary

W. DEPARTMENT CIRCULAR NO. DC2017-12-0017

ADOPTING THE PHILIPPINE CONVENTIONAL ENERGY CONTRACTING PROGRAM (PCECP) OF AWARDING PETROLEUM SERVICE CONTRACTS (PSCs) AND CREATING THE REVIEW AND EVALUATION COMMITTEE (REC)

WHEREAS, Republic Act No. 7638, as amended, otherwise known as "The Department of Energy (DOE) Act of 1992", mandates the DOE to prepare, integrate, coordinate, supervise and control all plans, programs, projects and activities of the Government relative to energy exploration, development, utilization, distribution, and conservation;

WHEREAS, Section 4 of Presidential Decree No. (PD) 87, as amended, otherwise known as the "Oil Exploration and Development Act of 1972", allows the Philippine Government (the "Government") to promote and undertake the exploration, development and production of the country's indigenous petroleum resources through PSCs;

WHEREAS, the DOE issued Department Circular No. DC2014-02-0005, or the "5th Philippine Energy Contracting Round (PECR5) Circular and Guidelines" reiterating and acknowledging therein the need to adopt a transparent and competitive system for awarding PSCs, among others, for the exploration, development, and production of the country's petroleum resources;

WHEREAS, the DOE issued Department Order No. DO2014-08-0017, as amended, otherwise known as "Prescribing Guidelines and Procedures for the Amendment of Contract Area in Coal Operating Contract (COCs) and Petroleum Services (PSCs)", to provide legal basis for existing COC and PSC contractors to carry out the exploration and development of petroleum and coal resources in other frontier areas not covered and offered in any energy contracting round;

WHEREAS, the DOE is continuously adopting new mechanisms and strategies to effectively carry out its plans and programs as mandated under PD 87, as amended, including its implementing rules and regulations;

WHEREAS, Section 5 of PD 87, allows the Government to promote and offer prospective petroleum areas for award through bidding or negotiation;

WHEREAS, the DOE desires to implement a simpler and faster public contracting program by nomination thru publication to facilitate the acceptance of applications for PSCs from interested applicants at any given time which is deemed to be more responsive if the development of the country's petroleum resources is to be intensified;

WHEREAS, the DOE intends to effectively administer, supervise and regulate the implementation of awarded PSCs to ensure the sustainable development of the country's petroleum resources;

NOW, THEREFORE, in consideration of the aforementioned premises, the following policies and procedures in the selection, evaluation, awarding and administration of PSCs are hereby adopted and promulgated for compliance by all concerned:

Section 1. Scope. This Circular shall govern the selection process in the awarding of PSCs and the reconstitution of the Review and Evaluation Committee (REC).

Section 2. Policies in the Conduct of Selection Process in Awarding PSCs. The selection process in the awarding of PSCs to qualified

applicants shall be conducted in a transparent, open, competitive and expeditious manner.

Section 3. Various Modes in Awarding Petroleum Service Contracts

3.1 Applicant/s Nomination and Publication of Area/s of Interest

Applicant/s for a PSC shall formally nominate the area/s of their interest for the REC consideration in accordance with the procedures set under Item I of Annex "A".

3.2 Offering of Pre-Determined Areas (OPDA)

The DOE, thru the Review and Evaluation Committee (REC), may publish identified petroleum area/s not covered by any application for nomination for the purpose of inviting interested applicant/s to file application in accordance with the procedures set under item II of Annex "A".

Section 4. Reconstitution of the Review and Evaluation Committee (REC). The REC is hereby reconstituted to carry out the responsibilities set forth in this Circular and shall be composed of the following officials:

Chairperson	-	Undersecretary-in-charge of the Energy Resource Development Bureau
Vice Chairman	-	Assistant Secretary
Members		Director of the ERDB
		Director of the Financial Services (FS)
		Director of the Legal Services Director of the Information Technology and Management Services (ITMS)

Section 5. REC Technical Working Group (TWG) and Secretariat. The REC TWG and Secretariat shall assist the REC in all activities related to Philippine Conventional Energy Contracting Program (PCECP) and in the coordination and administration, supervision and regulation of PSCs, and shall be composed of the following:

Head	Assistant Director of the ERDB
TWG Members	Chief, Petroleum Resources Development Division (PRDD)
	Chief, Conventional Energy Resources Compliance Division (CERCD)
	Chief, Upstream Conventional Energy Legal Services Division (UCELSD)
	Chief, Information Services Division (ISD)
	Chief, Information and Data Management Division (IDMD)
	The DOE Luzon Field Office (LFO), DOE Visayas Field Office (VFO) and DOE Mindanao Field Office (MFO) shall assist the TWG in the performance of its functions in their respective area/s of jurisdiction
Secretariat Members	Supervising Science Research Specialist and Staff of the PRDD's Research and Evaluation Section

Section 6. Responsibilities of the REC

6.1 Accept, evaluate and approve or reject the application for nomination of area/s of interest for publication;

6.2 Examine, evaluate, and review the legal, technical, and financial capabilities of the applicant/s and their application/s as provided for in PD 87, and existing laws, rules, and regulations;

6.3 Recommend to the Secretary the award and issuance of a PSC in favor of the

highest-ranked applicant for multiple applications, or legally, technically, and financially qualified in case of sole applicant;

6.4 Address any questions and inquiries that may be raised by the Secretary in connection with the PSCs endorsed for award and issuance;

6.5 Resolve issues in relation to the legal, technical and financial capabilities of applicants, including motions for reconsideration;

6.6 Cause the publication of PDAs and nominated petroleum areas approved by the DOE and open for PSC applications under Section 3 of this Circular;

6.7 Institute and implement a system of coordination and administration, supervision and regulation during the implementation and operation of the PSCs such as, but not limited to, the following:

a) Extension, amendment, cancellation / termination and relinquishment of PSCs;

b) Transfer and assignment of PSCs;

c) Disposal of assets; and,

d) Recommendation to allocate and utilize all assistance funds generated from the awarded PSCs in accordance with existing rules and regulations.

6.8 Other functions of REC that the Secretary may delegate and additional tasks that may be deemed necessary to carry out its responsibilities and objectives.

Section 7. Qualifications of a PSC Applicant. Applicant may be any local/foreign individual company or group of companies forming a joint venture/consortium, organized or authorized for the purpose of engaging in petroleum exploration and development.

Section 8. Evaluation, Selection and Awarding Procedures for the Various Modes of Selection Process. The evaluation, selection and awarding procedures for the various modes of selection process in awarding PSCs shall be provided for under Annex "A" of this Circular entitled "Guidelines for Philippine Conventional Energy Contracting Program (PCECP) for Petroleum Operating Contract (PSC) Application".

Section 9. Criteria for Selecting the Highest Ranked Applicant. A PSC applicant under any of the modes mentioned in Section 3 of this Circular shall submit complete documents as provided for under Annex "A" pertaining to the following selection criteria, to wit:

i. Legal qualification
ii. Work Program
iii. Technical qualification
iv. Financial qualification

In case of two or more applicants over the same area, the highest ranked applicant who meets the legal, technical and financial requirements shall be selected.

Section 10. Motions for Reconsideration and Appeals. The REC and/or the Secretary, for sufficient and valid cause, may at any given time reject any or all application/s submitted. Any motion for reconsideration or appeal from the decision of the REC and/or the Secretary shall comply with applicable provisions of Department Circular No. DC2002-07-004 or the "Rules of Practice and Procedure before the Department of Energy".

Section 11. Option for the Philippine National Oil Company or its Affiliates to participate in Petroleum Service Contracts (PSCs). For PSCs proposed under this Circular, an option shall be reserved for the PNOC or PNOC-EC for a maximum of ten percent (10%) participating interest in a proposed PSC involving one (1) or more Filipino participant or a maximum of fifteen percent (15%) participating interest in a proposed PSC involving no Filipino

participant. DOE shall inform the PNOC and PNOC-EC within thirty (30) calendar days from the award of the PSC, and, PNOC or PNOC-EC shall give proper notice, within thirty (30) calendar days from receipt thereof, to the winning applicant and the DOE whether it shall exercise the said option. All rights, privileges, benefits, costs, expenses, obligations and liabilities of PNOC or PNOC-EC shall be in proportion to its participating interest in the proposed PSC.

Section 12. Disqualification. Previous petroleum service contractors with cancelled/ terminated PSCs for cause and/or with outstanding work and financial obligations with the DOE, as determined by the REC, are disqualified to participate.

Section 13. Separability Clause. If for any reason, any section or provision of this Circular and its Annexes is declared unconstitutional or invalid, such parts not affected shall remain in full force and effect.

Section 14. Repealing Clause. All DOE issuances that are inconsistent with the provisions of this Circular are hereby repealed or amended accordingly.

Section 14. Effectivity. This Circular shall take into effect fifteen (15) calendar days following its publication in at least two (2) broadsheet newspapers of general circulation and shall remain in effect until otherwise revoked.

Issued this 27 December 2017 in Bonifacio Global City, Taguig City, Metro Manila.

Alfonso G. Cusi
Secretary

Annex "A"

Republic of the Philippines
DEPARTMENT OF ENERGY
Energy Center, Rizal Drive corner 34th Street Bonifacio Global City, Taguig City
Metro Manilla

GUIDELINES FOR PHILIPPINE CONVENTIONAL ENERGY CONTRACTING PROGRAM (PCECP) FOR PETROLEUM SERVICE CONTRACT (PSC) APPLICATIONS

I. Procedure for Nomination and Publication

A. Applicant/s for PSC shall formally nominate through written communication the area/s of their interest addressed to the Review and Evaluation Committee (REC) for consideration. Before the nomination is accepted for publication, the following shall be submitted:

1. Technical Description of the nominated area which shall be in accordance with the prescribed Petroleum Blocking and Monitoring System that divides the entire Philippine archipelago into meridional blocks of four (4) latitudinal arc-minutes by three (3) longitudinal arc-minutes (4' x 3') with WGS'84 Geographic Coordinates with each block covering an area of approximately 4,000 hectares (40 square kilometers), as verified by the DOE-Information Technology and Management Services (DOE-ITMS);

   The size of the nominated area, pursuant to Section 18 (b) of Presidential Decree (PD) No. 87, shall be within the range of 50,000 hectares (500 square kilometers) to 750,000 hectares (7,500 square kilometers) for onshore areas, and 80,000 hectares (800 square kilometers) to 1,500,000 hectares (15,000 square kilometers) for offshore areas; and

2. Area Clearance of nominated area/s from the DOE-ITMS.

B. The REC shall, within fifteen (15) working days from receipt of the nomination with complete documents, inform the nominating applicant through written notice on the approval / rejection for the publication on the existence of an application for the nominated area/s for public contracting program.

C. In case the nomination is approved, the REC shall direct the nominating applicant to comply and submit, within fifteen (15) days from receipt of the notice from the REC, the following:

1. Publish, at its own expense, the existence of an application for the nominated area/s with an invitation for challenge in two (2) broadsheet of general circulation;

2. Pay a non-refundable application fee of Php200,000.00 per area; and

3. Submit the complete application documents under Item IV hereof and the checklist attached as Annex "B".

   The nominating applicant shall submit a proof of publication within seven (7) calendar days from the date of publication.

   The REC shall likewise post the existence of an application for the

nominated area/s with an invitation for challenge in the DOE website from the publication date until the deadline for submission of documents.

In the event the nominating applicant fail to publish the nominated area/s within the required period, the nomination shall be nullified and the area shall be open for new nomination.

D. The nominating applicant shall follow the template layout of the items for publication shown in Annex "C" which include, among others, the following:

a. Timeline for the contracting program by publication:

i. Publication Date - Day 1

ii. Pre-submission Conference – Day 1 plus twenty (20) calendar days, 0900H at the DOE AVR

iii. Deadline for the Submission of documents by Applicants – Day 1 plus sixty (60) calendar days (2 months) on or before 1100H at the DOE Records Section

iv. Opening of Documents – Day 1 plus sixty (60) calendar days (same day as Deadline of Submission of Documents) 1300H at the DOE AVR

b. Location Map and Technical Description of the area/s:

a. Area/s to be nominated shall comply with Item I. A hereof;

b. Technical Description as certified by DOE-ITMS

c. Other information that the REC deems appropriate.

E. Upon publication of the nominated area, interested parties may submit their respective applications for the said area, within a period of sixty (60) days from date of publication, in accordance with Item III hereof on the submission of applications.

The REC shall open the applications at exactly 1330H on the last day of submission.

II. Procedure for Offering of Pre-Determined Area (PDA) by the DOE

1. PSC Applications. Interested parties may apply for PSCs on Pre-Determined Areas (PDAs) offered by the DOE during a prescribed period which shall be announced by the REC. (Annex "D")

1. Selection of PDAs. The ERDB shall identify and submit a list of PDAs for petroleum exploration, with the respective Location Maps and Technical Descriptions thereof, to the REC for approval. PDAs shall refer to areas with petroleum potential through sufficient available technical data as may be determined by the PRDD and approved by the REC.

2. Launch and Publication. PDAs approved by the REC shall be scheduled for launch and shall be publicly announced by the REC for applications. PDAs for offer shall be published in at least two (2) broadsheet newspapers of general circulation and shall likewise be posted at the DOE website.

3. Data Packages and Promotional Activities. The REC shall arrange for the availability of data

packages for the approved PDAs that can be purchased by interested parties in support to their applications. The REC shall conduct promotional activities, both locally and abroad, to promote the OPDA and the corresponding data packages so as to ensure maximum participation and awareness of prospective investors and stakeholders.

4. PDA Application. Applications may be submitted a day after the publication date until the last day of submission which shall be one hundred and eighty (180) calendar days from the date of publication in accordance with the procedures hereunder.

5. Opening of Applications. The REC shall open the applications at exactly 1330H on the last day of submission of applications.

III. Requirements for Submission of all PSC Application/s

A. Qualifications of PSC Applicant.

1. Applicant may be any local/foreign individual company or group of companies forming a joint venture/ consortium, organized or authorized for the purpose of engaging in petroleum exploration and development.

2. If an applicant is a joint venture/ consortium, it shall submit a copy of the joint venture agreement. The Operator must meet all legal, technical and financial requirements, and submit the application on behalf of the joint venture/consortium.

3. Members (Non-Operator) of the joint venture/consortium, on the other hand, shall be legally and financially qualified. The working capital of each member of the joint venture/ consortium shall be pro-rata based on its participating interest in the proposed work program and budget.

B. Applicant/s shall submit a letter of intent and three (3) complete sets of legal, technical, and financial documents in accordance with Item IV (Documentation Requirements) of this Annex for evaluation by the REC.

Each application shall cover only one predefined area of interest as published.

C. Submitted Application/s must be in both paper and digital (USB Drive in Microsoft Word or *.pdf format) copies. Times New Roman 12 font and single line spacing are recommended. Figures shall be submitted in an appropriate format, no smaller than A3 size. For legibility, figures and maps shall be submitted at a larger scale (1:10,000) as appendices.

D. An application fee shall be paid by each area applicant, along with the submission of complete application documents, as follows:

1. For nominated areas, applicants over the nominated area (also referred to as “Challenger”) shall pay a non-refundable fee of Php 1,000,000.00 per area;

2. For PDA applications, a non-refundable application fee of Php 200,000.00 per area shall be paid by the applicant.

All payments may be made in cash, manager/company cheque, payable to “Department of Energy” or wire/ bank transfer. All wire/bank transfer

should be net of all applicable bank and financial charges.

E. Both the original paper copy and the digital copy of the any application/s shall be addressed to:

The Chair
Review and Evaluation Committee
Department of Energy
Energy Center, Rizal Drive
Bonifacio Global City (BGC), Taguig City
Metro Manila, 1632 Philippines

The application may be sent by courier, registered mail, or hand delivered and must be stamped received by the DOE Records Division not later than 1100H of the deadline for submission of documents as prescribed in this Annex and the REC shall open the submitted applications at 1300H on the same day.

IV. Documentation Requirements

A. Legal Documentation

1. Duly filled-out covering information sheet showing a brief summary of the application:

COVERING INFORMATION SHEET
(Petroleum)

<table>
<tr><th>Company Name</th><th>Participating Interest %</th><th>Country of Registration</th><th>Parent Company</th></tr>
<tr><td>Operator:</td><td></td><td></td><td rowspan="5"></td></tr>
<tr><td>JV/Consortium Member:</td><td></td><td></td></tr>
<tr><td colspan="3">Address of Operator:</td></tr>
<tr><td>Telephone No.:</td><td>Fax No.:</td><td>Mobile Phone No.:</td></tr>
<tr><td>Email Address:</td><td colspan="2">Website:</td></tr>
<tr><td colspan="3">Address of JV / Consortium Member:</td><td rowspan="3"></td></tr>
<tr><td>Telephone No.:</td><td>Fax No.:</td><td>Mobile Phone No.:</td></tr>
<tr><td>Email Address:</td><td colspan="2">Website:</td></tr>
<tr><td colspan="4">PCECP Area Applied for:</td></tr>
<tr><td colspan="4">Proposed Signature Bonus:</td></tr>
<tr><td colspan="4">Proposed Development Assistance Fund:</td></tr>
<tr><td colspan="4">Training Assistance Fund</td></tr>
<tr><td colspan="4">It is certified that the foregoing information are true and correct. It is understood that any omission or misrepresentation of the required information shall be sufficient cause for the rejection of this application.

_____
Authorized Representative and Signature:</td></tr>
</table>

2. Certified true copies of the Securities and Exchange Commission (SEC) Certificate of Registration, Articles of Incorporation and By-Laws. The corporate purpose of the applicant shall include the exploration, development and utilization of petroleum resources;

3. Certified true copy of the General Information Sheet (GIS) stamped-received by the Securities and Exchange Commission (SEC) not more than twelve (12) months old at the time of filing of application;

4. Original Copy of the Certificate of Authority from the Board of Directors of the applicant authorizing a designated representative/s to apply, negotiate, sign any documents and execute the PSC. The said Certificate of Authority shall be executed under oath by the Corporate Secretary.

5. Any interested party, acting singly or forming part of a joint venture, that is organized in a foreign country shall submit legal and financial documents, or its equivalent, as required hereunder, issued by the appropriate governing body and duly authenticated by the Philippine consulate having appropriate jurisdiction.

B. Work Program Documentation

1. Pre-Determined Areas (PDAs) / Nominated Areas

a. Proposed work program (discussion of the exploration strategies and methodologies to be employed in delineating petroleum resources with subsequent manpower complement should be in detailed narrative format

including the Schedule of Activities in a Gantt Chart) and minimum expenditure for each proposed activity with respect to the area or areas specified in the proposal.

b. Work program and minimum expenditure with respect to the proposal:

b.1 Plan for exploration and work commitment. A description of the exploration strategy for the Contract Area applied for. This shall include:

- Geologic interpretation;
- Exploration or appraisal wells; and
- Seismic data acquisition as appropriate; and
- other geological and geophysical studies.

b.2 A proposed minimum exploration commitment including:

- Seismic program, size, and timing (2D/3D)
- Well program, number, and timing
- Other geological and geophysical work
- Others

b.3 Each item in the minimum exploration commitment shall be given a stipulated cost figure, the sum of which will constitute the minimum cost of the work program.

c. Geological and geophysical evaluation of the Contract Area applied for:

c.1 Database

Seismic and well data on which the geological evaluation is based must be listed, and the location must be illustrated on a base map (seismic coverage with wells) in appropriate scale (1:250,000). Coordinate reference system (CRS) should be specified in all geographically referenced data and maps.

Applicants shall state the following information for verification, cross-referencing and authentication purposes:

i. Sources of all data/ information/reports used (possibly in tabulated format), including whether these were acquired from the DOE or its contractors;

ii. Copies of reports/ literature if data/ information are not from DOE.

c.2 Petroleum Potential Analysis

The following aspects for each Contract Area applied for must be described briefly:

- stratigraphic and sedimentologic framework including reservoir development and reservoir quality;

- structural framework including trap development and evaluation of seal/retention characteristics;

- petroleum development including source rocks, maturity and migration; and

- description of play types.

The analysis must focus on aspects that are considered critical in the evaluation of the prospectivity of the Contract Area applied for.

c.3 Prospect/ Lead evaluation

The following documentation is required for potential area for further exploration:

- overview map with coordinates of leads and/or prospect;
- seismic and geological cross-section(s);
- seismic line showing well ties, where relevant reservoir horizon time-and-depth maps presented at identical scales; and
- seismic attribute maps.

The following shall be evaluated for each potential prospect:

- depositional environment/ reservoir type(s);
- trap and seal; and
- hydrocarbon type, source, migration and trap fill.

c.4 Resources

Brief comments may be submitted on the following:

- estimated resource (in-situ volume)
- method of resource volume calculation;
- hydrocarbon type;
- choice of GOR and expansion/shrinkage factors;
- choice of reservoir parameters; and
- recovery factor.

d. Probability of Discovery (Whenever applicable)

Component probability factors and the probability of discovery must be explained and documented. The methods of risk analysis must also be briefly described.

e. Economics and development concepts of possible petroleum discoveries:

e.1 Plan of Development

e.2 Project Economics

C. Technical Documentation

1. Overview of all Upstream Petroleum-related Projects.

2. Technical Personnel

a. Relevant Experience
b. Educational Attainment
c. Employment Status

Particulars of the technical and industrial qualifications, eligibilities and work-related experiences of the applicant and its employees. Particulars on the experiences, achievements, and track records of the applicant and its employees related to technical and industrial undertakings. Operational organization, including expertise, and experience.

D. Financial Documentation

1. For corporations existing for more than two (2) years at the time of filing of application:

    a. Original Copy of the Annual Report or Audited Financial Statements (FS) for the last two (2) years from the filing date and Original Copy of the latest Unaudited FS duly signed by the responsible official such as the President and/or Chief Finance Officer if the Audited FS is more than six (6) months old at the time of filing;

    b. Original Copy of the Bank Certification to substantiate the cash balance as of the latest unaudited FS;

    c. Original Copy of the Projected Cash Flow Statement for three (3) years covering fund sources and uses for the particular PCECP area applied for, other PCECP areas, renewable energy service contract applications, existing service/ operating contracts with DOE and other existing business, if applicable; and

    d. For domestic corporations, certified true copy of the latest income tax return filed with the Bureau of Internal Revenue, and duly validated with the tax payments made thereon.

2. For newly-organized corporations existing for less than two (2) years at the time of filing of application:

    a. Original Copy of the Audited Financial Statements (FS) or unaudited FS duly signed by the responsible official such as the President and/or Chief Finance Officer;

    b. Original Copy of the Bank Certification to substantiate the cash balance as of the latest unaudited FS; and

    c. Original Copy of the Projected Cash Flow Statement for three (3) years covering fund sources and uses for the particular PCECP area, other applied PCECP areas, renewable energy service contract applications, existing service/operating contracts with DOE and other existing business, if applicable.

3. For Parent Company that guarantees for corporations with insufficient working capital, the Parent Company's fund guarantee shall be limited to the corresponding participating interest and shall submit the following:

    a. Original Copy of the Parent Company's financial documents per D.1.a and D.1.b hereof; and

    b. Original Copy of duly notarized Letter of Undertaking / Support from the Parent Company to fund the Work Program.

4. Minimum working capital (Liquid Assets less Current Liabilities) is

100% of the financial commitment for the first contract year of the proposed work program and budget. Liquid Assets shall consist only of cash, trade accounts receivables and short term investments/placements. Credit line is not a Liquid Asset.

5. The applicant shall have available working capital for each PCECP application separate from other applied PCECP areas, renewable energy service contract applications and existing energy service/operating contracts, if applicable.

V. Evaluation and Awarding Procedures

A. Applications with incomplete documents based on the checklist attached as Annex "B" shall be automatically disqualified during the opening of the applications. No additional documents shall be accepted after the deadline for submission of applications.

Applicants will be duly informed by the REC whether its application passed the completeness check and shall be subjected to further legal, technical and financial evaluations. Disqualified applicants with incomplete documents shall also be duly informed by the REC citing its lacking documents.

B. After the opening of application documents, the REC shall immediately convene and shall conduct evaluation of the submitted applications for all PDAs or individual Nominated Areas based on the following criteria:

1. Legal qualification - Pass or Fail
2. Work Program - 40%
3. Technical qualification - 20%
4. Financial qualification - 40%

C. The highest ranked applicant who meets the legal, technical and financial requirements shall be selected.

D. After complete review and evaluation of the legal, technical, and financial qualifications of the applicants, the REC shall transmit to the Secretary a written endorsement of the winning applicant.

E. Based on the written endorsement of the REC, the Secretary may approve the application for PSC. The Secretary may convene the REC for any questions or inquiries pertaining to the review and evaluation undertaken.

F. The Secretary shall endorse the Awardees and the corresponding PSC Areas to the President for final approval.

G. Within seven (7) calendar days from receipt of the Notice of Approval of the PSC, the respective Awardees shall pay a processing fee of Php 0.48 per hectare based on DOE's Schedule of Fees and Charges in compliance with Executive Order (EO) No. 197, series of 2000.

H. The REC TWG and Secretariat shall prepare the final PSC using the Model Contract and its Accounting Procedures. No deviation from the Model Contract and its Accounting Procedures shall be allowed.

I. The DOE will award one PSC for each PCECP area.

Chapter II
Upstream Coal Laws, Rules and Regulations

I. PRESIDENTIAL DECREE NO. 972

PROMULGATING AN ACT TO PROMOTE AN ACCELERATED EXPLORATION, DEVELOPMENT, EXPLOITATION, PRODUCTION AND UTILIZATION OF COAL

WHEREAS, the increasing cost of imported crude oil imposes an unduly heavy demand on the country's international reserves thereby making it imperative for the government to pursue actively the exploration, development and exploitation of indigenous energy resources;

WHEREAS, while coal has been identified as a fossil fuel known to exist in mineable quantities in the country which could provide a viable energy source for some vital industries, large tracts of coalbearing lands have not been explored and mined in a manner and to an extent adequate to meet the needs of the economy;

WHEREAS, the proliferation of fragmented coal permits and leases has prevented, or deterred, the adequate and speedy exploration, development, exploitation and production of indigenous coal resources;

WHEREAS, to develop, achieve and implement a well- planned, systematic and meaningful exploration, development, exploitation and production of local coal resources, participation of the private sector with sufficient capital, technical and managerial resources must be encouraged and the technical and financial capabilities of the coal industry upgraded;

WHEREAS, hand in hand with an accelerated coal exploration, development, exploitation and production program, it is essential that the market for domestic coal production be developed by granting incentives to prospective coal users to convert their facilities for coal utilization;

WHEREAS, to realize the above, it is necessary to amend and/or supplement existing legislation relating to coal;

WHEREAS, Article XVII, Section 12 of the Constitution of the Philippines provides in part that when the National interest so requires the incumbent President of the Philippines or the interim Prime Minister may review all contracts, concessions, permits or other forms or privileges for the exploration, development, exploitation or utilization of natural resources entered into, granted, issued or acquired before the ratification of the Constitution;

NOW, THEREFORE, I, FERDINAND E. MARCOS, by virtue of the powers vested in me by the Constitution of the Philippines, do hereby decree and declare as part of the law of the land the following:

SECTION 1. ***Short Title***. This Act shall be known and may be cited as "The Coal Development Act of 1976."

SECTION 2. ***Declaration of Policy.*** It is hereby declared to be the policy of the state to immediately accelerate the exploration, development, exploitation production and utilization of the country's coal resources. A coal development program is therefore promulgated and established by this Decree.

Section 3. ***Coal Development Program.*** The country shall be divided into coal regions and exploration and exploitation programs shall be instituted and implemented pursuant to this Decree.

These programs shall be geared towards the promotion and development of the necessary technical and financial capability to undertake a work program to effectively explore exploit coal resources.

In recognition, however, of the social constraints that may be encountered in effecting the establishment of coal units in regions where there is high concentration of small coal miners, a special coal program shall be formulated and implemented in coordination with the appropriate government agency/agencies to meet the particular needs of such regions.

Section 4. ***Government to Undertake Coal Exploration Development and Production.*** The Government, through the Energy Development Board, its successors or assigns, shall undertake by itself the active exploration, development and production of coal resources. It may also execute coal operating contracts as hereafter defined. The active exploration and exploitation of coal resources by the Government or through coal operating contracts may cover public lands, any unreserved or unappropriated coal bearing lands, claims located and recorded by private parties areas covered by valid and subsisting coal revocable permits, coal leases and other existing rights granted by the Government for the exploration and exploitation of coal lands, government mineral reservations, coal areas/ mines whose leases or permits are presently owned or operated or held by government-owned or controlled corporations and coal mineable areas operated or held by government agencies.

SECTION 5. ***Blocking System.*** The Energy Development Board shall establish coal regions delimiting its extent and boundaries after taking into consideration the various coal bearing lands of the Philippines. Each coal region shall be divided into meridional blocks or quadrangles of two minutes (2') of latitude and one and one-half minutes (1-1/2) of longtitude, each block containing an area of one thousand (1,000) hectares, more or less, the boundaries thereof to coincide with the full two minutes and one and one-half minutes of latitude and longtitude, respectively, based on the Philippine Coast and Geodetic Survey Map, scale of 1:50,000.

SECTION 6. ***Coal Contract Area.*** In conformity with the blocking system herein established, the Energy Development Board shall determine in each coal region what areas, are available for coal operating contracts. In opening such contract areas, the Energy Development Board may resort to either of the following alternative procedures:

(a) By offering an area or areas for bids, specifying the minimum requirements and conditions in accordance with this Decree: or

(b) By negotiating with a qualified party for a coal operating contract under the terms and conditions provided in this Decree.

No person shall be entitled to more than fifteen (15) blocks of coal lands in any one coal region.

SECTION 7. ***Existing Permitees/Leaseholders.*** All valid and subsisting holders of coal revocable permits, coal leases and other existing rights granted by the government for the exploration and exploitation of coal lands or the operators thereof duly approved

by the appropriate government agency, shall be given preference in the grant of coal operating contract over the area covered by their permits, leases or other rights subjects to their compliance with the following conditions and guidelines:

(a) Those whose areas fall within a block as described in Section 5 hereof shall organize or consolidate themselves into a coal unit, singly or jointly with valid and subsisting holders of coal revocable permits, coal leases and other existing coal rights or the duly approved operator thereof, of contiguous blocks provided that a coal unit shall not be entitled to more than fifteen (15) blocks of coal lands in any coal region.

(b) Consolidation of areas into coal unit which shall require approval by the Energy Development Board must be completed within a period of six (6) months from the effectivity of this Decree.

(c) In order to qualify for consolidation into coal units, permitees, leaseholders or operators must have complied with the requirements of their existing permits, leases and/or rights as defined under existing laws, rules and regulations.

(d) Members of the coal unit shall agree on the form, terms and extent of participation of its individual members. All holders of valid and subsisting coal revocable permits, coal leases and other existing rights granted by the government for the exploration, development and exploitation of coal lands shall be given percentage interest in the unit or payments out of production under such terms and conditions as may be agreed by the members of the unit and approved by the Energy Development Board.

(e) A coal unit shall enter into a coal operating contract as hereafter provided within six (6) months from its formation.

Coal revocable permits, coal leases and other existing rights granted by the government for the exploration and exploitation of coal lands shall be deemed automatically canceled and the area covered thereby shall revert back to the State for failure of the holders or the qualified operators thereof for any cause whatsoever to consolidate their areas into coal units or secure a coal operating contract within the period specified in this section.

SECTION 8. ***Coal Operating Contract.*** Each coal operating contract herein authorized shall, subject to the approval of the President, be executed by the Energy Development Board.

In a coal operating contract, service, technology and financing are furnished by the operator for which it shall be entitled to the stipulated fee and reimbursement of operating expenses. Accordingly, the operator must be technically competent and financially capable as determined by the Energy Development Board to undertake the coal operations as required in the contract.

SECTION 9. ***Obligations of Operator in Coal Operating Contract.*** The operator under a coal operating contract shall undertake, manage and execute the coal operations which shall include:

(a) The examination and investigation of lands supposed to contain coal, by detailed surface geologic mapping, core drilling, trenching, test pitting and other appropriate means, for the purpose of probing the presence of coal deposits and the extent thereof;

(b) Steps necessary to reach the coal deposits so that can be mined, including but not limited to shaft sinking and tunneling; and

(c) The extraction and utilization of coal deposits.

The Government shall oversee the management of operation contemplated in the coal operating contract and in this connection, shall require the operator to:

(a) Provide all the necessary service and technology;

(b) Provide the requisite financing;

(c) Perform the work obligations and program prescribed in the coal operating contract which shall be less than those prescribed in this Decree;

(d) Operate the area on behalf of the Government in accordance with good coal mining practices using modern methods appropriate for the geological conditions of the area to enable maximum economic production of coal, avoiding hazards to life, health and property, avoiding pollution of air, land and waters, and pursuant to an efficient and economic program of operation;

(e) Furnish the Energy Development Board promptly with all information, data and reports which it may require;

(f) Maintain detailed technical records and account of its expenditures;

(g) Maintain detailed technical records and account of safety demarcation of agreement acreage and work areas, non-interference with the rights of the other petroleum, mineral and natural resources operators;

(h) Maintain all necessary equipment in good order and allow access to these as well as to the exploration, development and production sites and operations to inspectors authorized by the Energy Development Board;

(i) Allow representatives authorized by the Energy Development Board full access to their accounts, books and records for tax and other fiscal purposes;

On the other hand, the Energy Development Board shall:

(a) On behalf of the Government, reimburse the operator for all operating expenses not exceeding seventy per cent (70%) of the gross proceeds from production in any year; Provided, that if in any year, the operating expenses exceed seventy per cent (70%) of the gross proceeds from production, then the unrecovered expenses shall be recovered from the operating of succeeding years. Operating expenses means the total expenditures for coal operating incurred by the operator as provided in a coal operating contract;

(b) Pay the operator a fee, the net amount of which shall not exceed forty per cent (40%) of the balance of the gross income after deducting all operating expenses;

(c) Reimburse operating expenses and pay the operator's fee in such form and manner as provided for in the coal operating contract.

SECTION 10. ***Additional Fee.*** All valid and subsisting holders of coal revocable permits, coal leases and other existing rights granted by the government for the exploration and exploitation of coal lands or the duly qualified operators thereof who have organized their area into a coal unit may, subject to conditions imposed by the Energy Development Board, be granted in the coal operating contract, in addition to the face provided in Paragraph 2 of Section 9, a special allowance, the amount of which shall not exceed thirty per cent (30%) of the balance of the gross income after deducting all operating expenses.

Coal operating contracts entered into with Philippine citizens or corporations except those already covered under the

preceding paragraph, shall be granted a special allowance, the amount of which shall not exceed twenty per cent (20%) of the balance of the gross income after deducting all operating expenses; Provided, that coal operating contracts in which Philippine citizens or corporations have a minimum participating interest of fifteen per cent (15%) in the contract area, may subject to reasonable conditions imposed by the Energy Development Board, be granted a special allowance not exceeding ten per cent (10%) of the balance of the gross income after deducting all operating expenses.

For the purpose of this section, a Philippine corporation means a corporation organized under Philippine laws at least sixty per cent (60%) of the capital of which, including the voting shares, is owned and held by citizens of the Philippines.

SECTION 11. ***Minimum Terms and Conditions*****.** In addition to those elsewhere provided in this Decree, every coal operating contract executed in pursuance hereof shall contain the following minimum terms and conditions:

(a) Every operator shall be obliged to spend in direct prosecution of exploration work not less than the amounts provided for in the coal operating contract and these amounts shall not be less than the total obtained by multiplying the number of coal blocks or fraction thereof covered by the contract by One Million Pesos (P1,000,000.00) per block annually; Provided, that if the area or a portion thereof is suitable for open pit mining as determined jointly by the operator and the Energy Development Board, the minimum expenditure requirement herein provided may be reduced up to Two Hundred Thousand Pesos (P200,000.00) per block annually. From the time coal reserves in commercial quantity have been determined jointly by the operator and the Energy Development Board, the operator shall undertake development and production of the contract area within the period agreed upon in the contract and shall be obliged to spend in the development and production of the contract area an amount which shall be determined by negotiation between the operator and the Energy Development Board taking into account factors such as measured reserves, quality of coal, mining method and location and accessibility to market; Provided, further, that if during any contract year the operator shall spend more than the amount of money required to be spent, the excess may be credited against the money required to be spent by the operator during the succeeding years, except excess expenditures for exploration cannot be credited against financial commitment for development and production; Provided, further, that should the operator fail to comply with the work obligations provided for in the coal operating contract, it shall pay to the Government the amount it should have spent but did not in direct prosecution of its work obligations; Provided, finally, that except in case of open pit mining, the operator shall drill at least thirty (30) holes per blocks and a minimum footage of exploratory holes before the end of the exploration period as may be specified in the coal operating contract.

(b) The exploration period under every coal operating contract shall be for two (2) years. If the operator has complied with its exploration work obligations, the exploration period may be extended for another two (2) years. The coal operating contract shall lapse unless coal of commercial quantity is measured during the exploration period or at the end thereof in any area covered by the coal operating contract. If coal of commercial quantity is measured, the coal operating contract shall remain in force for development and production during the

balance of the exploration period and/ or for an additional period ranging from ten (10) to twenty (20) years, thereafter renewable for a series of three (3)-year periods not exceeding twelve (12) years under such terms and conditions as may be agreed upon by the parties.

(c) All materials, equipment, plants and other installations erected or placed on the exploration and/or production area of a movable nature by the operator shall become properties of the Energy Development Board if not removed therefrom within one (1) year after the termination of the coal operating contract.

(d) The operator shall be subject to the provisions of laws of general application relating to labor, health, safety and ecology insofar as they are not in conflict with the provisions otherwise contained in this Decree.

SECTION 12. ***Full Disclosure of Interest in Coal Operating Contract.*** Interest held in the coal operating contract by domestic mining companies and/or the latter's stockholders may be allowed to any extent after full disclosure thereof and approved by the Energy Development Board.

Section 13. ***Arbitration.*** The Energy Development Board may stipulate in a coal operating contract executed under this Decree that disputes in the implementation thereof between the Government

Section 14. ***Performance Guarantee.*** In order to guarantee compliance with the obligations of the operator executed under this Decree, the operator shall post a bond or other guarantee of sufficient amount in favor of the Government and with surety or sureties satisfactory to the Energy Development Board, conditioned upon the faithful performance by the operator of any or all of the obligations under and pursuant to said coal operating contracts.

SECTION 15. ***Transfer and Assignment.*** The rights and obligations under a coal operating contract executed under this Decree shall not be transferred or assigned without the prior approval of the Energy Development Board;

Provided, that such transfer or assignment may be made only to a qualified person possessing the resources and capability to continue the mining operation of the coal operating contract and that the operator has complied with all the obligations of the coal operating contract.

SECTION 16. ***Incentives to Operators.*** The provisions of any law to the contrary notwithstanding, a contract executed under this Decree may provide that the operator shall have the following incentives:

(a) Exemption from all taxes except income tax;

(b) Exemption from payment of tariff duties and compensating tax on importation of machinery and equipment and spare parts and materials required for the coal operations subject to the following conditions:

1. that machinery, equipment, spare parts and materials of comparable price and quality are not manufactured in the Philippines;

2. that the same are directly and actually needed and will be used exclusively by the operator in its operations or in operation for it by a contractor;

3. That they are covered by shipping documents in the name of the operator to whom the shipment will be delivered directly by the customs authorities; and

4. that prior approval of the Energy Development Board was obtained by the operator before the importation of such machinery, equipment, spare parts and materials, which approval shall not be unreasonably withheld; Provided, however, that the operator or its contractor may not sell, transfer, or dispose of the machinery, equipment, spare parts and materials without the prior approval of the Energy Development Board and payment of taxes and duties thereon; Provided, further, that should the operator or its contractor sell, transfer, or dispose of these machinery, equipment, spare parts or materials without the prior approval of the Energy Development Board, it shall pay twice the amount of the taxes and duties thereon; Provided, finally, that the Energy Development Board shall allow and approved the sale, transfer or disposition of the said items without tax if made:

   (a) to another operator under a coal operating contract;

   (b) for reasons of technical obsolescence; or

   (c) for purposes of replacement to improve and/or expand the operation under the coal operating contract.

(c) Accelerated Depreciation. At the option of the taxpayer and in accordance with the procedures established by the Bureau of Internal Revenue, fixed assets owned by the coal units in the performance of its coal operating contract may be:

   1. Depreciated to the extent of not more than twice as fast as normal rate of depreciated or depreciated at normal rate of depreciation if expected life is ten (10) years or less; or

   2. Depreciated over any number of years between five (5) years and expected life if the latter is more than ten (10) years, and the depreciation thereon allowed as a deduction from taxable income; Provided, that the taxpayer notifies the Bureau of Internal Revenue at the beginning of the depreciation period which depreciation rate allowed by this section will be used by it.

(d) Foreign Loans and Contracts. The right to remit at the prevailing exchange rate at the time of remittance of such sum as may be necessary to cover principal and interest of foreign loans and foreign obligations arising from technological assistance contracts relating to the performance of the coal operating contract, subject to Central Bank regulations.

(e) Preference in Grant of Government Loans. Government financial institutions such as the Development Bank of the Philippines, the Philippine National Bank, the Government Service Insurance System, the Social Security System, the Land bank of the Philippines and other government institutions as are now engaged or may hereafter engage in financing on investment operations shall, in accordance with and to the extent allowed by the enabling provisions of their respective charters or applicable laws, accord high priority to applications for financial assistance submitted by operators in the performance of coal operating contracts, whether such financial assistance be in the form of equity participation in preferred, common or preferred convertible shares of stock, or in loans and guarantee, and shall facilitate the processing thereof and the release of the funds therefor. However, financial assistance under this

paragraph shall be extended only to operators which are Philippine Nationals as the term is defined under Republic Act No. 5186, as amended.

(f) Entry upon the sole approval of the Energy Development Board which shall not be unreasonably withheld of alien technical and specialized personnel (including the immediate members of their families) who may exercise their profession only for the operation of the operator as prescribed in its coal operating contract with the government under this Decree; Provided, that if the employment or connection of any such alien with the operator ceases, the applicable laws and regulations on immigration shall apply to him and his immediate family; Provided, further, that Filipinos shall be given preference to positions for which they have adequate training, and; Provided, finally, that the operator shall adopt and implement a training program for Filipinos along technical or specialized lines, which program shall be reported to the Energy Development Board.

SECTION 17. ***Incentives to Coal Users.*** The following incentives shall be granted to enterprises/industries which will convert their existing oil fired plants facilities to make the same adaptable for coal burning:

(a) Tax Exemption on Imported Capital Equipment. Within seven (7) years from the date of approval of the plan for conversion of existing oil fired plants and facilities to make the same adaptable for coal burning, the importation of machinery and equipment, and spare parts shipped with such machinery and equipment necessary to implement their program of conversion shall not be subject to tariff and customs duties and compensating tax; Provided, that said machinery, equipment and spare parts are:

1. Not manufactured in the Philippines in reasonable quantity and quality at reasonable prices;

2. Directly and actually needed and will be used exclusively in the implementation of the conversion of existing plants to coal burning;

3. Covered by shipping documents in the name of the enterprise to whom the shipment will be delivered direct by customs authorities;

4. Prior approval, before importation of such machinery, equipment and spare parts was obtained. If imported machinery, equipment and spare parts are sold, transferred or otherwise disposed of without the required prior approval, the importer shall pay twice the amount of the tax and duty thereon. However, the sale, transfer or disposition of the said items shall be allowed and approved without tax and duty if made to another company for use in:

   (a) Converting its existing plants to coal burning subject to the same conditions and limitations as herein provided;

   (b) For reasons of technical obsolescence; or

   (c) For replacement of equipment to improve and/or expand the operations of the enterprise.

   For replacement of modernization of existing facilities of subject enterprises/industries which will be utilized partly or entirely in the conversion of coal burning, in lieu of an exemption from payment of tariff duties and taxes, it shall be granted deferment in the payment of such taxes and duties for a period

of not exceeding ten (10) years after posting the appropriate bond as may be required by the Secretary of Finance.

(b) Tax Credit on Domestic Capital Equipment. Within seven (7) years from the date of approval of the plan for conversion of existing oil fired plants, and facilities to make the same adaptable for coal burning, a tax credit equivalent to one hundred per cent (100%) of the value of the compensating tax and customs duties that would have been paid on machinery, equipment and spare parts necessary to implement the program of conversion had these items been imported, shall be given to the industry with a program of conversion to coal burning that purchases said machinery, equipment and spare parts from a domestic manufacturer; Provided:

1. That said machinery, equipment and spare parts are directly and actually needed and will be used exclusively in the implementation of the conversion of its existing plants to coal burning;

2. That the prior approval was obtained for the purchase of the machinery, equipment and spare parts. If the machinery, equipment and spare parts are sold, transferred or otherwise disposed of without the required prior government approval, the purchaser shall pay twice the amount of the tax credit given to it. However, the sale, transfer or disposition of the said items shall be allowed and approved without tax if made:

   a) To another company for use in its approved program of conversion to coal burning subject to the same conditions and limitations as herein provided:

   b) For reasons of technical obsolescence; or

   c) For purposes of replacement to improve and/or expand the operation of the enterprise.

(c) Net operating Lose Carryover. A net operating loss incurred in any of the first ten (10) years after the start of the implementation of the coal conversion program may be carried over as a deduction from taxable income for the six (6) years immediately following the year of such loss. The entire amount of the loss shall be carried over to the first of the (6) taxable years following the loss, and any portion of such loss which exceeds the taxable income of such first year shall be deducted in like manner from the taxable income of the next remaining five (5) years. The net operating loss shall be computed in accordance with the provision of the National Internal Revenue Code, any provision of this Decree to the contrary notwithstanding, except that income not taxable either in whole or in part under this or other laws shall be included in the gross income.

(d) Capital Gains Tax Exemption. Exemption from income tax on the proceeds of the gains realized from the sale, disposition or transfer of capital assets which are sold or disposed of as a result of the conversion of facilities to a coal burning plant; Provided, that such sale, disposition or transfer are registered with the Bureau of Internal Revenue; Provided, however, that the gains realized from the subject sale, disposition or transfer of capital assets are invested in new issues of capital stock of an enterprise registered under the Investment Incentives Act, as amended, and other allied incentives laws; Provided, further, that the shares of stock representing the investment are not disposed of, transferred, assigned, or

conveyed for a period of seven (7) years from the date the investment was made; and, Provided, finally, that if such shares of stock are disposed of within the said period of seven (7) years, all taxes due on the gains realized from the original transfer, sale, or disposition of the capital assets shall become immediately due and payable.

(e) Accelerated Depreciation. At the option of the taxpayer and in accordance with the procedure established by the Bureau of Internal Revenue, fixed assets used by the industry in carrying out the program of conversion to coal burning may be:

1. Depreciated to the extent of not more than twice as fast as normal rate of depreciation or depreciated at normal rate of depreciation if expected life is ten (10) years or less; or

2. Depreciated over any number of years between five (5) years and expected life if the latter is more than ten (10) years, and the depreciation thereon allowed as a deduction from taxable income; Provided, that the taxpayer notifies the Bureau of Internal Revenue at the beginning of the depreciation period which depreciation rate allowed by this section will be used by it.

(f) Foreign Loans and Contracts. The right to remit at the prevailing exchange rate at the time of remittance such sum as may be necessary to cover interest and principal of foreign loan and foreign obligations arising from technological assistance contracts relating to the implementation of the program of conversion to coal burning subject to Central Bank regulation.

(g) Preference in Grant of Government Loans. Government financial institutions such as the Development Bank of the Philippines, the Philippine National Bank, the Government Service Insurance System, the Social Security System, the Land Bank of the Philippines and such other government institutions as are now engaged or may hereafter engage in financing of investment operations shall, in accordance with and to the extent allowed by the enabling provisions of their respective charters or applicable laws, accord high priority to application for financial assistance submitted by enterprises/industries requiring funding to implement the program of conversion to coal burning, whether such financial assistance be in the form of equity participation in preferred, common or preferred convertible shares of stock, or in loans and guarantee, and shall facilitate the processing thereof and the release of the funds therefor; However, financial assistance shall be extended only under this paragraph to industry converting to coal burning which is a Philippine National as this term is defined under Republic Act No. 5186, as amended.

The foregoing incentives to enterprises/ industries which will convert their existing oil fired plants and facilities to make the same adaptable for coal burning shall be administered and implemented by the Board of Investments created under Republic Act No. 5186, also known as the Investment Incentives Act, as amended. The Board of Investments shall have the power to process and approved, under such terms and conditions as it may deem necessary, plans for conversion to coal burning and applications for availment of the foregoing incentives. It shall promulgate such rules and regulations as may be necessary to implement the intent and provisions of this section.

SECTION 18. ***Implementing Agency.*** Except as otherwise provided in Section 17 hereof, the Energy Development Board, created pursuant to Presidential Decree No. 910, in addition

to the powers, duties and functions under existing laws, shall be charged with carrying out the provisions of this Decree and shall be vested with the authority to promulgate rules and regulations implementing thereof.

SECTION 19. ***Separability Clause.*** Should any provision of this Decree be held unconstitutional, no other provision hereof shall be effected thereby.

SECTION 20. ***Repealing Clause.*** The provisions of Presidential Decree No. 463, otherwise known as the "Mineral Resources Development Decree of 1974" and other laws insofar as they deal, relate or affect the exploration, exploitation and administration of coal lands are hereby repealed. Furthermore, all laws, decree, executive orders, administrative orders, rules, and regulations, or parts thereof in conflict or inconsistent with any provision of this Decree are hereby repealed, revoked, modified or amended accordingly.

SECTION 21. ***Effectivity.*** This Decree shall take effect immediately upon approval.

Done in the City of Manila, this 28th day of July, in the year of Our Lord, nineteen hundred and seventy-six.

II. IRR OF PRESIDENTIAL DECREE NO. 972

RULES AND REGULATIONS IMPLEMENTING PRESIDENTIAL DECREE NO. 972, OTHERWISE KNOWN AS THE "COAL DEVELOPMENT ACT OF 1976"

Pursuant to the Presidential Decree No. 972, otherwise known and cited as the "Coal Development Act of 1976", the following rules and regulations to implement the intent and provisions of the Act are hereby promulgated:

I. Registration

(a) Coverage and Period. All holders of coal permits, leases, locations, patents, mining grants or concessions, applications and other existing rights granted by the government for the exploration, development and exploitation of coal lands and/or the duly authorized operators thereof shall register their permits, leases, locations, patents, mining grants or concessions, applications and other rights with the Energy Development Board within thirty (30) days from the date hereof.

(b) Requirement of Registration. The registration contemplated in Paragraph A hereof shall require the accomplishment and submission to the Energy Development Board of the attached EDB Form No. 11 (Information Sheet, Attachment "A"). The Information Sheet and all accompanying annexes and exhibits shall be verified (under oath) by the holder of the permit, lease, patent, location, concession or grant and application in cases of an individual or by a responsible officer thereof in cases of partnership, corporations or cooperatives. The Information Sheet shall serve as the basis for the evaluation of the status and work performance of the holders or operators to determine compliance with the requirements of their existing permits, leases, locations, grants, patents, concessions,

applications and other rights under laws, rules and regulations then in force.

(c) Effect of Failure to Register. Failure to comply with the registration required herein shall be deemed to constitute a waiver of rights and shall result in automatic cancellation or termination of holder's or operator's right in any coal permit, lease, location, patent, mining grant or concession, application and other rights.

(d) Place of Filing. The Information Sheet and all accompanying annexes and exhibits shall be filed with the offices of the Energy Development Board at the Philippine National Petroleum Center, Merrit Road, Fort Bonifacio, Rizal or at the Energy Development Board Cebu Office situated at barrio Opao, Mandaue City.

II. Blocking System.

A. Coal Regions. The following coal regions in the Philippines (see attached map, Attachment "b") are hereby established:

1. Cagayan Region
2. Ilocos Region
3. Central Luzon Region
4. Bondoc Peninsula Region
5. Bicol Region
6. Catanduanes Region
7. Samar-Leyte Region
8. Cebu Region
9. Negros Region
10. Panay Region including Semirara Island
11. Mindoro Region
12. Agusan-Davao Region
13. Surigao Region
14. Cotabato Region
15. Zamboanga Regions

Additional coal regions may be established by the Energy Development Board when attendant circumstances justify and warrant it.

B. Guidelines on Use of the Blocking System

1. Each of the above coal regions is divided into meridional blocks or quadrangles of two minutes (2') of latitude and one and one-half minutes (1-1/2') of longtitude, each block containing an area of one thousand (1,000) hectares, more or less. The boundaries of the block must coincide with the defined latitude and longtitude in the Energy Development Board Coal Blocking Maps (Scale 1:50,000) plotted on the Coast and Geodetic Survey maps.

2. This blocking system shall apply to areas being organized and consolidated into a coal unit as well as free areas. No person, partnership or corporation shall be entitled to more than fifteen (15) blocks of coal land in any one coal region.

3. A coal unit shall conform to the blocking system as closely as possible with its final configuration arrived at by both the permitee/leaseholder/applicant and the Energy Development Board but always subject to the final approval of the latter.

4. Any specific problem that may arise which is not presently covered by these guidelines will be considered on a case-to-case basis, e.g. inability to conform to the blocking system due to position of adjoining coal units, etc.

5. The ground survey for locating the coal blocks herein established shall be done by the Energy Development

Board at the expense of the permittee/leaseholder/applicant or by the latter when so authorized by the Energy Development Board. The corners of each block shall be marked by appropriate survey monuments. The survey plans shall be submitted to the Energy Development Board for verification and approval within one (1) year from the effective date of the coal operating contract, a requirement which shall be included as one of the obligations of the operator in coal operating contract.

6. Maps pertinent to the blocking system may be purchased at P50.00 per sheet at the Energy Development Board Office at the Philippine National Petroleum Center, Merritt Road, Fort Bonifacio, Rizal. The Energy Development Board maintains exclusive rights over the printing and sale of these maps and no map or any portion thereof may be reproduced without the permission of the Board.

7. These maps are considered official maps and shall form part of the official application paper that an applicant for a coal operating submits to the Board.

III. Survey of Coal Blocks

(A) Period of Survey. Within one (1) year from the effective date of the coal operating contract, the operator shall conduct the survey of the coal blocks which constitute the coal contract area of the coal operating contract. The survey shall be conducted in accordance with the regulations hereunder provided.

(B) Documents to Accompany Application for a Coal Operating Contract Necessary for Survey of Coal Blocks. The following documents shall be submitted upon filing of the application for a coal operating contract:

1. A notarized survey service contract executed by and between the applicant and a duly licensed geodetic engineer which shall stipulate, among others, the following:

   (a) The names of the contracting parties.

   (b) The coal sought to be surveyed.

   (c) The consideration or contract price and mode of payment of the same.

   (d) The date of the submittal of the survey returns to the Energy Development Board.

2. Affidavit of the duly licensed geodetic engineer representing that he can execute the survey of the coal blocks and submit the returns thereof within one (1) year from the effectivity date of the coal operating contract.

(C) Abandonment. Failure to perform the ground survey for the coal blocks within one (1) year from the effective date of the coal operating contract shall constitute automatic abandonment of the coal block and the land embraced therein shall thereupon be opened to application for another coal operating contract by qualified persons.

(D) Qualified Geodetic Engineers. Coal block surveys shall be executed by geodetic engineers of the Energy Development Board or by any duly

licensed geodetic engineers.

(E) Cost of Survey. If the Ground survey shall be undertaken by geodetic engineers of the Energy Development Board, the applicant shall pay the actual cost of the survey.

(F) Execution of Coal Block Survey. Corners of the coal block shall be defined by monuments placed at intervals of not more than four hundred (400) meters apart. When the boundary lines of the coal block pass across mountains or rolling terrains, the intermediate monuments between corners shall be established or ridges, whenever practicable, in which case, all consecutive corner monuments shall be intervisible. The sizes of corner monument of a coal shall be as follows:

1. Corners (principal corners) that fall on points with exact two minutes and/or one and one-half minutes of latitude and longitude, 20 cm. x 20 cm. concrete monuments shall be set 50 cm. in the ground.

2. Other concerns of the coal block shall by cylindrical concrete monuments of 15 cm. in diameter x 60 cm. long set 50 cm. in the ground.

The corners of the coal block shall be concrete monuments or cement patch on boulder, centered with a hole, spike, pipe or nail and marked with the corresponding corner number and coal block number. The latitude and longitude of the principal corner shall also be indicated on the sides of the concrete monuments when it coincides with the full two minutes and/or one and one-half minutes of latitude and longitude, respectively.

When the coal block undergoing survey adjoins submerged land, a witness corner monument along the boundary leading the shoreline shall be set on the ground to witness the boundary- point-corner of the coal block at the low tide level of the sea or lake. Concrete monuments, galvanized iron pipes, fixed rocks, boulders or stakes and other monuments shall be set to define the corners of the coal block along the shoreline at low tide level.

All computations, plans and maps of coal blocks surveys to be submitted to the Energy Development Board for verification and approval shall be prepared by using the Philippine Plane Coordinate System.

The characteristics of the Philippine Plane Coordinate System as used in the DANR Technical Bulletin No. 26 are as follows:

Spheroid Carke's Spheroid of 1865.

Projection Transverse Mercator in zones of two degrees (2 degrees) net width.

Point of Origin The intersection of the equator and the central meridian of each zone, with a northing of 0.00 meter and an easting of 500,000.00 meters.

Scale factor of the Central Meridian 0.99995 zonification.

NOTE: The overlap of 30 minutes thereof, however is reduced to 5 minutes which are as follows:

Zone No.		
I	117-00 E	16-00 to 118-05 E
II	119-00 E	117-55 to 120-05 E
III	121-00 E	119-55 to 122-05 E
IV	123-00 E	121-55 to 124-05 E
V	125-00 E	123-55 to 126-05 E

The tables in the DANR Technical Bulletin No. 26 and EDB Form No. 12 and EDB Form No. 13 hereto attached as Attachment "C" and "D",

respectively, and part of these Regulations shall be used for the transformation of geographic to plane coordinates, and from plane to geographic coordinates.

In all coal block surveys, the corresponding central meridian of the zone where the coal block is situated shall be used and the amount of convergency correction in seconds of arc from the central meridian to be applied to the observed astronomical azimuth of the line shall be, for all practice purposes, the product of the departure of the point of observation from the central meridian in kilometers and the number of seconds of angular convergency per kilometer of departure corresponding to the latitude of the place of observation which are tabulated as follows:

Latitude in Seconds of Arc per Kilometer	Angular Convergency of Departure
5°	2.83
6°	3.4
7°	3.97
8°	4.55
9°	5.12
10°	5.7
11°	6.29
12°	6.87
13°	7.46
14°	8.06
15°	8.66
16°	9.27
17°	9.88
18°	10.5
19°	11.13
20°	11.76
21°	12.41

The angular convergency correction, expressed in seconds, shall be added to the observed astronomical azimuth for points west and subtracted for points east of the central meridian.

All bearing of lines and coordinates of corners not in accordance with the Philippine Plane Coordinate System as used in the area computations of surveyed coal block that are within 150 m. from the periphery of the coal block undergoing survey shall be transformed to the Philippine Plane Coordinate System.

The zone number and central meridian of the Philippine Plane Coordinate System shall, in all cases, be indicated on the fieldnotes, computations, plans, maps, and reports of the surveys

.

For higher precision of surveys, convergency corrections, scale factors and azimuth correction (T-t) shall be referred from the formula used in the table of DANR Technical Bulletin No. 26, however, for tertiary precision of surveys, the scale factors and the azimuth correction (T-t) may be discarded.

Coal block surveys shall be definitely fixed in position on the earth's surface by monuments of prominent and permanent structure marking corner points of the coal block and by bearings and distances from the points of known geographic or Philippine Plane Coordinate System.

These tie points shall either be as follows:

1. Triangulation stations established by:

    (a) The Bureau of Coast and Geodetic Survey.
    (b) The United States Army Engineer Survey.
    (c) The 29th Engineer Topographic (Base) Battalion.
    (d) The Bureau of Lands.
    (e) The Bureau of Mines.
    (f) Other organizations, the survey of which is of acknowledged standard.

2. Bureau of Lands Location Monuments (BLM) and Bureau of Lands Barrio Monuments (BLBM) established by the Bureau of Lands.

3. Political Boundary Monuments such as Provincial Boundary Monuments (PBM), Municipal Boundary Monuments (MBM) and Barrio Boundary Monuments (BBM): Provided, That they were established by Cadastral Land Surveys, Group Settlement Surveys or Public Land Subdivision Surveys of the Bureau of Lands.

4. Bureau of Mines Reference Points (BMRP) monuments established by the Bureau of Mines.

5. Church cross, church spire, church dome, church tower, historical monument of known geographic or Philippine Plane Coordinate System acknowledged by the Bureau of Coast and Geodetic Survey, Bureau of Lands or Bureau of Mines.

6. Corners of approved coal block surveys with known geographic and/or Philippine Plane Coordinate Systems may be used as starting point of a coal block survey: Provided, however, That at least three (3) or more undisturbed corners of concrete monuments are surveyed for a good common point and the tie is computed from the tie point of the aforesaid approved surveys.

Should any discrepancy of datum plane between or among tie points arise, proper investigation shall be conducted by the authorized geodetic engineer and a report thereon shall be submitted to the Energy Development Board to form part of the survey returns for further investigation and record purposes.

Plans of coal blocks recorded under the Act shall correctly and neatly drawn to scale in drawing inks on the survey plan.

The latitudes and longitudes of the meridional blocks shall be drawn to scale on the plan whenever practicable, in light black inks.

In addition to the symbols used to designate various kinds of surveys, the survey symbol CBS shall be used to designate a coal blocks survey.

The manner of execution of coal land surveys shall be in accordance with these Regulations, as supplemented by the Manual of Regulations for Mineral Land Surveys in the Philippines promulgated on June 22, 1965 and the Philippine Land Surveyors Manual (Technical Bulletin No. 22, Bureau of Lands, July 1, 1955), as far as the provisions thereof are not inconsistent with the Decree.

(G) Submittal and Verification of Survey Returns. Survey returns coal block shall be submitted to the Energy Development Board within one (1) year from effective date of the coal operating contract and shall consist of the following:

1. Field notes completely filled in, paged and sealed (G.E.) and fieldnotes cover on EDB Form No. 14 hereto attached as Attachment "E", and made part of these regulations, duly accomplished, signed and sealed by the geodetic engineer and notary public.

2. Azimuth computations from astronomical observations, traverse computations, area computations, elevation and topographic survey computations and other reference computations all in original and in duplicate properly accomplished and signed by the computer and the geodetic engineer.

   Computerized (EDP) computations, however, may be submitted in place of the duplicate computations.

3. Tracing cloth plan/s duly accomplished with the corresponding working sheet thereof.

4. Descriptive and field investigation report on the coal block in quintuplicate duly signed by the geodetic engineer and authorized assistant, if any, and duly notarized.

5. A consolidated plan at scale at 1:4,000 showing the relative positions of the surveyed coal blocks and other coal blocks with existing rights at the time of the survey, if any.

6. Other documents pertinent to the survey of coal blocks.

Survey returns without items (1) to (6) above, shall not be accepted for verification and approval purposes.

Concerns and/or location monuments of approved surveys of coal blocks inspite of the nullity, cancellation, rejection or abandonment of the coal operating contract over the surveyed area, shall be preserved as reference mark and the geographic position thereof shall be kept for use in future coal block surveys, unless otherwise said survey is found to be erroneous by later approved coal block surveys.

Surveys of subsisting coal blocks rights, permits and leases which are to be erroneous may be ordered by the Energy Development Board to be corrected motu proprio, when justified by existing circumstances.

IV. Procedure of Filing an Application for Negotiated Coal Operating Contract under Presidential Decree No. 972.

In addition to the documents required to be submitted in the preceding section, the following documents shall accompany all applications for a coal operating contract:

(a) Information Sheet for Coal Operators (EDB Form No. 11).

(b) Proposed Coal Operating Contract Patterned after the Model Contract (EDB Form No. 15).

(c) A Comparative Analysis in tabulated form of items in the Coal Operating Contract proposal which deviate from the Model Contract. Reasons for the proposed changes should likewise be presented.

(d) In cases of a corporation, a Certificate of Authority from the Board of Directors of applicant Operator authorizing a designated representatives/representative to negotiate the Coal Operating Contract. The certification must be executed under oath by the Corporate Secretary and if executed abroad, must be properly authenticated. In cases of partnership or other forms of association, a duly authorized representative/s negotiates the Coal Operating Contract by the partners or members thereof.

(e) Copies of all technical reports or works done on the proposed coal contract areas, whenever available.

The applicant shall pay a processing fee of P1.00 per hectare but in no case less than P1,000.00 for the proposed coal contract area. Check should be made payable to the Energy Development Board. No negotiations can commence until the above requirements have been fully complied with.

V. Publication and Effectivity

These rules and regulations shall take effect immediately. Copies thereof shall be published in newspapers of general circulations in the Philippines.

Done in Makati, Metro Manila, on August 27, 1976.

CASE:

Republic of the Philippines
SUPREME COURT
Manila
SECOND DIVISION

G.R. No. 88550 April 18, 1990
INDUSTRIAL ENTERPRISES, INC., petitioner,

vs.

THE HON. COURT OF APPEALS, MARINDUQUE MINING & INDUSTRIAL CORPORATION, THE HON. GERONIMO VELASCO in his capacity as Minister of Energy and PHILIPPINE NATIONAL BANK, respondents.

Manuel M. Antonio and Dante Cortez for petitioner.
Pelaez, Adriano & Gregorio for respondent MMIC.
The Chief Legal Counsel for respondent PNB.

MELENCIO-HERRERA, J.:p

This petition seeks the review and reversal of the Decision of respondent Court of Appeals in CA-G.R. CV No. 12660, 1 which ruled adversely against petitioner herein.

Petitioner Industrial Enterprises Inc. (IEI) was granted a coal operating contract by the Government through the Bureau of Energy Development (BED) for the exploration of two coal blocks in Eastern Samar. Subsequently, IEI also applied with the then Ministry of Energy for another coal operating contract for the exploration of three additional coal blocks which, together with the original two blocks, comprised the so-called "Giporlos Area."

IEI was later on advised that in line with the objective of rationalizing the country's over-all coal supply-demand balance . . . the logical coal operator in the area should be the Marinduque Mining and Industrial Corporation (MMIC), which was already developing the coal deposit in another area (Bagacay Area) and that the Bagacay and Giporlos Areas should be awarded to MMIC (Rollo, p. 37). Thus, IEI and MMIC executed a Memorandum of Agreement whereby IEI assigned and transferred to MMIC all its rights and interests in the two coal blocks which are the subject of IEI's coal operating contract.

Subsequently, however, IEI filed an action for rescission of the Memorandum of Agreement with damages against MMIC and the then Minister of Energy Geronimo Velasco before the Regional Trial Court of Makati, Branch 150, 2 alleging that MMIC took possession of the subject coal blocks even before the Memorandum of Agreement was finalized and approved by the BED; that MMIC discontinued work thereon; that MMIC failed to apply for a coal operating contract for the adjacent coal blocks; and that MMIC failed and refused to pay the reimbursements agreed upon and to assume IEI's loan obligation as provided in the Memorandum of Agreement (Rollo, p. 38). IEI also prayed that the Energy Minister be ordered to approve the return of the coal operating contract from MMIC to petitioner, with a written confirmation that said contract is valid and effective, and, in due course, to convert said contract from an exploration agreement to a development/production or exploitation contract in IEI's favor.

Respondent, Philippine National Bank (PNB), was later impleaded as co-defendant in an Amended Complaint when the latter with the Development Bank of the Philippines effected extra-judicial foreclosures on certain mortgages, particularly the Mortgage Trust Agreement, dated 13 July 1981, constituted in its favor by MMIC after the latter defaulted in its obligation totaling around P22 million as of 15 July 1984. The Court of Appeals eventually dismissed the case against the PNB (Resolution, 21 September 1989).

Strangely enough, Mr. Jesus S. Cabarrus is the President of both IEI and MMIC.

In a summary judgment, the Trial Court ordered the rescission of the Memorandum of Agreement, declared the continued efficacy of the coal operating contract in favor of IEI; ordered the reversion of the two coal blocks covered by the coal operating contract; ordered BED to issue its written affirmation of the coal operating contract and to expeditiously cause the conversion thereof from exploration to development in favor of IEI; directed BED to give due course to IEI's application for a coal operating contract; directed BED to give due course to IEI's application for three more coal blocks; and ordered the payment of damages and rehabilitation expenses (Rollo, pp. 9-10).

In reversing the Trial Court, the Court of Appeals held that the rendition of the summary judgment was not proper since there were genuine issues in controversy between the parties, and more importantly, that the Trial Court had no jurisdiction over the action considering that, under Presidential Decree No. 1206, it is the BED that has the power to decide controversies relative to the exploration, exploitation and development of coal blocks (Rollo, pp. 43-44).

Hence, this petition, to which we resolved to give due course and to decide.

Incidentally, the records disclose that during the pendency of the appeal before the Appellate Court, the suit against the then Minister of Energy was dismissed and that, in the meantime, IEI had applied with the BED for the development of certain coal blocks.

The decisive issue in this case is whether or not the civil court has jurisdiction to hear and decide the suit for rescission of the Memorandum of Agreement concerning a coal operating contract over coal blocks. A corollary question is whether or not respondent Court of Appeals erred in holding that it is the Bureau of Energy Development (BED) which has jurisdiction over said action and not the civil court.

While the action filed by IEI sought the rescission of what appears to be an ordinary civil contract cognizable by a civil court, the fact is that the Memorandum of Agreement sought to be rescinded is derived from a coal-operating contract and is inextricably tied up with the right to develop coal-bearing lands and the determination of whether or not the reversion of the coal operating contract over the subject coal blocks to IEI would be in line with the integrated national program for coal-development and with the objective of rationalizing the country's over-all coal-supply-demand balance, IEI's cause of action was not merely the rescission of a contract but the reversion or return to it of the operation of the coal blocks. Thus it was that in its Decision ordering the rescission of the Agreement, the Trial Court, inter alia, declared the continued efficacy of the coal-operating contract in IEI's favor and directed the BED to give due course to IEI's application for three (3) IEI more coal blocks. These are matters properly falling within the domain of the BED.

For the BED, as the successor to the Energy Development Board (abolished by Sec. 11, P.D. No. 1206, dated 6 October 1977) is tasked with the function of establishing a comprehensive and integrated national program for the exploration, exploitation, and development and extraction of fossil fuels, such as the country's coal resources; adopting a coal development program; regulating all activities relative thereto; and undertaking by itself or through service contracts such exploitation and development, all in the interest of an effective and coordinated development of extracted resources.

Thus, the pertinent sections of P.D. No. 1206 provide:

> Sec. 6. Bureau of Energy Development. There is created in the Department a Bureau of Energy Development, hereinafter referred to in this Section as the Bureau, which

shall have the following powers and functions, among others:

a. Administer a national program for the encouragement, guidance, and whenever necessary, regulation of such business activity relative to the exploration, exploitation, development, and extraction of fossil fuels such as petroleum, coal, . . .

The decisions, orders, resolutions or actions of the Bureau may be appealed to the Secretary whose decisions are final and executory unless appealed to the President. (Emphasis supplied.)

That law further provides that the powers and functions of the defunct Energy Development Board relative to the implementation of P.D. No. 972 on coal exploration and development have been transferred to the BED, provided that coal operating contracts including the transfer or assignment of interest in said contracts, shall require the approval of the Secretary (Minister) of Energy (Sec. 12, P.D. No. 1206).

Sec. 12. . . . the powers and functions transferred to the Bureau of Energy Development are:

xxx xxx xxx

ii. The following powers and functions of the Energy Development Board under PD No. 910 . . .

(1) Undertake by itself or through other arrangements, such as service contracts, the active exploration, exploitation, development, and extraction of energy resources . . .

(2) Regulate all activities relative to the exploration, exploitation, development, and extraction of fossil and nuclear fuels . . .

(P.D. No. 1206) (Emphasis supplied.)

P.D. No. 972 also provides:

Sec. 8. Each coal operating contract herein authorized shall . . . be executed by the Energy Development Board.

Considering the foregoing statutory provisions, the jurisdiction of the BED, in the first instance, to pass upon any question involving the Memorandum of Agreement between IEI and MMIC, revolving as its does around a coal operating contract, should be sustained.

In recent years, it has been the jurisprudential trend to apply the doctrine of primary jurisdiction in many cases involving matters that demand the special competence of administrative agencies. It may occur that the Court has jurisdiction to take cognizance of a particular case, which means that the matter involved is also judicial in character. However, if the case is such that its determination requires the expertise, specialized skills and knowledge of the proper administrative bodies because technical matters or intricate questions of facts are involved, then relief must first be obtained in an administrative proceeding before a remedy will be supplied by the courts even though the matter is within the proper jurisdiction of a court. This is the doctrine of primary jurisdiction. It applies "where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body, in such case the judicial process is suspended pending referral of such issues to the administrative body for its view" (United States v. Western Pacific Railroad Co., 352

U.S. 59, Emphasis supplied).

Clearly, the doctrine of primary jurisdiction finds application in this case since the question of what coal areas should be exploited and developed and which entity should be granted coal operating contracts over said areas involves a technical determination by the BED as the administrative agency in possession of the specialized expertise to act on the matter. The Trial Court does not have the competence to decide matters concerning activities relative to the exploration, exploitation, development and extraction of mineral resources like coal. These issues preclude an initial judicial determination. It behooves the courts to stand aside even when apparently they have statutory power to proceed in recognition of the primary jurisdiction of an administrative agency.

One thrust of the multiplication of administrative agencies is that the interpretation of contracts and the determination of private rights thereunder is no longer a uniquely judicial function, exercisable only by our regular courts (Antipolo Realty Corp. vs. National Housing Authority, 153 SCRA 399, at 407).

The application of the doctrine of primary jurisdiction, however, does not call for the dismissal of the case below. It need only be suspended until after the matters within the competence of the BED are threshed out and determined. Thereby, the principal purpose behind the doctrine of primary jurisdiction is salutarily served.

Uniformity and consistency in the regulation of business entrusted to an administrative agency are secured, and the limited function of review by the judiciary are more rationally exercised, by preliminary resort, for ascertaining and interpreting the circumstances underlying legal issues, to agencies that are better equipped than courts by specialization, by insight gained through experience, and by more flexible procedure (Far East Conference v. United States, 342 U.S. 570).

With the foregoing conclusion arrived at, the question as to the propriety of the summary judgment rendered by the Trial Court becomes unnecessary to resolve.

WHEREFORE, the Court Resolved to DENY the petition. No costs.

SO ORDERED.

Paras, Padilla, Sarmiento and Regalado, JJ., concur.

III. EDB CIRCULAR NO. 13

TO: ALL APPLICANTS FOR COAL OPERATING CONTRACT UNDER THE "COAL DEVELOPMENT ACT OF 1976"

In line with the declared policy of the government to accelerate the exploration, development and exploitation of indigenous coal resources, attention is being focused on the development and promotion of the necessary technical and financial capability to undertake a meaningful work program provided under a coal operating contract. The guidelines herein enumerated were evolved after a series of working dialogue with the members of the Coal Miners Association of the Philippines and relate to the financial and technical capabilities of applicants for a coal operating contract.

The approved guidelines are as follows:

a) Financial Qualification

An applicant to be financially qualified to apply for a coal operating contract must have a minimum working capital of P1MM and a current ratio (current assets over current liabilities) of 1.5:1. "Working Capital" in the concept of these rules refers to the applicant's net current assets (current assets less current liabilities) consisting primarily of cash, temporary investments (marketable securities) short-term receivables, deposits and mining equipment.

It is understood that the above-stated minimum financial position should merely support the work program for the first exploration year of the coal operating contract. Therefore, the prospective operator should, in addition, be able to demonstrate its capability to raise additional working capital to fund the succeeding work program provided in the coal operating contract. For this purpose, applications for coal operating contracts shall be accompanied by a Statement of Sources and Uses of Funds covering the period of the contract.

b) Technical Qualifications

In order to have the necessary technical Personnel and supportive services to effectively carry out the coal exploration, at least one full-time geologist and one contracted geodetic engineer shall be in the employ of the applicant at the time of the filing of the application for a coal operating contract, provided, however, that in the event of the difficulty and unavailability of employing a full time geologist when satisfactory demonstrated to the Board, the applicant can employ a licensed mining engineer with at least two (2) years coal exploration experience. It is understood that this proviso can be availed only by existing permittees, leaseholders and holders of rights for the exploration and exploitation of coal lands or their duly authorized operators. In addition, the applicant must undertake to have complete coverage of services and technical expertise required during actual coal operations. In this connection, the Board should be informed of the company's consulting engineers who should not work for more than six (6) coal companies and the extent of the work being undertaken.

Coal operators are enjoined to observe strictly the guidelines of Republic Act No. 4274 entitled "An Act to regulate the practice of Mining Engineering, to Provide tor Licensing and Registration of Personnel of Mines and Quarries and for Other Purposes."

As a minimum requirement, the applicant must own or have contracted one drill rig for the exclusive use of the operation contemplated in the coa1 operating contract. It is understood that all supportive equipment and materia1a necessary for the efficient coal operation 5hall be made available by the applicant during the entire period of the contract.

Your strict compliance with the provisions of this Circular is hereby enjoined.

August 31, 1976

(Sgd.) GERONIMO VELASCO
Chairman

IV. PRESIDENTIAL DECREE NO. 1174

AMENDING PRESIDENTIAL DECREE NUMBERED NINE HUNDRED SEVENTY TWO, OTHERWISE KNOWN AS THE "COAL DEVELOPMENT ACT OF 1976"

WHEREAS, the coal development program envisioned in Presidential Decree No. 972, otherwise known as the "Coal Development Act of 1976" encourages the participation of the private sector with adequate and sufficient financial, technical and managerial resources to undertake a work program to effectively explore, develop and exploit indigenous coal resources calculated yield maximum benefit to the Filipino people and revenues to the Philippine Government and assure just and fair returns to the participating private enterprises;

WHEREAS, in line with the policy of the Government to encourage and accelerate exploration and development of indigenous resources and in the light of current conditions in the coal industry, it is imperative that Presidential Decree No. 972 be amended granting additional incentives to coal operators participating in the coal development program;

WHEREAS, in order that coal operations should not be unnecessarily hampered and snagged by the difficulties and delays in securing surface rights under existing laws and regulations for the entry into, access to or occupation of private lands, it is necessary to provide a just and equitable system of rights acquisition and use by coal operators which would also be given incentives and protection to private landowners and occupants;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the authority vested in me by the Constitution of the Philippines, do hereby decree and declare as part of the law of the land the following:

SECTION 1. Section Seven (e) of Presidential Decree No. 972 is hereby amended to read as follows:

> **"SEC. 7.** ***Existing Permittees/ Leaseholders***
>
> "(e) In order to give holders of valid and subsisting coal revocable permits, coal leases and other existing rights granted by the government for the exploration and exploitation of coal lands or the operators thereof duly approved by the appropriate government agency, sufficient time to upgrade their financial and technical capabilities to develop a viable work program to be embodied in a coal operating

contract, the deadline for entering and concluding a duly executed coal operating contract is extended from July 27, 1977 to January 27, 1978: *Provided*, That the extension shall apply only to those who have complied with the requirements of unitization: *Provided, further* That those who have unitized may be granted by the Board during the extension period special operating permits in order not to disrupt existing coal operations: Provided, finally, That no further extension shall be allowed after the extension granted in this decree, and coal permits, leases and other rights not converted to coal operating contract for any cause by January 27, 1978 shall be deemed automatically canceled and the area thereby shall be open for coal operating contract in accordance with Section 6 thereof."

SECTION 2. Section Nine, Third Paragraph, Sub-Paragraph of the same Decree is hereby amended to read as follows:

"SEC. 9. ***Obligations of Operator in a Coal Operating Contract. –***

xxx xxx xxx

"(a) On behalf of the Government, reimburse the operator for all operating expenses not exceeding ninety percent (90%) of the gross proceeds from production in any year: *Provided*, That if in any year, the operating expenses exceed ninety percent (90%) of the gross proceeds from production, then the unrecovered expenses shall be recovered from the operation of succeeding years. Operating expenses mean the total expenditures for coal operation incurred by the operator as provided in a coal operating contract;"

SECTION 3. Section Ten of the same Decree is hereby amended to read as follows:

"SEC. 10. ***Additional Fee.*** – All valid and subsisting holders of coal revocable permits, coal leases and other existing rights granted by the government for the exploration and exploitation of coal lands or the duly qualified operators thereof who have organized their area into a coal unit, subject to conditions imposed by the Energy Development Board, be granted in the coal operating contract, in addition to the operator's fee provided in Section 9, a special allowance, the amount of which shall not exceed forty percent (40%) of the balance of the gross income after deducting all operating expenses.

"Coal operating contracts entered into with Philippine citizens or corporations except those already covered under the preceding paragraph, shall be granted a special allowance the amount of which shall not exceed thirty per cent (30%) of the balance of the gross income after deducting all operating expenses: *Provided,* That coal operating contracts in which Philippine citizens or corporations have a minimum participating interest of forty percent (40%) in the contract area may, subject to reasonable conditions imposed by the Energy Development Board, be granted a special allowance not exceeding twenty percent (20%) of the balance of the gross income after deducting all operating expenses.

"For the purpose of this section, a Philippine corporation means a corporation organized under Philippine laws at least sixty percent (60%) of the capital of which, including the voting shares, is

owned and held by citizens of the Philippines."

SECTION 4. Section Eleven (a) of the same Decree is hereby amended to read as follows:

"SEC. 11. ***Minimum Terms and Conditions.*** – In addition to those elsewhere provided in this Decree, every coal operating contract executed in pursuance hereof shall contain the following minimum terms and conditions:

"(a) Every operator shall be obliged to spend in direct prosecution of exploration work not less than the amounts provided for in the coal operating contract and these amounts shall not be less than the total obtained by multiplying the number of coal blocks covered by the contract by One Million Pesos (P 1,000,000.00) per block annually: *Provided,* That if the area or a portion thereof is suitable for open pit mining as determined jointly by the operator and the Energy Development Board, the minimum expenditure requirement herein provided may be reduced up to Two Hundred Thousand Pesos (P 200,000.00) per block annually. From the time coal reserves in commercial quantity have been determined jointly by the operator and the Energy Development Board, the operator shall undertake the development and production of the contract area within the period agreed upon in the contract and shall be obliged to spend in the development and production of the contract area an amount which shall be determined by negotiation between the operator and the Energy Development Board taking into account factors such as measured reserves, quality of coal, mining method and location and accessibility to market: *Provided, further,* That with the approval of the Board, the operator may concentrate all the annual work obligations on any one or more of several contiguous or geologically related blocks if it is shown that such concentration of work will be most advantageous and beneficial in the development and operation of the coal operating contract are: *Provided, further,* That if during any contract year, the operator shall spend more than the amount of money required to be spent, the excess may be credited against the money required to be spent by the operator during the succeeding years; *Provided, furthermore:* That should the operator fail to comply with the work obligations provided for in the coal operating contract, it shall pay to the Government the amount it should have spent but did not in direct prosecution of its work obligations: *Provided, finally,* That except in case of open pit mining, the operator shall drill at least thirty (30) holes per block and a minimum footage of exploratory holes before the end of the exploration period as may be specified in the coal operating contract. The Board may, however, taking into account the geological and technical factors involved; allow a lesser number of drill holes and footage giving due credit to other accepted exploration methods and practices."

SECTION 5. The same Decree is hereby further amended by adding the following sections immediately following Section Sixteen thereof.

"SEC. 16-A. ***Entry and Use of Private Lands.*** **–**

"(a) Coal exploration, development and exploitation is hereby declared of public use and benefit and for which the power of eminent domain may be invoked and exercised for the entry, acquisition and use of private lands: *Provided,* That any person or entity acquiring any option or right on such land after the execution of a coal operating contract covering such land not be entitled to the compensation herein provided.

"(b) The coal operator shall not be prevented from entry into private lands for the purpose of exploring, developing and exploiting coal contract area, upon prior written notification sent to, and duly received by, the surface owner of the land and occupant thereof. However, if the surface owner of the land and occupant thereof refuses to allow the coal operator's entry into the land despite his receipt of the written notification, or refuses to receive said written notification, or cannot be found, then the coal operator shall notify the Energy Development Board of such fact, and shall be attached thereto a copy of the written notification.

"(c) In all cases mentioned in the preceding paragraph, the coal operator shall post a bond with the Energy Development Board in the amount to be fixed by said Energy Development Board based on type of the land and the value of the trees, plants and other existing improvements thereon which shall be the basis of compensation of the surface owner of the land and/or occupant thereof in the appropriated cases mentioned in the next succeeding paragraph.

"(d) In the absence of an agreement between the coal operator and the surface owner of the land and/or occupant, the surface owner of the land and occupant thereof shall be entitled to the following compensation;

"(1) *Titled Lands.* – For the conduct of exploration, development and exploitation within lands covered by Torrens Title or other government-recognized titles, the surface owner shall receive as compensation from the coal operator at least One Peso (P 1.00) for every ton of coal extracted on his hand. However, in the event that the surface owner suffers damage to his plants, trees, crops and other improvements on his land as a direct result of the coal operation conducted by the coal operator, the former shall be entitled to compensation for the value thereof that are damaged or destroyed.

"(2) *Untitled Lands or land with Incomplete Titles*. – For the conduct of exploration, development and exploitation of coal within untitled lands or lands with incomplete titles, the surface owner shall receive as compensation from the coal operator at least Fifty Centavos (P 0.50) for every ton of coal extracted on his land. However, in the event that the surface landowner suffers damage to his plants, trees, crops and other improvements on his land as a direct result of operation conducted by the coal operator, the former shall be entitled to compensation for the value thereof that are damaged or destroyed.

"Lands with incomplete titles referred to herein shall mean those possessory rights which can ripen into rights of ownership registerable under the Torrens System.

"(3) *Government Reserved Lands.* – Government reserved lands for purposes other than mining shall be open to a coal operating contract by filing an application therefore with the Energy Development Board, subject always to compliance with pertinent laws, rules and regulations covering such reserved lands; *Provided,* That the compensation due the surface owner shall accrue equally between the supervising agency and of the Energy Development Board, to be disbursed for conservation measures."

"SEC. 16-B. *Timber Rights.* – Any provision of law to the contrary notwithstanding, the operator may cut trees or timber within his coal contract area subject to applicable law and to the rules and regulations of the Bureau of Forest Development as may be necessary for the exploration, development and exploitation of his coal contract area: *Provided,* That if the lands covered in the coal contract area are already covered by existing timber concessions, the amount of timber needed and manner of cutting and removal thereof shall be subject to the same rules and agreed upon by the operator and the timber concessionaire: *Provided, further,* That, in case no agreement can be reached between the operator and the timber concessionaire, the matter shall be submitted to the Energy Development Board whose decision shall be final. The operator granted a timber right shall be obligated to perform reforestation works within the coal contract area in accordance with the regulations of the Bureau of Forest Development."

"SEC. 16-C. *Water Rights.* – A coal operator shall also enjoy water rights necessary for the exploration, development and exploitation of his coal contract area upon application filed with the Director of the Bureau of Public Works in accordance with the existing laws of water and the rules and regulations promulgated thereunder: *Provided,* That water rights already granted or legally existing shall not thereby be impaired: *Provided, further,* That the government reserves the right to regulate water rights and the reasonable and equitable distribution of water supply so as to prevent the monopoly of the use thereof."

"SEC. 16-D. *Applicability of Certain Provisions of Presidential Decree No. 463*. – The provisions of Chapter XIV (Penal Provisions) of Presidential Decree No. 463, otherwise known as the "Mineral Resources Development Decree of 1974" shall be applicable to the coal operations: *Provided,* That any reference therein to the Decree and to the Bureau Director of Mines shall mean Presidential Decree No. 972 and the Energy Development Board, respectively."

SECTION 6. ***Separability Clause.*** – Should any provisions of this Decree be held unconstitutional, no other provision hereof shall be effected thereby.

SECTION 7. ***Repealing Clause.*** – All laws, decrees, executive orders, administrative orders, rules and regulations, or parts thereof in conflict or inconsistent with any provision of this Decree are hereby repealed, revoked, modified or amended accordingly.

SECTION 8. ***Effectivity.*** – This Decree shall take effect immediately.

27 July 1977
Manila

V. COAL CIRCULARS AND OTHER ISSUANCES

A. BED CIRCULAR NO. 78-08-05

TO: ALL HOLDERS OF COAL OPERATING CONTRACTS UNDER "THE COAL DEVELOPMENT ACT OF 1976", AS AMENDED

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1. On November 3, 1976, the defunct Energy Development Board issued Circular No. 16 requiring coal operating contractors to accomplish EDB (BED) Form No. 17, "Monthly Coal Inventory/Production/ Sales Report" and to submit the same within ten (10) days after the end of each month.

   Subsequently, on February 15, 1978, the Bureau of Energy Development issued Circular No. 78-02-01 requiring said contractors to submit within ten (10) days after the end of each month starting February, 1978, of monthly Progress Report covering pertinent activities relating to coal operations. Attached to said Circular is a Monthly Report form to be accomplished by a responsible officer of the coal operator and that information be furnished on items particularly applicable to the coal operation, as per work program attached to the contract.

   We have noted that the "Monthly Coal Inventory/Production/Sales Report" required under the above-mentioned Circular No. 16, Series of 1976 had not been regularly complied with for one reason or another. We hereby make it clear that said Circular No. 16, Series of 1976 is still applicable and effective. Strict compliance of said Circular is hereby enjoined and the required report should be submitted in addition to the monthly progress report required under the aforesaid Circular No. 78-02-01.

2. This is to advice all concerned that Circular No. 1, Series of 1978, re-safety rules and regulations in coal mining operation is hereby renumbered and henceforth, should be referred to as Circular No. 78-01-03, conformably with the standard pattern of assigning numbers to Bureau Circulars to facilitate storage and retrieval whenever necessary.

Please be guided accordingly.

August 3, 1978

W. R. DELA PAZ
Acting Director

B. BED CIRCULAR NO. 79-05-04

RULES AND REGULATIONS GOVERNING COMPLAINTS INVOLVING ILLEGAL COAL OPERATIONS

Pursuant to Section 18 of Presidential Decree No. 972, as amended, and Section 6(g) of Presidential Decree No. 1206, as amended, the following rules and regulations governing complaints involving illegal coal operations are hereby promulgated and immediately effective, for the guidance and compliance of all concerned.

RULE I
General Provisions

SECTION 1. ***Scope and Coverage***

The provisions of these rules and regulations shall apply to all complaints involving illegal coal operations.

Coal operations shall include, a) the examination and investigation of lands, supposed to contain coal by detailed surface geologic mapping, core drilling, trenching, test pitting and other appropriate means, for the purpose of probing the presence of coal deposits and the extent thereof; b) steps necessary to reach coal deposit so that it can be mined, including but not limited to shaft sinking and tunnelling; and c) the extraction and utilization of coal.

Illegal coal operations shall include the performance by any person of any or all activity(ies) mentioned in the foregoing definition of coal operation, which is not pursuant to a valid and subsisting coal operating contract awarded by the Bureau of Energy Development, Ministry of Energy, in accordance with the provisions of Presidential Decree No. 972, as amended otherwise known as the Coal Development Act of 1976.

SECTION 2. ***Definition of Terms***

a) "Ministry" shall mean the Ministry of Energy

b) "Bureau" shall mean the Bureau of Energy Development

c) "Minister" shall refer to the Minister of Energy

d) "Director" shall refer to the Director of the Bureau of Energy Development

e) "Contract" refers to a coal operating contract

f) "Contractor" means the holder of coal operating contract awarded by the Bureau

g) "Person" shall mean any being, natural or juridical, that engages in coal operations

RULE II
Filing of Complaint

SECTION 1. No Complaint invoking illegal coal operation shall be accepted or entertained by the Bureau unless there is filed with the Bureau a verified complaint accompanied by a personal proof of service upon the respondent.

SECTION 2. Any modification, supplement, or amendment to such complaint may be made as a matter of right before hearing but in no case less than three (3) days before such hearing, and thereafter, only with the approval of the Bureau.

SECTION 3. Defect of Form. No defect in the form of any complaint allowed to be filed under these Rules will prejudiced the complainant; however, the Bureau may direct

amendments or require the submission of additional affidavits or other supporting documents as it may deem necessary.

RULE III
Substantial Requirements of Complaint

SECTION 1. No complaint involving illegal coal operations shall be entertained by the Bureau unless it contains the names and addresses of the complainant and the respondent, a detailed statement of the facts relied upon, discussion of the issues and arguments, together with all supporting plans, documents, data, documentary evidence and affidavits of all witnesses.

RULE IV
Filing of Answer

SECTION 1. If the complaint contains a cause of action and is sufficient in form and Substance, the Bureau shall give due course thereto by requiring the respondents to file an answer with the Bureau, copy furnished the complaint, within five (5) days from receipt of the Order to Answer.

SECTION 2. The answer shall contain a detained statement of the facts relied upon by the respondents, an exhaustive rebuttal or refutation of the issues and arguments raised in the complaint and all affirmative defenses that he may like to raise, and may be accompanied by all supporting documentary evidence and affidavits of all witnesses.

SECTION 3. Failure to file an answer shall not prevent the respondent from refuting all the allegations in the complaint but shall, however, bar him from raising my any defense or counter-claim against the complainant.

RULE V
Hearing

SECTION 1. Upon receipt of the Answer, The Bureau shall fix a date of hearing and all the parties shall be notified;

SECTION 2. The hearing shall be conducted and completed as much as possible in one setting or in a number of sessions which in case shall last more than five (5) days and shall be presided by an investigator designated by the Director which shall submit his report and recommendation to the Director within five (5) days from the termination of the investigation.

SECTION 3. The Director may issue subpoena and summons witnesses to appear in any hearing before the Bureau.

RULE VI
Decision

SECTION 1. The Director shall decide the case within five (5) days from the submission of the report and recommendation of the investigator.

RULE VII
Execution, Finality and Appeal

SECTION 1. In all cases, the decision of the Director shall be immediately executor.

SECTION 2. The aggrieved party may appeal to the Minister within five (5) days from receipt of the decision. The Minister shall decide the appeal on the basis of the records transmitted by the Director within five (5) days from receipt of the appeal.

SECTION 3. The decision of the Minister in appealed cases is final and immediately executory.

RULE VIII
Penalties

SECTION 1. The Bureau shall impose and collect a fine not exceeding ONE THOUSAND PESOS (P1, 000.00) for every day of illegal coal operation.

In case illegal coal operation is committed by a corporation or association, the manager

or the person who has charge of the management of the corporation or association and the officers or directors thereof who have ordered or authorized the commission of an illegal coal operation shall be solidarily liable for the payment of the fine.

The fine imposed shall be paid to the Bureau.

RULE IX
Writ of Execution/Injunction

SECTION 1. The Bureau may issue corresponding writs of execution directing the City Sheriff, Provincial Sheriff or other government peace officer, whom it may appoint, to enforce the fine or the order of closure, suspension or stoppage of illegal coal operations.

SECTION 2. Upon good cause shown and during the pendency of the complaint, the Bureau may issue an injunction ordering the respondent to stop the alleged illegal coal operations.

RULE X
General Provisions

SECTION 1. Nothing from the foregoing shall prevent the Bureau, on its own, to institute complaints and decide cases of illegal coal operations against any person.

SECTION 2. The remedy provided herein shall not be a bar to or affect any other remedy under existing laws, but shall be cumulative and additional to such remedies.

Done at Makati, Metro Manila, this 7th day of May, 1979.

W.R. DE LA PAZ
Acting Director

APPROVED:
GERONIMO Z. VELASCO
Minister

C. BED CIRCULAR NO. 80-08-07

TO: ALL APPLICANTS FOR COAL OPERATING CONTRACT UNDER PRESIDENTIAL DECREE NO. 972, AS AMENDED

We reiterate and enjoin strict compliance on the rules and Regulations governing the procedures in the filing of an application for a negotiated coal operating contract under Presidential Decree No. 972, which was amended by Presidential Decree No. 1174 embodied in Circular No. 12, Series of August 27, 1976, promulgated by the then Energy Development Board.

Under said Circular, the documents and payments required to be submitted and paid to accompany all applications for a coal operating contract are:

a) Information Sheet for Coal Operators (EDB Form No. 11).

b) Proposed Coal Operating Contract Patterned after the Model Contract (EDB Form No. 15)

c) A comparative Analysis in tabulated form of items in the Coal Operating Contract proposal which deviate from the Model Contract. Reasons for the proposed changes should likewise be presented.

d) In cases of a corporation, a Certificate of Authority from the Board of

Directors of applicant Operator authorizing a designated representative/ representatives to negotiate the Coal Operating Contract. The certification must be executed under oath by the Corporate Secretary and if executed abroad, must be properly authenticated. In cases of partnership or other forms of association, a duly authorized representative/s to negotiate the Coal Operating Contract by the Partners or members thereof.

e) Copies of all technical reports or works done in the proposed coal contract area, whenever applicable.

f) Applicant shall pay a processing fee of P100 per hectare but in no case less than P1,000 for the proposed coal contract area. Check should be made payable to the Energy Development Board. No negotiations can commence until the above requirements have been fully complied with.

In addition, it is now required that at the time of application, financial statements evidencing financial qualifications should also be submitted in accordance with existing guidelines.

Henceforth, no letter of intention or any communications indicating interest claim or application over a coal area although duly recorded by the Records Division of the Bureau of Energy Development shall be recognized as an application unless the procedures and requirements outlined in said Circular 12 dated August 27, 1976 and this Circular are complied with and the required complete documents submitted. Payment of processing fee alone although evidenced by official receipt and other documents which are not complete shall not be considered as a proper application.

This Circular shall take effect immediately.
August 22, 1980

W. R. DELA PAZ
Acting Director

D. BED CIRCULAR NO. 81-07-07

TO: ALL HOLDERS OF COAL OPERATING CONTRACTS UNDER THE "COAL DEVELOPMENT ACT OF 1976", AS AMENDED

Pursuant to Section 9 of Presidential Decree No. 972, otherwise known as the "Coal Development Act of 1976", this states in part that the operator in a coal operating contract shall:

"Operate the area on behalf of the government in accordance with good coal mining practices using modern methods appropriate for the geological conditions of the area to enable maximum economic production of coal, avoiding hazards to life, health and property, avoiding pollution of air, land and waters, and pursuant to an efficient and economic program of operation."

The Bureau of Energy Development prepared a set of safety rules and regulations (Circular No. 1, Series of 1978) to be complied with by holder of coal operating contracts.

For the last two years, however, it has been observed that most fatal accidents in coal mines have been due to mine gases. There is, therefore, a need to reiterate the provisions of said Circular and reinforce existing safety

rules and regulations to prevent recurrence of accidents due to mine gases. Accordingly, all holders of coal operating contracts are required to adhere strictly to the following specific rules and regulations:

1) Workers shall not be allowed to smoke, carry smoking materials, matches, or lighters underground. A system of inspection shall be instituted and strictly enforced to avoid bringing the above materials underground.

2) All active working places underground shall be ventilated by a current of air containing not less than 20% oxygen with sufficient volume and velocity to dilute, render harmless and to carry away flammable, explosive, noxious and harmful gases, dust, smoke and fumes.

3) Where natural ventilation is insufficient, coal mines shall be ventilated by mechanical ventilation equipment.

4) The allowable limits of gases in the active working places shall not be in excess of the concentrations listed below:

    a) Methane (CH4) - 1.00%
    b) Carbon Monoxide (CO) - 0.01%
    c) Carbon Dioxide (CO2) - 0.50%
    d) Hydrogen Sulfide (H2S) - 0.10%

5) Nitrous Oxide (NO2) - 0.0005%
6) Before the start of every shift, examinations of all active mine workings shall be conducted by the safety engineers or inspectors:

    a) Presence of Methane gas;
    b) Oxygen deficiency;
    c) Conditions of mine faces, roofs and ribs;
    d) Approaches to abandoned areas; and
    e) Quantity and direction of air flow.

7) During each shift, the following shall be undertaken:

    a) Check all working sections of the mine for hazardous conditions;
    b) Before any electrical equipment underground is switched on, check methane gas concentration in the area. Subsequently, check for methane gas at intervals of not more than twenty (20) minutes when the electrical equipment is operating;
    c) Check that methane concentration is below 1% before blasting is initiated.

8) If the methane concentration is:

    a) Over 1.0% but less than 1.5%, the ventilation system shall be improved or changed until the concentration is less than 1.0%
    b) Over 1.5%, all workers in the affected areas shall be withdrawn and adjustments in the ventilation system shall be made until the concentration is less than 1.0%
    9) The following examinations shall be conducted weekly;
    a) Check all working sections for hazardous conditions;
    b) Check conditions of idle workings and abandoned areas;
    c) Measure quantity and direction of air flowing in all underground sections of the mine.

10) Every month, tests for dangerous gases like carbon dioxide, carbon monoxide, hydrogen sulphide and nitrous oxide shall be made.

11) All pre-shift, on-shift, weekly and monthly and other examinations and tests shall be recorded in a permanent log book.

12) Air containing more than 0.25% methane shall not be used for ventilating any working place in the mine.

13) Methane detectors shall be used to test the presence of methane gas.

14) Permissible flame safety lamps or any approved oxygen detecting devices shall be used to test oxygen deficiency in coal mines.

15) Permissible multi-gas detectors shall be used to detect gases other than methane and oxygen.

16) Only permissible electrical equipment shall be used underground.

17) Electrical wires and cables shall be insulated adequately and properly protected.

18) All electrical connections or splices shall be re-insulated at least to the same degree as the remainder of the wire.

19) Only permissible cap lamps shall be used.

20) Only permissible explosives shall be used for blasting operations underground.

21) The entrance of any underground workings that is declared inactive, closed or abandoned shall be sealed by the operator.

22) No man shall be assigned to work in a place that has been stopped or abandoned unless accompanied by the shift boss or higher official directly ordered by the mine manager. Compliance with this Circular is hereby strictly enjoined. Non-compliance with any of the above rules and regulations shall constitute sufficient ground for suspension or cancellation of a coal operating contract.

This Circular shall take effect immediately.

July 20, 1981

W. R. DELA PAZ
Acting Director

E. BED CIRCULAR NO. 82-12-11

TO: ALL HOLDERS OF COAL OPERATING CONTRACTS UNDER PRESIDENTIAL DECREE NO. 972, AS AMENDED, COAL TRADERS, DEALERS, BROKERS, MIDDLEMEN, HAULERS, DELIVERY AGENTS AND HEAD-USERS

A. Section 16-D of Presidential Decree No. 1174, amending Presidential decree No. 972, makes applicable the provisions of Chapter XIV (Penal Provisions) of Presidential Decree No. 463, otherwise known as the "Mineral Resources Development Decree of 1974" to Coal operations.

Pursuant to Section 18 of Presidential Decree No. 972, as amended, and reiterated under Section 12 a (iii) of Presidential Decree No. 1206, as amended, which provides that the Bureau of Energy Development is charged with carrying out the provisions of Presidential Decree No. 972 and that it is vested with the authority to promulgate rules and regulations implementing thereof, the following provisions of Presidential Decree No. 1612, otherwise known as Anti-Fencing Law and the Revised Penal Code, so far the information and guidance of all coal operating contractors or operators, traders, dealers, brokers, middlemen, haulers, delivery agents and end-users involved in coal operations except those government agencies or

entities duly authorized by law to be such, to wit:

1. **False Statements** – Any person who, knowingly presents or causes to be presented any false application, declaration, or evidence to the Government or publishes or causes to be published any prospectus or other information containing any false statement relating to coal mines. Mining operations, or mining claims, shall be guilty of perjury if such statement is made under oath, and shall be punished upon conviction in accordance with the provisions of the Revised Penal Code. If such false statement is not made under oath, he shall be punished, upon convictio0n, by a fine not exceeding One Thousand Pesos (P1, 000.00) Section 75, PD No 463.

2. **Theft of Minerals** – Any person who, without a valid coal operating contract or authority to mine, shall extract, remove and/or dispose of minerals for commercial purposes belonging to the government or from the coal contract areas held or owned by other persons without the written permission of the government official concerned shall be deemed to have stolen the ores or the products thereof from the mines or mills. He shall, upon conviction, be imprisoned form six (6) months to six (6) years or pay a fine from one hundred pesos to ten thousand pesos, or both, in the discretion of the court, besides paying compensation for the minerals extracted and disposed of, the royalty and the damage caused thereby (Section 78, PD No. 463).

3. **Salting of Mineral Lands and Minerals.** - Any person, who knowingly place- or deposits, or becomes accessory to the placing or depositing of, any mineral in any land for the purpose-of "salting" or misleading other persons as to the value of the mineral deposits in such land, or who, knowingly comingles or causes to be comingled samples of minerals with any other substances whatsoever which increases the value or in any way changes the nature of the said minerals for the purpose-of deceiving, cheating, or defrauding any person, shall be punished, upon conviction, by imprisonment not exceeding a period of five (5) years besides paying compensation for the damage which have been caused thereby (Section 80, P.D. No. 453).

4. **Illegal Obstruction to Government officials.** – Any person who willfully obstructs, harasses, and/or threatens the Director of the Bureau of Energy Development or any of his subordinates or representatives, in the performance of their duties shall be punished upon conviction, by a fine not exceeding one thousand Pesos (P1, 000.00), or by imprisonment of not more than one (1) year or both, at the discretion of the court (Section 86, P.D. No. 463).

5. **Offenses of Corporation.** - Whenever any of the offenses mentioned in Chapter XIV of P.D. No. 463 is committed by a corporation, partnership or association, the President and each of the Directors or managers or said corporation, partnership or association or its agent or representative in the Philippines in case of a foreign corporation or association who shall have directed, or induced the commission of the said offense shall be criminally liable as principal thereof (Section, P.D. no 463).

6. **"Fencing"** is the act of any person who, with intent to gain for himself or for another, shall buy, receive, possess, keep, acquire, conceal, sell or dispose of, or shall buy and sell, or in any other manner deal in any article, item, object or anything of value which he knows, or should be known to him, to have been derived from the proceeds of the crime of robbery or theft (Section 2 (a) of P.D. No. 1612')

   "Fence" includes any person, firm, association, corporation or partnership or other organization who/which commits the act of fencing (Section 2 (b) of P.D. No. 1612).

   Any person guilty of fencing shall be punished as indicated under Section 3 of P.D. No. 1612. If the fence is a partnership, firm, corporation or association, the president or the manager or any officer thereof who knows or should have known the commission of the offense shall be liable.

7. Every penalty imposed for the commission of the crimes enumerated above shall carry with it the forfeiture of the proceeds of the crime and the instruments or tools with which it was committed.

   Such proceeds and instruments shall be confiscated and forfeited in favor of the Government, unless they be the property of a third person not liable for the offense (Article 45 of the Revised Penal Code)

A. 1. Under Item A. 6 above, a person guilty of committing the act of fencing - is punishable under Presidential Decree No. l612. It is hereby reiterated that any unauthorized coal trader, dealer, broker, middleman, hauler, jewelry agent, or end-user who, with intend to gain for himself or for another, shall buy, receiver poss€ss1 keep, acquire, conceal, sell or dispose of, or shall buy and sell, or in any other manner deal in any coal produce which he knows, or should be known to him, to have been derived from the proceeds of the crime of robbery or theft is guilty of the crime of fencing.

Please be guided accordingly.

December 30, 1982

W. R. DELA PAZ
Acting Director

F. BED CIRCULAR NO. 82-12-12

TO: ALL HOLDERS OF COAL OPERATING CONTRACTS UNDER PRESIDENTIAL DECREE NO. 972, AS AMENDED

The active exploration and exploitation of coal resources by the government has been declared as an urgent national policy under Presidential Decree No. 972, as amended by Presidential Decree No. 1174. "Work and financial commitments of the contractor are embodied in the work program which forms an integral part of each coal operating contract to be complied with within definite terms."

Exploration activities pursuant to the said work program may include tunneling, shaft sinking, aditing, diamond drilling, auger drilling, test pitting, trenching, etc. During the exploration over the coal operating contract areas by the operators, coal is removed or extracted as incident to such exploratory activities.

Investigations made by the BED technical staff, however, indicate that many coal operating contractors or operators for exploration have concentrated their activities on the extraction or removal of coal deposits rather than actively prosecuting exploration works as embodied in their work program. Reports further show that the volume of coal extracted are considerably more than reasonably necessary to conduct exploration works and that although geological studies warrant the conversion of the contract from exploration to development/production, there is an intention to delay such conversion.

There are also reported instances of operators using their contracts to accommodate and sell coal produced by persons who have no operating contract and of operators selling their production through another operator.

Accordingly, pursuant to Section 18 of Presidential Decree No. 972, as amended, in relation to Section 6 (e) and 12 a (iii) of Presidential Decree No. 1206, as amended by Presidential Decree No. 1573, the following reminders and guidelines are hereby issued for the strict enforcement and compliance of holders of coal operating contracts or operators for exploration, to wit:

1) Holders of coal operating contracts for exploration are hereby reminded that they are allowed to extract coal from their coal operating contract areas only such amount or volume as are reasonably necessary and incidental to the exploration activities done on said areas, consistent with the work commitment embodied in their respective work programs.

   The volume of coal extracted should be included and reported to the Bureau of Energy Development on a monthly basis using BED-CD-Coal 4 (per Circular No. 81-11-10). The proceeds from the sale of such extracted coal should be included in the quarterly reports denominated as Coal Operations Return required under BED Circular No. 81-11-10.

2) Coal operators are not allowed to purchase or otherwise acquire by any other means coal produces by persons or corporations who are without a coal operating contract. Without prejudice to the applicable penal sanction elsewhere provided herein and penalties for violation of the Anti-Fencing Law, as re-stated in BED Circular No. 82-12-11 the coal thus acquired by the operator shall be treated as production, subject

as aforementioned to accounting and payment of the government's share. The costs for acquiring such coal are non-recoverable under the operator's coal operating contract.

3) Unless otherwise duly authorized by BED, coal operators should sell their coal produce only to legitimate end users and to persons or entities which are duly authorized by law or existing rules and regulations to purchase coal. Without prejudice to the applicable penal sanction elsewhere provided, the coal operator shall be liable for the payment of any damages which the government may have suffered for violation of this provision.

4) Coal operators who sell coal produced by another coal operating contractor shall be responsible for the withholding and remittance of the government share to the Bureau of Energy Development. The government share shall be computed at 3% of gross sales without the benefit of any deduction and shall be remitted to BED within ten (10) days from date of sale. This does not exempt the producing contractor to render the quarterly report and remittance required under Circular No. 81-11-10.

5) Every violation of, or omission under this Circular shall be punishable by a fine of One Thousand Pesos (P 1,000.00), without prejudice to the suspension or cancellation of the coal operating contract of the coal contractor or operator concerned, in the discretion of the Bureau of Energy Development.

   The guidelines (Item 2-5) contained in this Circular shall take effect upon approval by the Minister of Energy.

December 27, 1982

W. R. DE LA PAZ
Acting Director

Approved:

GERONIMO Z. VELASCO
Minister of Energy

G. BED CIRCULAR NO. 83-08-09

TO: ALL COAL OPERATORS UNDER PRESIDENTAL DECREE 972

A review of the operations of coal operators showed among others, that most operators have failed to strictly observe the reporting and remittance requirements of the Bureau of Energy Development. The following unauthorized practices were likewise noted:

1) Non-submission of coal operations returns to avoid immediate payment of the government share.

2) Non-reporting of certain revenue from sale of coal.

In order to enforce the observance of the said reporting and remittance requirements, Chapter three, Section V (Penalties) of BED Circular 81-11-10 is hereby amended to read as follows:

"In general, penalties under this Section shall be imposed for the following:

1) Failure to submit the Production/Sales/ Inventory report on time as provided under Section II.

2) Failure to file the Coal Exploration, Development and Production Investment and Recoverable Cost Summary (BED-CD-Coal 6) on time as specified in Section IV.

3) Failure to file the Coal Operations Return on time as specified in Section III.

4) Failure to remit the government share on time.

5) Failure to report sales proceeds.

6) Filing of fraudulent return.

The penalties to be imposed shall be in accordance with the following:

A. For failure to file a return/report on time.

   1. lst 30 days P 10/day
      31 – 60- days P 20/day
      61 – 90 days P 30/day
      Over 90 days P 50/day

   2. After 90 days, cancellation proceedings of the coal operating contract shall be initiated. Cancellation proceedings shall likewise be initiated if the operator fails to submit the required return/ report for two consecutive quarters.

B. For failure to remit the government share on coal produced and sold.

   If the amount due the government or any part of such amount is not paid on time, there shall be collected as part thereof the following:

   1. 14% interest if the return is filed on time and the reason for non-remittance is approved by BED. The interest shall be computed from the end of each of the related calendar quarter.

   2. 15% surcharge plus interest if the return is not filed on time.

   3. 25% surcharge plus interest for failure to report sales proceeds which have been recorded in the accounting records of the coal operator.

   4. 50% surcharge plus interest for failure to record and report certain revenue from sale of coal. This act shall be presumed to have been intended to defraud the government of its lawful share of the sales proceeds. A repeated commission of this act shall conclusively establish the intent of the operator to defraud the government of its share of the proceeds and shall therefore result in the cancellation of the coal operating contract.

The above penalties are in addition to the ones prescribed under item A above and they are cumulative in nature. For instance, in addition to the daily fixed penalty, failure to file the return on time coupled by a failure to report recorded sales shall be assessed a 40% surcharge plus interest. On the other hand, 90% surcharge plus interest will be assessed on coal operator for failure: to file the return on time; to report recorded sales proceeds; and to record and report certain revenue from sale of coal.

The surcharge will be imposed on the total amount due BED for a particular period and not just on the government share from the unreported and/or unrecorded revenue. On the other hand, both the assessed government share and the surcharge will be assessed of interest.

In all of the above cases, the performance guarantee posted with the Bureau shall be held answerable for non-payment of the penalties."

The foregoing provisions shall take effect immediately.

July 21, 1983

W. R. DE LA PAZ
Acting Director

Approved:

GERONIMO Z. VELASCO
Minister of Energy

H. BED CIRCULAR NO. 83-11-017

TO: ALL HOLDERS OF COAL OPERATING CONTRACTS UNDER PRESIDENTIAL DECREE NO. 972

An on-going review of the operations of the coal operators showed that certain operators are buying coal from non-coal operators. This act is viewed by the Bureau with grave concern as this contributes to the proliferation of illegal mining and trading of coal. By way of restatement of Item 6 of BED Circular No. 82-12-11 dated December 20, 1982, fencing is the act of any person who, with intent to gain for himself or for another, shall buy, receive, possess, keep, acquire and sell, or in any other manner deal in any article, item, object or anything of value which he knows, or should be known to him, to have been derived from the proceeds of the crime of robbery or theft (Section 2 (a) of PD 1612).

"Fence" includes any person, firm, association, corporation or partnership or other organization who/which commits the act of fencing (Section 2 (b) of PD No. 1612).

Any person guilty of fencing shall be punished as indicated under Section 3 of PD 1612. If the fence is a partnership, firm, corporation or association, the president or the manager or any officer thereof who knows or should have known the commission of the offense shall be liable.

All coal operators are therefore hereby ordered to desist from buying coal from unauthorized traders and/or coal operators. Violation of this order shall result in the cancellation of the coal operating contract and the prosecution of the operator under the "Anti-Fencing Law of 1979" as embodied under Presidential Decree No. 1612.

For strict compliance.

November 22, 1983

W. R. DELA PAZ
Acting Director

I. BED CIRCULAR NO. 84-06-006

TO: ALL COAL OPERATORS UNDER P. D. 972

An on-going review of the performance of the coal operators showed that most of the coal operations return are being submitted past the deadline and/or without the remittance of the amount due the Bureau of Energy Development (BED).

All coal operators are therefore reminded of Circular No. 81-11-10, which, among others, specifically requires that the ***return together with the remittance of the amount due BED shall be filed within Sixty (60) days after the end of every Calendar Quarter.***

We enjoin all coal operators to observe strictly the aforestated reporting and remittance deadline to avoid being assessed of the interest and/or penalty provided for under Circular No. 83-08-09.

June 14, 1984

W. R. DE LA PAZ
Acting Director

J. BED CIRCULAR NO. 85-10-03

TO: ALL COAL OPERATORS UNDER P.D. 972, AS AMENDED

In order to stop the coal mining undertaken by person and entities who do not possess a valid and subsisting coal operating contract executed under P.D. 972, as amended, and in order to protect legitimate coal operators from illegal coal mining activities which undermines government and private initiative to meet the objective of P.D. 972, as amended, the BED issued Circular No. 82-12-12 dated December 27, 1982.

Reports received by the BED to monitor compliance with the BED Circular No. 82-12-12 indicate the existence of a number of incidences involving the sale of coal by those who do not possess coal operating contracts. This malpractice definitely run-counter to the objectives of P.D. 972, as amended, especially to when committed with the intention to impede BED's exercise with its regulatory and supervisory power over coal operations.

Cognizant of the foregoing considerations and especially to promote the objectives of P.D.972, as amended, the following rules and regulations are promulgated in addition to BED Circular No. 82-12-12.

I. AUTHORIZATION FOR THE EXTRACTION AND SALE OF COAL

As provided under P.D .972, as amended, only holders of validly executed and subsisting coal operating contracts are authorized to undertake coal operations particularly exploring for, extracting and sale of coal resources. The unauthorized extraction and sale of coal constitute a crime of theft while the purchase of illegally extracted coal constitutes the offense of fencing. Applicants for a coal operating contracts are not authorized to explore, extract and sell coal. Such exploration, extraction and/or sell shall

be sufficient ground for disapproval of the application, without prejudice to criminal prosecution for theft.

II. LIMITATIONS OF COAL OPERATING CONTRACTS

Only holders of coal operating contracts for production are authorized to sell the coal so extracted. Holders of a coal operating contract for exploration are not as a rule authorized to sell the coal so extracted except the incidental production arising from exploration, and only upon prior approval by the Bureau of Energy Development as provided under BED Circular No. 82-12-12. This does not however authorized exploration contracts to extract coal more than is reasonably necessary to pursue exploration.

III. DIRECTORY OF COAL OPERATORS

In order to assure that only coal operators with valid and subsisting coal operating contracts shall engage in coal operations authorized by the respective coal operating contracts, the BED will periodically prepare a listing of coal operators duly accredited by the BED as authorized to extract, sell or market coal. The listing shall be disseminated to all known consumers or purchasers of coal for their information and observance. In this manner coal operators will be reminded of the extent and limitations of their authority to engage in coal operations and at the same time serve notice to consumers or purchasers from whom to buy coal.

IV. LIST OF AUTHORIZED AND SUBSISTING PRODUCTION COA L OPERATORS

(List deleted)…

All consumers and purchasers of coal are enjoined to purchase their coal requirements exclusively from the above listed coal operators authorized to engage in production. Except as expressly authorized in writing by the BED, holders of exploration contract are not authorized to sell coal. Consumers therefore are required to inquire beforehand from the BED for the authorization of exploration coal operators to sell coal before purchasing coal from them. Consumers of coal who buy from unauthorized coal operators or from sources other than the above listed are liable for criminal prosecution, for theft.

Except for the above-listed production coal operating contracts, the Bureau of energy Development has not authorized, nor will it authorized, in any mode or manner whatsoever, persons or entities without a coal operating contract to extract, sell or market coal.

V. PENALTIES

Violation by the coal operators of any of the foregoing shall cause the cancellation of their coal operating contract, without prejudice to criminal prosecution. Consumers purchasing coal from unauthorized sources will be prosecuted criminally in accordance with law.

This circular shall take effect upon its approval by the Minister of Energy.

Issued this 9th day of October, 1985, Makati, Metro Manila.

ARTHUR SALDIVAR-SALI, Ph.D.
Deputy Director

APPROVED:

GERONIMO Z. VELASCO
Minister of Energy

K. BED CIRCULAR NO. 85- 12-04

TO: ALL CONTRACTORS UNDER PRESIDENTIAL DECREE NO. 972

In line with the validation requirements of the Bureau of Energy Development and to minimize disputes, exceptions in the audit of coal operating expenditures, all coal contractors under P. D. 972 are hereby required to observe the following:

1. Maintain original copy of all document supporting reported coal expenditures at the contractor's local home and/or central office.

2. All reported expenditures should be fully supported regardless of amount and nature thereof, except taxi fare, and other expenses wherein the supplier(s) are not customarily required to issue an invoice and /or receipt.

3. In cases where the supplier of services and/or merchandise is not in a position to issue receipts and/or invoices, the contractor should see to it that the transaction is properly documented and any payment to the supplier duly acknowledged at the time the transaction is made.

Failure to observe the foregoing requirements shall result in the disallowance of the expenditure as recoverable cost and as credit to the contractor's financial obligation under the coal operating contract.

For strict compliance.

W. R. DE LA PAZ
Acting Director

L. OEA CIRCULAR NO. 88-04-008

TO: ALL COAL USERS AND COAL OPERATORS UNDER P.D. 972 AS AMENDED

RE: PROVIDING FOR AN UPDATED LISTING OF VALID AND SUBSISTING COAL AND OPERATING CONTRACTOR

Pursuant No Circular No. 85-10-03 dated October 9, 1985 in connection with par. III thereof, the Office of Energy Affairs (OEA) shall issue a semi-annual directory of duly accredited coal operators whose Coal Operating Contracts (COCs) are still valid and subsisting as well as the extent and limitations of their authority to engage in coal operation. Except for the attached listing, all succeeding directories shall be disseminated to all coal operators on the first week of January and June of each year and will likewise be made available to coal users and the general public.

All consumers and purchasers of coal are thus enjoined to purchase their coal requirements exclusively from coal operators listed in the directory who are authorized to engage in production. Except as expressly authorized in writing by the OEA, holders of exploration contracts are NOT AUTHORIZED to sell coal.

This Circular shall take effect immediately, Makati, Metro Manila, 18 April 1988.

W. R. DE LA PAZ
Executive Director

M. OEA CIRCULAR NO. 88-08-12

TO: ALL COAL USERS AND COAL OPERATORS UNDER PD NO. 972, AS AMENDED

RE: PROVIDING FOR COAL OPERATING AN UPDATED LISTING OF VALID AND SUBSISTING COAL OPERATING CONTRACTORS

Pursuant to Circular No, 85-10-03 dated October 9, 1985 in connection with par. III thereof, the OFFICE OF ENERGY AFFAIRS (OEA) shall issue a semi-annual directory of duly accredited production coal operators whose Coal operating contracts (COCs) are still valid and subsisting as well as the extent and limitations of their authority to engage in coal operation.

In accordance with the aforesaid Circular, the attached directories of accredited coal operators are hereby issued.

All consumers and purchasers of coal are thus enjoined to purchase their coal requirements exclusively from coal operators listed in the attached directory who are authorized to engage in production. Except as expressly authorized in writing by the Office of Energy Affairs, holders of exploration contracts are not AUTHORIZED TO SELL COAL.

OEA Circular No. 88-04-008 dated l8 April 1988 is hereby superseded.

This Circular shall take effect immediately.

Makati, Metro Manila, 13 July, 1988.

W.R. DE LA PAZ
Executive Director

N. OEA CIRCULAR NO. 88-08-14

TO: ALL CONSUMERS AND PURCHASERS OF COAL AND COAL OPERATORS UNDER PD NO. 972, AS AMENDED

RE: PROVIDING FOR AN UPDATED LISTING OF VALID AND SUBSISTING COAL OPERATING CONTRACTORS

Pursuant to Circular No. 85-10-03 dated October 9, 1985 in connection with par. III thereof, the OFFICE OF ENERGY AFFAIRS shall henceforth issue once every two (2) months a directory of duly accredited PRODUCTION Coal Operators whose Coal Operating Contract/s (COC's) are still valid and subsisting as well as the extent and limitations of their authority to engage in coal operations and at the same time serve notice to consumers and purchasers from whom to buy coal.

In accordance with the aforesaid Circular, the attached directory of accredited Coal Operators is hereby issued.

All consumers and purchasers of coal are thus enjoined to strictly and exclusively purchase their coal requirements from Coal Operators listed in the attached directory who are authorized to engage in PRODUCTION (extract, sell or market coal).

Except as expressly authorized in writing by the OFFICE OF ENERGY AFFAIRS, holders of EXPLORATION Contracts are NOT AUTHORIZED TO SELL COAL.

OEA Circular No. 88-08-12 dated 13 July 1988 is hereby superseded.

This circular shall take effect immediately.
Makati, Metro Manila, 28 October 1988.

W. R. DE LA PAZ
Executive Director

O. OEA CIRCULAR NO. 91-07-02

SUBJECT: AMENDMENT TO GUIDELINES FOR THE ISSUANCE OF NON-EXCLUSIVE RECONNAISSANCE PERMIT UNDER BED CIRCULAR NO. 82-06-04

The former Bureau of Energy Development (BED), now Office of Energy Affairs (OEA) issued BED Circular No. 82-06-04 dated June 3, 1982 providing guidelines for the issuance of non-exclusive reconnaissance permit to individual or corporation to further accelerate the development of local coal to eliminate or at least minimize coal importation.

However it has been observed that individual permittees who were granted non-exclusive reconnaissance permit find it difficult to convert said permit into a Coal Operating Contract (COC) due to its inability to meet the financial and/or technical requirements thus causing a delay in the development of the area covered by the permit.

To remedy the situation, it is necessary to amend item No. 2 of BED Circular No. 82-06-04 by making it a requirement for a permittee to incorporate or to establish a corporation for it to qualify to apply for a non-exclusive reconnaissance permit.

In view thereof, item No. 2 of BED Circular No. 82-06-04 dated June 3, 1982 is hereby amended to read as follows:

> 2. The maximum area covered by one (1) permit shall be one coal region. The permittee shall be a corporation organized under Philippine laws at least sixty (60%) percent of the capital is owned and held by citizens of the Philippines and duly certified by the Securities and Exchange Commission (SEC). The permittee may apply for at least three (3) permits at any one time.

This Circular shall take effect immediately.

Makati, Metro Manila, 19 July 1991.

W.R. DE LA PAZ
Executive Director

P. DEPARTMENT CIRCULAR NO. 93-12-10

TO: ALL HOLDERS OF COAL OPERATING CONTRACTS UNDER PD 972, AS AMENDED BY PD 1174

SUBJECT: GUIDELINES ON POSTING OF PERFORMANCE GUARANTY

PURPOSE: THIS CIRCULAR IS BEING ISSUED TO ENABLE THE DEPARTMENT OF ENERGY (DOE) TO EFFECTIVELY ENFORCE THE STATUTORY AND CONTRACTUAL PROVISIONS ON THE POSTING OF PERFORMANCE GUARANTY AND TO PROVIDE THE CONTRACTOR THE NECESSARY GUIDELINES ON THE AMOUNT OF GUARANTY ACCEPTABLE TO THE DOE.

I. General Provisions

The performance guaranty shall be posted within thirty (30) days after the effectivity date of the contract. No copy of the contract shall be released to the contractor unless the required performance guaranty is timely and adequately posted in favor of the DOE.

II. Amount of Guaranty

A. *Exploration Contracts*

The initial amount of the guaranty shall be equal to the first-year, financial commitment based on the work program under the contract. Subsequent thereto, the amount of guaranty may be increased or decreased subject to the following conditions:

1. If the contractor's actual expenditures during the year exceed its commitment, the excess shall be credited to the succeeding year. The difference between the second-year expenditure commitment and the excess amount for the first year shall then become the basis of computing the second-year performance bond guarantee.
2. In the event that the contractor has fully complied with its financial commitments under the contract but has not fully performed its work obligations, the amount of the guaranty shall be equal to the penalty it should pay the government as provided under the contract.

B. *Development and Production Contracts*

The amount of guaranty shall be equal to the government share based on yearly production commitment, computed based on the average selling price of coal during the year as determined by the DOE.

If the contractor has fully complied with all its financial commitments but the contract is still in effect, a minimum guaranty of P100.000 shall be posted by the contractor to cover all other obligations under the contract.

III. Penalties

For failure to post or renew the performance bond on due dates, the penalties to be imposed shall be in accordance with the following:

1. 1st 30 days P10/day

31 - 60 days P20/day
61 - 90 days P30/day
Over 90 days P50/day

2. After 90 days, cancellation proceedings of the coal operating contract shall be initiated by the DOE.

This circular shall take effect immediately.

December 29, 1993, Makati, Metro Manila.

RUFINO B. BOMASANG
Undersecretary

Q. DEPARTMENT CIRCULAR NO. 94-11-07

TO: ALL HOLDERS OF COAL OPERATING CONTRACT UNDER PRESIDENTIAL DECREE (PD) 972 AS AMENDED BY PD 1174

In order to effectively enforce collection of the assessed government share pursuant to Section 24 of RA 7638 in the exploration, development and production of coal by coal contractors under a Coal Operating Contract with the government through the Department of Energy (DOE), the following guidelines are hereby issued for the resolution of the audit exceptions and final assessment of government share:

A. Determination of the Final Assessment of Government Shares and Validation of Expenses as Recoverable Costs

   1. The contractor shall be given thirty (30) days from receipt of the audit report to contest the validity of the DOE audit assessments and exceptions, otherwise, the assessments and exceptions becomes final.

   2. Should the contractor seasonably contest the validity of the assessments and exceptions, it shall have sixty (60) days from the date of the contested assessments and exceptions within which to submit to the DOE all pertinent documents, records and/or data in support of its claims. In such an event the enforcement of the DOE assessments and exceptions shall temporarily be suspended.

   3. The DOE shall within sixty (60) days from the date of submission of the pertinent documents, records and/or data resolve the contested assessments and exceptions whose findings thereof shall become final and executory.

B. Remittance of the Assessed Government Share

   1. The assessed government share shall be promptly remitted within thirty (30) days from the date of receipt by the contractor of the DOE's final assessment including the 14% interest per annum which shall be computed starting on the first day following the end of the calendar year covered by the audit.

   2. In the event the contractor fails to remit the assessed government share within thirty (30) days from the date of receipt of the DOE's final assessments, the contractor's COC

shall be suspended or cancelled as warranted and the unsettled account shall be referred to the Office of the Solicitor General for appropriate legal action.

This Circular shall take effect immediately.

24 November 1994, Fort Bonifacio, Metro Manila

FRANCISCO L. VIRAY
Secretary

R. DEPARTMENT CIRCULAR NO. 95-05-004

WHEREAS, Section 2 of Republic Act No. 7638 declares the policy of the State, among others, to ensure a continuous, adequate, and economic supply of energy with the end in view of ultimately achieving self-reliance in the country's energy requirements through the integrated and intensive exploration, production, management, and development of the country's indigenous energy resources;

WHEREAS, Sections 5(b) and 5(c) of R.A. 7638 mandate the Department of Energy (Department) to establish and administer programs for the exploration, transportation, marketing, distribution, utilization, conservation, stockpiling, and storage of energy resources of all forms which include coal, in order to meet the country's increasing energy requirements and reduce its dependence on imported fuels;

WHEREAS, under Section 5(d) of R.A. 7638, the Department likewise exercises supervision and control over all government activities relative to energy projects in order to attain the goals embodied in Section 2 of said Act;

WHEREAS, the Department with the support of the Philippine coal mining industry has prepared a Coal Industry Action Plan, in consultation with other agencies, for the purpose of, among others, creating a guaranteed market for local coal;

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WHEREAS, to ameliorate and facilitate the marketing of coal by local coal producers thereby upgrading their financial viability, it is deemed necessary to issue this Circular.

ACCORDINGLY, the Department promulgates the following guidelines for the information, guidance and implementation of all concerned.

SECTION 1. The National Power Corporation (NPC) is hereby required to utilize local coal for at least ten percent (10%) of its total coal requirements.

SECTION 2. NPC shall submit to the Department, through the Energy Industry Administration Bureau, the necessary reports covering each semester within the month next following said semester, to establish compliance with this Circular.

SECTION 3. This Circular shall take effect immediately a day after its complete publication in a newspaper of general circulation.

Merritt Road, Fort Bonifacio, Metro Manila.
May 25, 1995.

FRANCISCO L. VIRAY
Acting Secretary

S. DEPARTMENT CIRCULAR NO. DC2012-05-0006

GUIDELINES ON THE ACCREDITATION OF COAL TRADERS AND REGISTRATION OF COAL END-USERS
WHEREAS, Section 2, Article XII of the 1987 Constitution states that all land of the public domain,

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waters, mineral, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State and their exploration, development and utilization shall be under its full control and supervision;

WHEREAS, Republic Act (R.A. No. 7638, otherwise known as "The Department of Energy (DOE} Act of 1992", mandates the DOE to establish and administer programs, for the exploration, transportation. marketing, distribution, utilization, conservation, stockpiling and storage of energy resources of all forms, whether conventional or nonconventional;

WHEREAS, Presidential Decree (P.D.) No. 972, otherwise known as "The Coal Development Act of 1976", as amended, authorized the Energy Development Board (now the DOE) to "carry out the provisions of this Decree and shall be vested with the authority to promulgate rules and regulations implementing thereof;

WHEREAS, the operation of unregulated coal trading and utilization has resulted in substantial losses in the payment of the government share from coal mining operations;

WHEREAS, in order to carry out the mandate under P.D. 972 to develop, achieve and implement a systematic and meaningful exploration, development, exploitation and production of local coal resources and protect the interest of the government, the existing regulations on the trading and sale of coal must be strengthened and rationalized;

NOW, THEREFORE. the foregoing premises considered, and pursuant to its statutory mandate, the DOE hereby promulgates the following rules and regulations:

SECTION 1. ***Scope and Application.*** This Circular shall govern the accreditation of Coal Traders and registration of Coal End-Users as defined under Section 2 herein.

SECTION 2. ***Definition of Terms.*** As used in this Circular, the following terms shall be defined as follows:

2.1 BED - refers to the Bureau of Energy Development (now Energy Resources Development Bureau (ERDB) as provided under P. D. No. 972, as amended;

2.2 Certificate of Compliance - refers to the document issued by the DOE to an accredited Coal Trader and registered Coal End-User as a requirement prior to coal importation after complying with the necessary requirements of the ERDB pursuant to R.A 7638 and this Circular;

2.3 Coal - means a black or brownish-black solid combustible rock containing less than 40% non-combustible inorganic components, formed by the accumulation, decomposition and compaction of plant material under long-acting geological process;

2.4 Coal End-User - refers to any person or business entity requiring the supply and delivery of Coal for its own use or utilization such as, but not limited to: power generation,

cement, steel, chemical, canning, paper, rubber, garments, food and beverage, and other manufacturing industries;

2.5 Coal Export Permit - refers to the document issued by the DOE to an accredited Coal Trader authorizing the sale of coal outside the Philippines after complying with the necessary requirements of the ERDB pursuant to R.A. 7638 and this Circular;

2.6 Coal Operating Contract (COC) - refers to Coal Operating Contract awarded by DOE under P. D. No. 972, as amended;

2.7 Coal Trader - refers to any person, partnership, cooperative or corporation engaged in Coal Trading;

2.8 Coal Trading - refers to the business of buying, selling, importing, exporting, marketing, transporting, distributing, retailing, handling, stockpiling and storage of coal, and all other related activities;

2.9 Coal Transport Permit (CTP) - refers to the permit to transport coal Issued by DOE upon accreditation and/or registration under this Circular;

2.10 COC Development and Production (COC D/P) - refers to Coal Operating Contracts wherein the COC Operator is already authorized to conduct coal production activities as well as the beneficiation, transportation and sale of coal to buyers;

2.11 Department of Energy (DOE) – refers to the government agency created pursuant to Republic Act No, 7638, as amended;

2.12 DOE Field Offices - refers to the DOE Field Offices for Luzon, Vlsayas and Mindanao;

2.13 independent SSCMP - refers to Small Scale Coal Mining Permittee (SSCMP) who is not under the direct supervision of a COC holder; but is authorized to directly sell to Coal End-user/s and Coal Trader/s; and

2.14 Special Transport Permit - refers to the document issued by the DOE to a registered Coal End-user authorizing the transport of coal under special circumstances.

SECTION 3. ***Prohibited Acts.*** No person, partnership. cooperative or corporation shall engage in the trading or utilization of coal within the Philippines, unless duly accredited or registered, respectively, with the DOE within the periods set forth in the succeeding section.

No person shall transport, convey, deliver or otherwise move coal from one place to another without a valid CTP or STP issued by the DOE.

Any person or entity violating the abovementioned prohibited acts shall be considered to have committed illegal coal trading or utilization subject to the penalties as provided for under Section 9 hereof.

SECTION 4. ***Compliance Period.*** All existing Coal Traders are required to comply with this Circular within sixty (60) calendar days upon its effectivity. Holders of valid and existing COC for Development and Production (D/P) and independent SSCMP are considered to be accredited under this Circular. Existing COC D/P Holders and Independent SSCMP shall be issued Certificate of Accreditation and Coal Transport Permit upon written request.

All Cool End-users shall be required to register with the DOE prior to the operation

of its business/enterprise. Existing Coal End-users shall henceforth register with the DOE within ninety (90) days upon the effectivity of this Circular.

Coal-fired power plants with DOE Certificate of Endorsement required under R.A 9136 or the Electric Power Industry Reform Act of 2001 or EPlRA, its Implementing Rules and Regulati0ns (IRR) and other duly-issued Circulars and Guidelines shall be deemed automatically registered while operational for the purpose of this Circular.

Exempted from this Circular are persons and entities which transport, possess and use coal for testing and laboratory analyses, as certified and approved by the DOE.

SECTION 5. ***Requirement for Accreditation and Registration.*** The following are the mandatory requirements for accreditation and registration. Any application with incomplete mandatory requirements shall not be accepted.

5.1 Coal Trader Accreditation. The application for accreditation of Coal Traders shall be filed with the ERDB or DOE Field Offices upon payment of application fee in the amount of Three Thousand Five Hundred Pesos (PhP 3,500.00) and submission of a complete set of the following mandatory requirements:

a. Duly accomplished application form as prescribed in ERDB Form No. 2011-1 attached hereto as Annex "A";

b. Certificate of Registration issued by proper government agencies, such as Securities and Exchange Commission (SEC), Department of Trade and Industry (DTI) or Cooperative Development Authority (CDA);

c. Coal supply contract and/or purchase agreement, if applicable, or Deed of Undertaking with a COC D/P Holder, Independent SSCMP Holder or foreign coal supplier for a period of at least one (1) year;

d. Other supporting and relevant documents that the DOE may find necessary for the proper evaluation of the application.

5.2 Coal End-user- Registration. The application for registration of Coal End-users shall be filed with the ERDB or DOE Field Offices upon payment of application fee in the amount of Five Thousand Pesos (PhP 5,000.00) and submission of a complete set of the following mandatory requirements:

a. Duly accomplished application form as prescribed in ERDB Form No. 2011-2 attached hereto as Annex "B";

b. Certificate of Registration issued by proper government agencies, such as Securities and Exchange Commission (SEC), Department of Trade and Industry (DTI) or Cooperative Development Authority (CDA);

c. Technical specifications of coal-fired equipment and location; and

d. Other supporting and relevant documents that the DOE may find necessary for the proper evaluation of the application.

SECTION 6. ***Certificate of Accreditation and/or Registration***

6.1 Processing of Applications. The following procedures shall be observed in the processing of applications and issuance of the Certificate of Accreditation and Registration:

a. The ERDB shall evaluate the application upon receipt of the

complete documents specified under Section 5 hereof;

b. The ERDB shall issue the Certificate of Accreditation and/or Registration or reject the application after proper evaluation within fifteen (I5) working days from receipt thereof.

c. Upon the issuance of a Certificate of Accreditation, the ERDB shall issue a CTP in the name of the Coal Trader.

d. The ERDB shall issue Special Transport Permit upon written request of the party concerned.

6.2 Validity. The Certificate of Accreditation and CTP shall have a validity of one (1) year from date of issuance and may be renewed on a yearly basis unless earlier revoked or cancelled by the ERDB on reasonable and valid grounds as set forth in this Circular and Other applicable regulation. The Coal Trader shall submit its application for renewal together with a current business permit within a period of sixty (60) calendar days prior to the expiration of the Certificate of Accreditation and CTP.

The Certificate of Registration issued under this Circular shall be valid for a period of ten (10) years from dale of issuance and may be renewed for the same period while in operation unless earlier revoked or cancelled by the ERDB on reasonable and valid grounds as set forth in this Circular and other applicable regulations.

SECTION 7. ***Rights and Obligations of the Coal Traders***

7.1 Accredited Coal Traders shall have the following rights:

a. To purchase, transport, convey and trade/sell coal from COC and/or Independent SSCMP holders;

b. To buy, sell, market, import, export and distribute coal;

c. To be eligible to apply for a Certificate of Compliance for coal importation as may be required by the Bureau of Customs and Bureau of Internal Revenue; and

d. To be eligible to apply for a Coal Export Permit.

7.2 Accredited Coal Traders shall have the following obligations:

a. To purchase locally-produced coal only from valid COC Holders, Independent SSCMP Holders or other Accredited Coal Traders, or in case of importation, to comply with all rules and regulations pertinent to coal importation;

b. To sell only to accredited Coal Traders and/or registered Coal End-Users and entities exempted from accreditation and registration under this Circular;

c. To comply with applicable laws, rules and regulations on tax, health, safety, labor and environment;

d. To allow DOE representatives, at all reasonable times upon prior written notice, full access to accounts, books and records relating to its rights hereunder for proper monitoring, computation of appropriate government share and other valid purpose;

e. To withhold the three percent (3%) government share on the cost of coal purchased from COC Holders, Independent SSCMP and/or other Accredited Coal Traders per transaction and remit the said government shares to the DOE on a quarterly basis within sixty (60)

days from the end of the applicable calendar quarter;

f. To submit quarterly report on Coal purchases and sales within sixty (60) days from end of the applicable calendar quarter;

g. To remit to the DOE quarterly within sixty (60) days from the end of the applicable Calendar quarter the three percent (3%) government share on the net proceeds on locally-produced coal computed, as the difference between the coal sales and allowable expenses, such as cost of coal purchase and delivery expense-hauling or freight costs incurred in transporting coal to the consumer, as approved by the DOE;

h. In case the Coal Trader does not own the conveyance used to transport coal, or the conveyance is not registered under its name, the Coal Trader shall submit to the DOE the list of its authorized transporters. The Coal Traders' authorized transporters of coal shall be, at all times under its direct responsibility;

i. To install, construct, establish and/or use facilities which the DOE may deem necessary to the proper handling of the Coal product and comply with existing laws, rules and regulations both by the local and national government; and

j. To be responsible for any economic, social and environmental damage in relation to Coal Trading operations such as but not limited to, coal spillages during transport, air pollution, contamination, fire, spontaneous combustion, coal run-off into seas and rivers and any other liability arising from the handling of the coal product.

SECTION 8. ***Rights and Obligations of the Coal End-users***

8.1 Registered Coal End-Users shall have the following rights:

a. To purchase coal only from COC Holders, Independent SSCMP, and accredited Coal Traders;

b. To import and use Coal;

c. To be entitled to a Special Transport Permit to transport upon written request; and

d. Upon registration, Coal End-users shall be considered compliant to rules and regulations of the DOE in the use or utilization of coal.

8.2 Registered Coal End-users shall have the following obligations:

a. To purchase locally-produced coal only from valid COC Holders, Independent SCCMP Holders or Accredited Coal Trader, or in the case of importation, to comply with all rules and regulations pertinent to coal importation;

b. To submit quarterly report on coal purchases and utilization within thirty (30) days from end of the applicable calendar quarter; and

c. To comply with applicable laws, rules and regulations on health, safety, labor and environment.

SECTION 9. ***Administrative Fines and Penalties.*** The following penalties or sanctions shall be imposed on any Coal Traders or Coal End-user found committing the acts prohibited under Section 3 of this Circular or engaged in illegal coal trading, to wit:

For Coal Traders:

1. First offense - 3 fine of **TEN THOUSAND PESOS (PhP10,000.00).**

2. Second offense and above - a fine of TWENTY-FIVE THOUSAND PESOS (PhP25,000.00).

For Coal End-users:

1. First Offense - a fine of **TWENTY FIVE THOUSAND PESOS (PhP25.000.00)**.

2. Second offense and above - a fine of **FIFTY THOUSAND PESOS (PhP50,000.00).**

The DOE may further recommend the suspension or revocation of the business permit and/or closure of business establishment.

SECTION 10. ***Penalties for violation of Section 7.2 and 8.2 of this Circular.*** The DOE may suspend, revoke or cancel any Coal Traders Certificate of Accreditation/CTP or Certificate of Registration of Coal End-users due to, among others, failure to comply with the obligations as provided in Sections 7.2 and 8.2 hereof and the terms and conditions under which the Certificate of Accreditation/ CTP or Registration was issued in accordance with the provisions of DC2002-07-004, otherwise known as the *"Rules of Practice and Procedure of the Department of Energy".*

SECTION 11. ***Criminal liability.*** By way of restatement of BED Circular No. 82-12-11 dated 20 December 1982, the following shall be criminally liable:

Theft of Minerals - Any person who, without a valid coal operating contract or authority to mine, shall extract, remove and/or dispose of mineral for commercial purposes belonging to the government or from the Coal contract areas held or owned by other persons without the written permission of the government official concerned shall be deemed to have stolen the ores or the products thereof from the mines or mills. He shall, upon conviction be imprisoned for six (6) months to six (6) years or pay a fine from one hundred pesos to ten thousand pesos or both, in the discretion of the court, besides paying compensation for the minerals extracted and disposed of, the royalty and the damage caused thereby (Section 78, PD No. 463).

Fencing - Any person who, with intent to gain for himself or for another, shall buy, receive, possess, keep, acquire and sell, or in any other manner deal in any article, item, object or anything of value which he knows, or should be known to him, to have been derived from the proceeds of the crime of robbery or theft (Section 2 (a) of P.D. 1612).

Fence - includes any person, firm, association, corporation or partnership or other organization who/which commits the act of fencing (Section 2 (b) of PD No. 1612).

Any person guilty of fencing shall be punished as indicated under Section 3 of P.D. No. 1612.

If the fence is a partnership, firm, corporation or association, the president or the manager or any officer thereof who knows or should have known the commission of the offense shall be liable.

SECTION 12. ***Filing of Criminal cases.*** Whenever there exists a commission of crime/s mentioned under Section 11 of this Circular, the Director of DOE Field Offices, Director of ERDB, and in their absence, the Assistant Director or concerned Division Chief of ERDB or concerned Division Chief of DOE Field Offices shall with the assistance of the Legal Services or DOE Field Offices Legal Officer, file the corresponding complaint with the proper Office of the City/Provincial Prosecutor, Department of Justice (DOJ). The coal shall be confiscated and disposed of in accordance with the applicable laws, rules and regulations.

The DOE may request the assistance of law enforcement agencies and local government units, whenever it is deemed necessary for

the effective implementation of this Circular.

SECTION 13. ***Confiscation and Disposition.*** Coal in possession and control of non-accredited Coal Trader's and non-registered Coal End-users, produced or purchased from illegal or unauthorized Sources as determined by the DOE shall be apprehended, confiscated and disposed of in accordance with applicable laws, rules and regulations.

SECTION 14. ***Separability Clause.*** If for any reason, any provision of this Circular is declared unconstitutional or invalid, such part not affected shall remain in full force and effect.

SECTION 15. ***Repealing Clause.*** All other circulars, rules and regulations inconsistent with this Department Circular are hereby modified, amended and repealed accordingly.

SECTION 16. ***Effectivity.*** This Circular shall be effective fifteen (15) calendar days after its Publication in two (2) newspapers, of general circulation.

Issued at Fort Bonifacio, Taguig City, this 22nd day of May 2012.

JOSE RENE D. ALMENDRAS
Secretary

T. DEPARTMENT CIRCULAR NO.DC2017- 09-0010

ADOPTING THE PHILIPPINE CONVENTIONAL ENERGY CONTRACTING PROGRAM (PCECP) OF AWARDING COAL OPERATING CONTRACTS (COC) AND CREATING THE REVIEW AND EVALUATION COMMITTEE (REC) REPEALING FOR THIS PURPOSE DEPARTMENT CIRCULAR NO.DC2014-02-0005 AND DEPARTMENT ORDER NO. DO2014-08-0017

WHEREAS, Republic Act No. 7638, as amended, otherwise known as *"The Department of Energy (DOE)* Act of 1992", mandates the Department of Energy (DOE) to prepare, integrate, coordinate, supervise and control all plans, programs, projects and activities of the Government relative to energy exploration, development, utilization, distribution, and conservation;

WHEREAS, Section 4 of Presidential Decree No. 972, as amended, otherwise known as *"The Coal Development Act of 1976"*, allow the Philippine Government (the "Government") to promote and undertake the exploration, development and production of the country's indigenous coal resources through Coal Operating Contracts (COCs) with contractors:

WHEREAS, the DOE issued Department Circular No. DC2014-02-0005 (the *"5th Philippine Energy Contracting Round (PECR5) Guidelines")* to reiterate and acknowledge the need to continue adopting a transparent and competitive system for awarding COCs for the exploration, development, and production of the country's coal resources;

WHEREAS, the DOE issued Department Order No. DO2014-08-0017, as amended, otherwise known as *"Prescribing Guidelines and Procedures for the Amendment of Contract Area in Coal Operating Contract (COCs) and Petroleum Service Contracts (SCs)",* to provide legal basis for existing COC and SC contractors to carry out the exploration and development of petroleum and coal resources in other frontier areas not covered and offered in any energy contracting round;

WHEREAS, the DOE is continuously adopting new mechanisms and strategies to effectively carry out its plans and programs as mandated under PD 972, as amended, including its implementing rules and regulations;

WHEREAS, Section 6 of PD 972, as amended, otherwise known as *"The Coal Development Act of 1976"*,allows the Government to promote and offer prospective coal areas for award through bidding or negotiation;

WHEREAS, the DOE desires to implement a simpler and faster public contracting program by nomination thru publication to facilitate the acceptance of applications for COC from interested applicants at any given time which is deemed to be more responsive if the development of the country's coal resources is to be intensified;

WHEREAS, the DOE intends to effectively administer, supervise and regulate the implementation of awarded COCs to ensure the sustainable development of the country's coal resources;

NOW, THEREFORE, in consideration of the aforementioned premises, the following policies and procedures in the selection, evaluation, awarding and administration of COCs are hereby adopted and promulgated for compliance by all concerned:

SECTION 1. ***Scope*****.** This Circular shall govern the selection process in the awarding of COCs and the creation of the Review and Evaluation Committee (REC).

SECTION 2. ***Policies in the Conduct of Selection Process in Awarding COCs.*** The selection process in the awarding of COCs to qualified applicants shall be conducted in a transparent, open, competitive and expeditious manner.

SECTION 3. ***Various Modes in Awarding Coal Operating Contracts***

3.1 Applicant/s Nomination and Publication of Area/s of Interest Applicant/s for COC shall formally nominate the area/s of their interest for the REC consideration in accordance with the procedures set under Item I of Annex "A".

3.2 DOE Publication of Coal Areas Open for Application

The DOE thru the Review and Evaluation Committee (REC) may publish identified coal area/s not covered by any application for nomination for the purpose of inviting interested applicant/s to file application.

SECTION 4. ***Creation of the Review and Evaluation Committee (REC).*** The REC is hereby constituted to carry out the responsibilities set forth in this Circular and shall be composed of the following officials:

Chairperson	- Undersecretary-in-charge of the Energy Resource Development Bureau (ERDB)
Vice Chair	- Assistant Secretary
Members	- Director of the ERDB - Director of the Financial Services (FS) - Director of the Legal Services (LS) - Director of the Information Technology and Management Services (ITMS)

SECTION 5. REC Technical Working Group (TWG) and Secretariat. The REC TWG and Secretariat shall assist the REC in all activities related to Philippine Conventional Energy Contracting Program (PCECP) and in the coordination and administration, supervision and regulation of COCs, and shall be composed of the following:

Head	- Assistant Director of the ERDB
TWG Members	- Chief, Coal and Nuclear Minerals Division (CNMD) - Chief, Conventional Energy Resource Compliance Division (CERCD)

- Chief, Upstream Conventional Energy Legal Services Division (UCELSD)
- Chief, Information Services Division (ISD)
- Chief, Information and Data Management Division (IDMD)
- The DOE Luzon Field Office (LFO), DOE Visayas Field Office (VFO) and DOE Mindanao Field Office (MFO) shall assist the TWG in the performance of its functions in their respective area/s of jurisdiction.

Secretariat Members: Supervising Science Research Specialists and Staff, CNMD Exploration and Geosciences Research Section and Development and Production Section

SECTION 6. Responsibilities of the REC

6.1 Accept, evaluate and approve or reject the application for nomination of area/s of interest for publication;

6.2 Examine, evaluate, and review the legal, technical, and financial capabilities of the applicant/s and their application/s as provided for in PD 972, and existing laws, rules, and regulations;

6.3 Recommend to the Secretary the award and issuance of COC in favor of the highest-ranked applicant for multiple applications, or legally, technically, and financially qualified in case of sole applicant;

6.4 Address any questions and inquiries that may be raised by the Secretary in connection with the COCs endorsed for award and issuance;

6.5 Resolve issues in relation to the legal, technical and financial capabilities of applicants, including motions for reconsideration;

6.6 Cause the publication of coal area/s open for COC applications under Section 3.2 of this Circular;

6.7 Institute and implement a system of coordination and administration, supervision and regulation during the implementation and operation of the COCs such as, but not limited to, the following:

a) Extension, amendment, cancellation / termination and relinquishment of COCs;

b) Transfer and assignment of COCs;

c) Disposal of assets; and,

d) Recommend allocation and utilization of all assistance funds generated from the awarded COCs in accordance with the existing rules and regulations.

6.8 Other functions of REC that the Secretary may delegate and additional tasks that may be deemed necessary to carry out its responsibilities and objectives.

SECTION 7. Qualifications of COC Applicant. Applicant must be a corporation or partnership with at least sixty percent (60%) of its capitalization is owned by Filipinos duly registered with the Securities and Exchange Commission (SEC), or cooperative, organized or authorized for the purpose of engaging in coal exploration and development.

In relation thereto, the applicant shall comply with Section 2-A of Commonwealth Act (CA) No. 108 or the *"Anti-Dummy Law"* and Foreign Investment Act.

SECTION 8. ***Evaluation, Selection and Awarding Procedures for the Various Modes of Selection Process.*** The evaluation, selection and awarding procedures for the various modes of selection process in awarding COCs shall be provided for under Annex "A" of this Circular entitled *"Guidelines for Philippine Conventional Energy Contracting Program (PCECP) for Coal Operating Contract Application".*

SECTION 9. Criteria for Selecting the Highest Ranked Applicant. A COC applicant under any of the modes mentioned in Section 3 of this Circular shall submit complete documents as provided for under Annex "A" pertaining to the following selection criteria, to wit:

i. Legal qualification
ii. Work Program
iii. Technical qualification
iv. Financial qualification

In case of two or more applicants over the same area, the highest ranked applicant who meets the legal, technical and financial requirements shall be selected.

SECTION 10. ***Motions for Reconsideration and Appeals.*** The REC and/or the Secretary, for sufficient and valid cause, may at any given time reject any or all application/s submitted. Any motion for reconsideration or appeal from the decision of the REC and/or the Secretary shall comply with applicable provisions of Department Circular No. DC2002-07-004 or the *"Rules of Practice and Procedure before the Department of Energy".*

SECTION 11. ***Separability Clause.*** If for any reason, any section or provision of this Circular and its Guidelines is declared unconstitutional or invalid, such parts not affected shall remain in full force and effect.

SECTION 12. ***Repealing Clause.*** Department Circular No. DC2014-02-0005 and the Department Order No. DO2014-08-0017 and provisions of all other DOE issuances that are inconsistent with the provisions of this Circular are hereby repealed.

SECTION 13. ***Effectivity.*** This Circular shall take into effect fifteen (15) days following its publication in at least two (2) broadsheet of general circulation and shall remain in effect until otherwise revoked.

Issued this 13th day of September, 2017 in Bonifacio Global City, Taguig City, Metro Manila.

ALFONSO G. CUSI
Secretary

Annex "A"

Republic of the Philippines
DEPARTMENT OF ENERGY
Energy Center, Rizal Drive corner 34th Street Bonifacio Global City, Taguig City,
Metro Manila

GUIDELINES ON PHILIPPINE CONVENTIONAL ENERGY CONTRACTING PROGRAM (PCECP) FOR COAL OPERATING CONTRACT (COC) APPLICATION

I. Procedures for Nomination and Publication

A. Applicant/s for COC shall formally nominate through written communication the area/s of their interest addressed to the Review and Evaluation Committee (REC) for consideration. Before the nomination is accepted for publication, the following shall be submitted:

   1. Technical Description of the nominated area/s as verified by the DOE-Information Technology and Management Services (DOE-ITMS);

   2. Area Clearance of nominated area/s from the DOE-ITMS;

   3. Certification from the Department of Environment and Natural Resources (DENR) that the nominated area/s is/are not within a Protected area/s; and,

   4. Certification from the Local Government Units (LGU) that the nominated area/s is/are not within a mining activity ban.

B. The REC shall, within fifteen (15) working days from receipt of the nomination with complete documents, inform the nominating applicant through written notice on the approval / rejection for the publication on the existence of an application for the nominated area/s for public contracting program.

C. The nominating applicant, in coordination with the REC, shall, at its own expense, cause the publication on the existence of an application for the nominated area/s with an invitation for challenge in two (2) broadsheet of general circulation within fifteen (15) calendar days upon receipt of the written notice, otherwise, the applicant's nomination shall be nullified and the area will be open for new nomination.

   The nominating applicant shall submit a proof of publication including copies of Official Receipt (OR) of payment within seven (7) calendar days from the date of publication.

   The REC shall likewise post the existence of an application for the nominated area/s with an invitation for challenge in the DOE website from the publication date until the deadline for submission of documents.

D. The nominating applicant shall follow the template layout of the items for publication shown in Annex "B" which include, among others, the following:

   1. Timeline for the contracting program by publication:

      i. Publication Date - Day 1

      ii. Pre-submission Conference – Day 1 plus twenty (20) calendar days, 0900H at the DOE AVR

iii. Deadline for the Submission of documents by Applicants – Day 1 plus sixty (60) calendar days (2 months) on or before 1100H at the DOE Records Section

iv. Opening of Documents – Day 1 plus sixty (60) calendar days *(same day as Deadline of Submission of Documents)* 1300H at the DOE AVR

2. Location Map and Technical Description of the area/s:

   a. Area/s to be nominated shall conform to existing coal blocking system:

      Maximum area for nomination = 15 coal blocks per coal region (1 coal block = 2 minutes of latitude by 1 ½ minutes of longitude with an area of approximately 1,000 hectares)

   b. Technical Description as certified by DOE-ITMS

3. Other information that the REC deems appropriate.

II. Procedures for Submission of COC Application/s

A. Applicant/s shall submit three (3) complete sets of legal, technical, and financial documents in accordance with Item III of this Annex for evaluation by the REC.

Each application shall cover only one predefined area of interest with corresponding number of coal blocks as nominated and published.

Only Exploration Work Program in the application for Coal Operating Contract (COC) that conforms to the Work Program Documentation, as required under Item III.B of this Guideline, shall be accepted.

B. Submitted application must be in both paper and digital (USB Drive in Microsoft Word or *.pdf format) copies. Times New Roman 12 font and single line spacing are recommended. Figures shall be submitted in an appropriate format, no smaller than A3 size. For legibility, figures and maps shall be submitted at a larger scale (1:10,000) as appendices.

C. A non-refundable application fee of Php 200,000.00 per area shall be paid by the applicant upon submission of the application and its supporting documents. Payment may be made in cash, manager/company cheque payable to "Department of Energy" or wire/bank transfer. All wire/bank transfer should be net of all applicable bank and financial charges.

D. Both the original paper copy and the digital copy of the application shall be addressed to:

The Chair
PCECP Review and Evaluation Committee Department of Energy
Energy Center, Rizal Drive corner 34th Street Bonifacio Global City
Taguig City, Metro Manila,
1632 Philippines

The application may be sent by courier, registered mail, or hand delivered and must be stamped received by the DOE Records Division not later than 1100H of the deadline for submission of documents as prescribed in Item I.D.1.ii of this Annex and the REC shall open the submitted applications at 1300H on the same day.

III. Documentation Requirements

The following documentation requirements shall be included in the application:

A. Legal Documentation

1. Duly filled-out covering information sheet showing a brief summary of the application, e.g.

COVERING INFORMATION SHEET

Company Name
Telephone No.:
Fax No.:
Mobile Phone No.:
Email Address:
Website:

Address of Applicant:
Area Applied for:
Proposed Signature Bonus:
Proposed Training Assistance:
Proposed Development Assistance Fund:

It is certified that the foregoing information are true and correct. It is understood that any omission or misrepresentation of the required information shall be sufficient cause for the rejection of this application.

Authorized Representative
Name and Signature

2. Certified true copies of the Securities and Exchange Commission (SEC) Certificate of Registration, Articles of Incorporation and By-Laws. The corporate purpose of the applicant shall include the exploration, development and utilization of coal resources;

3. Certified true copy of the General Information Sheet (GIS) stamped received by the Securities and Exchange Commission (SEC) not more than twelve (12) months old at the time of filing of application;

4. Original Copy of the Certificate of Authority from the Board of Directors of the applicant authorizing a designated representative/s to apply, negotiate, sign any documents, and execute the COC. The said Certificate of Authority shall be executed under oath by the Corporate Secretary; and,

5. In case the applicant is a partnership or cooperative, it shall submit the legal documents as specified in A.2 to A.4 above, or its equivalent, issued or authenticated by the appropriate governing authorities.

B. Work Program Documentation

1. Geological Report (Narrative presentation of available data such as geology, coal quality, resource estimate, if available etc, indicating presence of coal resources at depth);

2. Proposed Exploration Work Program (Narrative discussion of the different exploration strategies and methodologies to be employed in delineating coal resources at depth with subsequent manpower complement and projected expenditures on annual basis for each activity with respect to the area or areas specified in the proposal);

3. The work equivalents as provided for in Chapter Four (4) Section III of BED Circular 81-11-10 or "Guidelines for Coal Operations in the Philippines" shall be applied equivalent to 9,000 feet or 2,743 meters drillhole-equivalent per coal block annually.

4. Schedule of Works and Manpower Requirements in Gantt Chart; and,

5. Projected Exploration Expenditures.

C. Technical Documentation

1. Particulars of technical and industrial resources available to the applicant for the exploration of coal resources;

2. Particulars on the technical and industrial qualifications, eligibilities and work related experiences of the applicant and its employees;

3. Particulars on the experiences, achievements and track records of the applicant and its employees related to technical and industrial undertakings; and,

4. Particulars on organizational and management structures relative to administration, financial and technical aspects of the applicant.

D. Financial Documentation

1. For corporations existing for more than two (2) years at the time of filing of application:

   a. Original Copy of the Annual Report or Audited Financial Statements (FS) for the last two (2) years from the filing date and Original Copy of the latest Unaudited FS duly signed by the responsible official such as the President and/or Chief Finance Officer if the Audited FS is more than six (6) months old at the time of filing;

   b. Original Copy of the Bank Certification to substantiate the cash balance as of the latest unaudited FS;

   c. Original Copy of the Projected Cash Flow Statement for three (3) years covering fund sources and uses for the particular offered area, other applied PCECP areas, renewable energy service contract applications, existing service/operating contracts with DOE and other existing business, if applicable; and,

   d. A certified true copy of the latest income tax return filed with the Bureau of Internal Revenue, and duly validated with the tax payments made thereon.

2. For newly-organized corporations existing for less than two (2) years at the time of filing of application:

   a. Original Copy of the Audited Financial Statements (FS) or unaudited FS duly signed by the responsible official such as the President and/or Chief Finance Officer;

b. Original Copy of the Bank Certification to substantiate the cash balance as of the latest unaudited FS; and

c. Original Copy of the Projected Cash Flow Statement for three (3) years covering fund sources and uses for the particular offered area, other applied PCECP areas, renewable energy service contract applications, existing service/operating contracts with DOE and other existing business, if applicable.

3. For Parent Company that guarantees for corporations with insufficient working capital. Financial guarantees of foreign companies to their subsidiaries that are shareholders of the applicant shall be limited to their equity participation in the allowable maximum forty percent (40%) foreign capitalization.

   a. Original Copy of the Parent Company's financial documents per D.1.a and D.1.b;

   b. Original Copy of duly notarized Letter of Undertaking/ Support from the Parent Company to fund the Work Program; and,

   c. General Information Sheet (GIS) of the shareholders of the applicant availing of the Parent Company fund guarantee.

4. Minimum working capital requirement (Liquid Assets less Current Liabilities) is 150% of the financial commitment for the first contract year of the proposed work program and budget as provided for in Chapter One (1) Section III item A.1.a of BED Circular 81-11-10 or "Guidelines for Coal Operations in the Philippines". Liquid Assets shall consist only of cash, trade accounts receivables and short term investments/placements. Credit line is not a Liquid Asset.

5. The applicant shall have available working capital for each PCECP application separate from other applied PCECP areas, renewable energy service contract applications and existing energy service/operating contracts.

IV. Evaluation, Selection and Awarding Procedures for the Various Modes of Selection Process

A. After the opening of application documents as stipulated under Item I.D.1.iii of this Annex, REC will convene and shall conduct evaluation of the submitted applications based on the following criteria:

Legal qualification	-	Pass or Fail
Work Program	-	40%
Technical qualification	-	20%
Financial qualification	-	40%

B. The highest ranked applicant who meets the legal, technical and financial requirements shall be selected

In case the nominating applicant loses to a challenger, the winning applicant shall reimburse in cash or Manager's cheque the nominating applicant of its publication expenses and application fee within seven (7)

calendar days from receipt of notice of award of COC. Failure of the winning applicant to reimburse said expenses within said period shall automatically nullify the award of COC and the second highest-ranked applicant shall be issued the notice of award of COC subject to the same conditions.

If the losing nominating applicant refuses to accept the reimbursement of expenses, the winning applicant shall open an escrow account in a government banking institution in favor of the losing nominating applicant. The winning applicant shall submit proof of the escrow account or payment of reimbursement of expenses to the REC.

C. An applicant that submitted incomplete or defective documents shall only be allowed to complete or correct the same if no other proposal was received during the selection process. If there are two or more proposals, no further submission or substitution of lacking or defective documents from any applicant, including the nominating applicant, shall be allowed.

The period within which a sole applicant shall be allowed to submit or replace the lacking or defective documents shall be at the discretion of the REC but not to exceed thirty (30) calendar days from the opening of the application/s.

D. Failure of the sole applicant to submit or correct lacking or defective documents within the period given by the REC shall result in the automatic disqualification of the application.

In the case of two or more applicants over the same coal area, any lacking or defective documents submitted by the applicants shall result to the automatic disqualification of the application.

E. After complete review and evaluation of the legal, technical, and financial qualifications of the applicant/s and the production of the execution copy of the COC, the REC shall transmit to the Secretary a written endorsement of the winning applicant.

F. Based on the written endorsement of the REC, the Secretary may approve the application for COC. The Secretary may convene the REC for any questions or inquiries pertaining to the review and evaluation undertaken.

G. Within seven (7) calendar days from receipt of notice of award, the winning applicant shall pay a processing fee of Thirty Thousand Pesos (Php 30,000.00)/coal block based on the DOE's schedule of fees and charges pursuant to DOF-DBM-NEDA Joint Circular No. 1-2013 dated 30 January 2013.

H. The REC TWG and Secretariat shall prepare the final COC using the Model Contract and its Accounting Procedures. No deviation from the Model Contract and its Accounting Procedures shall be allowed.

I. The DOE will award one COC for each Nominated Area. A company shall be entitled to not more than fifteen (15) coal blocks, including existing COCs, in any one coal region pursuant to Section 6of PD 972, as amended.

ANNEX "B"

Republic of the Philippines
DEPARTMENT OF ENERGY
Energy Center, Rizal Drive corner 34th Street, Bonifacio Global City,
Taguig City, Metro Manila

NOTICE OF APPLICATION FOR COAL OPERATING CONTRACT (COC)
Under the Philippine Conventional Energy Contracting Program (PCECP)

This is to inform the public that_____ is applying for ____Coal Blocks located in _____as seen in the map below and is bounded by the following Technical Descriptions:

INVITATION FOR CHALLENGE

Interested applicants may challenge the application of _____ by submitting their application over the same area in accordance with and subject to the following prescribed timeline and procedures:

A. Timeline

i. Pre-submission Conference – Twenty (20) calendar days from this date, 0900H at the DOE AVR.

ii. Deadline for the Submission of documents by Applicants – Sixty (60) calendar days (2 months) from this date on or before 1100H at the DOE Records Section.

iii. Opening of Documents – Sixty (60) calendar days (2 months) from this date at 1300H at the DOE AVR.

B. Procedures for Application:

1. Applicant shall submit three (3) complete sets of legal, technical, and financial documents for evaluation by the Review and Evaluation Committee (REC).

   Each application shall cover only one predefined area of interest with corresponding number of coal blocks as nominated and published.

   Only exploration Work Program in the application for COC that conforms to the Work Program Documentation, as required under Item III.B. of the Guidelines, shall be accepted.

2. Submitted application must be in both paper and digital (USB Drive in Microsoft Word of *.pdf format) copies. Times New Roman 12 font and single line spacing are recommended. Figures shall be submitted at a large scale (1:10,000) as appendices.

3. A non-refundable application fee of Php 200,000.00 per area shall be paid by the applicant upon submission of the application and its supporting documents. Payment may be made in cash, manager/company cheque payable to Department of Energy or wire/bank transfer. All wire/bank transfer should be net of all applicable bank and financial charges.

BLOCK	COORDINATES	
	LATITUDE	LONGITUDE

4. Both the original paper copy and the digital copy of the application shall be addressed to:

   The Chair

   PCECP Review and Evaluation Committee Department of Energy
   Energy Center, Rizal Drive corner 34th Street Bonifacio Global City
   Taguig City, Metro Manila,
   1632 Philippines

5. The application may be sent by courier, registered mail, or hand delivered and must be stamped received by the DOE Records Division not than 1100H of the deadline for submission of documents and the REC shall open the submitted applications at 1300H on the same day.

C. Selection Process

The selection process shall follow the provision of December Circular No. DC2017-09-0010 dated 13 September 2017, and its Annexes, a copy of which can be obtained from the REC Secretariat, ERDB, DOE.

For more information on the matter, interested Applicants may visit the DOE Website with the link _____ or write a letter to The Chair, Review and Evaluation Committee or call (02) 8402254.

Annex "C"

Republic of the Philippines
DEPARTMENT OF ENERGY
Energy Center, Rizal Drive corner 34th Street
Bonifacio Global City, Taguig City
Metro Manila

PHILIPPINE CONVENTIONAL ENERGY CONTRACTING PROGRAM (PCECP) FOR COAL OPERATING CONTRACT (COC) APPLICATION

APPLICATION CHECKLIST – LEGAL

I. LEGAL	**DOCUMENT FORMAT**
☐ 1) Duly filled-out covering information sheet (DOE Format).	*Original*
☐ 2) SEC Certificate of Registration or Incorporation.	*Certified True Copy*
☐ 3) SEC Articles of Incorporation and By-Laws (The corporate purpose of the applicant shall include the exploration and development of coal resources).	*Certified True Copy*
☐ 4) General Information Sheet (GIS) stamp-received by the SEC not more than 12 months old at the time of filing of application.	*Certified True Copy*
☐ 5) Certificate of Authority from the Board of Directors of the applicant authorizing designated representative/s to apply, negotiate, sign any document and execute the Coal Operating Contract. The said Certificate of Authority shall be executed under oath by the Corporate Secretary.	*Original*
☐ 6) For partnership or cooperative, applicants shall submit equivalent legal documents as specified in item nos. 2 – 5 above, issued or authenticated by the appropriate governing authorities.	*Original*
☐ 7) Proof of payment for processing / application fee (DOE Official Receipt) *NOTE: Payment Order / Remittance Slip to be secured from the Office of the Director, ERDB before payment to the Treasury Division* *Coal = Php 200,000.00*	*Original*

APPLICATION CHECKLIST – TECHNICAL

II. TECHNICAL	**DOCUMENT FORMAT**
1) Work program	
☐ a) Geological Report (Narrative presentation of the following available data such as geology, coal quality, resource estimate, if available, indicating presence of coal resources at depth).	*Digital and printed copy*
☐ b) Proposed Exploration Work Program (Narrative discussion of the different exploration strategies and methodologies to be employed in delineating coal resources at depth with subsequent manpower complement and projected expenditures on annual basis for each activity with respect to the area or areas specified in the proposal).	*Digital and printed copy*
☐ c) Schedule of works and manpower requirements in Gantt Chart.	*Digital and printed copy*
☐ d) Projected exploration expenditures.	*Digital and printed copy*
2) Technical documentation	
☐ a) Technical and industrial resources available to the applicant for the exploration of coal resources.	*Digital and printed copy*
☐ b) Technical and industrial qualifications, eligibilities and work-related experiences, achievements and track records of the applicant and its employees related to technical and industrial undertakings.	*Original*
☐ c) Operational organization and management structures relative to administration, financial and technical aspects of the applicant.	*Original*

APPLICATION CHECKLIST – FINANCIAL

III. FINANCIAL	**DOCUMENT FORMAT**
1) For corporations existing for more than 2 years at the time of filing:	

☐ a) Annual Report or Audited Financial Statements (FS) for the last two (2) years from the filing date and latest Unaudited FS duly signed by the responsible official such as the President and/or Chief Finance Officer if the Audited FS is more than six (6) months old at the time of filing.	*Original*
☐ b) Bank Certification to substantiate the cash balance as of the latest unaudited FS.	*Original*
☐ c) Projected Cash Flow Statement for three (3) years covering fund sources and uses for the particular offered area, other applied PCECP areas, renewable energy service contract applications, existing service/ operating contracts with DOE and other existing business, if applicable.	*Original*
☐ d) Latest income tax return filed with the Bureau of Internal Revenue, and duly validated with the tax payments made thereon.	*Certified True copy*
2) For newly-organized corporations (existing for two (2) years or less at the time of filing)	
☐ a) Audited Financial Statements (FS) or unaudited FS duly signed by the responsible official such as the President and/or Chief Finance Officer.	*Original*
☐ b) Bank Certification to substantiate the cash balance as of the latest unaudited FS.	*Original*
☐ c) Projected Cash Flow Statement for three (3) years covering fund sources and uses for the particular offered area, other applied areas, renewable energy service contract applications, existing service/ operating contracts with DOE and other existing business, if applicable.	*Original*
3) For Parent Company's guarantee for corporations with insufficient working capital:	

☐ a) Parent Company's financial documents per Coal Application Checklist Items III.1.a and III.1.b.	*Original*	first contract year of the proposed work program and budget as provided for in Chapter One (1) Section III item A.1.a of BED Circular 81-11-10 or "Guidelines for Coal Operations in the Philippines". Liquid Assets shall consist only of cash, trade accounts receivables and short term investments/ placements. Credit line is not a Liquid Asset.
☐ b) Duly notarized Letter of Undertaking/ Support from the Parent Company to fund the Work Program.	*Original*	
☐ c) General Information Sheet (GIS) of the shareholder availing of the Parent Company fund guarantee	*Certified True copy*	The applicant shall have available working capital for each PCECP application separate from other applied PCECP areas, renewable energy service contract applications and existing energy service/operating contracts.
NOTE: Minimum working capital requirement (Liquid Assets less Current Liabilities) is 150% of the financial commitment for the		

Chapter III
Small Scale Mining

I. BED CIRCULAR NO. 87-03-001

PROVIDING FOR GUIDELINES AND PROCEDURE TO IMPLEMENT A PROGRAM THAT WILL ALLOW SMALL-SCALE COAL MINING

SECTION 1. Rationale:

Presidential Decree No. 972 introduced the service contract system for the exploration, development and exploitation of domestic coal resources, under the administration of the Bureau of Energy Development (BED). The service contract system, which is a departure from the coal permit and lease systems, envisioned large-scale, capital intensive coal operations over extensive coal blocks as requirements for applicants to quality for a coal operating contract.

There are, however, areas in the Philippines that have small deposits of coal whose exploitation will not quality under the requirements of P.D. No. 972, but which nonetheless contain enough coal deposits suitable for small mining. Many of these coal-bearing areas have been traditionally mined by local residents as a source of income and economic livelihood, long before the promulgation of P.D. No. 972 in 1976.

Given clear guidelines consistent with mining safety, systematic exploitation, techniques and accountability to the BED, these small coal deposits could be exploited by local residents/small entrepreneurs under less stringent but more realistic regulations that will essentially recognized coal operations in these areas as socio-economic projects easily accessible to the people and calculated to uplift their quality of life.

SECTION 2. Definition of Terms

a) Small-Scale Mining Operations. Pertains to the exploitations of coal under a permit issued by the BED, subject to the terms and condition provided under this Circular.

b) Applicant. A qualified Filipino citizen, applying for a permit with the BED to engage in Small-Scale Mining Operations.

c) Permittee. A holder of permit issued by the BED to exploit coal resources.

d) Coal Operating Contact. A valid and subsisting coal operating contact issued under P.D. No. 972, as amended.

e) Coal Operator. The holder of a coal operating contract who is authorized by its terms to undertake coal operations.

f) Supervising Coal Operator. A coal operator who, under the terms of this Circular, is charged with the supervision of the Permittee for the BED.

SECTION 3. Who May Apply.

A Filipino citizen, of legal age, and resident of the place or area where the coal deposit is located, as certified to by its barangay captain and local mayor, may apply for a small scale coal mining permit with the BED.

SECTION 4. Area Open to Small-Scale Mining.

Applications and permits may cover coal areas within a coal operating contract or free areas outside of a coal operating contact, as determined by the BED. A coal permit shall cover a compact and contiguous area of not exceeding five (5) hectares with a geological coal reserve not exceeding 50,000 metric tons.

SECTION 5. Contents of Applications.

All small-scale coal mining operations authorized under Permits issued under this Circular, whether conducted within an area covered by a coal contract or outside the same, shall be undertaken by the Permittee under the administration and supervision of the BED through the supervision of the coal operator in whose coal contract area the small-scale coal operations are located, or in cases where the area is outside a coal operating contract area, through the coal operator nearest the small-scale coal area.

An applicant shall accomplish in triplicate the BED application form provided in Appendix A of this Circular. The duly accomplished application form must be accompanied by the following documents:

a) Written undertaking or agreement between the applicant and the supervising coal operator to the effect that the supervising coal operator shall supervise and assume responsibility to the BED for the small-scale operations of the applicant or Permittee including the implementation of safety measures in the area covered by the permit, as approved by the BED.

b) The survey plan and the corresponding technical description of the area applied for and prepared by a qualified geodetic engineer.

c) A one-year work program indicating the presence of deposits of coal not suitable for large or medium scale operations under a service contract but which deposits are suitable to small-scale, labor intensive operations.

d) Written endorsement or clearance from the local Barangay captain and Mayor attesting that applicant is a permanent resident of the province or city or municipality where the small-scale mining operations will be undertaken.

e) A contract of purchase and sale between the coal operator and the Permittee under which the coal operator shall purchase all the coal, production of the Permittee.

In addition to the above, the applicant must show proof that it has the minimum operating capital of Ten Thousand Pesos, whether in cash or in kind. The necessary proof include bank deposit, real property tax declaration, contract of lease of equipment and such other similar proof as would show that applicant has the requisite means and resources to pursue small-scale mining under Permit.

Applications will be accepted on a “first come, first served” basis. The more filing of an application does not authorize the applicant to commence and exercise the rights of a Permittee.

Incomplete applications will not be accepted for processing and will not be deemed as filed even if delivered for filing. An application fee of One Hundred Pesos (P100.00) per hectare

shall be paid upon the filing of the application.

SECTION 6. Obligations of the Permittee.

The Permittee shall have the following obligations:

a) In general, to undertake with due diligence the small-scale coal operations in accordance with the terms and conditions of the Permit.

b) To remain at all times accountable to the BED through its duly designated supervising coal operator.

c) To diligently pursue small-scale coal operations in accordance with its approved work program, observing safety measures required by the BED.

d) To submit as required periodic and other reports to the BED.

e) To sell all its coal production to its duly-designated supervising coal operator or only to such other coal operator or end-user upon approval by the BED.

SECTION 7. Obligations of the Supervising Coal Operator.

The supervising coal operator shall have the following obligations:

a) To exercise overall supervision over the conduct of the small-scale operation by the Permittee ensuring its observance of systematic and safe mining techniques and practices required by the BED.

b) To purchase the coal production of the Permitte to the maximum extent possible that will allow the coal operator to meet its own production commitment with the BED and the buyer.

c) To account to the BED its purchase from the Permittee through quarterly reports indicating payments to the Permittee.

d) To deduct 3% from the gross purchase price of coal sourced from the Permittee, and to remit to BED said amount within thirty (30) days from its deduction.

SECTION 8. Period of Term.

A permit shall have period or term of five (5) years from the date of issuance, renewable for additional five (5) year terms thereafter.

SECTION 9. Cancellation or Termination of Permit.

A Permit shall be cancelled or terminated for the following causes:

a) Expiration of its term or period;
b) Cancellation by the BED for causes provided in the Permit and/or this Circular;

c) Failure to comply with duly-issued Circulars of the BED;

d) Death of Permittee in which case his nearest qualified legal heir shall be given priority to apply for a new permit over the same permit area;

e) Exhaustion of coal reserves;

f) Voluntary relinquishment by Permittee.

SECTION 10. Disqualification.

The following are disqualified from applying for a permit:

a) A coal operator;

b) Those with pending cases in court for unauthorized coal mining;

c) Those facing administrative investigation in the BED for unauthorized coal mining;

d) Those individual convicted of a crime involving violation of P.D. 463, P.D. 972, as amended by P.D. 1174.

SECTION 11. Exclusivity of Permit.

The permits issued under the Circular may not be assigned, transferred, encumbered or otherwise disposed of in any manner without the prior written consent of the supervising coal operator and the BED.

SECTION 12. Miscellaneous Provision.

a) **Priority.** The Landowner of the coal reserves has priority to a Permit if he or she shall personally reside and operate in the permit area. Otherwise, the actual resident has priority.

b) **Settlement of Disputes.** Conflicts between the Permittee and the Supervising Coal Operator with respect to rights and obligations that arise out of the Permit issued under the Circular shall be settled amicably between them. In case of failure after exhaustion of all efforts towards amicable settlement, the aggrieved party may file a written complaint in the BED.

c) **Expeditious Processing or Application.** Dispositive action on complete applications shall come not later than ninety (90) days after its filing as provided in Section 3 hereof. The running of the period is interrupted upon applicant a receipt of notice from the BED requiring the submission of further documents or the performance of any act pertinent to the application, and shall commence to run again upon receipt by the BED of applicant's compliance. Applications which are not diligently prosecuted by applicant shall be deemed automatically denied if applicant fails to comply with the requirements of the BED within thirty (30) days from receipt of notice to comply.

SECTION 13. Direct Supervision by the BED.

The BED may temporarily supervise directly the Permittee under the following circumstances:

a) In case of cancellation or expiration of the coal operating contract of the supervising coal operator.

b) In areas outside an existing coal contract area where there is no coal operator nearby or where the nearest coal operator cannot effectively operate under this Circular.

The temporary supervision of the BED shall continue until the appointment and qualification of a new supervising coal operator.

SECTION 14. The Circular shall take effect upon its approval of the Deputy Executive Secretary for Energy.

Issued this 4th day of March 1987 in Makati, Metropolitan, Manila.

W. R. DE LA PAZ
Acting Director

APPROVED:

VICENTE I. PETERNO
Deputy Executive Secretary For Energy

II. OEA CIRCULAR NO. 88-02-002

WHEREAS, the former Bureau of Energy Development now Office of Energy Affairs (OEA) issued BED Circular No. 87-03-001 that will allow small scale mining operation in areas covered by a Coal Operating Contract (COC).

WHEREAS, it is necessary to provide the OEA with sufficient means and remedies through which it can effectively exercise and enforce said Circular over said area.

SECTION 1. Section 4 is hereby amended by adding a second paragraph to read as follows:

> Section 4. **Areas Open to Small Scale Mining**
>
> An area covered by a COC once declared by the OEA suitable for small scale coal mining operations and a permit formally issued is considered automatically relinquished by a COC holder in favor of the permittee."

SECTION 2. Section 5 (e) is hereby amended to read as follows:

> "(e) A contract of purchase and sale which shall be subject to the approval of the OEA"

SECTION 3. Section 9 (c) is likewise hereby amended to read as follows:

> "(c) Failure and/or refusal of the Permittee to comply with duly issued Circulars of the OEA, and/or approved work program."
>
> Section 4. Additional ground for cancellation or termination of the permit is hereby provided by adding a new subsection (g) in Section 9 to read as follows."
>
> "(g) The area is later determined to be suitable for large scale operations."

SECTION 5. Section 13 is likewise hereby amended by adding a new subsection (c) which reads as follows:

> "(c) In case the COC holder refused to become the Supervising Coal Operator."

SECTION 6. This Circular shall take effect immediately.

Issued this February 10, 1988, in Makati, Metro Manila.

W. R. DE LA PAZ
Executive Director

III. OEA CIRCULAR NO. 88-03-006

WHEREAS, the former Bureau of Energy Development now Office of Energy Affairs (OEA) issued BED Circular No. 87-03-001 providing for guidelines and procedure to implement a program that will allow small scale coal mining operation on areas covered by a Coal Operating Contract (COC).

WHEREAS, it is necessary to provide the OEA with sufficient means and remedies through which it can effectively exercise and enforce said circular over said area.

WHEREAS, in view of the foregoing consideration, the aforesaid BED Circular No. 87-03-001 was amended on February 10, 1988 through OEA Circular No. 88-02-002.

WHEREAS, there is a need to further amend said Circular.

NOW, THEREFORE, the said BED Circular No. 87-03-001 as amended is hereby further amended as follows:

SECTION 1. Section 5(a) is hereby amended to read as follows:

a) Written undertaking or agreement between the applicant and the supervising coal operator to the effect that the supervising coal operator shall supervise and oversee the small scale operations of the applicant or Permittee including the implementation of safety measures in the area covered by the permit, as approved by the OEA.

SECTION 2. Section 7 (a) is hereby amended to read as follows:

a) To exercise overall supervision over the conduct of the small scale operation by the Permittee ensuring its observance of systematic and safe mining techniques and practices required by OEA as embodied in the written undertaking or agreement mentioned in Section 5(a), as amended.

SECTION 3. All other provision not inconsistent herewith shall remain in full force and effect.

SECTION 4. This Circular shall take effect immediately.

Issued this 22nd day of March 1988 in Makati, Metro Manila.

B. C. SALCEDO
Officer-in-Charge

IV. OEA CIRCULAR NO. 89-11-11

WHEREAS, the Office of Energy Affairs issued OEA Circular No. 88-03-006 and 88-02-002, amending certain provisions of BED Circular No. 87-03-001 providing for guidelines and procedure to implement a program that will allow small-scale mining operation in areas covered by a Coal Operating Contract (COC).

WHEREAS, it is necessary to further amend BED Circular No. 87-03-001 to make it attuned to the conditions under which it is being implemented.

NOW, THEREFORE, the said BED Circular No. 87-03-001 as amended is hereby further amended as follows:

SECTION 1. Section 13 Direct supervision by the OEA (then BED) is hereby amended to contain the following additional provisions:

a.1. In cases where the OEA assumes the supervision over the activities and operations of the small-scale mining permittee, the permittee shall have, in addition to the provisions of Section 6 hereof, the following duties and obligations:

1. To submit all the required periodic and other reports directly to the OEA;

2. To submit to the OEA immediately, a list of its prospective buyers of coal;

3. Remit to the OEA, within a reasonable time, the 3% OEA share from coal sales.

SECTION 2. Section 12 of BED Circular No. 87-03-001 is hereby amended to include a new subsection (d) thereof to read as follows:

(d) In cases where the SSMP had been cancelled or terminated under the conditions enumerated in Section 4 of OEA Circular No. 88-02-002, the permittee shall be given a grace period of six (6) months from notice within which he can recoup his capital investment.

SECTION 3. This Circular shall take effect immediately.

Issued this 6th day of November, 1989 in Makati, Metro Manila.

W.R. DELA PAZ
Executive Director

By: BEN-HUR C. SALCEDO
Officer-In-Charge

Chapter IV
DOE Laws, Rules and Regulations for Upstream Coal and Petroleum

I. SUBCONTRACTING GUIDELINES (COC/SC)

A. PRESIDENTIAL DECREE NO. 1354

IMPOSING FINAL INCOME TAX ON SUBCONTRACTORS AND ALIEN EMPLOYEES OF SERVICE CONTRACTORS AND SUBCONTRACTORS ENGAGED IN PETROLEUM OPERATIONS IN THE PHILIPPINES UNDER PRESIDENTIAL DECREE NO. 87

WHEREAS, foreign subcontractors involved in petroleum operations in the Philippines are taxable as resident foreign corporations;

WHEREAS, the said foreign subcontractors perform transitory activities during the taxable year and neither maintain regular office or fixed place of business nor keep books of accounts in the Philippines;

WHEREAS, the aliens employed by the said service contractors and by their subcontractors are likewise taxable on their income from Philippine sources;

WHEREAS, it is also difficult to determine whether the said aliens are resident aliens or nonresident aliens engaged or not engaged in trade or business in the Philippines which in turn make it difficult to determine their income tax;

WHEREAS, it is therefore necessary to simplify the method of taxing the said foreign subcontractors and the aliens involved in petroleum operations in the Philippines so as to insure the collection of whatever tax that is due from them;

WHEREAS, in order to place local or domestic subcontractors on equal footing and to make them competitive with foreign subcontractors, they should similarly be taxed as foreign subcontractors;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby decree as follows:

SECTION 1. ***Tax on subcontractors.*** – Every subcontractor, whether domestic or foreign, entering into a contract with a service contractor engaged in petroleum operations in the Philippines shall be liable to a final income tax equivalent to eight percent (8%) of its gross income derived from such contract, such tax to be in lieu of any and all taxes, whether national or local: *Provided, however,* That any income received from all other sources within and without the Philippines in the case of domestic subcontractors and within the Philippines in the case of foreign subcontractors shall be subject to the regular income tax under the *National Internal Revenue Code.* The term "gross income" means all income earned or

received as a result of the contract entered into by the subcontractor with a service contractor engaged in petroleum operations in the Philippines under Presidential Decree No. 87.

SECTION 2. ***Taxation of aliens employed by petroleum service contractors and subcontractors.*** – Aliens who are permanent residents of a foreign country but who are employed and assigned in the Philippines by service contractors or by subcontractors engaged in petroleum operations in the Philippines, shall be liable to a final income tax equal to fifteen percent (15%) of the salaries, wages, annuities, compensations, remunerations and emoluments received from such contractors or subcontractors. Any income earned from all other sources within the Philippines by the said alien employees shall be subject to the income tax imposed under the National Internal Revenue Code.

SECTION 3. ***Manner of collecting the tax.*** –

(a) Every service contractor shall deduct, withhold, and pay the tax imposed in Section 1 of this Decree from the amounts paid by the service contractor to the subcontractor under the contract entered into by and between them in the same manner and subject to the same conditions as provided in Section 54 of the *National Internal Revenue Code.*

(b) Every service contractor shall also deduct, withhold and pay the tax imposed in Section 2 of this Decree from the salaries, wages, annuities, compensations, remunerations and emoluments paid to (1) its alien employees and (2) the aliens employed by its foreign subcontractors in the same manner and under the same conditions as provided in Section 54 of the *National Internal Revenue Code.*

(c) Every domestic subcontractor shall deduct, withhold and pay the tax imposed in Section 2 of this Decree from the salaries, wages, annuities, compensations, remunerations and emoluments paid to its alien employees in the same manner and under the same conditions as provided in Section 54 of the *National Internal Revenue Code.*

SECTION 4. ***Registration of service contracts.*** – All contracts relating to oil operations entered into between the service contractor and a subcontractor engaged in petroleum operations in the Philippines shall be registered with the Bureau of Energy Development.

SECTION 5. ***Additional conditions for reimbursement of operating expense.*** – The cost of subcontractors shall be considered as part of reimbursable operating expenses of the service contractor under Presidential Decree No. 87 only if it is shown that the contract has been properly registered with the Bureau of Energy Development and the taxes due under this Decree have been withheld and paid in accordance with the provisions of Section 53 and 54 of the National Internal Revenue Code.

SECTION 6. ***Repealing Clause.*** – Any provision of existing general and special laws inconsistent with the provisions of this Decree is hereby modified, amended or repealed accordingly.

SECTION 7. ***Effectivity.*** – This Decree shall take effect upon approval.

Done in the City of Manila, this 21st day of April, in the year of Our Lord, Nineteen Hundred and Seventy-Eight.

B. DEPARTMENT CIRCULAR NO. DC2014-08-0013

ADOPTING NEW MECHANISMS AND PROCEDURES IN THE REGISTRATION OF ALL SUBCONTRACTS AND AGREEMENTS ENTERED INTO BY PETROLEUM SERVICE CONTRACTORS UNDER PRESIDENTIAL DECREE NO. 87, AS AMENDED, AND COAL OPERATING CONTRACT HOLDERS UNDER PRESIDENTIAL DECREE NO. 972, AS AMENDED, AMENDING FOR THIS PURPOSE OFFICE OF ENERGY AFFAIRS CIRCULAR NOS. 82-09-09, 82-09-09A, 89-01-02 AND 89-08-09

WHEREAS, Section 5(h) of Republic Act No. 7638 or the "Department of Energy Act of 1992", as amended, states that the Department of Energy (DOE) shall exercise supervision and control over all government activities relative to energy projects;

WHEREAS, Presidential Decree No. 1354, which imposes final income tax on subcontractors and alien employees of Petroleum Service Contractors and subcontractors engaged in petroleum operations in the Philippines, mandates the registration of subcontracts with the Bureau of Energy Development (BED);

WHEREAS, the Office of Energy Affairs (OEA) issued OEA Circular Nos. 82-09-09, 82-09-09A and 89-08-09 mandating, for cost recovery purposes, the registration with the BED of all subcontracts entered into by Coal Operating Contract ("COC") holders not later than 30 days from execution thereof;

WHEREAS, the OEA (now the DOE) also issued OEA Circular No. 89-01-02 requiring the submission of two (2) copies of subcontracts entered into by petroleum Service Contractors (the "Service Contractors") under Presidential Decree No. (PD) 87, as amended, for registration and approval by the BED not later than 60 days from execution thereof, for cost recovery purposes;

WHEREAS, it has been observed in actual practice that the period prescribed in the abovementioned Circulars within which to submit the subcontracts are not sufficient resulting in late submission, especially since the Service Contractors, in the interest of economy and efficiency have resorted to submitting those subcontracts" in bulk, especially those executed or entered into overseas; and

WHEREAS, it is in the best interest of the Government and the Service Contractors/ COC holders to simplify and rationalize the registration/approval of the subcontracts/ agreements entered into under PD 87, as amended, and PD 972, as amended, by clarifying the procedures and lengthening the period with which to submit these subcontracts to the DOE;

NOW THEREFORE, for and in consideration of the foregoing premises and pursuant to Section 5(h) of Republic Act No. 7638, the following procedures and additional rules and regulations are hereby issued for strict compliance by the Service Contractors and COC holders;

SECTION 1. Scope and Application. This Circular shall govern the registration of all subcontracts and agreements entered for Service Contractors under PD 87, as amended, and COC holders under PD 972, as amended.

SECTION 2. General Provisions. All Service Contractors and COC holders shall comply with the following procedures.

a. All services covered by subcontracts or agreements to be entered into by Service Contractors and COC holders with their

subcontractors and/or service providers in pursuance of their SCs or COCs shall be included and incorporated in their Work Program (WP) that is submitted to and approved by DOE;

b. All activities under the COC may be allowed to be subcontracted except those work/activities related to coal mining, coal extraction and other activities related to coal production which shall be performed directly by the COC holder. To ensure that all subcontracts for coal operations shall comply with this provision, these subcontracts or agreements, subject to Section 2.d hereof, shall be submitted for registration and approval prior to the actual implementation thereof;

c. Administrative contracts under PD 87, as amended, as defined under Section 2.f of Revenue Regulation No. 15-78[1], need not be registered with the DOE. However, a copy of each administrative contract shall be nonetheless be furnished the DOE for records purposes;

d. All subcontracts or agreements entered into by Service Contractors and COC holders with subcontractors and/or service providers on or after the effectivity date of this Circular, which are sought to be cost recovered under PD 87 and PD 972, respectively, shall be submitted to DOE for registration not later than six (6) months from the date of execution thereof. Provided, That for the purposes of this Section, date of execution mean:

   i. the date of signing by all the parties of the subcontract or agreement if all made on the same date, or

   ii. if a subcontract or agreement is signed on different dates, the date of signing by the last party to sign;

e. Subcontracts or agreements shall be submitted in two (2) original or certified true copies. Subcontracts executed pursuant to PD 87, as amended, shall contain a provision regarding the deductions, withholding and remittance of final income tax imposed in relation to Section 1 of PD 1354, from the gross income paid by Service Contractor to the subcontractor. If by the nature of the subcontract and/or agreement, the contract value and the applicable tax to be withheld or paid is contingent or not yet determinable at the time of registration, the Service Contractor shall submit related documents evidencing compliance with the deduction, withholding and remittance of final income tax under PD 1354, within six (6) months from the end of the calendar year that the tax is paid or prior to the conduct of audit by the Compliance Division, Financial Services ("CD-FS")[2];

f. Subcontract or agreement which provides petroleum and/or coal as payment for the services of the subcontractor shall be deemed in excess of the authority granted by DOE to Service Contractors and COC holders, and accordingly is hereby prohibited.

SECTION 3. Administrative Procedures. The subcontracts or agreements shall be reviewed, evaluated and registered in the following manner:

a. The subcontracts or agreements shall be submitted to the Records Division,

[1] ***"Regulations governing taxation of subcontractors and alien individuals employed by service contractors and sub-contractors engaged in the Petroleum operations in the Philippines under Presidential Decree No. 87, as provided under Presidential Decree Number 1354*** *(October 10, 1978)*

Section 2.f "Administrative contracts" refer to contracts entered into by the service contractor with domestic entities or individuals relating to the administrative operation of the service contractor's local office in the Philippines. Examples of administrative contracts are those covering janitorial services, lease of office space, staff houses, office cars and office equipment, maintenance service thereof and other contracts of similar nature."

[2] *now, Conventional Energy Resources Compliance Division (CERCD)*

Administrative Services for records purposes;

b. The Records Division shall immediately endorse these subcontracts or agreements to the Energy Resource Development Bureau (ERDB) for evaluation to determine whether the subcontracts/agreements relate to petroleum/coal operations and that these are incorporated in the approved WPB under the particular SC or COC;

c. In addition, all subcontracts or agreements under PD 972, as amended, shall be evaluated whether they comply with Section 2.b hereof;

d. Furthermore, administrative contracts shall be evaluated by the ERDB whether or not they comply with Section 2.c hereof;

e. All other contracts, agreements and other expenses not specified herein shall comply with applicable provisions of the Service Contract or COC and its Accounting Procedures;

f. The ERDB shall thereafter forward the subcontracts to the Legal Services for review and evaluation to determine whether the Service Contractors or COC holders compy with the pertinent provisions of this Circular prior to the approval of the registration thereof.

SECTION 4. Registration Procedure. In case the subcontract or agreement complies with the provisions of this Circular, it shall be endorsed by the Legal Services to the ERDB for registration and a copy thereof furnished to the CD-FS. Thereafter, a registration notice shall be sent to the Service Contractor or COC holder by the ERDB stating that the subcontract or agreement has been registered in the DOE.

In instances where the subcontract or agreement is submitted beyond the prescribed period in Section 2.d of this Circular, the registration thereof shall only be allowed upon payment of the penalty as provided under Section 7 hereof. The ERDB shall forthwith inform the Service Contractor or COC holder of the amount to be paid and period within which the payment shall be made.

SECTION 5. Nature of Subcontract. The registration of the subcontract or agreement shall not be construed either as an assignment or transfer of rights and responsibilities under the Service Contract or COC. The Service Contractor and COC holder shall be fully responsible to the DOE for the work obligations and commitments under the Service Contract or COC. In addition, the Service Contractor and COC holder shall be responsible for the general safety, security and compliance to environmental rules and regulations, among others.

SECTION 6. Existing Subcontract/Agreement. All existing subcontracts or agreement entered into by Service Contractors and COC holders with subcontractors and/or service providers pursuant to the provisions of PD 87, as amended, and PD 972, as amended, prior to the effectivity of this Circular shall be registered with the DOE within a period of six (6) months from effectivity of this Circular, otherwise the application for registration thereof shall be automatically denied.

SECTION 7. Penalty Provision. In the event that the subcontracts and/or agreements are submitted beyond the prescribed period under this Circular, cost-recovery may be allowed subject to prior payment of a penalty in the amount of Ten Thousand Pesos (P 10,000) per subcontract and/or agreement. Failure to pay the penalty within a period of sixty (60) days from notice thereof shall result to the disallowance of the related expenditures as cost recovery.

SECTION 8. Separability Clause. If any provision of this Circular is declared unconstitutional, the remainder or the provisions not affected shall remain valid and subsisting.

SECTION 9. Repealing Clause. All circulars, orders, letters of instructions or issuances contrary to or inconsistent with this Circular are hereby repealed, modified or amended accordingly.

SECTION 10. Effectivity. This Circular shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Issued at the Energy Center, Rizal Drive, Bonifacio Global City, Taguig City.

CARLOS JERICHO L. PETILLA
Secretary

II. TAX-EXEMPTION INCENTIVE (COC/SC)

DEPARTMENT CIRCULAR NO. DC2018-03-0006

OMNIBUS RULES AND REGULATIONS GOVERNING TAX-EXEMPT IMPORTATIONS FOR PETROLEUM OPERATIONS UNDER PRESIDENTIAL DECREE NO. 87, AS AMENDED AND COAL OPERATIONS UNDER PRESIDENTIAL DECREE NO. 972, AS AMENDED

WHEREAS, Presidential Decree No. 87 or the "The Oil Exploration and Development Act of 1972", as amended, and Presidential Decree No. 972 or the "The Coal Development Act of 1976", as amended, allow tax- and duty-free importation of machinery and equipment, materials and parts which are directly and actually needed and will be used exclusively by the contractor/operator in its operations;

WHEREAS, Section 5 (h) of R. A. 7638 or the "Department of Energy Act of 1992", as amended, states that the Department of Energy (DOE) shall exercise supervision and control over all government activities relative to energy projects;

WHEREAS, the then Bureau of Energy Development (BED) had issued various circulars providing for the rules and regulations governing tax-exempt importations for both petroleum and coal operations;

WHEREAS, Section 2 of Republic Act No. 9485 or the "Anti-Red Tape Act of 2007" mandates the government to promote transparency in each agency with regard to the manner of transacting with the public, which shall encompass a program for the adoption of simplified procedures that will reduce red tape and expedite transactions in government;

WHEREAS, consistent with the above-mentioned policy, it is high time that the existing circulars on tax-exempt certificate processing and issuance which were issued way back in 1980 to 2005 be updated, simplified and streamlined to make it responsive to the current situation;

NOW, THEREFORE, for and in consideration of the foregoing premises and pursuant to Section 5 (h) of R. A. 7638, as amended, the DOE does hereby promulgate the following rules and regulations:

Section 1. Scope and Application. This Department Circular shall govern the application, processing, approval and issuance of tax-exempt certificates ("TEC") for the importation, exportation and disposal of machinery, equipment, spare parts and materials used for Petroleum and Coal Operations.

Section 2. Definition of Terms. As used in this Circular, the following shall have the following respective meanings:

a. **Actually, Directly and Exclusively Used** – means the use and utilization of machinery, equipment, spare parts and materials in the implementation of the approved work program of the Petroleum Service Contract or Coal Operating Contract ;

b. **Annual Procurement Plan** – means the consolidated program and activities by the SC operator or COC Holder for the current year, based on its approved WP and budget, including the machinery, equipment, spare parts and materials to be procured and the method for their procurement;

c. **Applicant** – means the SC Operator or COC Holder with an application for the issuance of a TEC for the importation or exportation of machinery, equipment, spare parts and materials, and the sale or donation of unserviceable or used machinery, equipment, spare parts and materials duly filed with the DOE pursuant to this Circular;

d. **Coal Operation** – means the activities of a COC Holder for: (a) the examination and investigation of lands, supposed to contain coal by detailed surface geologic mapping, core drilling, trenching, test pitting and other appropriate means, for the purpose of probing the presence of coal deposits and the extent thereof; (b) steps necessary to reach coal deposit so that it can be mined, including but not limited to shaft sinking and tunnelling; (c) the extraction, beneficiation and transportation up to the delivery point; and (d) the progressive mine rehabilitation and final decommissioning activities;

e. **Coal Operating Contract Holder** – means the operator of a valid and subsisting COC issued under P.D. No. 972, as amended;

f. **Emergency Importation** – means the importation of machinery, equipment, materials and spare parts not included in the work program but urgently needed to prevent accident, losses, and unnecessary delays and expenses;

g. **Exportation** – means the act of sending or transmitting machinery, equipment, spare parts and materials from the Philippines to a foreign territory and covered by a TEC under a temporary Importation, or permanent Importation which is subject to repairs and/or regular maintenance;

h. **Importation** – means the act of bringing in machinery, equipment, spare parts and materials which are Actually, Directly and Exclusively Used for Petroleum or Coal Operations from a foreign territory into the Philippine jurisdiction, with intent to land;

i. **Machinery, Equipment, Spare Parts and Materials** – refer to capital equipment, major components thereof, non-perishable tools, machines and other mechanical, chemical and or electrical apparatus, whether fixed or movable; usual components of machinery and/or equipment which are subject to wear and tear arising from normal use, utilization and operation; and matters which are intended to be used in the creation of a mechanical structure, needed in Petroleum and Coal Operations;

j. **Petroleum Operation** – means searching for and obtaining petroleum within the Philippines through drilling and pressure or suction or the like, and all other operations incidental thereto. It includes the transportation, storage, handling and sale (whether for export or for domestic consumption) of petroleum so obtained but does not include any: (1) transportation of petroleum outside the Philippines; (2) processing or refining at a refinery; or (3) any transactions in the products so refined as defined under the SCs;

k. **Service Contractor** – means the petroleum service contract holder and/or operator under a valid petroleum SC;

l. **Tax Exemption Certificate (TEC)** – means the document issued by the DOE in accordance with Section 12 (b) of PD No. 87 and Section 16 (b) of PD No. 972 granting exemption from payment of tariff duties and compensating tax on the importation of machinery and equipment, and spare parts and all materials to the contractors for petroleum and coal operations; and

m. Technical Obsolescence – means the design or specification of the asset no longer fulfills the function for which it was originally designed and/or the machinery, equipment, spare parts and/or materials covered by a TEC has diminished in value caused by changes in technology and new inventions rendering it less desirable in the industry, including a decline in value due to improved alternatives becoming available that are more cost effective, as may be verified and approved by the DOE.

Section 3. Conditions for the Importation, Exportation and Disposal of machinery, equipment, spare parts and materials for Coal and Petroleum Operations.

A. The DOE shall allow the importation of machinery, equipment, spare parts and materials for petroleum and coal operations under the following conditions, to wit:

1. The machinery, equipment, spare parts and materials of comparable price and quality are not manufactured domestically;

2. The machinery, equipment, spare parts and materials are actually, directly and exclusively used by the Service Contractor or COC Holder in its petroleum and coal operations, or in operation for it by a subcontractor;

3. The machinery, equipment, spare parts and materials are covered by shipping documents in the name of the SC Operator or COC Holder to whom the shipment will be delivered directly by the customs authorities; and

4. Prior approval of the DOE was obtained by the contractor before the importation of such machinery, equipment, spare parts and materials, through the approved WP&B and APP.

B. Emergency Importation. In case of emergency importation, the Applicant shall submit a written request showing the necessity of the emergency importation, subject to the conditions for regular importation under Section 3 (A) (1), (2) and (3) hereof.

In addition, the Applicant shall post a good and sufficient bond in favor of the Bureau of Customs (BoC) in an amount not less than the stated amount of duty and tax from which the Emergency Importation is being exempted. It shall be the principal condition of the bond that the Applicant shall submit to the BoC within thirty (30) days from the withdrawal of the emergency importation from customs custody, the appropriate BoC required documents qualifying the Applicant to undertake the importation on a tax-exempt basis.

Failure of the Applicant to comply with the BoC required documents within the prescribed period shall cause the automatic cancellation of the bond in favor of the BoC without recourse to a suit in law.

C. Exportation. The DOE shall allow the exportation of machinery, equipment, spare parts and materials when the following conditions exists:

1. That the importation is only temporary importation as indicated in the application and the duly-issued TEC by the DOE; and

2. That the machinery, equipment, spare parts and materials are to be exported for repair and/or maintenance, as approved by the DOE.

In case of exportation without prior approval of the DOE, the applicant shall be liable to pay twice the amount of taxes and duties which were originally waived in its favor.

D. Disposal. The DOE shall allow and approve the disposal without tax if made to:

1. Another existing SC Operator or COC Holder under a valid petroleum service contract and/or coal operating contract;

2. For reasons of technical obsolescence as may be verified by the DOE; or

3. For purposes of replacement to improve and/or expand operation under the SC or COC.

SC Operators and COC Holders are not allowed to dispose its machinery, equipment, spare parts and materials which were imported under this Circular without the prior approval of the DOE, and payment of taxes and duties thereon, if applicable.

In case the SC Operator or COC Holder disposes the machinery, equipment, spare parts and materials without prior approval from the DOE, it shall pay twice the amount of taxes and duties thereon. Provided, that the SC Operator or COC Holder may be allowed to donate the machinery, equipment, spare parts and materials subject to the foregoing rules on disposal and only on the following additional conditions:

a. It will involve used office equipment; or

b. The recipient or beneficiary is a government entity.

For fully cost-recovered articles, machinery, equipment, spare parts and materials imported under this Circular, as provided for under the respective Petroleum SC and COC, the DOE reserves the right to send its duly authorized representatives for the purpose of verifying conditions of the machinery, equipment, spare parts and materials prior to approval of the disposal and/or donation.

Section 4. Procedures, Forms and Documentary Requirements. The Applicant shall comply with the following rules and regulations on the application, evaluation, endorsement, approval, recording and reporting of applications for importation, exportation and disposal of machinery, equipment, spare parts and materials under this Circular.

1. The Applicant shall file four (4) sets of a completely filled-out Application Form attached hereto as Annexes “A” to “E” and sworn to by a responsible officer of the Applicant before a Notary Public.

   The application shall cover only one (1) complete shipment and/or transaction.

   In the Application Form, the Applicant shall submit proof, or declare under oath, that the machinery, equipment, spare parts and materials of comparable price and quality are not manufactured in the Philippines.

   For importations, the Applicant shall attach shipping documents of the imported machinery, equipment, spare parts and materials, in its name to whom the shipment will be delivered directly by the customs authorities.

2. The TEC application shall be filed at least ten (10) working days prior to the actual Importation, Exportation or disposal.

3. The Applicant shall file the application, together with the necessary documents,

with the Records Management Division of the DOE.

4. Upon receipt by the Records Management Division, the Applicant shall bring the application and supporting documents to the Petroleum Resources Development Division (PRDD) for petroleum operations, or to the Coal and Nuclear Minerals Division (CNMD) in case of coal operations.

   Upon receipt of the TEC application, the PRDD or CNMD shall issue the TEC Application Number and Payment Order (PO) slip to the Applicant for the payment of the processing fee with the Treasury Division, in accordance with the DOE Schedule of Fees and Charges. Applications with incomplete documents shall not be accepted.

   The PO slip shall only be valid for ten (10) calendar days upon issuance thereof and failure of the Applicant to pay the processing fee within the said period shall make to the application as null and void.

5. After payment of the processing fee, the Applicant shall then submit the application together with the supporting documents to the PRDD or CNMD for technical evaluation.

   In case of Importation, the application shall be evaluated within one (1) working day from submission of the application whether it complies with the approved WP&B and the APP, under the respective Petroleum SC or the COC. In case of Exportation and Disposal, the application shall be evaluated and acted upon within three (3) working days from receipt thereof.

   The PRDD or CNMD shall inform the Applicant on the payment of fees for the DOE Sticker as provided for under Section 6 hereof, if applicable.

6. After the technical evaluation, the application shall be endorsed by the ERDB Director to the Legal Services for legal evaluation, together with a duly-prepared TEC Certificate of Qualification for Tax-Exemption and a Memorandum recommending the issuance of a TEC to the Assistant Secretary and Undersecretary in-charge of ERDB.

   However, the approval of the Secretary shall be required for the following items:

   i. Transport vehicles and fuel; and

   ii. Those that, upon determination by the ERDB, do not clearly satisfy the condition of being for the actual, direct and exclusive use for the activity/purpose allowed under PD 87 and 972, both as amended.

7. Upon approval of the application, the approved and signed TEC Certificate of Qualification for Tax-Exemption shall be endorsed to the Records Management Division for dry seal and release to the Applicant. Any TEC Certificate of Qualification for Tax-Exemption not bearing the said seal shall not be considered as valid.

   In case the application is disapproved in any stage hereof, the ERDB shall immediately inform the Applicant in writing stating the cause and/or reason for the disapproval.

8. For Emergency Importations, the Applicant shall submit, in addition to the foregoing requirements, a written request showing the necessity of the Emergency Importation, the urgency and the expected or actual date of arrival of the machinery, equipment, spare parts and/or materials and proof of the posting of a good and sufficient bond in favor

of the BoC in an amount not less than the stated amount of duty and tax from which the Emergency Importation is being exempted.

9. In case of sale of machinery, equipment, spare parts and materials under Section 3(D) hereof, the Applicant shall submit to the DOE documents evidencing the consummation of such sale, including the proper reporting or remittance of gain, as may be applicable.

   In addition, the application to sell machinery, equipment, spare parts and materials under this Circular shall be endorsed to the Conventional Energy Resources Compliance Division of the Financial Services (CERCD-FS) for review on the validated costs and related depreciation/amount cost recovered. Thereafter, the application shall then be forwarded to the PRDD or CNMD.

Section 5. Post-Importation Requirements. All Applicants shall comply with the following post importation requirements:

1. Within thirty (30) calendar days following the release of the Importation from BoC custody, the Applicant shall submit to the DOE copies of official documents indicating the description, quantity and price of the machinery, equipment, spare parts and materials imported, including the names of the supplier and carrying vessel and other particulars relating to said Importation.

2. The Applicant shall, within the same period, advise the DOE in writing of the precise place where the Importation has been taken and the actual use thereof. In case installation is necessary, the same shall be made within one hundred twenty (120) calendar days following the withdrawal of the Importation from BoC custody, unless said period is extended by the DOE upon proper request for good cause shown.

   The DOE reserves the right to send its duly authorized representatives for the purpose of verifying whether the machinery, equipment, spare parts and materials has actually been installed and is being used in the Petroleum or Coal Operations, as represented by the SC Operator or COC Holder.

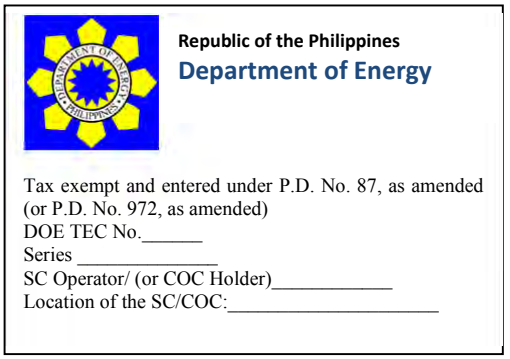
Section 6. Posting of DOE Sticker. The DOE shall evaluate whether the machinery, equipment, spare parts and materials shall be required to be pasted or sealed with DOE stickers.

1. The Applicant, upon the approval of the application, shall procure from the ERDB appropriate DOE Sticker to be pasted or sealed on all imported machinery, equipment, spare parts and materials, as determined in the evaluation by the DOE.

2. The Applicant shall, within a period of thirty (30) days upon release of the importation from BoC, post or seal the machinery, equipment, spare parts and materials with a DOE Sticker, in the presence of DOE personnel, if practicable. In case DOE personnel are not available, the Applicant shall submit a report, together with appropriate pictures, of the posting of DOE Sticker within the same period.

3. The DOE Sticker shall remain at all times conspicuously be posted at the imported machinery, equipment, spare parts and materials. In case of deterioration or damage thereto, the Applicant shall immediately procure from the ERDB replacement DOE Stickers.

4. The DOE Sticker shall have a measurement of at least 10 cm. X 27.5 cm. and shall display the emblem of the Department of Energy and shall provide the following notice :



5. As provided for under Section 6 (1) hereof, the Applicant shall pay the DOE an amount of Three Hundred Pesos (P300.00), or as may be indicated in the DOE's Schedule of Fees and Charges, per DOE Sticker upon the filing with the DOE of an Application for TEC certificate. The DOE Sticker shall be attached to the TEC released by the DOE for endorsement to the Mabuhay Lane of the DOF.

Section 7. DOE Inspection, Reportorial Requirements, Recording and Data Base. The following rules shall govern in the inspection, reporting, recording and data base management of TECs under this Circular.

1. All Applications under this Circular shall, at any reasonable time, be subject to inspection by the duly authorized staff of the DOE, subject to prior and reasonable notice to the Applicant. The DOE shall have the right of entry or access to any premises to inspect all machinery, equipment, spare parts and materials covered by this Circular.

2. The Applicant shall create a database of data and information on the machinery, equipment, spare parts and materials under this Circular and other related data and shall submit report to the DOE on the summary and status and/or updates of all Applications under this Circular on a semi-annual basis. The DOE may also require the submission of such other information as the Department may reasonably require under this Circular.

3. The Records Division of the DOE shall prepare and submit a monthly list of approved TEC Certificate of Qualification for Tax-Exemption applications to the Mabuhay Lane of the Department of Finance (DOF) for reconciliation reference. In addition, the Records Division shall copy furnish the ERDB a copy of such monthly list.

4. The PRDD or CNMD shall keep all records of the Applications and related documents and shall maintain a data base for records and reference purposes.

Section 8. Fees. The Applicant shall pay a processing fee of Seven Hundred Fifty Pesos (PhP750.00), or as may be indicated in the DOE's Schedule of Fees and Charges, for every Application under this Circular .
In case of a reapplication for an expired TEC and a request to amend an approved TEC, the Applicant shall pay a corresponding amount equivalent to the processing fee.

All processing fees, payments and fines and penalties made under this Circular shall not be a part of the Operating Expenses as defined under the respective Petroleum SC and COC and shall not be cost recoverable.

Section 9. Administrative Fines and Penalties. Subject to the requirements and procedures under Department Order No. DO2012-07-004 or the "Rules of Practice and Procedures before the Department of Energy", the following sanctions shall be imposed against the Applicant, in case of violations under this Circular:

1. Any serious tampering, falsification, misrepresentation or fraud committed in connection with applications under this Circular, including violations of the required posting or tampering of DOE Sticker, the offender shall be imposed the following fines and penalties:

First Offense – Ten Thousand Pesos and/ or suspension of tax exemption privileges of the SC Operator or COC Holder for six (6) months, at the discretion of the DOE;

Second Offense - Twenty Thousand Pesos and/or suspension of tax exemption privileges of the SC Operator or COC Holder for one (1) year, at the discretion of the DOE;

Succeeding Offenses Suspension and/or Termination of the Petroleum SC or COC.

2. In case of multiple violations of the tax exemption privileges under this Circular with the intention to abuse or use the same for smuggling and/or other illegal activities, including the unauthorized utilization of the machinery, equipment, spare parts and materials for other purposes other than for coal or petroleum operations, the DOE, BoC or other authorities may institute seizure proceedings on the said machinery, equipment, spare parts and materials and shall cause the filing of the proper criminal or civil action against the Applicant as may be warranted under the Tariff and Customs Code and other applicable laws, rules and regulations.

Section 10. Separability Clause. If for any reasons, any provision of this Circular is declared unconstitutional or invalid, such part not affected shall remain in full force and effect.

Section 11. Repealing Clause. Any circulars, orders, letters of instructions or issuances contrary to or inconsistent with this Circular are hereby repealed, modified or amended accordingly.

Section 12. Effectivity. This Circular shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Issued at the Energy Center, Rizal Drive, Bonifacio Global City, Taguig City.

ALFONSO G. CUSI
Dated: March 15, 2018

ANNEX *"A"*

DOE TEC Form No. 1 TEC Application No: _____
(Application for TEC on Importation)

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF ENERGY

APPLICATION FOR TAX-EXEMPT IMPORTATIONS UNDER PRESIDENTIAL DECREE NO. 87, as amended/ PRESIDENTIAL DECREE NO. 972, as amended

NAME OF APPLICANT :

OFFICE ADDRESS :

TELEPHONE NUMBER :

MACHINERY, EQUIPMENT, SPARE PARTS, MATERIALS TO BE IMPORTED								
							FOR SPARE PARTS	
NO. OF UNITS	DESCRIPTION	ITEM PRICE IN US$ DOLLAR (US$)	ESTIMATE OF TAXES AND DUTIES WAIVED IN PHILIPPINE PESO (PHP)	SPECIFIED USE & PLACE OF USE OR INSTALLATION	SPECIFIC COST ITEM AND PAGE NUMBER IN THE SUBMITTED AND ERDB APPROVED WORK PROGRAM	SPECIFIED COST ITEM AND PAGE NUMBER IN THE SUBMITTED AND ERDB APPROVED ANNUAL PROCUREMENT PLAN	DESCRIPTION, TEC NUMBER AND ACQUISITION COST OF THE PRINCIPAL/ EQUIPMENT MACHINERY THAT USES THE IMPORTED SPARE PARTS	REASON/ CAUSE OF THE REPLACEMENT OF THE PARTS
				Department of Energy **Department** / **Initials/Date** Treasury Division PRDD*/ CNMD** Technical UCELSD*** Legal				

* Petroleum Resources Development Bureau
** Coal Nuclear Minerals Division
*** Upstream Conventional Energy Legal Services Division

COMPUTATION OF CUSTOMS DUTIES & TAXES

No. of Units	Item Description	Computation	Duties and Taxes Waived

ANNEX *"A"*

THE APPLICANTS CERTIFIES:

1. That the above described machinery, equipment, spare parts and/or materials are directly and actually needed and will be used exclusively in the particular phase of exploration, development and production operations for it by a contractor or a subcontractor;
2. That the same are not manufactured domestically at comparable prices and quality;
3. That the importation involved shall in no case entail payment in foreign exchange out of the country's international reserve.
4. That the importation will be imported on _____and will be entered at the port of _____.
5. That this is a regular/emergency importation (see attached justification for emergency importation).
6. That all information provided in DOE TEC Form No. 1 and the justification per emergency importation (if applicable) are true and correct.

Done in the City/Province of _____, this day of ____, 20___.

_____
APPLICANT

Republic of the Philippines
City/Province of _____) S. S.
_____)

Subscribed and sworn to before me this _____ day of _____, 20 ___, in the City/Province of _____, affiant exhibited to me his/her (Competent evidence of Identity) , issued by the ____(Government Agency) on _____ and set to expire on _____ as his/her competent evidence of identity bearing his/her photograph and signatures, known to me as the same person who personally signed the foregoing instrument before me and avowed under penalty of law to the whole truth of the contents of said instrument.

_____
NOTARY PUBLIC
Commission No._____
Notary Public for_____
Until December 31, 20___
Roll No._____
IBP Lifetime Roll No. _____
PTR No. _____
MCLE Compliance No.____

Doc No. _____
Page No. _____
Book No. _____
Series No. _____

ANNEX *"B"*

DOE TEC Form No. 2
(Application for TEC on Exportation)

TEC Application No: _____

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF ENERGY

APPLICATION FOR EXPORTATION OF TAX-EXEMPT IMPORTATIONS MADE UNDER PRESIDENTIAL DECREE NO. 87, as amended/ PRESIDENTIAL DECREE NO. 972, as amended

NAME OF APPLICANT :

OFFICE ADDRESS :

TELEPHONE NUMBER :

MACHINERY, EQUIPMENT, SPARE PARTS, MATERIALS				
NO. OF UNITS	DESCRIPTION	TEC NO.	RECEPIENT/PLACE OF EXPORTATION	REASON FOR EXPORTATION
			Department of Energy **Department** / **Initials/Date** Treasury Division PRDD*/ CNMD** (Technical) UCELSD*** (Legal)	

* Petroleum Resources Development Bureau
** Coal Nuclear Minerals Division
*** Upstream Conventional Energy Legal Services Division

ANNEX *"B"*

THE APPLICANTS CERTIFIES:

1. That the above described machinery, equipment, spare parts and/or materials is/are temporary importation or for repair of permanent importation.
2. That all information provided in DOE TEC Form No. 2 are true and correct.

Done in the City/Province of _____, this day of ____, 20___.

_____
APPLICANT

Republic of the Philippines
City/Province of _____) S. S.
_____)

Subscribed and sworn to before me this _____ day of _____, 20 ___, in the City/Province of _____, affiant exhibited to me his/her (Competent evidence of Identity) , issued by the ____(Government Agency) on _____ and set to expire on _____ as his/her competent evidence of identity bearing his/her photograph and signatures, known to me as the same person who personally signed the foregoing instrument before me and avowed under penalty of law to the whole truth of the contents of said instrument.

_____
NOTARY PUBLIC
Commission No._____
Notary Public for_____
Until December 31, 20___
Roll No._____
IBP Lifetime Roll No. _____
PTR No. _____
MCLE Compliance No.____

Doc No. _____
Page No. _____
Book No. _____
Series No. _____

ANNEX *"C"*

DOE TEC Form No. 3 TEC Application No: _____
(Application for TEC on Sale/Disposal)

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF ENERGY

APPLICATION FOR SALE/DISPOSITION OF TAX-EXEMPT IMPORTATIONS MADE UNDER PRESIDENTIAL DECREE NO. 87, as amended/ PRESIDENTIAL DECREE NO. 972, as amended

NAME OF APPLICANT :

OFFICE ADDRESS :

TELEPHONE NUMBER :

MACHINERY, EQUIPMENT, SPARE PARTS, MATERIALS

NO. OF UNITS	DESCRIPTION	TEC NO.	RECEPIENT/PLACE OF SALE OR DISPOSITION	REASON FOR SALE OR DISPOSITION
			Department of Energy **Department** / **Initials/Date** Treasury Division PRDD*/ CNMD** (Technical) UCELSD*** (Legal)	

* Petroleum Resources Development Bureau
** Coal Nuclear Minerals Division
*** Upstream Conventional Energy Legal Services Division

ANNEX *"C"*

THE APPLICANTS CERTIFIES:

1. That the above described machinery, equipment, spare parts and/or materials is/are for sale/disposal due to either of the following reasons:
   a. No longer needed for the operations.
   b. For reasons of technical obsolescence.
   c. For purpose of replacement to improve and/or expand operation.

2. That all information provided in DOE TEC Form No. 3 are true and correct.

Done in the City/Province of _____, this day of ____, 20___.

_____
APPLICANT

Republic of the Philippines
City/Province of _____) S. S.
_____)

Subscribed and sworn to before me this _____ day of _____, 20 ___, in the City/Province of _____, affiant exhibited to me his/her (Competent evidence of Identity) , issued by the ____(Government Agency) on _____ and set to expire on _____ as his/her competent evidence of identity bearing his/her photograph and signatures, known to me as the same person who personally signed the foregoing instrument before me and avowed under penalty of law to the whole truth of the contents of said instrument.

_____
NOTARY PUBLIC
Commission No._____
Notary Public for_____
Until December 31, 20___
Roll No._____
IBP Lifetime Roll No. _____
PTR No. _____
MCLE Compliance No.____

Doc No. _____
Page No. _____
Book No. _____
Series No. _____

ANNEX *"D"*

DOE TEC Form No. 4
(Application for TEC on Transfer)

TEC Application No: _____

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF ENERGY

APPLICATION FOR TRANSFER OF
TAX-EXEMPT IMPORTATIONS MADE UNDER
PRESIDENTIAL DECREE NO. 87, as amended/
PRESIDENTIAL DECREE NO. 972, as amended

NAME OF APPLICANT :

OFFICE ADDRESS :

TELEPHONE NUMBER :

MACHINERY, EQUIPMENT, SPARE PARTS, MATERIALS				
NO. OF UNITS	DESCRIPTION	TEC NO.	RECEPIENT/PLACE OF TRANSFER	REASON FOR TRANSFER
			Department of Energy **Department** / **Initials/Date** Treasury Division PRDD*/ CNMD** (Technical) UCELSD*** (Legal)	

* Petroleum Resources Development Bureau
** Coal Nuclear Minerals Division
*** Upstream Conventional Energy Legal Services Division

ANNEX *"D"*

THE APPLICANTS CERTIFIES:

1. That the above described machinery, equipment, spare parts and/or materials is/are needed and required by other Petroleum service contractor or Coal Operating Contract Operator of the Department in its/their operations.

2. That all information provided in DOE TEC Form No. 4 are true and correct.

Done in the City/Province of _____, this day of ____, 20___.

_____
APPLICANT

Republic of the Philippines
City/Province of _____) S. S.
_____)

Subscribed and sworn to before me this _____ day of _____, 20 ___, in the City/Province of _____, affiant exhibited to me his/her (Competent evidence of Identity) , issued by the ____(Government Agency) on _____ and set to expire on _____ as his/her competent evidence of identity bearing his/her photograph and signatures, known to me as the same person who personally signed the foregoing instrument before me and avowed under penalty of law to the whole truth of the contents of said instrument.

_____
NOTARY PUBLIC
Commission No._____
Notary Public for_____
Until December 31, 20___
Roll No._____
IBP Lifetime Roll No. _____
PTR No. _____
MCLE Compliance No.____

Doc No. _____
Page No. _____
Book No. _____
Series No. _____

ANNEX *"E"*

DOE TEC Form No. 5 TEC Application No: _____
(Application for TEC on Donation)

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF ENERGY

APPLICATION FOR DONATION OF
TAX-EXEMPT IMPORTATIONS MADE UNDER
PRESIDENTIAL DECREE NO. 87, as amended/
PRESIDENTIAL DECREE NO. 972, as amended

NAME OF APPLICANT :

OFFICE ADDRESS :

TELEPHONE NUMBER :

MACHINERY, EQUIPMENT, SPARE PARTS, MATERIALS				
NO. OF UNITS	DESCRIPTION	TEC NO.	NAME OF DONEE (Government Agency/LGU)	REASON FOR DONATION
			Department of Energy **Department** / **Initials/Date** Treasury Division PRDD*/ CNMD** (Technical) UCELSD*** (Legal)	

* Petroleum Resources Development Bureau
** Coal Nuclear Minerals Division
*** Upstream Conventional Energy Legal Services Division

ANNEX *"E"*

THE APPLICANT CERTIFIES:

1. That the above described machinery, equipment, spare parts and/or materials is/are to be donated due to either/or of the following reasons:
   a. No longer needed for their operations.
   b. For reasons of technical obsolescence.
   c. For purpose of replacement to improve and/or expand operation.

2. That all information provided in DOE TEC Form No. 5 are true and correct.

Done in the City/Province of _____, this day of ____, 20___.

_____
APPLICANT

Republic of the Philippines
City/Province of _____) S. S.
_____)

Subscribed and sworn to before me this _____ day of _____, 20 ___, in the City/Province of _____, affiant exhibited to me his/her (Competent evidence of Identity) , issued by the ____(Government Agency) on _____ and set to expire on _____ as his/her competent evidence of identity bearing his/her photograph and signatures, known to me as the same person who personally signed the foregoing instrument before me and avowed under penalty of law to the whole truth of the contents of said instrument.

_____
NOTARY PUBLIC
Commission No._____
Notary Public for_____
Until December 31, 20___
Roll No._____
IBP Lifetime Roll No. _____
PTR No. _____
MCLE Compliance No.____

Doc No. _____
Page No. _____
Book No. _____
Series No. _____

III. TAXES AND FINANCES

A. BED CIRCULAR NO. 82-01-01

TO: ALL SERVICE CONTRACTORS UNDER PRESIDENTIAL DECREE NOS. 87 (OIL), 972 (COAL) AND 1442 (GEOTHERMAL ENERGY)

Inquiries have been received by the Bureau of Energy Development concerning the scope or applicability of the privilege from "exemption from all taxes except income tax" of service contractors under Presidential Decree Nos. 87, 972 and 1442.

The Ministry of Finance holds that the subject exemption provision includes both national and local taxes, except permit and regulatory fees which a local government may impose under Sections 36 and 51, respectively, of the Local Tax Code, as amended, said impositions not in the nature of a tax and are imposed for services rendered.

The Ministry of Finance has ruled that permit and regulatory fees should be paid to the local government unit where the operation is actually being undertaken, provided there is an existing local tax ordinance duly acted in accordance with the Local Tax Code, as amended, imposing such fees.

For your information and guidance.

W. R. DE LA PAZ
Acting Director

February 1, 1982

Bureau of Energy Development
Merritt Road, Fort Bonifacio
Metro Manila

B. BED CIRCULAR NO. 82-10-10

TO: ALL FOREIGN SERVICE CONTRACTORS/OPERATORS UNDER PRESIDENTAL DECREE NOS. 87 and 972 and 1442

In line with the requirement of the Central Bank relative to foreign exchange transactions you are hereby required to submit to the Management of External Debt and Investment Accounts Department, Technical Staff Group of the Central Bank (copy furnished the Bureau of Energy Development) on or before the twenty fifth (25th) of each month, a report of your advances for working capital from your head office for use in exploration and development projects in the Philippines using the attached TSC Form DEP-1.

The amount to be reported shall include direct transfer of funds and debits by your home offices but shall not include that portion of your expenditures which is to be shouldered by your Filipino partners.

The initial report covering the period January to September 30, 1982 should be submitted on or before November 15, 1982.

For strict compliance.

W. R. DE LA PAZ
Acting Director

October 27, 1982

Bureau of Energy Development
Makati, Fort Bonifacio

C. OEA CIRCULAR NO. 89-01-01

TO: ALL PETROLEUM SERVICE ONTRACTORS AND SUB-CONTRACTORS

You are hereby informed that the Value-Added Tax (VAT) Committee of the Bureau of Internal Revenue (BIR) has issued a VAT Ruling No. 516-88 dated November 16, 1988, (copy attached) which ruled that Petroleum subcontractors are exempt from the payment of VAT from its gross receipts for services paid by the petroleum service contractors by virtue of the (Fiscal Incentives Review Board (FIRB) resolution under FIRB Resolution No. 19-87 Dated June 24, 1987, restoring the tax and duty exemption (including VAT) to subcontractors and petroleum service contractors subject however to the terms and condition of P.D. 135 4 .

For your guidance and information.

December 22, 1988, Makati, Metro Manila

W.R DE LA PAZ
Executive Director

D. OEA CIRCULAR NO. 91-02-02

TO: ALL SERVICE AND OPERATING CONTRACTORS UNDER P.D. NOS. 87, 972 AND 1442

For the benefit and information of service and operating contractors under P. D. Nos. 87, 972 and 1442. Attached is a photocopy of the Department of Finance (DOF) Memorandum to the Commissioner of Customs dated 12 February 1991 clarifying the exemption from the payment of additional duties of five percent (5%) AD VALOREM under Executive Order No. 438 and the nine percent (9%) under Executive Order No. 443, subject to pertinent custom rules and regulations of importations of all machinery, equipments spare parts and all material actually and directly required for and to be used exclusively in petroleum/coal/geothermal operations by energy service contractors/sub-contractors/ operators with Service Operating Contracts with the Government of the Republic of the Philippines through the Department of Energy/Office of Energy Affairs under the terms and provisions of P.D. 87, 972, both as amended and P.D. 1442.

Please be guided accordingly.

W.R. DE LA PAZ
Executive Director

15 February 1991

Republic of the Philippines

DEPARTIMENT OF FINANCE
Manila

MEMORANDUM

TO: The Commissioner of Custom

FROM : The Department of Finance

SUBJECT: Clarifying further The implementation of EO 443 entitled, "IMPOSING AN ADDITIONAL DUTY OF NINE PERCENT (9%) ADVALOREM ON ALL IMPORTED ARTICLE SUBJECT TO CERTAIN EXEMPTIONS AND CONDITIONS.

The following clarifications are hereby made:

1. Section 3(c) of EO 413 shall mean to include those importations on consignment of machineries/equipments, spare parts and supplies by members of the Semi-Conductor Electronics Industry Foundation, INC., duly registered with the Board of Investment as of December 31, 1990, and at the same time operators of duly registered Bonded Manufacturing Warehouses in good standing under section 2002 of the Tariff and Customs Code, provided said articles are thru the said Bonded Manufacturing Warehouses subject to Customs rules and regulations thereto appertaining.

2. Importations of all machinery, equipments, spare parts and all materials actually and directly required for and to be used exclusively in petroleum/coal/ geothermal operations by energy service contractor/sub-contractor/operator with service/operating contract with the Governement of the Republic of the Philippines through the Department of Energy/ Office of Energy Affairs under the terms and provisions of P.D. 87, P.D. 972, both as amended, and P.D. 1442, are exempt from the additional duty of five percent (5%) ad valorem under EO 438, and the nine percent (9%) under E O 443, subject to pertinent Customs rules and regulations.

Please be guided accordingly.

JESUS P. ESTANESLAO
Secretary

February 12, 1991

E. OEA CIRCULAR NO. 92-09-03

TO: All Holders of Coal Operating Contracts Under PD 972, Service Contracts Under P.D. 1442 and PD 87

Pursuant to Chapter 2, Section 290 of the Local Government Code of 1991 granting share to Local Government Units (LGUs) on the gross collection derived by the National Government from mining taxes, royalties, and such other taxes, fees or charges including related surcharges, interests or fines, and from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction, following are the guidelines on the computation, remittance and reporting procedures for the information of all concerned:

A. Share of the Local Government Units from any Government-Owned or Controlled Corporation (GOCC)

1. The share of the LGUs from the proceeds derived by any GOCC engaged in the exploration and development of coal and geothermal shall be computed quarterly at one percent (1%) of the gross proceeds, or 40% of the Office of Energy Affairs (OEA) share including related surcharges, interests or fines whichever will produce a higher share for LGU.

2. The aforestated share shall be directly remitted by such GOCC to the provincial city, municipal or barangay treasurer concerned within five (5) days after the end of each quarter. Within 3 days from the date of remittance, the GOCC concerned shall furnish the Treasurer of the Philippine with a copy of the remittance advice.

3. The aforestated remittance to the LGUs shall be deducted from the total OEA share and the corresponding official receipts issued by the treasurer of the LGU shall be attached to the quarterly reports submitted by the GOCC to OEA with corresponding remittance of net OEA share.

4. In case of assessment of additional OEA share resulting from our examination of the revenues and expenditures reported by the GOCC, the share of the LGU shall be computed based on the final assessmen. The OEA has the right to adjust any previous remittances made by the GOCC to the Local Government Units as a result of our audit.

B. Share of LGUs from Private Holders of Coal Operating Contracts, Geothermal and Petroleum Service Contracts.

The computation and remittances of the share of LGUs from private holders of coal operating contract, geothermal and petroleum contract shall be in accordance with Article 390 of the rules and regulations implementing the Local Government Code which is hereby quoted:

"a). The computation of 40% share of each LGU in the proceeds from the development and utilization of coal from the preceding year, indicating the corresponding share of each province, city, municipality, and barangay where the national wealth

is being developed and/or utilized, shall be submitted by the revenue collecting agencies (OEA) to DBM not later than the fifteenth (15th) of March of each ensuing year.

b) The allotment representing the share of each LGU shall be released without need of any further action directly to the provincial, city, municipal, or barangay treasurer, as the case may be, on a quarterly basis within five (5) days after the end of each quarter, and which shall not be subject to any lien or holdback that may be imposed by the National Government."

Accordingly and in accordance with the above provisions, all claims of LGUs share from private holders of Coal Operating and Service Contracts shall be submitted directly to the Department of Budget and Management (DBM).

For your information and guidance.

RUFINO B. BOMASANG
Acting Executive Director

September 3, 1992
Makati, Metro Manila

F. OEA CIRCULAR NO. 98-01

JOINT DILG-DEPARTMENT OEA CIRCULAR NO. 98-01

Department of the Interior and Local Government
Department of Energy
OEA Circular No. 98-01

TO: ALL LOCAL CHIEF EXECUTIVES, SANGUNIANG BAYAN / PANGLUNGSOD / PANLALAWIGAN MEMBERS AND OTHER CONCERNED PARTIES

SUBJECT: GUIDELINES AND PROCEDURES ON THE UTULIZATION OF THE SHARE ON NATIONAL WEALTH TAXES, FEES, ROYALTIES AND CHARGES DERIVED FROM ENERGY RESOURCES

PURPOSE: This Circular is issued as additional guidelines and procedures to be followed by Local Government Units (LGUs) hosting energy projects to implement the provisions of Republic Act (R.A.) 7160, otherwise known as the Local Government Code (LGC) of 1991 and its implementing rules and regulations (IRR), specifically Sections 289-294 of the LGC and Articles 388-392 of its IRR. The Circular provides for the detailed criteria on the delineation of host LGUs for energy projects and options on the use of proceeds for electricity reduction and on the use of excess funds.

SECTION 1. Definition of Terms. –

The following terms are used in this Circular:

1.1 National wealth – all natural resources within the Philippine territorial jurisdiction including the lands of

public domains, water, minerals, coal, petroleum, mineral oils, potential energy sources, gas and oil deposits, forest products, wildlife, flora and fauna, fishery and aquatic resources and all quarry products.

1.2 National wealth proceeds – levy or tax, royalty, fee or charge derived from the development and utilization of natural resources or national wealth.

1.3 Geothermal reservoir – subsurface geological environment where geothermal fluids accumulate and circulate (system is inclusive of the production and reinjection/recharge zones).

1.4 Hydro reservoir – natural or artificial lake, the latter created by the impounding of steam flow, run-off and subsurface water behind a dam.

1.5 Host LGU – refers to local government unit (provinces, city, municipality or barangay) where the energy resource is located.

1.6 Electrification/energization – provision of dependable and adequate electric service

1.7 Subsidy scheme – plan to extend direct subsidy to the intended beneficiaries the amount of the LGU's share in the national wealth proceeds for the reduction in the cost of electricity.

1.8 Non-subsidy – plan with the end view of lowering the cost of electricity for the consumers of the host LGU.

The definition of terms in the **Joint DILG-DOE Circular 95-01** and the IRR of the *Local Government Code* are hereby incorporated and adopted in this Circular.

SECTION 2. Additional Guidelines and Procedures. –

2.1 DELINEATION OF HOST LGU

With respect to energy resources, the host LGUs shall be determined as follows:

(a) Coal

The host LGU is the area where the producing positive coal reserve is located, as delineated by detailed geophysical, geological, and exploration surveys.

(b) Geothermal

The host LGU is the area where the producing geothermal reservoir is located as delineated by detailed geochemical, geophysical, and exploration surveys.

(c) Hydro

The host LGU is the area where the hydro reservoir is located as delineated by detailed topographic, geological, and geotechnical investigations; reservoir and dam height optimization studies; and as delineated by a detailed ground survey.

(d) Petroleum/Natural Gas

The host LGU is the area where the producing petroleum/natural gas reservoir is located, as delineated by detailed geochemical, geophysical, and exploration surveys.

In addition to the energy reserve or reservoir, the host LGU for the above types of energy projects may include the developed energy resource field as delineated on the ground by the production facilities and other physical facilities related to the project except the transmission lines and sub-stations.

2.2 ALLOCATION OF LGU SHARES

In conjunction with Section 292 of the Local Government Code, which prescribes the LGU allocation of national wealth taxes, royalties, fees, and charges, the appointment of the shares shall be based on the areas located within the technically delineated energy resource area pursuant to Section 2.1 of this Circular.

When the natural resources are located in two (2) or more provinces, or in two (2) or more municipalities or in two (2) or more barangays, their respective shares shall be computed on the basis of:

(a) Population – seventy percent (70%); and

(b) Land area – thirty percent (30%)

where the land area is area of the host barangay/s found within the technically delineated energy resource area and where the population refers to the population of the host barangay/s found wholly within the technically delineated energy resource.

Arrangements between the host LGUs and the DOE/project proponent on the allocation of national wealth that are in place prior to this Circular shall be respected without precluding the parties from adopting the prescription in this Circular.

2.3 TECHNICAL ASSESSMENT OF ENERGY RESOURCE AREA

Pursuant to Sections 2.1 and 2.2 of this Circular, the allocation of national wealth taxes, royalties, fees and charges shall be based on the technical assessment of the energy resource. The assessment shall be conducted by the **Department of Energy (DOE)** in consultation with the project proponent. The technical report shall be provided to the Department of Interior and Local Government (DILG) for implementation by the concerned LGUs.

2.4 UTILIZATION OF 80% OF NATIONAL WEALTH TAXES, ROYALTIES, FEES AND CHARGES

(a) As provided in Section 294 of the Local Government Code, at least 80% of the national wealth proceeds derived from the development and utilization of energy resources shall be applied solely to lower the cost of electricity in the LGU where the source of energy is located. Either one or a combination of two approaches can be adopted in the reduction of electricity, namely subsidy and non-subsidy schemes.

The non-subsidy benefits may take the form but not limited to electrification, the technical upgrading and rehabilitation of distribution lines to reduce electricity losses, the use of energy saving devices, and support of the electrical consumption of the infrastructure facilities servicing the public which can all redound to the reduction of electricity rates of the area.

(b) Areas that cannot be energized directly from the grid due to technical or economic constraint shall be provided alternative power sources (e.g., generator, solar panel, wind, etc.). The cost of the installation as well as the maintenance of the facility shall be taken from the LGU royalty share. The activity shall require the endorsement of the concerned LGU council.

(c) Any use of the national wealth proceeds outside the prescriptions in the **DILG-DOE Circular 95-01 of October 31, 1995** and this Circular shall require the approval of the **DILG Secretary.**

SECTION 3. Boundary Disputes and Escrow of Funds. –

In the event of a boundary dispute, the national wealth proceeds shall be deposited in a government bank under escrow. The DILG shall exert all efforts to resolve the conflict guided by Section 118 of the *Local Government Code*, with the assistance of the **Land Management Bureau** of the **Department of Environment and Natural Resources.**

SECTION 4. Mechanics for the Utilization of National Wealth Proceeds. –

The mechanics for the utilization of the national wealth proceeds for electricity rate reduction shall adhere to the provisions of the **DILG-DOE Circular No. 95-01 of October 31, 1995.**

SECTION 5. Monitoring. –

(a) The **DILG** shall monitor the compliance of the LGUs with the provisions of this Circular and other relevant issuances. To assist in the monitoring of compliance, all host LGUs of energy projects are required to submit the following:

    (i) The scheme of electricity rate reduction adopted by the host LGU (with proper documentation) based on the prescription in the **DILG-DOE Circular 95-01 of October 31, 1995** at the start of the use of the fund or upon the amendment of the scheme by the respective LGU councils; and

    (ii) Summary of transactions thirty (30) days after the end of each quarter;

    DILG shall furnish **DOE** with a copy of the above information within fifteen (15) days from the date of the reporting period.

(b) The **DILG** and **DOE** shall enter into a Memorandum of Agreement with the **Commission on Audit (COA)** for the yearly audit of the national wealth proceeds consistent with the responsibility of COA to examine all accounts pertaining to uses of funds and property owned or held in trust by the Government or any of its agencies as mandated by Section 2 of P.D. 1445 of 1976.

SECTION 6. Penal Provisions. –

In the event of violation or non-compliance with the provisions of **Joint DILG-DOE Circular 95-01**, this Circular and other relevant issuances, the **DILG** may, upon prior notice of said hearing, order the project proponent through DOE, the non-remittance of the royalty payment to the host LGU concerned pending the completion of the investigation of the concerned LGU. The unremitted funds shall be deposited in a government bank under escrow.

SECTION 7. Dispute Resolution. –

Prior to court action, all disputes or conflicts arising from the implementation of this Circular shall be adjudicated by an Arbitration Committee composed of representatives from the **Presidential Management Staff, DILG,** and **DOE.**

SECTION 8. Repealing Clause. –

All pertinent issuances, circulars and memoranda inconsistent with this Circular are hereby amended or repealed accordingly.
SEC. 9. Effectivity. –

This Circular shall take effect immediately.

MARIO V. TIAOQUI
Secretary
Department of Energy

JOSEPH EJERCITO ESTRADA
Secretary
Department of the Interior and Local Government

Chapter V
Nuclear Energy Laws

I. REPUBLIC ACT No. 2067

AN ACT TO INTEGRATE, COORDINATE, AND INTENSIFY SCIENTIFIC AND TECHNOLOGICAL RESEARCH AND DEVELOPMENT AND TO FOSTER INVENTION; TO PROVIDE FUNDS THEREFOR; AND FOR OTHER PURPOSES.

SECTION 1. This Act shall be known as the *"Science Act of 1958."*

SECTION 2. In consonance with the provisions of section four, Article XIV of the Constitution, it is hereby declared to be the policy of the state to promote scientific and technological research and development, foster invention, and utilize scientific knowledge as an effective instrument for the promotion of national progress.

SECTION 3. In the implementation of the foregoing policy, the Government shall, in accordance with the provisions of this Act:

(1) Stimulate and guide scientific, engineering and technological efforts towards filling the basic and immediate needs of the people;

(2) Survey the scientific, engineering and technological resources of the country and formulate a comprehensive program for the development and maximum utilization of such resources in the solution of the country's problems;

(3) Strengthen the educational system of the country so that the same will provide a steady source of competent scientific and technological manpower;

(4) Furnish incentives to private and individual initiative in scientific work, as a fundamental basis for the advancement of science;

(5) Promote and encourage the dissemination of the results of scientific and technological research and the general application thereof;

(6) Encourage and facilitate the active participation of domestic and foreign sectors in furnishing financial, technical and other forms of assistance for scientific and technological activities;

(7) Promote coordination and cooperation in research in order to secure concentration of effort, minimize duplication and thereby achieve maximum progress;

(8) Initiate and bring about the establishment of standards, quality control measures and documentation facilities; and

(9) Encourage studies in the pure and fundamental sciences.

SECTION 4. To carry out the provisions of the preceding section, there is hereby created a National Science Development Board, hereinafter referred to as the Board, with the

following functions, powers and duties:

(1) To coordinate and promote cooperation in the scientific research and development activities of government agencies and private enterprises;

(2) With the approval of the President of the Philippines, to formulate consistent and specific national scientific policies and prepare comprehensive scientific and technological programs which shall be observed and implemented by the Government and all its subdivisions, agencies and instrumentalities;

(3) To establish a system of priorities for scientific and technological projects;

(4) To review and analyze scientific and technological projects, schedules of activities, programs and project proposals, including the progress of project being undertaken, and to take such measures as may be necessary to accomplish the objectives and policies involved in these activities;

(5) To develop a program for the effective training and utilization of scientific and technological manpower;

(6) To initiate and facilitate arrangements for scientific and technological aid from domestic private sectors and foreign sources and for the exchange of information among local and foreign institutions and scientific investigators;

(7) To offer to, and accept from, public and private sectors, specific project proposals of scientific and/or technological research and development in accordance with section ten hereof, and to provide appropriate financial, technical and other support thereto;

(8) To establish and/or provide incentives, including financial and technological support, for the establishment of scientific and technological centers;

(9) To disseminate the results of scientific and technological research and to encourage their practical application;

(10) To grant scholarship in mathematics, science, technology and science teaching to deserving citizens;

(11) To grant financial or other awards, bonuses and/or prized to deserving scientific, engineering and technological researchers and inventors;

(12) To pay additional compensation to scientific, engineering and technological researchers and inventors employed in the Government or its subdivisions and instrumentalities under such terms and conditions as may be most conducive towards the attainment of maximum efficiency in scientific research and studies;

(13) To extend travel grants for scientific and/or technological purposes; to send delegates and/or observers to scientific and technological conferences or conventions; and to promote and assist scientific and technological conferences and conventions in the Philippines;

(14) With the approval of the President of the Philippines, to appoint not more than five science attaches with the proper scientific background and, whenever necessary, to send scientific and technological missions abroad;

(15) To undertake, in collaboration with the Department of Education, a thorough survey of the educational system and to determine, as well as to recommend to the corresponding authorities, the measures which may be necessary to make it an effective instrument for scientific advancement;

(16) To initiate and formulate measures designed to promote scientific effort and science consciousness;

(17) To submit to the President of the Philippines and to both Houses of Congress, not later than the opening of the regular session each year, an annual report on the status of the national science effort, embodying such recommendations as it may deem proper to make; and

(18) Generally, to do such other things and take such action as may be directly or indirectly incidental or conducive to the attainment of the objectives of this Act.

SECTION 5. The Board shall be composed of a Chairman; a Vice-Chairman, who shall concurrently be the Executive Director of the Board; and the following members: the Chairman of the National Research Council of the Philippines, the Commissioner of the National Institute of Science and Technology, the Commissioner of the Philippine Atomic Energy Commission, the Director of the Office of National Planning of the National Economic Council, a representative from the University of the Philippines to be designated by the President of the University, one member representing industry, one member representing scientific and/or technological associations or societies, one member representing agriculture, and one member representing education.

The members representing industry, scientific and/or technological associations or societies, agriculture and education shall be appointed by the President of the Philippines from among those who shall be recommended by representative groups, subject to the confirmation of the Commission on Appointments, and shall hold office each for a period of three years.

SECTION 6. The Chairman of the Board, who shall have cabinet rank, shall be appointed by the President of the Philippines, subject to the confirmation of the Commission on Appointments. He shall be a citizen of the Philippines with proven executive ability who shall have distinguished himself in science, technology and/or his chosen profession or field of activity. He shall hold office for six years and shall not be removed therefrom except for cause. He shall receive an annual compensation of twenty-four thousand pesos.

The Vice-Chairman shall be appointed by the President of the Philippines, subject to the confirmation of the Commission on Appointments. He shall be a citizen of the Philippines with proven executive ability who shall have achieved distinction in science and/or technology. He shall receive an annual compensation of eighteen thousand pesos.

Both the Chairman and the Vice-Chairman shall pass the necessary security clearance.

SECTION 7. The member of the Board, except the Commissioner of the National Institute of Science and Technology and the Commissioner of the Philippine Atomic Energy Commission who shall serve as ex officio members without extra compensation, shall receive a per diem of fifty pesos each per session of the Board: Provided, That the monthly total of such per diems for each member shall not exceed two hundred pesos.

SECTION 8. The Board shall have the following divisions: the Division of Programming and Evaluation, the Division of Development and Assistance, the Administrative Division, the Legal Division and such other divisions which the Board may deem necessary to create.

SECTION 9. The Board shall have, for all legal purposes, all the duties, powers and prerogatives of a Board of Directors and shall function as such, unless otherwise provided for in this Act. The Board shall promulgate such rules and regulations as may be necessary for the conduct and exercise of its functions,

duties, and powers under this Act: Provided, That the concurrence of at least six members is required for the approval of any resolution: And provided, further, That only the members of the Board who have passed the necessary security clearance shall deliberate and act on classified matters relating to atomic energy and/or nuclear science.

The Board shall exercise its powers in such manner as to insure the continuity of research and development activities in the fields specified in this Act by the Government and private enterprise and to assist in increasing theoretical and practical knowledge in such fields.

SECTION 10. Notwithstanding the provisions of Commonwealth Act Numbered One hundred and thirty-eight and the requirements of public bidding, the Chairman shall, subject to the approval of the Board enter into contracts, or otherwise make arrangements, for the conduct of the following activities and their development:

(a) Industrial research
(b) Agricultural research
(c) Medical and pharmaceutical research
(d) Biological research
(e) Atomic energy research
(f) Food and nutrition research
(g) Engineering research
(h) Research on social science and the humanities, and
(i) Pure and fundamental science studies.

In implementation of such contracts or arrangements the Chairman may, subject to the approval of the Board, make partial or advance payments and make available such equipment and facilities of the Board and its agencies as he may deem necessary.

The Chairman shall, with the approval of the Board, appoint such technical and administrative personnel as may be necessary to carry out the assigned functions of the Board.

SECTION 11. The Vice-Chairman and Executive Director shall exercise immediate control and supervision over the divisions and offices of the Board.

SECTION 12. There is hereby created the National Institute of Science and Technology, hereinafter referred to as the Institute, which shall be under the supervision of the National Science Development Board, with the following functions, powers, and duties:

(1) To implement and conduct programs of scientific and technological research and development as may be directed by the Board;

(2) To cooperate with private enterprise in research activities relating to scientific and technological problems of industry, agriculture, medicine, engineering, mathematics and the natural, biological and social sciences;

(3) To conduct studies through its research centers on industrial, agricultural, medical, biological and related field, and to cooperate with other government agencies along these lines;

(4) To perform analyses and tests for the purpose of establishing suitable standards of products, to calibrate weights and measures, to determine the quality and composition of materials, and to issue certification in relation thereto;

(5) To provide government entities and local industrial organizations with data of scientific and/or technological nature, subject to established laws and regulations on national security;

(6) To establish, expand, maintain and operate pilot plants, research centers, test and standard laboratories, experimental

stations and documentation facilities;

(7) To study and evaluate project proposals for research and development in the industrial, agricultural, medical, biological and related fields from public and private sectors, and to recommend necessary financial, technical and other appropriate assistance thereto;

(8) To receive assignments or patents, grant exclusive rights to their use, charges and collect reasonable fees or charges for their use in accordance with the policies of the institute;

(9) To keep posted on research projects and activities finance or assisted under this Act;

(10) To recommend deserving citizens for training, government and private grants and scholarships in the Philippines and abroad in science, other than nuclear science, technology, mathematics and science teaching; and

(11) To render annual reports and such special reports as may be requested by the Board.

SECTION 13. The Institute shall be under a Commissioner and a Deputy Commissioner, both of whom shall be appointed by the President of the Philippines upon the recommendation of the Chairman of the Board, subject to the confirmation of the Commission on Appointments. Both officials shall be citizens of the Philippines with distinguished accomplishments in scientific and/or technological research and with broad administrative experience. The Commissioner shall receive an annual compensation of eighteen thousand pesos, and the Deputy Commissioner an annual compensation of fifteen thousand pesos.

SECTION 14. The Institute shall have the following divisions: the Administrative Division, the Division of Documentation, the Legal Division, and such other divisions as the Board may, upon the recommendation of the Commissioner of the Institute, deem necessary to create.

There shall also be under the control and supervision of the Institute the following centers: the Industrial Research Center, the Agricultural Research Center, the Medical Research Center, the Biological Research Center, and such other centers as may be created by the Board. Each research center shall be headed by a research director.

The President of the Philippines is hereby authorized to transfer to and place under the jurisdiction of the Institute, upon recommendation of the Board, such existing government research agencies and instrumentalities as may constitute the nucleus of the respective centers herein provided. The President may likewise, upon recommendation of the Board, reorganize and strengthen said government agencies and instrumentalities so that they may adequately function as research centers under the provisions of this Act.

The existing Institute of Nutrition under the Department of Health, together with its personnel, appropriation, supplies and equipment with all its functions and powers, is hereby transferred to the National Institute of Science and Technology, under which it shall become one of its research centers and shall function as presently organized, Reorganization Plan No. 14-A under Republic Act Numbered Nine hundred ninety-seven, as amended, notwithstanding, without prejudice to its reorganization by the President as above provided. The said Institute of Nutrition is hereby renamed Food and Nutrition Research Center.

SECTION 15. Such technical and administrative personnel as may be necessary to carry out the functions of the Institute shall be appointed by the Chairman of the Board,

upon recommendation of the Commissioner of the Institute and subject to the approval of the Board.

SECTION 16. There is hereby created the Philippine Atomic Energy Commission, hereinafter referred to as the Commission, which shall be under the supervision of the Board, with the following functions, powers, and duties:

(1) To establish or cause the establishment of laboratories for nuclear research and training;

(2) To conduct or cause the performance of research and development relating to:

(a) Nuclear processes and techniques;

(b) The theory of atomic energy;

(c) Processes, materials, and devices used in the production of atomic energy;

(d) The utilization of special nuclear material and radioactive material for commercial, industrial, medical, biological, agricultural, or other peaceful purposes;

(3) To issue rules and regulations for the protection of its personnel and the general public and undertake their enforcement;

(4) To approved and facilitate the procurement of radioactive material and instruments for use in nuclear laboratories;

(5) To issue licenses for the use of radioactive material;

(6) To study and evaluate project proposals on nuclear research from public and private sectors, and to recommend necessary technical, financial and other appropriate assistance thereto;

(7) To coordinate the work of research entities and government agencies and instrumentalities on nuclear science;

(8) To keep posted on nuclear research project and activities financed or assisted under this Act;

(9) To represent the Philippines in conferences related to atomic energy and its application;

(10) To recommend deserving citizens for training, government and private grants and scholarships in the Philippines and abroad in nuclear science; and

(11) To render annual reports and such special reports as may be requested by the Board.

SECTION 17. The Commission shall be under a Commissioner and a Deputy Commissioner, both of whom shall be appointed by the President of the Philippines upon recommendation of the Chairman of the Board, subject to the confirmation of the Commission on Appointments. Both officials shall be citizens of the Philippines with adequate administrative experience who shall have won distinction in science and/or technology and who posses sufficient background in nuclear science. Both shall pass the necessary security clearance.

The Commissioner shall receive an annual compensation of eighteen thousand pesos, and the Deputy Commissioner fifteen thousand pesos.

SECTION 18. The Commission shall have the following divisions: the Administrative Division, the Division of Training, Plans and Policies, the Research and Development Division, the Legal Division and such other divisions as the Board may, upon recommendation of the Commissioner, deem necessary to create.

The Commission shall exercise control and supervision over the activities of the Atomic Energy Research Center which is hereby created, and such other centers as may be created by the Board, upon recommendation of the Commissioner.

SECTION 19. Such technical and administrative personnel as may be necessary to carry out the functions of the Commission shall be appointed of the Commissioner and subject to the approval of the Board.

SECTION 20. The National Research Council of the Philippines shall act as the official adviser on scientific matters to the Government of the Philippines.

The Science Foundation of the Philippines shall act as the official adviser on scientific matters to the Board.

SECTION 21. The Board and its agencies are hereby authorized to call upon other government agencies and instrumentalities for assistance and cooperation in the formulation and implementation of its policies, plans and programs.

SECTION 22. The Chairman and Vice-Chairman of the Board, the Commissioners and Deputy Commissioners of both the National Institute of Science and Technology and the Philippine Atomic Energy Commission shall not, during their continuance in office, engage in the practice of any profession, or intervene, directly or indirectly, in the management or control of any private enterprise which in any way may be affected by the functions of their office, nor shall they directly or indirectly be financially interested in any contract with the Government or any subdivision or instrumentality thereof.

SECTION 23. The Board and its agencies, as well as the University of the Philippines, are hereby authorized and empowered to receive grants, bequests and donations, made or given for the purpose of aiding scientific and technological investigations or establishing scholarships in the fields of science, engineering and technology. Such grants, bequests and donations shall be tax-exempt and upon certification of the Board or the University that said grants, bequests and donations are dedicated to the purposes above-mentioned.

SECTION 24. The Board shall promote and, in its discretion assist in the establishment of private foundations for scientific advancement as well as specific research and development projects by private individuals, firms and institutions. All funds contributed to the support and maintenance of such foundations and their projects as well as specific research and development projects undertaken by private individuals and educational institutions, shall be tax-exempt and deductible from the donor's income tax returns, upon certification by the Board that such foundations and funds are dedicated to scientific pursuits.

SECTION 25. Any person who evades or defeats or attempts to evade or defeat, in any manner, any tax imposed by law by availing himself of the provisions of section twenty-three or twenty-four hereof through fraud or misrepresentation shall be punished by a fine of not more than four thousand pesos or imprisonment for not more than one year, or both, in the discretion of the Court.

In case the violator is a corporation or association the penalty shall be fine of not more than ten thousand pesos, without prejudice to the criminal responsibility of the member, officer of employee thereof committing such violation.

SECTION 26. Provisions of law to the contrary notwithstanding, all officials and employees appointed under this Act, classification, shall be exempt from the provisions of laws, except those who belong to the clerical and janitorial rules and regulations on wage and position classification.

SECTION 27. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions and purposes of this Act.

All sums heretofore appropriated or to be appropriated under section three of Republic Act Numbered One thousand six hundred and six, including the special fund known as the Scientific, Engineering and Technological Research Fund, as well as other appropriations for the National Science Board, the National Scientific and Industrial Research Institute (the former Institute of Science and Technology), the Philippine Nuclear Energy Commission, the Institute of Nutrition and such other government agencies and instrumentalities as may be transferred to the Board pursuant to section fourteen hereof, and all appropriations for the foregoing agencies and instrumentalities under the Appropriation Act for the fiscal year 1959 are hereby re-appropriated as funds of the Board to be used in such manner as shall best insure the implementation of the objectives of this Act, subject to the provisions of section twenty-five hereof.

The sum of six hundred thousand pesos is hereby appropriated from any available funds of the National Treasury not otherwise appropriated as additional outlay for the activities of the Board for the fiscal year nineteen hundred fifty-nine.

SECTION 28. Funds appropriated for the Board and its agencies shall, if obligated by contract during the fiscal year for which appropriated, remain available for expenditure for four years following the expiration of the fiscal year for which appropriated or for the duration of the contract under which obligated.

SECTION 29. All files, records, supplies, equipment, buildings, personnel, funds and unexpended balance of appropriations of the National Science Board, the National Scientific and Industrial Research Institute (the former Institute of Science and Technology), and the Philippine Nuclear Energy Commission, are hereby transferred respectively to each of the corresponding agencies under this Act, subject to the provisions of sections ten, fifteen and nineteen hereof.

SECTION 30. Projects already initiated under the National Science Board shall be continued under the National Science Development Board.

The projects enumerated under Republic Act Numbered One thousand six hundred and six, which have not yet been initiated shall be reviewed and, if necessary, revised by the National Science Development Board which shall provide for their continuance until the end of the fiscal year nineteen hundred sixty-one.

SECTION 31. If any provision of this Act or the application of such provision to any person or circumstances is held invalid, the remainder of this Act or the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 32. This Act repeals Republic Act Numbered One thousand six hundred and six, except section three thereof which shall continue in force as amended by section twenty-six hereof, Republic Act Numbered One thousand eight hundred and fifteen, except section ten thereof which shall continue in force as amended by section twenty-six hereof, and such other Acts or parts of Acts which are inconsistent herewith.

SECTION 33. This Act shall take effect upon the constitution of the Board but not later than thirty days after the approval hereof.

Approved: June 13, 1958

II. EXECUTIVE ORDER NO. 128

REORGANIZING THE NATIONAL SCIENCE AND TECHNOLOGY AUTHORITY

RECALLING that the reorganization of the government is mandated expressly in Article II, Section 1 [a], and Article III of the Freedom Constitution.

HAVING IN MIND that, pursuant to Executive Order No. 5 (1986), it is directed that necessary and proper changes in the organizational and functional structures of the government, its agencies and instrumentalities, be effected in order to promote efficiency and effectiveness in the delivery of public services;

AFFIRMING that it is necessary to reorganize the National Science and Technology Authority in order to make it more effective and responsive to the scientific and technological needs of the country;

NOW, THEREFORE, I, CORAZON C. AQUINO, President of the Philippines, by virtue of the powers vested in me by the sovereign will of the Filipino People and the Freedom Constitution, do hereby order:

SECTION 1. Title. This Executive Order shall otherwise be known as the Reorganization Act of the National Science and Technology Authority.

SECTION 2. Reorganization. The National Science and Technology Authority is hereby reorganized, structurally and functionally, hereinafter referred to as Authority, in accordance with the provisions of this Executive Order.

SECTION 3. Declaration of Policy. It shall be the policy of the State to:

Support and encourage local scientific and technological efforts that address national and local problems and positively contribute to national development;

Promote the development of local capability in science and technology to achieve technological self-reliance in selected areas that are vital to national development;

Support and encourage public and private sector partnership aimed at accelerating self-reliance in the selected areas;

Encourage and support private sector initiatives in science and technology and provide the necessary incentives and assistance to enable the private sector to take increasing responsibility and a greater role in the country's research and development efforts.

SECTION 4. Mandate. The Authority shall provide central direction, leadership, and coordination of scientific and technological efforts and ensure that the results therefrom are geared and utilized in areas of maximum economic and social benefits for the people.

The Authority shall formulate and implement policies, plans, programs and projects for the development of science and technology and for the promotion of scientific and technological activities for both the public and private sectors, and ensure that the results of scientific and technological activities are properly applied and utilized to accelerate economic and social development.

The Authority shall continually review the state and needs of science and technology in the context of the country's developmental goals.

SECTION 5. Powers and Functions. To accomplish its mandate, the Authority shall

have the following powers and functions:

[a] Formulate and adopt a comprehensive National Science and Technology Plan including specific goals, policies, plans, programs and projects based on the recommendation of the Inter-Council Review Board and, upon approval by the President, monitor and coordinate its funding and implementation by all government agencies and instrumentalities;

[b] Promote, assist, and where appropriate, undertake scientific and technological research and development in those areas which are determined to be vital to the country's development and offer optimum returns for the resources employed;

[c] Promote the development of indigenous technology and adaptation and innovation of suitable imported technology, and in this regard, undertake technology development up to the commercial stage, preferably in joint venture with the private sector or with public agencies;

[d] Undertake design and engineering work to complement its research and development functions;

[e] Promote, assist and where appropriate undertake the transfer of the results of scientific and technological research and development, to their end-users;

[f] Promote, assist and where appropriate undertake technological services needed by agriculture, industry, transport, and the general public;

[g] Develop and maintain an information system and databank on science and technology for use by both the public and private sectors;

[h] Develop and implement, together with other entities concerned, programs for strengthening scientific and technological capabilities in the relevant disciplines through manpower training, and through infrastructure and institution building and rationalization, in both the public and private sectors;

[i] Promote public consciousness in science and technology;

[j] Undertake policy research, technology assessment studies, feasibility studies and technical studies.

SECTION 6. Structural Organization. The Authority, comprising the Offices of the Director-General, and Deputy and Assistant Directors-General, shall consist of the Services, Inter-Council Review Board, Sectoral Planning Councils, Institutes and Regional Offices.

SECTION 7. Director-General. The authority and responsibility for the exercise of the mandate of the Authority and for the discharge of its powers and functions shall be vested in a Director-General, and shall be appointed by the President and shall have supervision and control of the Authority, except the Inter-Council Review Board and the Sectoral Planning Councils, over which he shall exercise supervision only.

SECTION 8. Office of the Director-General. The Office of the Director-General shall consist of the Director-General and his immediate staff.

SECTION 9. Deputy Directors-General. The Director-General shall be assisted by three (3) Deputy Directors-General appointed by the President upon the recommendation of the Director-General, one for research and development, one for regional operations and one for scientific and technical services. The Deputy Directors-General shall have supervision over the Institute under their

respective functional areas of responsibility.

SECTION 10. Assistant Directors-General. The Director-General shall also be assisted by three (3) Assistant Directors-General, who shall be appointed by the President upon the recommendation of the Director-General.

SECTION 11. Services. The Services of the Authority shall consist of the following :

[a] Planning and Evaluation Service, which shall be responsible for providing the Authority with efficient and effective services relating to planning, programs and project monitoring and development;

[b] Financial and Management Service, which shall be responsible for providing the Authority with efficient and effective staff advice and assistance on budgetary, financial, and management improvement matters;

[c] Administrative and Legal Service, which shall be responsible for providing the Authority with efficient and effective services relating to personnel, information, records, supplies, equipment collection, disbursement, security and custodial work, and all legal matters.

SECTION 12. Inter-Council Review Board. There is hereby created an Inter-Council Review Board, composed of the Ministers or their designated Deputy Ministers who are members of the sectoral planning councils under the following Sections 13, 14, 15, 16, 17 and 18, and shall be chaired by the Director-General of Science and Technology.

The main function of the Board shall be to review the plans of the sectoral planning councils and the National Science and Technology Plan and, in connection therewith, shall be assisted by the Planning and Evaluation Service.

SECTION 13. Sectoral Planning Councils. There shall be five (5) sectoral planning councils as follows:

[a] Philippine Council for Industry and Energy Research and Development, for industry and energy and mineral resources;

[b] Philippine Council for Health Research and Development, for health;

[c] Philippine Council for Agriculture, Forestry and Natural Resources Research and Development, for agriculture and forestry resources;

[d] Philippine Council for Aquatic and Marine Research and Development, for aquatic and marine resources;

[e] Philippine Council for Advanced Science and Technology Research and Development, for advanced science and technology.

Each of the councils shall be responsible, in their respective sectors, for the formulation of strategies, policies, plans, programs and projects for science and technology development; for programming and allocation of government and external funds for research and development; for monitoring of research and development projects; and for the generation of external funds.

Each council shall have a secretariat which shall be headed by an Executive Director who shall be appointed by the President upon the recommendation of the Director-General.

SECTION 14. Philippine Council for Industry and Energy Research and Development. The Philippine Council for Industry and Energy Research and Development, presently existing, is hereby reorganized, which shall be under the administrative supervision of the Authority, and shall consist of the Director-General as Chairman and eight (8) members, as follows: Minister of Trade

and Industry, Minister or Transportation and Communications, Minister of Public Works and Highways or their designated Deputy Ministers, and Executive Director of the Council Secretariat, and four (4) representatives of the private sector in the field of industry and energy, who are chief executive officers of their respective companies in the field of industry or energy or are acknowledged leaders in their professions to be appointed by the President, in their personal capacity, upon recommendation of the Director-General, each of whom shall be for a term of two (2) years; provided, however, that the tenure of the members first appointed by the President shall be as follows: two (2) for one (1) year and two (2) for two (2) years, as fixed in their respective appointments. The members shall serve and continue to hold office until their respective successors shall have been duly appointed and qualified. Appointment to any vacancy in the Council shall be by the President and shall only be for the unexpired portion of the term of the predecessor.

SECTION 15. Philippine Council for Agriculture and Forestry Research and Development. The Philippine Council for Agriculture and Forestry Research and Development is hereby created, which shall be under the administrative supervision of the Authority, and shall consist of the Director-General as Chairman and eight (8) members, as follows: Minister of Agriculture and Food, Minister of Natural Resources or their designated Deputy Ministers, Chancellor of the University of the Philippines at Los Baños, Administrator of the National Food Authority and Executive Director of the Council Secretariat and three (3) representatives of the private sector in the fields of agriculture or forestry, who are chief executive officers of their respective companies in the field of agriculture or forestry or are acknowledged leaders in their professions to be appointed by the President, in their personal capacity, upon recommendation of the Director-General, each of whom shall be for a term of two (2) years; provided, however, that the tenure of the members first appointed by the President shall be as follows: one (1) for one (1) year and two (2) and two (2) years, as fixed in their respective appointments. The members shall serve and continue to hold office until their successors shall have been duly appointed and qualified. Appointment to any vacancy in the Council shall be by the President and shall only be for the unexpired portion of the term of the predecessor.

SECTION 16. Philippine Council for Health Research and Development. The Philippine Council for Health Research and Development, presently existing, is hereby reorganized which shall be under the administrative supervision of the Authority, and shall consist of the Director-General as Chairman and eight (8) members, as follows: Minister of Health or his designated Deputy Minister, Chancellor of the University of the Philippines Health Services Center, Executive Director of the National Nutrition Council, Executive Director of the Council Secretariat and four (4) representatives of the private sector in the field of health, who are chief executive officers of their respective companies in the field of health or are acknowledged leaders in their professions to be appointed by the President, in their personal capacity, upon recommendation of the Director-General, each of whom shall be for a term of two (2) years; provided, however, that the tenure of the members first appointed by the President shall be as follows: two (2) for one (1) year and two (2) for two (2) years, as fixed in their respective appointments. The members shall serve and continue to hold office until their successors shall have been duly appointed and qualified. Appointment to any vacancy in the Council shall be by the President and shall only be for the unexpired portion of the term of the predecessor.

SECTION 17. Philippine Council for Aquatic and Marine Research and Development. The Philippine Council for Aquatic and Marine Research and Development is

hereby created, which shall be under the administrative supervision of the Authority, and shall consist of the Director-General as Chairman, and eight (8) members as follows: Minister of Agriculture and Food, Minister of Natural Resources or their designated Deputy Ministers, Executive Director of the Council Secretariat, two (2) representatives from the academic/research institution and three (3) representatives from the private sector who are chief executive officers of their respective companies in the field of aquaculture or marine research or development or are acknowledged leaders of their professions to be appointed by the President, in their personal capacity, upon the recommendation of the Director-General, each of whom shall be for a term of two (2) years; provided, however, that the terms of the members first appointed by the President shall be as follows: two (2) for one (1) year and the other three (3) for two (2) years, as fixed in their respective appointments. The members shall serve and continue to hold office until their successors shall have been duly appointed and qualified. Appointment to any vacancy in the Council shall be by the President and shall only be for the unexpired portion of the term of the predecessor.

SECTION 18. Philippine Council for Advanced Science and Technology Research and Development. The Philippine Council for Advanced Science and Technology Research and Development is hereby created, which shall be under the administrative supervision of the Authority and shall consist of the Director-General as Chairman and eight (8) members, as follows: Minister of Education, Culture and Sports or his designated Deputy Minister, President of the University of the Philippines System; two (2) representatives from the government sector; and four (4) representatives from the private sector in the field of advanced science research, all of whom shall be appointed by the President, in their personal capacity, upon recommendation of the Director-General, each of whom shall be for a term of two (2) years.

SECTION 19. Institutes. The Institutes of the Authority are the following, which shall be line in character: Industrial Technology Development Institute: Philippine Nuclear Research Institute; Food and Nutrition Research Institute; Forest Products Research and Development Institute; Philippine Textile Research Institute; Advanced Science and Technology Institute; Science Education Institute; Science and Technology Information Institute; and Technology Application and Promotion Institute.

SECTION 20. Industrial Technology Development Institute. There is hereby created the Industrial Technology Development Institute, which shall have the following functions:

[a] Undertake applied research and development to develop technologies and technological innovations in the field of industrial manufacturing, mineral processing and energy;

[b] Undertake the transfer of research results directly to end-users or preferably via linkage units of other government agencies;

[c] Undertake technical services, such as but not limited to, standards, analytical and calibration services mandated by law or as needed by industry;

[d] Conduct training and provide technical advisory and consultancy services to industry clientele and end-users.

The Institute shall be headed by a Director, who shall be appointed by the President upon the recommendation of the Director-General and shall be assisted by one or more Deputy Directors, as may be necessary. The Institute shall have the following divisions:

[1] Chemicals and Minerals Division;
[2] Food Processing Division;
[3] Fuels and Energy Division;

[4] Material Science Division;
[5] Microbiology and Genetics Division;
[6] Electronics and Process Control Division;
[7] Environmental Division;
[8] Rural Technology Division;
[9] Economics Division;
[10] Standards and Testing Division.

SECTION 21. Philippine Nuclear Research Institute. The Philippine Nuclear Research Institute, formerly the Philippine Atomic Energy Commission, is hereby reorganized and shall have the following functions:

[a] Conduct research and development on the application of radiation and nuclear materials, processes and techniques in agriculture, food, health, nutrition and medicine and in industrial or commercial enterprises;

[b] Undertake the transfer of research results to end-users, including technical extension and training services;

[c] Operate and maintain nuclear research reactors and other radiation facilities;

[d] License and regulate activities relative to production, transfer, and utilization of nuclear and radioactive substances.

The Institute shall be headed by a Director, who shall be appointed by the President upon the recommendation of the Director-General and shall be assisted by one or more Deputy Directors, as may be necessary. The Institute shall have the following divisions:

[1] Atomic Research Division;
[2] Nuclear Services and Training Division;
[3] Nuclear Regulations, Licensing, and Safeguards Division.

SECTION 22. Food Nutrition Research Institute. The Food Nutrition Research Institute, presently existing, is hereby reorganized and shall have the following functions:

[a] Undertake research that defines the citizenry's nutritional status, with reference particularly to the malnutrition problem, its causes and effects, and identify alternative solutions to them;

b] Develop and recommend policy options, strategies, programs and projects, which address the malnutrition problem for implementation by the appropriate agencies;

[c] Disseminate research findings and recommendations to the relevant end-users.

The Institute shall be headed by a Director, who shall be appointed by the President upon the recommendation of the Director-General and shall be assisted by one or more Deputy Directors, as may be necessary. The Institute shall have the following divisions:

[1] Nutrition Standard and Management Division;
[2] Bio-Medical Nutrition Division;
[3] Nutrition Intervention Modelling and Assessment Division;
[4] Communication and Dissemination Services Division.

SECTION 23. Forest Products Research and Development Institute. The Forest Products Research and Development Institute, presently existing, is hereby reorganized and shall have the following functions:

[a] Conduct applied research and development in secondary and tertiary processing for the forest-based industry to generate information and technology which can improve the utility value of wood and other forest products;

[b] Undertake the transfer of completed researches directly to the end-users or

via linkage units of other government agencies;

[c] Undertake technical services and provide training programs

The Institute shall be headed by a Director, who shall be appointed by the President upon the recommendation of the Director-General, and shall be assisted by one or more Deputy Directors, as may be necessary. The Institute shall have the following divisions:

1] Housing Materials Division;
2] Furniture, Wares and Packaging Division;
3] Paper and Chemical Products Division.

SECTION 24. Philippine Textile Research Institute. The Philippine Textile Research Institute, presently existing, is hereby reorganized and shall have the following functions:

[a] Conduct applied research and development for the textile industry sector;

[b] Undertake the transfer of completed researches to end-users or via linkage units of other government agencies;

[c] Undertake technical services and provide training programs.

The Institute shall be headed by a Director, who shall be appointed by the President upon recommendation of the Director-General and shall be assisted by one or more Deputy Directors, as may be necessary, and shall have the following divisions:

[1] Research and Development Division;
[2] Technical Services Division.

SECTION 25. Advanced Science and Technology Institute. There is hereby created the Advanced Science and Technology Institute, which shall have the following functions:

[a] Undertake long-term researches to strengthen and modernize science and technology infrastructure;

[b] Conduct research and development work in the advanced fields of studies including biotechnology and microelectronics;

[c] Complement the overall endeavour in the scientific field with intensive activities in the computer and information technologies.

The Institute shall be headed by a Director, who shall be appointed by the President upon the recommendation of the Director-General and shall be assisted by one or more Deputy Directors, as may be necessary.

SECTION 26. Science Education Institute. There is hereby created the Science Education Institute, which shall have the following functions:

[a] Undertake science education and training;

[b] Administer scholarships, awards and grants;

[c] Undertake science and technology manpower development;

[d Formulate plans and establish programs and projects for the promotion and development of science and technology education and training in coordination with the Ministry of Education, Culture and Sports, and other institutions of learning in the field of science and technology.

The Institute shall be headed by a Director, who shall be appointed by the President upon the recommendation of the Director-General and shall be assisted by one or more Deputy

Directors, as may be necessary. The Institute shall have the following divisions:

1] Scholarship and Training Division;
2] Science and Technology Manpower Assessment Division; and
3] Science and Technology Education Division.

SECTION 27. Science and Technology Information Institute. There is hereby created the Science and Technology Information Institute which shall have the following functions:

[a] Establish a science and technology databank and library;

[b] Disseminate science and technology information; and

[c] Undertake training on science and technology information.

The Institute shall be headed by a Director, who shall be appointed by the President upon the recommendation of the Director-General and shall be assisted by one or more Deputy Directors, as may be necessary.

SECTION 28. Technology Application and Promotion Institute. There is hereby created the Technology Application and Promotion Institute (TAPI) whose primary responsibility is to serve as the implementing arm of the Authority in promoting the commercialization of technologies and in marketing the services of the other operating units in the Authority; for such purpose it shall have the following functions:

[a] Undertake contract research, particularly at the pilot plant and semi-commercial stage;

[b] Provide technical consultancy including engineering design services, patenting and licensing services;

[c] Provide grants and/or venture-financing for new and/or emerging projects.

The Institute shall be headed by a Director who shall be appointed by the President upon the recommendation of the Director-General and shall be assisted by one or more Deputy Directors as may be necessary.

SECTION 29. Philippine Atmospheric, Geophysical and Astronomical Services Administration. — The Philippine Atmospheric, Geophysical and Astronomical Services Administration, presently existing, is hereby reorganized and shall have the following functions:

[a] Maintain a nationwide network pertaining to observation and forecasting of weather and other climatological conditions affecting national safety, welfare and economy;

[b] Undertake activities relative to observation, collection, assessment and processing of atmospheric and allied data for the benefit of agriculture, commerce and industry;

[c] Engage in studies of geophysical and astronomical phenomena essential to the safety and welfare of the people;

[d] Undertake researches on the structure, development and motion of typhoons and formulate measures for their moderation; and

[e] Maintain effective linkages with scientific organizations here and abroad, and promote exchange of scientific information and cooperation among personnel engaged in atmospheric, geophysical and astronomical studies.

The Institute shall be headed by a Director who shall be appointed by the President upon recommendation of the Director-General and shall be assisted by one or more Deputy

Directors as may be necessary.

SECTION 30. Philippine Institute of Volcanology and Seismology. The Philippine Institute of Volcanology and Seismology, presently existing, is hereby reorganized and shall have the following functions:

[a] Predict the occurrences of volcanic eruptions and earthquakes and their geotectonic phenomena;

[b] Determine how eruptions and earthquakes shall occur and, also likely areas to be affected;

[c] Exploit the positive aspects of volcanoes and volcanic terrain in furtherance of the socio-economic development efforts of the government;

[d] Generate sufficient data for forecasting volcanic eruptions and earthquakes;

[e] Formulate appropriate disaster-preparedness plans; and

[f] Mitigate hazards of volcanic activities through appropriate detection, forecast, and warning systems.

The Institute shall be headed by a Director who shall be appointed by the President upon the recommendation of the Director-General and shall be assisted by one or more Deputy Directors as may be necessary.

SECTION 31. Regional Offices. The Authority is hereby authorized to establish, operate and maintain a Regional Office, whenever appropriate, in each of the administrative regions of the country, to be headed by a Regional Director who shall report to, and subject to the supervision of, the Deputy Director-General for Regional Operations. A Regional Office shall have, within its administrative region, the following functions:

[a] Implement laws, rules, regulations, policies, plans, programs and projects of the Authority;

[b] Provide efficient and effective service to the people;

[c] Coordinate with regional offices of other ministries, offices and agencies in the administrative region;

[d] Coordinate with local government units; and

[e] Perform such other functions as may be provided by law.

SECTION 32. Authority Offices in Other Countries. The Authority may also have such offices and representatives in other countries in places where its presence is considered necessary, subject to the approval of the President for each of them.

SECTION 33. Attached Agencies. The following agencies shall be attached to the Authority:

[a] Philippine National Science Society, [formerly National Research Council of the Philippines], in connection with Section 35 [b] hereof;

[b] National Academy of Science and Technology; and

[c] Philippine Science High School

SECTION 34. Transfer of Agencies to the Authority. The following agencies are hereby transferred as follows:

[a] The Metals Industry Research and Development Center from the Ministry of Trade and Industry, to the Authority, as a separate unit and attached thereto; provided, however, it is subject to a memorandum of agreement which defines: the relationship between the

Ministry of Trade and Industry and the Metals Industry Research and Development Center and the manner by which equipment and resources are accessed. The investment and trade promotion aspects are recognized to be functions of the Ministry of Trade and Industry in cooperation with the National Science and Technology Authority.

[b] The Philippine Textile Research Institute from the Ministry of Trade and Industry, to the Authority as a separate unit and attached thereto; provided, however, it is subject to a memorandum of agreement which defines: the relationship between the Ministry of Trade and Industry and the Philippine Textile Research Institute and the manner by which equipment and resources are accessed. The investment and trade promotion aspects are recognized to be functions of the Ministry of Trade and Industry in cooperation with the National Science and Technology Authority.

[c] Subsections a], and b] shall be in accordance with Section 36 [e

SECTION 35. Abolition of Agencies. The following agencies are hereby abolished:

[a] Philippine Council for Agriculture and Resources Research and Development; provided that its appropriations, funds, records, equipment, facilities, choses in actions, rights, other assets and personnel as may be necessary shall be transferred to the Philippine Council for Agriculture and Forestry Research and Development; its liabilities, if any, shall be treated in accordance with the Government Auditing Code and other pertinent laws, rules and regulations; its personnel shall, in a hold-over capacity, continue to perform their duties and responsibilities and receive the corresponding salaries and benefits unless in the meantime they are separated from the service pursuant to Executive Order No. 17 (1986) or Article III of the Freedom Constitution; its personnel, whose positions are not included in the Authority's new position structure and staffing pattern approved and prescribed by the Director-General under Section 37 hereof or who are not reappointed, shall be deemed separated from the service and shall be entitled to the benefits provided in the second paragraph of the same Section 37;

[b] National Research Council of the Philippines; provided that what is being abolished herein is the Council as created under Executive Order No. 784;

[c] Philippine Invention Development Institute; provided that its appropriations, funds, records, equipment, facilities, choses in action, rights, other assets, personnel as may be necessary and liabilities, if any, shall be transferred to the Technology Application and Promotion Institute (TAPI) in accordance with the provisions of the foregoing Subsection [a];

[d] Science Promotion Institute; provided, that its appropriations, funds, records, equipment, facilities, choses in action, rights, other assets, personnel as may be necessary and liabilities, if any, shall be transferred to the Science and Technology Information Institute (STII) and the Science Education Institute (SEI) in accordance with the provision of the foregoing Subsection [a];

[e] National Institute of Science and Technology; provided, that its appropriations, funds, records, equipment, facilities, choses in action, rights, other assets, personnel as may be necessary and liabilities, if any, shall be transferred to the Industrial Technology Development Institute in accordance with the provisions of the foregoing Subsection [a];

[f] Materials Science Research Institute; provided, that its appropriations, funds, records, equipment, facilities, choses in action, rights, other assets, personnel as may be necessary and liabilities, if any, shall be transferred to the Industrial Technology Development Institute in accordance with the provisions of the foregoing Subsection [a];

[g] Special Projects Service; provided, that its appropriations, funds, records, equipment, facilities, choses in action, rights, other assets, personnel as may be necessary and liabilities, if any, shall be transferred to the Planning and Evaluation Service in accordance with the provision of the foregoing Subsection [a]

The abolitions under Subsections b], c], d and g shall be in accordance with Section 36 [d] hereof.

SECTION 36. Transitory Provisions. In accomplishing the acts of reorganization herein prescribed, the following transitory provisions shall be complied with, unless otherwise provided elsewhere in this Executive Order:

[a] The transfer of a government unit shall include the functions, appropriations, funds, records, equipment, facilities, choses in action, rights, other assets and liabilities, if any, of the transferred unit as well as the personnel thereof, as may be necessary, who shall, in a hold-over capacity, continue to perform their respective duties and responsibilities and receive the corresponding salaries and benefits unless in the meantime they are separated from government service pursuant to Executive Order No. 17 (1986) or Article III of the Freedom Constitution. Those personnel of the transferred unit whose positions are not included in the new position structure and staffing pattern approved and prescribed by the Director-General or who are not reappointed shall be deemed separated from the service and shall be entitled to the benefits provided in the second paragraph of Section 37 hereof;

[b] The transfer of functions which results in the abolition of the government unit that has exercised them shall include the appropriations, funds, records, equipment, facilities, choses in action, rights, other assets and personnel as may be necessary to the proper discharge of the transferred functions. The abolished unit's remaining appropriations and funds, if any, shall revert to the General Fund and its remaining assets, if any, shall be allocated to such appropriate units as the Director-General shall determine or shall otherwise be disposed in accordance with the Auditing Code and other pertinent laws, rules and regulations. Its liabilities, if any, shall likewise be treated in accordance with the Auditing Code and other pertinent laws, rules and regulations. Its personnel shall, in a hold-over capacity, continue to perform their duties and responsibilities and receive the corresponding salaries and benefits unless in the meantime they are separated from the service pursuant to Executive Order No. 17 (1986) or Article III of the Freedom Constitution. Its personnel, whose positions are not included in the Authority's new position structure and staffing pattern approved and prescribed by the Director-General under Section 37 hereof or who are not reappointed, shall be deemed separated from the service and shall be entitled to the benefits provided in the second paragraph of the same Section 37.

[c] The transfer of functions which does not result in the abolition of the government unit that has exercised them shall include the appropriations, funds, records, equipment, facilities, choses in action, rights, other assets and personnel as may be necessary to the proper discharge of

the transferred functions. The liabilities, if any, that may have been incurred in connection with the discharge of the transferred functions, shall be treated in accordance with the Auditing Code and other pertinent laws, rules and regulations. Such personnel shall, in a hold-over capacity, continue to perform their respective duties and responsibilities and receive the corresponding salaries and benefits unless in the meantime they are separated from the service pursuant to Executive Order No. 17 (1986) or Article III of the Freedom Constitution. Any personnel, whose position is not included in the new position structure and staffing pattern approved and prescribed by the Director-General under Section 37 hereof or who has not been reappointed, shall be deemed separated from the service and shall be entitled to the benefits provided in the second paragraph of the same Section 37.

[d] In case of the abolition of a government unit which does not result in the transfer of its functions to another unit, the appropriations and funds of the abolished unit shall revert to the General Fund, while the records, equipment, facilities, choses in action, rights, and other assets, thereof shall be allocated to such appropriate units as the Director-General shall determine. The liabilities of the abolished unit shall be treated in accordance with the Auditing Code and other pertinent laws, rules and regulations, while the personnel thereof, whose position is not included in the Authority's new position structure and staffing pattern approved and prescribed by the Director-General under Section 37 hereof or who has not been reappointed, shall be deemed separated from the service and shall be entitled to the benefits provided in the second paragraph of the same Section 37.

[e] In case of merger or consolidation of government units, the new or surviving unit shall exercise the functions (subject to the reorganization herein prescribed and the laws, rules and regulations pertinent to the exercise of such functions) and shall acquire the appropriations, funds, records, equipment, facilities, choses in action, rights, other assets, liabilities if any, and personnel, as may be necessary, of [1] the units that compose the merged unit or [2] the absorbed unit, as the case may be. Such personnel shall, in a hold-over capacity, continue to perform their respective duties and responsibilities and receive the corresponding salaries and benefits unless in the meantime they are separated from the service pursuant to Executive Order No. 17 (1986) or Article III of the Freedom Constitution. Any such personnel, whose position is not included in the Authority's new position structure and staffing pattern approved and prescribed by the Director-General under Section 37 hereof or who is not reappointed, shall be deemed separated from the service and shall be entitled to the benefits provided in the second paragraph of the same Section 37.

[f] In case of termination of a function which does not result in the abolition of the government unit which has performed such function, the appropriations and funds intended to finance the discharge of such function shall revert to the General Fund, while the records, equipment, facilities, choses in action, rights and other assets used in connection with the discharge of such function shall be allocated to the appropriate units as the Director-General shall determine or shall otherwise be disposed in accordance with the Government Auditing Code and other pertinent laws, rules and regulations. The liabilities, if any, that may have been incurred in connection with the discharge of such function shall likewise be treated in accordance with the Government Auditing Code and other pertinent laws, rules and regulations. The personnel who have performed such function, whose

positions are not included in the new position structure and staffing pattern approved and prescribed by the Director-General under Section 37 hereof or who have not been reappointed, shall be deemed separated from the service and shall be entitled to the benefits provided in the second paragraph or the same Section 37.

SECTION 37. New Structure and Pattern. Upon approval of this Executive Order, the officers and employees of the National Science and Technology Authority shall, in a hold-over capacity, continue to perform their respective duties and responsibilities and receive the corresponding salaries and benefits unless in the meantime they are separated from government service pursuant to Executive Order No. 17 (1986) or Article III of the Freedom Constitution.

The new position structure and staffing pattern of the Authority shall be approved and prescribed by the Director-General within one hundred twenty (120) days from the approval of this Executive Order and the authorized positions created thereunder shall be filled with regular appointments by him or by the President, as the case may be. Those incumbents whose positions are not included therein or who are not reappointed shall be deemed separated from the service. Those separated from the service shall receive the retirement benefits to which they may be entitled under existing laws, rules and regulations. Otherwise, they shall be paid the equivalent of one-month basic salary for every year of service, or fraction thereof, computed on the basis of the highest salary received, but in no case shall such payment exceed the equivalent of 12 months salary.

No court or administrative body shall issue any writ or preliminary injunction or restraining order to enjoin the separation/replacement of any officer or employee affected under this Executive Order.

SECTION 38. Periodic Performance Evaluation. The Director-General is hereby required to formulate and enforce a system of measuring and evaluating periodically and objectively the performance of the Authority and submit the same annually to the President.

SECTION 39. Notice or Consent Requirement. If any reorganizational change herein authorized is of such substance or materiality as to prejudice third persons with rights recognized by law or contract such that notice to or consent of creditors is required to be made or obtained pursuant to any agreement entered into with any of such creditors, such notice or consent requirement shall be complied with prior to the implementation of such reorganizational change.

SECTION 40. Change of Nomenclature. In the event of the adoption of a new Constitution which provides for a presidential form of government, the Authority shall be called Department of Science and Technology and the titles of Director-General, Deputy Director-General, and Assistant Director-General shall be changed to Secretary, Undersecretary and Assistant Secretary, respectively.

SECTION 41. Prohibition Against Change. No change in the reorganization herein prescribed shall be valid except upon prior approval of the President for the purpose of promoting efficiency and effectiveness in the delivery of public services.

SECTION 42. Funding. Funds needed to carry out the provisions of this Executive Order shall be taken from funds available in the Authority.

SECTION 43. Implementing Authority of Director-General. The Director-General shall issue such rules, regulations and other issuances as may be necessary to ensure the effective implementation of the provisions of this Executive Order.

SECTION 44. Separability. Any portion or provision of this Executive Order that may be declared unconstitutional shall not have the effect of nullifying other portions or provisions hereof as long as such remaining portions or provisions can still subsist and be given effect in their entirety.

SECTION 45. Repealing Clause. All laws, ordinances, rules and regulations, other issuances or parts thereof, which are inconsistent with this Executive Order, are hereby repealed or modified accordingly.

SECTION 46. Effectivity. This Executive Order shall take effect immediately upon its approval.

APPROVED in the City of Manila, Philippines, this 30th day of January, in the Year of Our Lord, Nineteen Hundred and Eighty-seven.

(Sgd.) CORAZON C. AQUINO
President of the Philippines

By the President:
(Sgd.) JOKER P. ARROYO
Executive Secretary

III. REPUBLIC ACT No. 5207

AN ACT PROVIDING FOR THE LICENSING AND REGULATION OF ATOMIC ENERGY FACILITIES AND MATERIALS, ESTABLISHING THE RULES ON LIABILITY FOR NUCLEAR DAMAGE, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

PART I
General Provisions

SECTION 1. Short Title. - This Act shall be known as the "Atomic Energy Regulatory and Liability Act of 1968."

SECTION 2. Declaration of Policy. – It is hereby declared to be the policy of the Philippine Government to encourage, promote and assist the development and use of atomic energy for all peaceful purposes, as a means to improve the health and prosperity of the inhabitants of the Philippines, contribute to the general welfare, and accelerate scientific, technological, agricultural, commercial, and industrial progress.

The production and use of atomic energy facilities and atomic energy materials shall be subject to control by the State in order to achieve the foregoing purposes, to assure fulfillment of the international obligations of the State, to protect the health and safety. of workers and of the general public, and to protect against the use of such facilities and materials for unauthorized purposes.

In order to encourage the development and use of atomic energy for peaceful purposes and to provide proper protection of the public, it is also in the national interest to establish the rules on liability for nuclear damage and to assure the availability of funds to satisfy liabilityy claims.

SECTION 3. Definitions. - As used in this Act:

(a) "Commission" means the Philippine Atomic Energy Commission.

(b) The term *"atomic energy facility"* means any equipment or device which the Commission may determine from time to time, by regulation, to be capable of producing or utilizing atomic energy material in such quantity or in such manner as to be of significance to the national interest or to the health and safety of the public.

(c) *"Atomic energy material"* means "source material", "special fissionable material" and any other radioactive material.

(d) The term *"individual operator"* means any individual who manipulates the controls of an atomic energy facility.

(e) *"Installation operator"* means the person licensed by the Commission as the operator of that installation. If no person is licensed by the Commission as the operator of the installation and the installation is operated by or for the Commission, "installation operator" shall be deemed to mean the Commission.

(f) *"Nuclear Damage"* means loss of, life, any personal injury or any loss of, or damage to, or loss of use of property, which arises out of or results from the radioactive, toxic, explosive or other hazardous properties, or any combination thereof, of nuclear fuel or radioactive products or any waste in, or of nuclear materials coming from, originating in, or sent to, a nuclear installation or from the ionizing radiation emitted by any other source of radiation inside a nuclear installation. *"Personal injury"* as used herein means any physical or mental injury (including death), sickness or disease whether caused directly by a physical trauma or otherwise. [As amended by Section 1 of P.D. No. 1484.]

(g) *"Nuclear fuel"* means any material which is capable of producing energy by a self-sustaining chain process of nuclear fission.

(h) *"Nuclear incident"* means any occurrence or series of occurrence having the same origin which causes nuclear damage.

(i) *"Nuclear installation"* means (1) any nuclear reactor other than one with which a means of sea or air transport is equipped for use as a source of power, whether for propulsion or for any other purposes; (2) any factory using nuclear fuel for the production of nuclear material, or any factory for the processing of nuclear materials, including any factory for the reprocessing of irradiated nuclear fuel; and (3) any facility where nuclear material is stored, other than storage incidental to the carriage of such material.

(j) *"Nuclear materials"* means (1) nuclear fuel, other than natural uranium and depleted uranium, capable of producing energy by a self sustaining chain process of nuclear fission outside a nuclear reactor, either alone or in combination with some other material; and (2) radioactive products or waste.

(k) *"Nuclear reactor"* means any structure containing nuclear fuel in such an arrangement that a self-sustaining chain process of nuclear fission can occur therein without an additional source of neutron.

(l) *"Person"* means any individual, partnership, private or public body whether corporate or not, Government agency other than the Commission, any international organization enjoying legal personality under the law where the nuclear installation is situated, and any State or any of its constituent subdivisions; and any legal successor, representative, agent or agency of the foregoing.

(m) *"Radioactive products or waste"* means any radioactive material produced in,

or any material made radioactive by exposure to the radiation incidental to, the production or utilization of nuclear fuel, but does not include nuclear fuel, or radioisotopes which have reached the final stage of fabrication so as to be usable for any scientific, medical or agricultural, commercial or industrial purpose,

(n) The term *"source material"* means uranium containing the mixture of isotopes occurring in nature, uranium depleted in the isotope 235; thorium; any of the foregoing in the form of metal, alloy, chemical compound, or concentrate and other material containing one or more of the foregoing in such concentration as the Commission may from time to time determine.

(o) The term *"special fissionable material"* means plutonium-239, plutonium-241, uranium-233, uranium-235, any material containing one or more of the foregoing, and such other fissionable material as the Commission shall from time to time determine; but the term "special fissionable material" does not include source material.

(p) "The term *"individual"* means a natural person. [As amended by Section 2 of P.D. No. 1484.]

PART II
General Authority of the Commission

SECTION 4. Commission Authority. - In the performance of its functions under this Act, the Commission is authorized:

(a) To establish and issue regulations and orders with respect to atomic energy facilities and materials for the protection of the health and safety of the workers and of the general public; and to make inspections to insure compliance with such requirements;

(b) To establish and issue regulations and orders to ensure that atomic energy facilities and materials are used only for purposes authorized under this Act, and that such uses are consistent with the national interest; and to make inspections to ensure compliance with such requirements;

(c) To license and regulate or prohibit the import or export of atomic energy facilities and materials as may be necessary in the national interest;

(d) To issue licenses to qualified persons authorizing the conduct of activities for which a license is required under this Act;

(e) To modify, amend, suspend, or revoke any license in accordance with the provisions of this Act;

(f) To inspect activities which are licensed under this Act; and to require licensees to maintain records, and to require reports from licensees, with regard to such activities;

(g) To hold hearings and conduct investigations and for these purposes to administer oaths and affirmations, and by subpoena to require any person to appear and testify, or to appear and produce documents at any designated place.

(h) To establish advisory boards to advise with and make recommendations to the Commission; and to fix and pay the amount of per diem of members of such advisory boards not to exceed fifty pesos per meeting;

(i) To establish and issue regulations and orders for the safe transport of atomic energy materials and facilities;

(j) To call upon other government agencies and instrumentalities for assistance and

cooperation in carrying out the provisions of this Act;

(k) To charge and collect reasonable fees in connection with its licensing and regulatory functions, provided that such fees shall be imposed by regulation on the basis of such published criteria as the Commission deems appropriate, taking into consideration, among other criteria, the nature of the activity licensed and regulated;

(l) To issue, amend and revoke such regulations and orders as may be necessary or proper with respect to the furnishing of financial security to cover liability for nuclear damage, the furnishing of certificates to carrier, and such other regulations and orders as the Commission finds necessary or proper in carrying out the purposes and provisions of Part VII of this Act; and

(m) To issue, amend and revoke such regulations and orders as may be necessary or proper to carry out the purposes and provisions of this Act. Nothing in this Act shall preclude the authorized agents of the Department of National Defense to make inspections of atomic energy facilities, materials or any activity jointly with the authorized representatives of the Commission after prior consultation with the latter when the security of the state is involved.

SECTION 5. Regulatory Policy. - In issuing licenses and regulations under this Act, the Commission shall impose the minimum requirements consistent with the Commission's obligations under this Act to protect the health and safety of the public and to promote the national interest.

PART III
Regulation and Licensing of Atomic Energy Facilities

SECTION 6. Activities Subject to License. - It shall be unlawful for any person to transfer, construct, receive, own, possess, operate, import or export any atomic energy facility except under a license issued by the Commission under this Act.

SECTION 7. Form and Content of Application. - Each application for a license for an atomic energy facility shall be in writing and shall contain such information as the Commission may by regulation or order deem to be necessary to carry out its responsibilities under this Act. Such information shall include, but shall not be limited to, information bearing on the technical and financial qualifications of the applicant, the character of the applicant, and the citizenship of the applicant. In addition the applicant shall state such technical information as to the proposed atomic energy facility, the amount, kind, and source of reactor fuel requirements, the proposed location and site of the atomic energy facility, the operational procedure for the atomic energy facility and such other information as the Commission may by regulation deem necessary in order to enable it to decide whether operation of the atomic energy facility will not pose undue risk to the health and safety of the public.

SECTION 8. To Whom License Issued. - The Commission shall issue a license upon finding:

(1) That the proposed activities are consistent with the policies declared in Section Two of this Act;

(2) That the applicant is technically and financially qualified to engage in the proposed activities in accordance with the requirements of this Act, and the Commission's regulations;

(3) That the proposed activities will not pose undue risk to the health and safety of the public; and

(4) That the applicant, if required by this Act or the Commission's regulations, has

financial security to fulfill the obligations for liability for nuclear damage.

SECTION 9. Citizenship Requirement. - No license to acquire, own, or operate any atomic energy facility shall be issued to an alien, or any corporation or other entity which is owned or controlled by an alien, a foreign corporation, or a foreign government. For purposes of this Act, a corporation or entity is not owned or controlled by an alien, a foreign corporation or a foreign government if at least sixty per cent (60%) of its capital stock is owned by Filipino citizens.

SECTION 10. Provisional License. - In all cases of applications for licenses to construct an atomic energy facility if the Commission finds that, on the basis of the technical information and data so far made available to it, there is reasonable assurance that the proposed installation can be constructed and operated at the proposed location without undue risk to the health and safety of the public, it shall initially issue a provisional license to the applicant. Such a provisional license may be granted even if the health and safety information then available is less than would be needed for a license to operate, provided that the Commission is satisfied that there is reasonable assurance that questions of health and safety will be so resolved as to warrant the issuance of a license to operate the installation.

SECTION 11. License to Operate. - Upon the filing of any additional information and data needed to enable the Commission to make a determination of the safety aspects of the complete atomic energy facility, and upon finding that the facility authorized has been constructed and will operate in conformity with the application as amended and in conformity with the provisions of this Act and of the regulations of the Commission, and in the absence of any good cause being shown to the Commission why the granting of a license would not be in accordance with the provisions of this Act, the Commission shall thereupon issue a license to the applicant to operate the facility.

SECTION 12. Advisory Board on safety of atomic energy facilities and materials. - Upon the recommendation of the Commission, the Chairman of the National Science Development Board shall establish an Advisory Board on safety of atomic energy facilities and materials not exceeding eleven in number and appoint the members, to assist and advise the Commission on the health and safety matters arising in connection with atomic energy facility and material licenses, and regulations applicable to such licenses, composed of experts outside the Commission from other government agencies or the private sector or both: *Provided, however,* That the Commission shall have the final decision and responsibility with respect to such matters. The opinions and reports of the Board on license applications shall be made in writing and shall be made available to the public.

SECTION 13. Continued Operation of Atomic Energy Facility in Case of Revoked License. -

Whenever the Commission finds that the public convenience and necessity or the atomic energy development program of the Commission requires continued operation of an atomic energy facility the license for which has been revoked, the Commission may, after consultation with the Public Service Commission or appropriate agency having jurisdiction, order that possession be taken of such atomic energy facility (including any atomic energy materials which are at the facility for use in operation of the facility) and that it be operated for such period of time as in the judgment of the Commission, the public convenience and necessity or the atomic energy development program of the Commission require, until a license for the operation of the atomic energy facility shall become effective. Just compensation shall be paid for the use of the facility.

SECTION 14. Additional Requirements in Case of Atomic Energy Facility for Commercial Power; Exemptions. - Nothing in this Act shall be construed to exempt the operator of an atomic energy facility designed primarily for the generation of electricity for commercial purposes, from complying with other requirements provided by existing laws, such as securing a franchise, a certificate of public convenience and necessity, obtaining approval for rates and services and others, from the appropriate agency having jurisdiction: *Provided, however;* That upon certification by the Commission, importations of nuclear fuel for use in these facilities shall be free from all taxes and duties within a period of ten years commencing from the date of delivery of the first importation of fuel for the first of such atomic energy facility in the country, any provision of existing laws to the contrary notwithstanding.

SECTION 15. Individual Operators. - The Commission shall:

(a) Prescribe the classes of atomic energy facilities for which it determines that individual operators' licenses should be required in order to protect the health and safety of the public;

(b) Determine the qualifications of such individuals;

(c) Issue licenses to such individuals in such form as the Commission may prescribe; and

(d) Suspend or revoke such licenses for violations of any provisions of this Act or regulation or order issued by the Commission.

PART IV
Regulation and Licensing of Atomic Energy Materials

SECTION 16. Activities Subject to Licensing. - It shall be unlawful for any person to manufacture, produce, receive, possess, own, use, transfer, import or export any atomic energy material except under a license issued by the Commission or except as otherwise authorized by the Commission under this Act: Provided, however. That the mining and processing of radioactive ores or minerals shall be governed by the applicable mining laws prior to the removal from its place of deposit in nature.

SECTION 17. Exemption from Licensing Requirements. - The Commission may by regulation exempt small quantities of low activity atomic energy materials, and users or uses of such low activity atomic energy materials, from the licensing requirements of this Act if the Commission finds that the exemption of such quantities or such kinds of users or uses will not constitute an undue risk to the health and safety of the public and will otherwise be consistent with the national interest.

SECTION 18. Safe Transport of Atomic Energy Materials. - Any person who ships or transports atomic energy materials shall comply with all such regulations and orders of the Commission as the Commission deems necessary to protect the health and safety of the public.

SECTION 19. Form and Content of Application. - Each application for a license for atomic energy materials shall be in writing and shall contain such information as the Commission may by regulation or order deem to be necessary to carry out its responsibilities under this Act. All applications and statements shall be signed by the applicant or licensee. Applications for various licenses specified in this Act may be combined in a single application.

SECTION 20. To Whom License Issued. - The Commission shall issue a license upon finding:

(1) That the proposed activity is consistent with the policies declared in Section Two of this Act.

(2) That the applicant is technically and financially qualified to engage in the proposed activities in accordance with the requirements of this Act, and the Commission's regulations;

(3) That the proposed activities will not pose undue risk to the health and safety of the public; and

(4) That the applicant, if required by this Act or the Commission's regulations, has financial protection to fulfill obligations for liability for nuclear damage.

SECTION 21. Prior and Preferential Rights of the Government over Special Fissionable Material. - The Government of the Philippines, acting through the Commission, shall have the right to acquire any special fissionable material owned by a person in the Philippines. Such rights may be exercised only when in the view of the Commission the development of atomic energy in the Philippines or the national interest so requires. The acquisition of special fissionable material pursuant to this section shall be made for a fair and reasonable price.

PART V
Common Provisions for Regulation of Atomic Energy Facilities and Materials

SECTION 22. Form and Contents of License. –

(a) Each license shall be in such form and shall contain such terms as the Commission may prescribe to effectuate the provisions of this Act.

(b) Every license issued under this Act shall be subject to the rights of possession or control vested in the Commission under the provisions of this Act and to all of the other provisions of this Act, now or hereafter in effect and to all valid regulations and orders of the Commission.

SECTION 23. Period of License. - Each license shall be issued for a specified period, as determined by the Commission depending on the type of activity to be licensed, but not exceeding thirty five years and may be renewed upon the expiration of such period.

SECTION 24. Transfer of Licenses. - No license issued by the Commission, and no right granted by any such license, shall be transferred, assigned, encumbered, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, unless the Commission shall, after securing full information, find that such transfer, assignment, encumbrance, or other disposition is in accordance with the purposes and provisions of this Act and shall give its consent in writing.

SECTION 25. License Subject to Amendment. - The terms and conditions of all licenses shall be subject to amendment or modification, by reason of amendments of this Act or by reason of amendments of regulations or orders issued in accordance with the terms of this Act.

SECTION 26. Regulatory Enforcement Powers. - For the purpose of determining whether the application should be granted or denied or whether a license should be modified, suspended, or revoked, and of otherwise implementing its licensing and regulatory responsibilities under this Act, the Commission may at any time after the filing of the original application and before the expiration of the license (a) require additional written statements which shall, if the Commission so decides, be made under oath or affirmation, and additional technical information and data concerning activities under the application; (b) enter, through authorized representatives, at all reasonable times, the premises where the atomic energy facility is located or where atomic energy material is stored, and perform such inspection as may be necessary; and (c) order the applicant or licensee, where situations or conditions endangering life, health or

property are found to exist, to adopt such measures as would eliminate or protect against such situations or conditions.

SECTION 27. Suspension or Revocation of License. - Any license may be suspended or revoked for any material false statement contained in the application or contained in any statement, record or report required under this Act or for reasons or conditions revealed by such application or statement of fact or any report, record, or inspection or other means which would warrant the Commission to refuse to grant a license on an original application, or for failure to construct or operate an atomic energy facility in accordance with the terms of the license, or for violation of, or failure to observe, any of the terms and provisions of the Act or for any regulation or order by the Commission.

SECTION 28. Protective Measures in Cases of Suspension, Revocation or Expiration of License. - Upon the suspension, revocation, or expiration of a license which is not renewed, and pursuant to Commission order, the Commission shall take, or shall require the licensee to take, such measures as may be necessary to protect the health and safety of the public or the national interest. The Commission may, if necessary to protect the public health and safety or the national interest, take temporary custody of any atomic energy material or facilities held by the licensee pending their appropriate and lawful disposition by or for the licensee.

SECTION 29. Activities of the Commission. - Nothing in this Act shall be deemed to require a license for the conduct of activities by or on behalf of the Commission.

SECTION 30. Combining Applications: Oath or Affirmation. - The Commission may consider in a single application one or more of the activities for which a licensee is required by this Act and may combine in a single license authorization for one or more of such activities. The Commission may require that any application or statement be made under oath or affirmation.

PART VI
Administrative Procedure and Judicial Review

SECTION 31. Notice and Hearing. -

(a) In any proceeding under this Act for the granting, suspending, revoking or amending of any license, including a provisional license and including an application to transfer control of a license, or upon the issuance of an order under Sections Thirteen, Twenty-one, Twenty-six, or Twenty-eight, the Commission shall hold a hearing upon the request of any person whose interest may be affected and shall admit such person as a party to the proceeding.

(b) Except in cases where immediate action is required in order to protect the health and safety of the public or the national interest, no order for the suspension, revocation or modification of a license, and no order issued under Sections Thirteen, Twenty-one, Twenty-six or Twenty-eight shall become effective until after the licensee has had notice for a hearing and opportunity to be heard.

(c) Where an order suspending, revoking or modifying a license, or an order issued under Section Thirteen, Twenty-one, Twenty-six or Twenty-eight is made effective without prior notice for a hearing and opportunity to be heard, the order shall only be temporary pending the hearing and issuance of a final decision in the proceeding.

SECTION 32. Notice of Regulation. - No regulation adopted by the Commission shall be effective less than fifteen days after publication of the regulation in the Official Gazette, except that it the Commission finds that the health and safety of the public or

the national interest requires, the regulation may be made effective immediately upon publication in the Official Gazette or upon furnishing copies of the regulation to the persons affected.

SECTION 33. Licensee Incident Reports. - No report by any licensee of any incident arising out of or in connection with a licensed activity made pursuant to any requirement of the Commission shall be admitted as evidence in any suit or action for damages growing out of any matter mentioned in such report.

SECTION 34. Hearing Procedure. - All hearings and investigations before the Commission shall be governed by rules adopted by the Commission: Provided, That in the conduct thereof the Commission shall not be bound by the technical rules of evidence, except that the Commission shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or duly repetitious evidence.

SECTION 35. Orders and Decisions. - All orders and decisions of the Commission taken in any proceeding after hearing shall be in writing, stating clearly and distinctly the facts and issues involved and the reasons on which the Commission's order or decision is based, and shall be made available to the public.

SECTION 36. Judicial Review. - The Court of Appeals is hereby given the power of judicial review over any final order or decision of the Commission rendered under Section Thirty-five and shall modify or set aside such order or decision when it clearly appears that there was no evidence before the Commission to support reasonably such order or decision, or that the same is contrary to law. Any such final order or decision may be reviewed by the Court of Appeals on the application of any party or other person affected thereby, by certiorari in appropriate cases, or by petition for review, in accordance with the Rules of Court, within such period as the Commission may by rule prescribe but not exceeding thirty days from notice of such order or decision. An appeal shall not suspend the grant of a license, but shall stay the suspension or revocation of a license until after the final disposition of the appeal by the Court of Appeals, unless said Court determines otherwise. On questions of law only such order or decision may be reviewed by the Supreme Court.

PART VII
Liability for Nuclear Damage

SECTION 37. The Operator Liable. - The installation operator shall be liable for nuclear damage upon proof that such damage has been caused by a nuclear incident –

(a) in his nuclear installation; or

(b) involving nuclear material coming from or originating in his nuclear installation and occurring –

  (1) before liability with regard to nuclear incidents involving the nuclear material has been assumed, pursuant to the express terms of a contract in writing, by another installation operator; or

  (2) in the absence of such express terms, before another installation operator has taken charge of the nuclear material;

(c) involving nuclear material sent to his nuclear installation, and occurring –

  (1) after liability with regard to nuclear incidents involving the nuclear material has been assumed by him, pursuant to the express terms of a contract in writing, from another installation operator; or

  (2) in the absence of such express terms, after he has taken charge of the nuclear material: Provided, That if nuclear damage is caused by a nuclear incident occurring in

a nuclear installation and involving nuclear material stored therein incidentally to the carriage of such material, the provisions of paragraph (a) of this section shall not apply where another installation operator or person is solely liable pursuant to the provisions of subparagraph (b) or (c) of this paragraph;

(d) Any provision in this section to the contrary notwithstanding, the installation operator shall be liable for nuclear damage upon proof that such damage has been caused by a nuclear incident involving nuclear material in the course of carriage (1) to his nuclear installation from a nuclear installation located outside the Philippines, or (2) from his nuclear installation to a nuclear installation outside the Philippines. The provisions of this paragraph shall be applicable only in the absence of applicable provisions to the contrary in an effective international agreement to which the Philippine Government and the Government of the nuclear installation outside the Philippines are parties.

SECTION 38. Absolute and Exclusive Liability. -

(a) The liability of the installation operator for nuclear damage shall be absolute.

(b) The installation operator shall not be relieved of liability for nuclear damage because such damage Is caused directly or indirectly by a grave natural disaster of an exceptional character.

(c) Except as otherwise provided in Part VII of this Act, no person other than the installation operator shall be liable for nuclear damage.

SECTION 39. Recourse Actions. - The installation operator shall have a right of recourse only:

(a) If there is such a right pursuant to the express provision of a written contract with the other installation operator; or

(b) If the nuclear incident results from the act or omission done with intent to cause damage, against the individual who has acted or omitted to act with such intent: Provided, however, That the installation operator or any other person including the commission which may be subrogated to the rights of the installation operator shall have no right of action, under any law, against the persons who may be liable for the acts or omissions of such individual such as but not limited to employers, parents and teachers. [As amended by Section 3 of P.D. No. 1484.]

SECTION 40. Gross Negligence or Intentional Act of Claimant. - If the nuclear damage resulted wholly or partly either from the gross negligence of the person suffering the damage or from an act or omission of such person done with intent to cause damage, the court may relieve the installation operator from his obligation to pay compensation in respect of the damage suffered by such person.

SECTION 41. Exceptions to Liability. - No installation operator shall be liable for any nuclear damage caused by a nuclear incident directly due to an act of armed conflict, hostilities, civil war or insurrection.

SECTION 42. Limit of Liability. - The liability of the installation operator for nuclear damage under this Act shall be limited to an amount in Philippine pesos which is equivalent to five million dollars, United States currency, for any one nuclear incident, exclusive of an interest or costs which may be awarded by the Court in actions for compensation of such nuclear damage.

SECTION 43. Property for Which Installation Operator Not Liable. – The installation operator shall not be liable under this Act for nuclear damage:

(a) To the nuclear installation itself or to any property on the site of that installation which is used or to be used in connection with that installation; or,

(b) To the means of transport upon which the nuclear material involved was located at the time of the nuclear incident.

SECTION 44. Liabilities not Affected by this Act. - Nothing in this Act shall affect

(a) the liability of any individual for nuclear damage for which the installation operator, by virtue of Sections forty-one and forty-three of this Act is not liable under this Act and which that individual caused by an act or omission done with intent to cause damage; or

(b) the liability outside this Act of the installation operator for nuclear damage for which, by virtue of subparagraph (b) of Section forty-three of this Act, he is not liable under the provisions of this Act.

SECTION 45. Exclusions. - The Commission may, if it determines that the small extent of the risk involved so warrants, exclude by regulation any small quantities of nuclear material from the application of the provisions in this Part VII, Provided, That (a) maximum limits for the exclusion of such quantities have been established by the Board of Governors of the International Atomic Energy Agency; and (b) any exclusion must be within limits so established. [As amended by Section 4 of P.D. No. 1484.]

SECTION 46. Requirement of Financial Security. - No license to operate a nuclear installation shall be issued unless the installation operator secures and maintains insurance or other financial security covering his liability for nuclear damage under this Act. The Commission shall by regulation, prescribe the type and terms of financial security herein required, which may include private insurance, private contractual indemnity, self-insurance or other proof of financial ability to pay damages under this Act or a combination of any thereof: Provided, That, in fixing the type and terms of such financial protection, the Commission shall be guided by the objectives of assuring to potential victims of a nuclear incident adequate and effective compensation without imposing an unreasonable burden on the installation operator.

SECTION 47. Certificate to Carrier. - In accordance with such regulations as the Commission may issue, the appropriate installation operator shall provide the carrier which furnishes carriage of nuclear material with a certificate issued by or on behalf of the insurer or other financial guarantor furnishing the financial security under Section forty-six. The certificate shall be in such form and contain such information as may be prescribed by the Commission's regulations, including the name and address of the appropriate installation operator, the amount, type and duration of the security and a statement that such information may not be disputed by the person for whom or on whose behalf the certificate was issued. The certificate shall indicate the nuclear material in respect to which the security applies and shall include also a verification by the Commission that the person designated is an appropriate installation operator within the meaning of the provisions of this Part VII.

SECTION 48. When Non-nuclear Damage Deemed Nuclear Damage. – Whenever both nuclear damage and damage other than nuclear damage have been caused by a nuclear incident or jointly by a nuclear incident and one or more other occurrences, such other damage shall, to the extent that it is not reasonably separable from the nuclear damage be deemed, for purposes of this Part, to be nuclear damage caused by that nuclear incident. Where, however, damage is caused jointly by a nuclear incident covered by this Part VII by an emission of ionizing radiation not covered by this Part, nothing in this Part

shall limit or otherwise affect the liability, either as regards any persons suffering nuclear damage or by way of recourse or contribution, of any person who may be held liable in connection with that emission of ionizing radiation.

SECTION 49. Several Installation Operators Liable. - Where nuclear damage engages the liability of more than one installation operator, the following rules shall apply:

(a) In so far as damage attributable to each installation operator is not reasonably separable, the installation operators involved shall be jointly and severally liable.

(b) In case the nuclear incident occurs in the course of carriage of nuclear material, either in one and the same means of transport, or in the case of storage incidental to the carriage, in one and the same nuclear installation and causes nuclear damage which engages the liability of more than one installation operator, the total liability shall not exceed the amount established in Section forty-two of this Act.

(c) In neither of the cases referred to in subparagraphs (a) and (b) of this section shall the liability of any one installation operator exceed the amount established in Section forty-two thereof.

SECTION 50. Operator of Several Installations. - Subject to the provision of Section forty-nine, where several nuclear installations of one and the same installation operator are involved in one nuclear incident, such installation operator shall be liable in respect of each nuclear installation involved up to the amount established in Section forty-two hereof.

SECTION 51. Carrier or Handler of Nuclear Material as Installation Operator. - The Commission may, subject to such terms and conditions as it may by regulation or order prescribe, designate a carrier of nuclear material or a person handling radioactive waste, at his request and with the consent of the installation operator concerned, as installation operator in the place of that installation operator in respect of such nuclear material or radioactive waste respectively. Upon such designation, such carrier or such person shall be considered as an installation operator for the purpose of this Part VII.

SECTION 52. Government Indemnity. - The Government, through the Commission, shall indemnify the installation operator liable and shall provide the necessary funds for the payment of claims for compensation for nuclear damage which have been established against the operator to the extent that the yield of insurance or other financial security is inadequate to satisfy such claims: Provided, That the obligation of the Government under this section, together with the yield of insurance or other financial security, shall not in the aggregate exceed the maximum amount established in Section forty-two for any nuclear incident. The Republic of the Philippines acting through such officer as may be designated by the President shall enter into agreements of indemnification with contractors or suppliers of goods or services for an atomic energy facility owned or operated by the government, its agencies, instrumentalities or corporations owned or controlled by the government pursuant to which the government agrees to indemnify and hold such contractors or suppliers harmless from any loss or liability arising out of or in relation to a nuclear incident occurring in the Philippines in excess of the yield of the insurance or other security herein set forth: Provided, however, that such indemnity shall in no case exceed the amount of Philippine pesos which is equivalent to one hundred twenty million U.S. dollars. [As amended by Section 5 of P.D. No. 1484.]

SECTION 53. When Claims Exceed Maximum Limit. –

(a) Upon petition of the installation operator liable or of the Commission, and upon showing that the nuclear damage from a nuclear incident will probably exceed the limit of liability established in Section forty-two hereof, the Court having jurisdiction shall issue such orders as may be necessary to assure the equitable distribution of compensation, including orders apportioning the payments to be made to claimants, orders permitting partial payments to be made before final determination of the total claims, and orders setting aside part of the funds available for possible latent injuries not discovered until a later time.

(b) In any case where it appears that the nuclear damage caused by a nuclear incident exceeds or will probably exceed the limit of liability established in Section forty-two hereof, the Commission shall furnish a report thereon to the Congress with its recommendations, including any recommendations for the appropriation of additional funds to provide compensation to those suffering nuclear damage.

SECTION 54. Court Having Jurisdiction. - The Court of First Instance situated in the place where the nuclear incident occurs shall have exclusive jurisdiction over claims for compensation for nuclear damage under this Act.

SECTION 55. Intervention of Commission in Court Proceedings. - When, after the occurrence of a nuclear incident, it appears that the Government will have to pay indemnity pursuant to the provisions of Section fifty-two hereof, the Court having jurisdiction over the claims for compensation arising from the nuclear incident shall allow the Commission, upon its petition, to intervene in the proceedings, at any time before final judgment.

SECTION 56. Compulsory Examination. - After the occurrence of a nuclear incident for which it appears compensation may be payable under Part VII of this Act, the Commission may adopt such measures as may be appropriate to determine the persons who were or might have been exposed to radiation resulting from such nuclear incident, which measures may include a summons to such persons to submit themselves to examination before such authority or body as shall be designated by the Commission within three months from the date of summons. In determining the amount of damages or the right to recover damages, the Court may, in its discretion, take into account the inexcusable failure of the claimant to fulfill or comply with the foregoing obligation.

SECTION 57. Investigation of Nuclear Incidents. - The Commission shall make an investigation of the cause and extent of any nuclear incident for which it appears compensation may be payable under this Act and its findings shall be made available to the public, to the parties involved and to the Courts.

SECTION 58. Several Installations on Same Site. - The Commission may determine that several nuclear installations of one installation operator which are located at the same site shall be considered as a single nuclear installation for purposes of this Part VII.

SECTION 59. Exemption of Government from Financial Security. – Nothing herein contained shall be construed to require the government or any government agency or instrumentality operating a nuclear installation to secure and maintain financial security to cover its liability as installation operator.

SECTION 60. Cancellation or Suspension of Financial Protection. - It shall be unlawful for any insurer or other financial guarantor to suspend or cancel the insurance or other financial security provided pursuant to the

provisions of this Act without giving such prior notice in writing as may be required by the Commission's regulations.

SECTION 61. Against Whom Action for Compensation Brought. – Persons entitled to compensation for nuclear damage under this Act may, at their option, bring the action for recovery of such compensation against the operator liable or against the insurer or other persons furnishing financial security as required by this Act.

SECTION 62. Prescription of Rights and Actions. - Rights of compensation under this Act shall prescribe after ten years from the date of the nuclear incident. Furthermore, actions for compensation under this Act shall be barred unless brought within three years from the date on which the person suffering nuclear damage had knowledge or should have had knowledge of the damage and of the installation operator liable for the damage: Provided, however, That any person who claims to have suffered nuclear damage and who has brought an action for compensation within the period applicable pursuant to this section may amend his claim to take into account any aggravation of the damage, even after the expiry of that period: Provided further, That final judgment has not been entered in the case.

SECTION 63. Prescription with Respect to Nuclear Materials Lost, Stolen, etc. -

Where nuclear damage is caused by a nuclear incident involving nuclear material which at the time of the nuclear incident was stolen, lost, jettisoned or abandoned, the period established pursuant to Section sixty-two of this Act shall be computed from the date of that nuclear incident, but the period shall in no case exceed a period of twenty years from the date of the theft, loss, jettison or abandonment.

PART VIII
Penal Provisions

SECTION 64. Violation of Specific Provisions of the Act. - Any person who wilfully violates, attempts to violate, or conspires to violate, any provision of Section six or sixteen of this Act, shall upon conviction thereof, suffer the penalty of imprisonment of not more than five years or a fine of not more than Ten thousand pesos (P10,000.00) or both.

SECTION 65. Violation of Other Provisions of this Act. - Any person who shall wilfully violate, attempt to violate, or conspire to violate any provision of this Act for which no penalty is specifically provided or of any regulation, order or license issued under the authority of this Act shall, upon conviction thereof, suffer the penalty of imprisonment of not more than two years or a fine of not more than Five thousand pesos (P5,000.00), or both.

PART IX
Final Provisions

SECTION 66. Separability Clause. - If any provision or part of a provision of this Act or the application of such provision to any person or circumstance is held invalid, the remainder of the provisions of this Act or the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 67. Repealing Clause. - All Acts, executive orders, administrative orders, proclamations, rules and regulations inconsistent with any provisions of this Act are repealed or modified accordingly.

SECTION 68. Effectivity Date. - This Act shall take effect on the tenth day following its publication in the Official Gazette.

Approved,

GIL J. PUYAT
President of the Senate
This Act, which originated in the Senate was finally passed by the same on May 8, 1968.

ELISEO M. TENZA
Secretary of the Senate

J. B. LAUREL, JR.
Speaker of the House of Representatives

Finally passed by the House of Representatives on May 7, 1968.

INOCENCIO B. PAREJA
Secretary of the House of Representatives

Approved: June 15, 1968

FERDINAND E. MARCOS
President of the Philippines

NOTES: Published in the Official Gazette on May 5, 1969.

The Amendatory Act, Presidential Decree No. 1484, took effect upon its approval on June 11, 1978.

IV. PRESIDENTIAL DECREE NO. 1484

AMENDING CERTAIN SECTIONS OF REPUBLIC ACT NUMBERED FIFTY-TWO HUNDRED AND SEVEN ENTITLED "AN ACT PROVIDING FOR THE LICENSING AND REGULATION OF ATOMIC ENERGY FACILITIES AND MATERIALS, ESTABLISHING THE RULES ON LIABILITY FOR NUCLEAR DAMAGE, AND FOR OTHER PURPOSES"

WHEREAS, Republic Act No. 5207 entitled "The Atomic Energy Regulatory and Liability Act of 1968" was enacted to encourage, promote and assist the development and use of atomic energy for all peaceful purposes as a means to improve the health and prosperity of the inhabitants of the Philippines, contribute to the general welfare and accelerate scientific, technological, agricultural, commercial and industrial progress;

WHEREAS, the Government has entered into agreements for the installation, construction, development, maintenance and use of nuclear power plants in the Philippines to generate electric power to promote the above-enumerated objectives of the Atomic Energy Regulatory and Liability Act of 1968;

WHEREAS, the aforesaid agreements have brought to light the need for amending certain provisions of the said Act in order to further facilitate and encourage the wider use and application of atomic energy for peaceful purposes in the Philippines and as well as to attract local and international nuclear suppliers to invest and cooperate in the installation, construction, maintenance and use of nuclear power projects in the country;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby decree and order as part of the law of the land the following:

SECTION 1. Section 3(f) of Republic Act No. 5207 is hereby amended to read as follows:

> f. " *'Nuclear Damage'* means loss of, life, any personal injury or any loss of, or damage to, or loss of use of property, which arises out of or results from the RADIOACTIVE, TOXIC, EXPLOSIVE OR OTHER HAZARDOUS PROPERTIES, OR ANY COMBINATION THEREOF, of nuclear fuel or radioactive products or any waste in, or of nuclear materials coming from, originating in, or sent to, a nuclear installation or from the ionizing radiation emitted by

any other source of radiation inside a nuclear installation. 'PERSONAL INJURY' AS USED HEREIN MEANS ANY PHYSICAL OR MENTAL INJURY (INCLUDING DEATH), SICKNESS OR DISEASE WHETHER CAUSED DIRECTLY BY A PHYSICAL TRAUMA OR OTHERWISE."

SECTION 2. Section 3 is hereby amended by the addition of subsection (p) which shall read as follows:

p. "THE TERM 'INDIVIDUAL' MEANS A NATURAL PERSON."

SECTION 3. Section 39(b) is hereby amended to read as follows:

b. "If the nuclear incident results from the act or omission done with intent to cause damage, against the individual who has acted or omitted to act with such intent: *PROVIDED, HOWEVER,* THAT THE INSTALLATION OPERATOR OR ANY OTHER PERSON INCLUDING THE COMMISSION WHICH MAY BE SUBROGATED TO THE RIGHTS OF THE INSTALLATION OPERATOR SHALL HAVE NO RIGHT OF ACTION, UNDER ANY LAW, AGAINST THE PERSONS WHO MAY BE LIABLE FOR THE ACTS OR OMISSIONS OF SUCH INDIVIDUAL SUCH AS BUT NOT LIMITED TO EMPLOYERS, PARENTS AND TEACHERS."

SECTION 4. Section 45 is hereby amended to read as follows:

"Exclusions.—The Commission may, if it determines that the small extent of the risks involved so warrants, exclude by regulation any small quantities of nuclear material from the application of the provisions in this Part VII, *PROVIDED,* THAT (a) MAXIMUM LIMITS FOR THE EXCLUSION OF SUCH QUANTITIES HAVE BEEN ESTABLISHED BY THE BOARD OF GOVERNORS OF THE INTERNATIONAL ATOMIC ENERGY AGENCY; AND (b) ANY EXCLUSION MUST BE WITHIN THE LIMITS SO ESTABLISHED."

SECTION 5. Section 52 is hereby amended by the addition of a new paragraph which shall read as follows:

"THE REPUBLIC OF THE PHILIPPINES ACTING THROUGH SUCH OFFICER AS MAY BE DESIGNATED BY THE PRESIDENT SHALL ENTER INTO AGREEMENTS OF INDEMNIFICATION WITH CONTRACTORS OR SUPPLIERS OF GOODS OR SERVICES FOR AN ATOMIC ENERGY FACILITY OWNED OR OPERATED BY THE GOVERNMENT, ITS AGENCIES, INSTRUMENTALITIES OR CORPORATIONS OWNED OR CONTROLLED BY THE GOVERNMENT PURSUANT TO WHICH THE GOVERNMENT AGREES TO INDEMNIFY AND HOLD SUCH CONTRACTORS OR SUPPLIERS HARMLESS FROM ANY LOSS OR LIABILITY ARISING OUT OF OR IN RELATION TO A NUCLEAR INCIDENT OCCURRING IN THE PHILIPPINES IN EXCESS OF THE YIELD OF THE INSURANCE OR OTHER SECURITY HEREIN SET FORTH, PROVIDED, HOWEVER, THAT SUCH INDEMNITY SHALL IN NO CASE EXCEED THE AMOUNT OF PHILIPPINE PESOS WHICH IS EQUIVALENT TO ONE HUNDRED TWENTY MILLION U.S. DOLLARS."

SECTION 6. This Decree shall take effect upon approval.

DONE in the City of Manila this 11th day of June, in the year of Our Lord, nineteen hundred and seventy-eight.

Sgd.) FERDINAND E. MARCOS
President of the Philippines

By the President:

(Sgd.) JACOBO C. CLAVE
Presidential Executive Assistant

V. PRESIDENTIAL DECREE NO. 1586

ESTABLISHING AN ENVIRONMENTAL IMPACT STATEMENT SYSTEM, INCLUDING OTHER ENVIRONMENTAL MANAGEMENT RELATED MEASURES AND FOR OTHER PURPOSES

WHEREAS, the pursuit of a comprehensive and integrated environment protection program necessitates the establishment and institutionalization of a system whereby the exigencies of socio-economic undertakings can be reconciled with the requirements of environmental quality;

WHEREAS, the regulatory requirements of environmental Impact Statements and Assessments instituted in pursuit of this national environmental protection program have to be worked into their full regulatory and procedural details in a manner consistent with the goals of the program.

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution do hereby order and declare:

SECTION 1. Policy. It is hereby declared the policy of the State to attain and maintain a rational and orderly balance between socio-economic growth and environmental protection.

SECTION 2. Environmental Impact Statement System. There is hereby established an Environmental Impact Statement System founded and based on the environmental impact statement required, under Section 4 of Presidential Decree No. 1151, of all agencies and instrumentalities of the national government, including government-owned or controlled corporations, as well as private corporations, firms and entities, for every proposed project and undertaking which significantly affect the quality of the environment.

SECTION 3. Determination of Lead Agency. The Minister of Human Settlements or his designated representative is hereby authorized to name the lead agencies referred to in Section 4 of Presidential Decree No. 1151 which shall have jurisdiction to undertake the preparation of the necessary environmental impact statements on declared environmentally critical projects and areas. All Environmental Impact Statements shall be submitted to the National Environmental Protection Council for review and evaluation.

SECTION 4. Presidential Proclamation of Environmentally Critical Areas and Projects. The President of the Philippines may, on his own initiative or upon recommendation of the National Environmental Protection Council, by proclamation declare certain projects, undertakings or areas in the country as environmentally critical. No person, partnership or corporation shall undertake or operate any such declared environmentally critical project or area without first securing an Environmental Compliance Certificate issued by the President or his duly authorized representative. For the proper management of said critical project or area, the President may by his proclamation reorganize such government offices, agencies, institutions, corporations or instrumentalities including the re-alignment of government personnel, and their specific functions and responsibilities.

For the same purpose as above, the Ministry of Human Settlements shall: (a) prepare the proper land or water use pattern for said critical project(s) or area (s); (b) establish ambient environmental quality standards; (c) develop a program of environmental enhancement or protective measures against

calamitous factors such as earthquake, floods, water erosion and others, and (d) perform such other functions as may be directed by the President from time to time.

SECTION 5. Environmentally Non-Critical Projects. All other projects, undertakings and areas not declared by the President as environmentally critical shall be considered as non-critical and shall not be required to submit an environmental impact statement. The National Environmental Protection Council, thru the Ministry of Human Settlements may however require non-critical projects and undertakings to provide additional environmental safeguards as it may deem necessary.

SECTION 6. Secretariat. The National Environmental Protection Council is hereby authorized to constitute the necessary secretariat which will administer the Environmental Impact Statement System and undertake the processing and evaluation of environmental impact statements.

SECTION 7. Management and Financial Assistance. The Ministry of Human Settlements is hereby authorized to provide management and financial support to government offices and instrumentalities placed under its supervision pursuant to this Decree financed from its existing appropriation or from budgetary augmentation as the Minister of Human Settlements may deem necessary.

SECTION 8. Rules and Regulations. The National Environmental Protection Council shall issue the necessary rules and regulations to implement this Decree. For this purpose, the National Pollution Control Commission may be availed of as one of its implementing arms, consistent with the powers and responsibilities of the National Pollution Control Commission as provided in P.D. No.

SECTION 9. Penalty for Violation. Any person, corporation or partnership found violating Section 4 of this Decree, or the terms and conditions in the issuance of the Environmental Compliance Certificate, or of the standards, rules and regulations issued by the National Environmental Protection Council pursuant to this Decree shall be punished by the suspension or cancellation of his/its certificate or and/or a fine in an amount not to exceed Fifty Thousand Pesos (P50,000.00) for every violation thereof, at the discretion of the National Environmental Protection Council.

SECTION 10. Environmental Revolving Fund. Proceeds from the penalties prescribed in the preceding Section 9 and other penalties imposed by the National Pollution Control Commission as authorized in P.D. 984, shall be automatically appropriated into an Environment Revolving Fund hereby created as an exemption to P.D. 711 and P.D. 1234. The fund shall be used exclusively for the operation of the National Environmental Protection Council and the National Pollution Control Commission in the implementation of this Decree. The rules and regulations for the utilization of this fund shall be formulated by the Ministry of Human Settlements and submitted to the President for approval.

SECTION 11. Repealing Clause. The Inter-Agency Advisory Council of the National Pollution Control Commission created under Section 4 of P.D. 984 is hereby abolished and its powers and responsibilities are forthwith delegated and transferred to the Control of the National Environmental Protection Council.

All other laws, decrees, executive orders, rules and regulations inconsistent herewith are hereby repealed, amended or modified accordingly.

SECTION 12. Effectivity Clause. This Decree shall take effect immediately.

DONE in the City of Manila, this 11th day of June, in the year of Our Lord, nineteen hundred and seventy-eight.

Chapter VI
Upstream Petroleum and Coal Related Cases

RELATED CASES:

Republic of the Philippines
SUPREME COURT
Baguio City

EN BANC

G.R. No. 180771 **April 21, 2015**

RESIDENT MARINE MAMMALS OF THE PROTECTED SEASCAPE TAÑON STRAIT, e.g., TOOTHED WHALES, DOLPHINS, PORPOISES, AND OTHER CETACEAN SPECIES, Joined in and Represented herein by Human Beings Gloria Estenzo Ramos and Rose-Liza Eisma-Osorio, In Their Capacity as Legal Guardians of the Lesser Life-Forms and as Responsible Stewards of God's Creations, Petitioners,

vs.

SECRETARY ANGELO REYES, in his capacity as Secretary of the Department of Energy (DOE), SECRETARY JOSE L. ATIENZA, in his capacity as Secretary of the Department of Environment and Natural Resources (DENR), LEONARDO R. SIBBALUCA, DENR Regional Director-Region VII and in his capacity as Chairperson of the Tañon Strait Protected Seascape Management Board, Bureau of Fisheries and Aquatic Resources (BFAR), DIRECTOR MALCOLM J. SARMIENTO, JR., BFAR Regional Director for Region VII ANDRES M. BOJOS, JAPAN PETROLEUM EXPLORATION CO., LTD. (JAPEX), as represented by its Philippine Agent, SUPPLY OILFIELD SERVICES, INC. Respondents. x - x

G.R. No. 181527

CENTRAL VISAYAS FISHERFOLK DEVELOPMENT CENTER (FIDEC), CERILO D. ENGARCIAL, RAMON YANONG, FRANCISCO LABID, in their personal capacity and as representatives of the SUBSISTENCE FISHERFOLKS OF THE MUNICIPALITIES OF ALOGUINSAN AND PINAMUNGAJAN, CEBU, AND THEIR FAMILIES, AND THE PRESENT AND FUTURE GENERATIONS OF FILIPINOS WHOSE RIGHTS ARE SIMILARLY AFFECTED, Petitioners,

vs.

SECRETARY ANGELO REYES, in his capacity as Secretary of the Department of Energy (DOE), JOSE L. ATIENZA, in his capacity as Secretary of the Department of Environment and Natural Resources (DENR), LEONARDO R. SIBBALUCA, in his capacity as DENR Regional Director-Region VII and as Chairperson of the Tañon Strait Protected Seascape Management Board, ALAN ARRANGUEZ, in his capacity as Director - Environmental Management Bureau-Region VII, DOE Regional Director for Region VIII1 ANTONIO

LABIOS, JAPAN PETROLEUM EXPLORATION CO., LTD. (JAPEX), as represented by its Philippine Agent, SUPPLY OILFIELD SERVICES, INC., Respondents.

CONCURRING OPINION

"Until one has loved an animal, a part of one 's soul remains unawakened."

Anatole France

LEONEN, J.:

I concur in the result, with the following additional reasons.

I

In G.R. No. 180771, petitioners Resident Marine Mammals allegedly bring their case in their personal capacity, alleging that they stand to benefit or be injured from the judgment on the issues. The human petitioners implead themselves in a representative capacity "as legal guardians of the lesser life-forms and as responsible stewards of God's Creations."[1] They use Oposa v. Factoran, Jr.[2] as basis for their claim, asserting their right to enforce international and domestic environmental laws enacted for their benefit under the concept of stipulation pour autrui.[3] As the representatives of Resident Marine Mammals, the human petitioners assert that they have the obligation to build awareness among the affected residents of Tañon Strait as well as to protect the environment, especially in light of the government's failure, as primary steward, to do its duty under the doctrine of public trust.[4]

Resident Marine Mammals and the human petitioners also assert that through this case, this court will have the opportunity to lower the threshold for locus standi as an exercise of "epistolary jurisdiction."[5]

The zeal of the human petitioners to pursue their desire to protect the environment and to continue to define environmental rights in the context of actual cases is commendable. However, the space for legal creativity usually required for advocacy of issues of the public interest is not so unlimited that it should be allowed to undermine the other values protected by current substantive and procedural laws. Even rules of procedure as currently formulated set the balance between competing interests. We cannot abandon these rules when the necessity is not clearly and convincingly presented.

The human petitioners, in G.R. No. 180771, want us to create substantive and procedural rights for animals through their allegation that they can speak for them. Obviously, we are asked to accept the premises that (a) they were chosen by the Resident Marine Mammals of Tañon Strait; (b) they were chosen by a representative group of all the species of the Resident Marine Mammals; (c) they were able to communicate with them; and (d) they received clear consent from their animal principals that they would wish to use human legal institutions to pursue their interests. Alternatively, they ask us to acknowledge through judicial notice that the interests that they, the human petitioners, assert are identical to what the Resident Marine Mammals would assert had they been humans and the legal strategies that they invoked are the strategies that they agree with.

In the alternative, they want us to accept through judicial notice that there is a relationship of guardianship between them and all the resident mammals in the affected ecology.

1 Rollo (G.R. No. 180771), p. 7-8.

2 G.R. No. 101083, July 30, 1993, 224 SCRA 792 [Per J. Davide, Jr., En Banc].

3 Rollo (G.R. No. 180771), p. 16.

4 Rollo (G.R. No. 180771), p. 123-124.

5 Id. at 196.

Fundamental judicial doctrines that may significantly change substantive and procedural law cannot be founded on feigned representation.

Instead, I agree that the human petitioners should only speak for themselves and already have legal standing to sue with respect to the issue raised in their pleading. The rules on standing have already been liberalized to take into consideration the difficulties in the assertion of environmental rights. When standing becomes too liberal, this can be the occasion for abuse.

II

Rule 3, Section 1 of the 1997 Rules of Civil Procedure, in part, provides:

SECTION 1. ***Who may be parties; plaintiff and defendant.*** - Only natural or juridical persons, or entities authorized by law may be parties in a civil action.

The Rules provide that parties may only be natural or juridical persons or entities that may be authorized by statute to be parties in a civil action.

Basic is the concept of natural and juridical persons in our Civil Code:

ARTICLE 37. Juridical capacity, which is the fitness to be the subject of legal relations, is inherent in every natural person and is lost only through death. Capacity to act, which is the power to do acts with legal effect, is acquired and may be lost.

Article 40 further defines natural persons in the following manner:

ARTICLE 40. Birth determines personality; but the conceived child shall be considered born for all purposes that are favorable to it, provided it be born later with the conditions specified 'in the following article.

Article 44, on the other hand, enumerates the concept of a juridical person:

ARTICLE 44. The following are juridical persons:

(1) The State and its political subdivisions;

(2) Other corporations, institutions and entities for public interest or purpose, created by law; their personality begins as soon as they have been constituted according to law;

(3) Corporations, partnerships and associations for private interest or purpose to which the law grants a juridical personality, separate and distinct from that of each shareholder, partner or member.

Petitioners in G.R. No. 180771 implicitly suggest that we amend, rather than simply construe, the provisions of the Rules of Court as well as substantive law to accommodate Resident Marine Mammals or animals. This we cannot do.

Rule 3, Section 2 of the 1997 Rules of Civil Procedure further defines real party in interest:

SECTION 2. ***Parties in interest.*** - A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest. (2a)[6]

A litigant who stands to benefit or sustain an injury from the judgment of a case is a real party in interest.[7] When a case is brought to the courts, the real party in interest must show that another party's act or omission

6 1997 RULES OF CIV. PROC., Rule 3, sec. 2.

7 See Consumido v. Ros, 555 Phil. 652, 658 (2007) [Per J. Tinga, Second Division].

has caused a direct injury, making his or her interest both material and based on an enforceable legal right.[8]

Representatives as parties, on the other hand, are parties acting in representation of the real party in interest, as defined in Rule 3, Section 3 of the 1997 Rules of Civil Procedure:

SECTION 3. Representatives as parties. - Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest. A representative may be a trustee of an express rust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal.(3a)[9]

The rule is two-pronged. First, it defines .a representative as a party who is not bound to directly or actually benefit or suffer from the judgment, but instead brings a case in favor of an identified real party in interest.[10] The representative is an outsider to the cause of action. Second, the rule provides a list of who may be considered as "representatives." It is not an exhaustive list, but the rule limits the coverage only to those authorized by law or the Rules of Court.[11]

These requirements should apply even in cases involving the environment, which means that for the Petition of the human petitioners to prosper, they must show that (a) the Resident Marine Mammals are real parties in interest; and (b) that the human petitioners are authorized by law or the Rules to act in a representative capacity. The Resident Marine Mammals are comprised of "toothed whales, dolphins, porpoises, and other cetacean species inhabiting Tañon Strait."[12] While relatively new in Philippine jurisdiction, the issue of whether animals have legal standing before courts has been the subject of academic discourse in light of the emergence of animal and environmental rights.

In the United States, animal rights advocates have managed to establish a system which Hogan explains as the "guardianship model for nonhuman animals":[13]

Despite Animal Lovers, there exists a well-established system by which nonhuman animals may obtain judicial review to enforce their statutory rights and protections: guardianships. With court approval, animal advocacy organizations may bring suit on behalf of nonhuman animals in the same way court-appointed guardians bring suit on behalf of mentally-challenged humans who possess an enforceable right but lack the ability to enforce it themselves.

In the controversial but pivotal Should Trees Have Standing?-Toward Legal Rights for Natural Objects, Christopher D. Stone asserts that the environment should possess the right to seek judicial redress even though it is incapable of representing itself. While asserting the rights of speechless entities such as the environment or nonhuman animals certainly poses legitimate challenges - such as identifying the proper spokesman -the American legal system is already well-equipped with a reliable mechanism by which nonhumans may obtain standing via

8 Rebollido v. Court of Appeals, 252 Phil. 831, 839 (1989) [Per J. Gutierrez, Jr., Third Division], citing Lee et al. v. Romillo, Jr., 244 Phil. 606, 612 (1988) [Per J. Gutierrez, Jr., Third Division].

9 1997 RULES OF CIV. PROC., Rule 3, sec. 3.

10 Ang, represented by Aceron v. Spouses Ang, G.R. No. 186993, August 22, 2012, 678 SCRA 699, 709 [Per J. Reyes, Second Division]. ·

11 1997 RULESOFCIV. PROC., Rule 3, sec. 3.

12 Rollo (G.R No. 180771), p. 8.

13 Marguerite Hogan, Standing for Nonhuman Animals: Developing a Guardianship Model from the Dissents in Sierra Club v. Morton, 95 CAL. L. REV. 513 (2007) <http://scholarship.law.berkeley.edu/califomialawreview/vol95/iss2/4> (visited March 15, 2015).

a judicially established guardianship. Stone notes that other speechless - and nonhuman - entities such as corporations, states, estates, and municipalities have standing to bring suit on their own behalf. There is little reason to fear abuses under this regime as procedures for removal and substitution, avoiding conflicts of interest, and termination of a guardianship are well established.

In fact, the opinion in Animal Lovers suggests that such an arrangement is indeed possible. The court indicated that AL VA might have obtained standing in its own right if it had an established history of dedication to the cause of the humane treatment of animals. It noted that the Fund for Animals had standing and indicated that another more well-known advocacy organization might have had standing as well. The court further concluded that an organization's standing is more than a derivative of its history, but history is a relevant consideration where organizations are not well-established prior to commencing legal action. ALVA was not the proper plaintiff because it could not identify previous activities demonstrating its recognized activism for and commitment to the dispute independent of its desire to pursue legal action. The court's analysis suggests that a qualified organization with a demonstrated commitment to a cause could indeed bring suit on behalf of the speechless in the form of a court-sanctioned guardianship.

This Comment advocates a shift in contemporary standing doctrine to empower non-profit organizations with an established history of dedication to the cause and relevant expertise to serve as official guardians ad !item on behalf of nonhuman animals interests. The American legal system has numerous mechanisms for representing the rights and interests of nonhumans; any challenges inherent in extending these pre-existing mechanisms to nonhuman animals are minimal compared to an interest in the proper administration of justice. To adequately protect the statutory rights of nonhuman animals, the legal system must recognize those statutory rights independent of humans and provide a viable means of enforcement. Moreover, the idea of a guardianship for speechless plaintiffs is not new and has been urged on behalf of the natural environment. 'Such a model is even more compelling as applied to nonhuman animals, because they are sentient beings with the ability to feel pain and exercise rational thought. Thus, animals are qualitatively different from other legally protected nonhumans and therefore have interests deserving direct legal protection.

> Furthermore, the difficulty of enforcing the statutory rights of nonhuman animals threatens the integrity of the federal statutes designed to protect them, essentially rendering them meaningless. Sensing that laws protecting nonhuman animals would be difficult to enforce, Congress provided for citizen suit provisions: the most well-known example is found in the Endangered Species Act (ESA). Such provisions are evidence of legislative intent to encourage civic participation on behalf of nonhuman animals. Our law of standing should reflect this intent and its implication that humans are suitable representatives of the natural environment, which includes nonhuman animals.[14] (Emphasis supplied, citation omitted)

When a court allows guardianship as a basis of representation, animals are considered as similarly situated as individuals who have enforceable rights but, for a legitimate reason (e.g., cognitive disability), are unable to bring suit for themselves. They are also similar to entities that by their very nature are incapable of speaking for themselves (e.g., corporations, states, and others).

14 Id. at 517-519.

In our jurisdiction, persons and entities are recognized both in law and the Rules of Court as having standing to sue and, therefore, may be properly represented as real parties in interest. The same cannot be said about animals.

Animals play an important role in households, communities, and the environment. While we, as humans, may feel the need to nurture and protect them, we cannot go as far as saying we represent their best interests and can, therefore, speak for them before the courts. As humans, we cannot be so arrogant as to argue that we know the suffering of animals and that we know what remedy they need in the face of an injury. Even in Hogan's discussion, she points out that in a case before the United States District Court for the Central District of California, Animal Lovers Volunteer Ass'n v. Weinberger,[15] the court held that an emotional response to what humans perceive to be an injury inflicted on an animal is not within the "zone-of-interest" protected by law.[16]Such sympathy cannot stand independent of or as a substitute for an actual injury suffered by the claimant.[17] The ability to represent animals was further limited in that case by the need to prove "genuine dedication" to asserting and protecting animal rights:

What ultimately proved fatal to ALVA 's claim, however, was the court's assertion that standing doctrine further required ALVA to differentiate its genuine dedication to the humane treatment of animals from the general disdain for animal cruelty shared by the public at large. In doing so, the court found ALVA 's asserted organizational injury to be abstract and thus relegated ALVA to the ranks of the "concerned bystander. "

. . . .

In fact, the opinion in Animal Lovers suggests that such an arrangement is indeed possible. The court indicated that ALVA might have obtained standing in its own right if it had an established history of dedication to the cause of the humane treatment of animals. It noted that the Fund for Animals had standing and indicated that another more well-known advocacy organization might have had standing as well. The court further concluded that an organization's standing is more than a derivative of its history, but history is a relevant consideration where organizations are not well-established prior to commencing legal action. ALVA was not the proper plaintiff because it could not identify previous activities demonstrating its recognized activism for and commitment to the dispute independent of its desire to pursue legal action. The court's analysis suggests that a qualified organization with a demonstrated commitment to a cause could indeed bring suit on behalf of the speechless in the form of a court-sanctioned guardianship.[18](Emphasis supplied, citation omitted)

What may be argued as being parallel to this concept of guardianship is the principle of human stewardship over the environment in a citizen suit under the Rules of Procedure for Environmental Cases. A citizen suit allows any Filipino to act as a representative of a party who has enforceable rights under environmental laws before Philippine courts, and is defined in Section 5: .

SECTION 5. Citizen suit. - Any Filipino citizen in representation of others, including minors or generations yet unborn, may file an action to enforce rights or obligations under environmental laws. Upon the filing of a citizen suit, the court shall issue an order which shall

15 Id. at 513-514. Footnote 1 of Marguerite Hogan's article cites this case as Animal Lovers Volunteer Ass'n v. Weinberger, 765 F.2d 937, 938 (9th Cir., 1985).

16 In that case, the claim was based on a law called "National Environmental Policy Act."

17 Marguerite Hogan, Standing for Nonhuman Animals: Developing a Guardianship Model from the Dissents in Sierra. Club v. Morton, 95 CAL. L. REV. 513, 514 (2007) <http://scholarship.law.berkeley.edu/califomialawreview/vol95/iss2/4> (visited March 15, 2015).

18 Id. at 515, 518.

contain a brief description of the cause of action and the reliefs prayed for, requiring all interested parties to manifest their interest to intervene in the case within fifteen (15) days from notice thereof. The plaintiff may publish the order once in a newspaper of a general circulation in the Philippines or furnish all affected barangays copies of said order.

There is no valid reason in law or the practical requirements of this case to implead and feign representation on behalf of animals. To have done so betrays a very anthropocentric view of environmental advocacy. There is no way that we, humans, can claim to speak for animals let alone present that they would wish to use our court system, which is designed to ensure that humans seriously carry their responsibility including ensuring a viable ecology for themselves, which of course includes compassion for all living things.

Our rules on standing are sufficient and need not be further relaxed.

In Arigo v. Swift,[19] I posed the possibility of further reviewing the broad interpretation we have given to the rule on standing. While representatives are not required to establish direct injury on their part, they should only be allowed to represent after complying with the following: [I]t is imperative for them to indicate with certainty the injured parties on whose behalf they bring the suit. Furthermore, the interest of those they represent must be based upon concrete legal rights. It is not sufficient to draw out a perceived interest from a general, nebulous idea of a potential "injury."[20]

I reiterate my position in Arigo v. Swift and in Paje v. Casiño[21] regarding this rule alongside the appreciation of legal standing in Oposa v. Factoran[22] for environmental cases. In Arigo, I opined that procedural liberality, especially in cases brought by representatives, should be used with great caution:

Perhaps it is time to revisit the ruling in Oposa v. Factoran.

That case was significant in that, at that time, there was need to call attention to environmental concerns in light of emerging international legal principles. While *"intergenerational responsibility"* is a noble principle, it should not be used to obtain judgments that would preclude future generations from making their own assessment based on their actual concerns. The present generation must restrain itself from assuming that it can speak best for those who will exist at a different time, under a different set of circumstances. In essence, the unbridled resort to representative suit will inevitably result in preventing future generations from protecting their own rights and pursuing their own interests and decisions. It reduces the autonomy of our children and our children 's children. Even before they are born, we again restricted their ability to make their own arguments.

It is my opinion that, at best, the use of the Oposa doctrine in environmental cases should be allowed only when a) there is a clear legal basis for the representative suit; b) there are actual concerns based squarely upon an existing legal right; c) there is no possibility of any countervailing interests existing within the population represented or those that are yet to be born; and d) there is an absolute necessity for such standing because there is

19 J. Leonen, Concurring Opinion in Arigo v. Swift, G.R No. 206510, September 14, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/september2014/206510 _ leonen.pdf> [Per J. Villarama, Jr., En Banc].

20 Id. at 11.

21 J. Leanen, Concurring and Dissenting Opinion in Paje v. Casino, G.R. No. 205257, February 3, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.htm l?fi!e=/jurisprudence/2015/february2015/207257_leonen.pdf> [Per J. Del Castillo, En Banc].

22 G.R. No. 101083, July 30, 1993, 224 SCRA 792, 803 [Per J. Davide, Jr., En Banc].

a threat of catastrophe so imminent that an immediate protective measure is necessary. Better still, in the light of its costs and risks, we abandon the precedent all together.[23] (Emphasis in the original)

Similarly, in Paje:

A person cannot invoke the court's jurisdiction if he or she has no right or interest to protect. He or she who invokes the court's jurisdiction must be the "owner of the right sought to be enforced." In other words, he or she must have a cause of action. An action may be dismissed on the ground of lack of cause of action if the person who instituted it is not the real party in interest.[24] The term *"interest"* under the Rules of Court must refer to a material interest that is not merely a curiosity about or an *"interest in the question involved."* The interest must be present and substantial. It is not a mere expectancy or a future, contingent interest.

A person who is not a real party in interest may institute an action if he or she is suing as representative of a real party in interest. When an action is prosecuted or defended by a representative, that representative is not and does not become the real party in interest. The person represented is deemed the real party in interest. The representative remains to be a third party to the action instituted on behalf of another.

. . . .

To sue under this rule, two elements must be present: "(a) the suit is brought on behalf of an identified party whose right has been violated, resulting in some form of damage, and (b) the representative authorized by law or the Rules of Court to represent the victim."

The Rules of Procedure for Environmental Cases allows filing of a citizen's suit. A citizen's suit under this rule allows any Filipino citizen to file an action for the enforcement of environmental law on behalf of minors or generations yet unborn. It is essentially a representative suit that allows persons who are not real parties in interest to institute actions on behalf of the real party in interest.

The expansion of what constitutes "real party in interest" to include minors and generations yet unborn is a recognition of this court's ruling in Oposa v. Factoran. This court recognized the capacity of minors (represented by their parents) to file a class suit on behalf of succeeding generations based on the concept of intergenerational responsibility to ensure the future generation's access to and enjoyment of [the] country's natural resources.

To allow citizen's suits to enforce environmental rights of others, including future generations, is dangerous for three reasons:

First, they run the risk of foreclosing arguments of others who are unable to take part in the suit, putting into. question its representativeness. Second, varying interests may potentially result in arguments that are bordering on political issues, the resolutions of which do not fall upon this court. Third, automatically allowing a class or citizen's suit on behalf of minors and generations yet unborn may result in the oversimplification of what may be a complex issue, especially in light of the impossibility of determining future generation's true interests on the matter.

23 J. Leanen, Concurring Opinion in Arigo v. Swift, G.R No. 206510, September 14, 2014, 13 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/september:iO 14/206510 _leonen.pdf> [Per J. Villarama, Jr., En Banc].

24 J. Leanen, Concurring and Dissenting Opinion in Paje v. Casino, G.R. No. 205257, February 3, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/20l5/february2015/207257 _ leonen.pdf> [Per J. Del Castillo, En Banc]. See also De Leon v. Court of Appeals, 343 Phil. 254, 265 (1997) [Per J. Davide, Jr., Third Division], citing Columbia Pictures, Inc. v. Court of Appeals, 329 Phil. 875, 900-902 (1996) [Per J. Regalado, En Banc].

In citizen's suits, persons who may have no interest in the case may file suits for others. Uninterested persons will argue for the persons they represent, and the court will decide based on their evidence and arguments. Any decision by the court will be binding upon the beneficiaries, which in this case are the minors and the future generations. The court's decision will be res judicata upon them and conclusive upon the issues presented.[25]

The danger in invoking Oposa v. Factoran to justify all kinds of environmental claims lies in its potential to diminish the value of legitimate environmental rights. Extending the application of "real party in interest" to the Resident Marine Mammals, or animals in general, through a judicial pronouncement will potentially result in allowing petitions based on mere concern rather than an actual enforcement of a right. It is impossible for animals to tell humans what their concerns are. At best, humans can only surmise the extent of injury inflicted, if there be any. Petitions invoking a right and seeking legal redress before this court cannot be a product of guesswork, and representatives have the responsibility to ensure that they bring "reasonably cogent, rational, scientific, well-founded arguments"[26] on behalf of those they represent.

Creative approaches to fundamental problems should be welcome. However, they should be considered carefully so that no unintended or unwarranted consequences should follow. I concur with the approach of Madame Justice Teresita J. Leonardo-De Castro in her brilliant ponencia as it carefully narrows down the doctrine in terms of standing. Resident Marine Mammals and the human petitioners have no legal standing to file any kind of petition.

However, I agree that petitioners in G.R. No. 181527, namely, Central Visayas Fisherfolk Development Center,. Engarcial, Yanong, and Labid, have standing both as real parties in interest and as representatives of subsistence fisherfolks of the Municipalities of Aloguinsan and Pinamungahan, Cebu, and their families, and the present and future generations of Filipinos whose rights are similarly affected. The activities undertaken under Service Contract 46 (SC-46) directly affected their source of livelihood, primarily felt through the significant reduction of their fish harvest.[27] The actual, direct, and material damage they suffered, which has potential long-term effects transcending generations, is a proper subject of a legal suit.

III

In our jurisdiction, there is neither reason nor any legal basis for the concept of implied petitioners, most especially when the implied petitioner was a sitting President of the Republic of the Philippines. In G.R. No. 180771, apart from adjudicating unto themselves the status of "legal guardians" of whales, dolphins, porpoises, and other cetacean species, human petitioners also impleaded Former President Gloria Macapagal-Arroyo as "unwilling co-petitioner" for "her express declaration and undertaking in the ASEAN Charter to protect Tañon Strait."[28]

No person may implead any other person as a co-plaintiff or co-petitioner without his or her consent. In our jurisdiction, only when there is a party that should have been a necessary party but was unwilling to join would there be an allegation as to why that party has been omitted. In Rule 3, Section 9 of the 1997 Rules of Civil Procedure:

25 J. Leonen, Concurring and Dissenting Opinion in Paje v. Casino, G.R. No. 205257, February 3, 2015, 3-5 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/20l5/february2015/207257_leonen.pdt> [Per J. Del Castillo, En Banc].

26 Id. at 7.

27 Rollo (G.RNo.180771), p.12.

28 Id. at 8.

SECTION 9. Non-joinder of necessary parties to be pleaded. - Whenever in any pleading in which a claim is asserted a necessary party is not joined, the pleader shall set forth his name, if known, and shall state why he is omitted. Should the court find the reason for the omission unmeritorious, it may order the inclusion of the omitted necessary party if jurisdiction over his person may be obtained.

The failure to comply with the order for his inclusion, without justifiable cause, shall be deemed a waiver of the claim against such party.

The non-inclusion of a necessary party does not prevent the court from proceeding in the action, and the judgment rendered therein shall be without prejudice to the rights of such necessary party.[29]

A party who should have been a plaintiff or petitioner but whose consent cannot be obtained should be impleaded as a defendant in the nature of an unwilling co-plaintiff under Rule 3, Section 10 of the 1997 Rules of Civil Procedure:

SECTION 10. Unwilling co-plaintiff. - If the consent of any party who should be joined as plaintiff can not be obtained, he may be made a defendant and the reason therefor shall be stated in the complaint.[30]

The reason for this rule is plain: Indispensable party plaintiffs who should be part of the action but who do not consent should be put within the jurisdiction of the court through summons or other court processes. Petitioners. should not take it upon themselves to simply imp lead any party who does not consent as a petitioner. This places the unwilling co-petitioner at the risk of being denied due process.

Besides, Former President Gloria Macapagal-Arroyo cannot be a party to this suit. As a co-equal constitutional department, we cannot assume that the President needs to enforce policy directions by suing his or her alter-egos. The procedural situation caused by petitioners may have gained public attention, but its legal absurdity borders on the contemptuous. The Former President's name should be stricken out of the title of this case.

IV

I also concur with the conclusion that SC-46 is both. illegal and unconstitutional.

SC-46 is illegal because it violates Republic Act No. 7586 or the National Integrated Protected Areas System Act of 1992, and Presidential Decree No. 1234,[31] which declared Tañon Strait as a protected seascape. It is unconstitutional because it violates the fourth paragraph of Article XII, Section 2 of the Constitution.

V

Petitioner Central Visayas Fisherfolk Development Center asserts that SC-46 violated Article XII, Section 2, paragraph 1 of the .1987 Constitution because Japan Petroleum Exploration Co., Ltd. (JAPEX) is 100% Japanese-owned.[32] It further asserts that SC-46 cannot be validly classified as a technical and financial assistance agreement executed under Article XII, Section 2, paragraph 4 of the 1987 Constitution.[33] Public respondents counter that SC-46 does not fall under the coverage of paragraph 1, but is a validly executed contract under paragraph 4.[34]· Public respondents further aver that SC-

29 1997 RULES OF CIV. PROC., Rule 3, sec. 9.

30 1997 RULES OP CIV. PROC., Rule 3, sec. 10. e 31

31 Declaring the Tañon Strait Situated in the Provinces of Cebu, Negros Occidental and Negros Oriental as a Protected Area Pursuant to R.A. 7586 (NIPAS Act of 1992) and Shall be Known as Tañon Strait Protected Seascape, May 27, 1998.

32 Rollo (G.R No. 181527), p. 26.

33 Id. at 26-28.

34 Rollo (G.R No. 180771), p. 81-83.

46 neither granted exclusive fishing rights to JAPEX nor violated Central Visayas Fisherfolk Development Center's right to preferential use of communal marine and fishing resources.[35]

VI

Article XII, Section 2 of the 1987 Constitution states:

SECTION 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception. of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fish-workers in rivers, lakes, bays, and lagoons.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

> The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution. (Emphasis supplied)

I agree that fully foreign-owned corporations may participate in the exploration, development, and use of natural resources, but only through either financial agreements or technical ones. This is the clear import of the words "either financial or technical assistance agreements." This is also the clear result if we compare the 1987 constitutional provision with the versions in the 1973 and 1935 Constitution:

1973 CONSTITUTION

ARTICLE XIV THE NATIONAL ECONOMY AND THE PATRIMONY OF THE NATION

> SECTION 9. The disposition, exploration, development, of exploitation, or utilization of any of the natural resources of the Philippines shall be limited to citizens of the Philippines, or to corporations or association at least sixty per centum of the capital of which is owned by such citizens. The Batasang Pambansa, in the national interest, may allow such citizens, corporations, or associations to enter

35 Id.

into service contracts for financial, technical, management, or other forms of assistance with any foreign person or entity for the exploitation, development, exploitation, or utilization of any of the natural resources. Existing valid and binding service contracts for financial, the technical, management, or other forms of assistance are hereby recognized as such. (Emphasis supplied)

1935 CONSTITUTION

ARTICLE XIII CONSERVATION AND UTILIZATION OF NATURAL RESOURCES

SECTION 1. All agricultural timber, and mineral. lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution. Natural resources, with the exception of public agricultural land, shall not be alienated, and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for another twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and the limit of the grant.

The clear text of the Constitution in light of its history prevails over any attempt to infer interpretation from the Constitutional Commission deliberations. The constitutional texts are the product of a full sovereign act: deliberations in a constituent assembly and ratification. Reliance on recorded discussion of Constitutional Commissions, on the other hand, may result in dependence on incomplete authorship; Besides, it opens judicial review to further subjectivity from those who spoke during the Constitutional Commission deliberations who may not have predicted how their words will be used. It is safer that we use the words already in the Constitution. The Constitution was their product. Its words were read by those who ratified it. The Constitution is what society relies upon even at present.

SC-46 is neither a financial assistance nor a technical assistance agreement. Even supposing for the sake of argument that it is, it could not be declared valid in light of the standards set forth in La Bugal-B'laan Tribal Association, Inc. v. Ramos:[36]

Such service contracts may be entered into only with respect to minerals, petroleum and other mineral oils. The grant thereof is subject to several safeguards, among which are these requirements:

(1) The service contract shall be crafted m accordance with a general law that will set standard or uniform terms, conditions and requirements, presumably to attain a certain uniformity in provisions and avoid the possible insertion of terms disadvantageous to the country.

(2) The President shall be the signatory for the government because, supposedly before an agreement is presented to the President for signature, it will have been vetted several times over at different levels to ensure that it conforms to law and can withstand public scrutiny

(3) Within thirty days of the executed agreement, the President shall report it to Congress to give that branch of

36 486 Phil. 754 (2004) [Per J. Panganiban, En Banc].

> government an opportunity to look over the agreement and interpose timely objections, if any.[37] (Emphasis in the original, citation omitted)

Based on the standards pronounced in La Bugal, SC-46' S validity must be tested against three important points: (a) whether SC-46 was crafted in accordance with a general law that provides standards, terms, and conditions; (b) whether SC-46 was signed by the President for and on behalf of the government; and (c) whether it was reported by the President to Congress within 30 days of execution.

VII

The general law referred to as a possible basis for SC-46's validity is Presidential Decree No. 87 or the Oil Exploration and Development Act of 1972. It is my opinion that this law is unconstitutional in that it allows service contracts, contrary to Article XII, Section 2 of the 1987 Constitution:

> The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources. (Emphasis supplied)

The deletion of service contracts from the enumeration of the kind of agreements the President may enter into with foreign-owned corporations for exploration and utilization of resources means that service contracts are no longer allowed by the Constitution. Pursuant to Article XVIII, Section 3 of the 1987 Constitution,[38] this inconsistency renders the law invalid and ineffective. SC-46 suffers from the lack of a special law allowing its activities. The Main Opinion emphasizes an important point, which is that SC-46 did not merely involve exploratory activities, but also provided the rights and obligations of the parties should it be discovered that there is oil in commercial quantities in the area. The Tañon Strait being a protected seascape under Presidential Decree No. 1234[39] requires that the exploitation and utilization of energy resources from that area are explicitly covered by a law passed by Congress specifically for that purpose, pursuant to Section 14 of Republic Act No. 7586 or the National Integrated Protected Areas System Act of 1992:

> SECTION 14. Survey for Energy R6'sources. - Consistent with the policies declared in Section 2, hereof, protected areas, except strict nature reserves and natural parks, may be subjected to exploration only for the purpose of gathering information on energy resources and only if such activity is carried out with the least damage to surrounding areas. Surveys shall be conducted only in accordance with a program approved by the DENR, and the result of such surveys shall be made available to the public and submitted to the President for recommendation to Congress. Any exploitation and utilization of energy resources found within NIP AS areas shall be allowed only through a law passed by Congress.[40] (Emphasis supplied)

37 Id. at 815.

38 Section 3. All existing laws, decrees, executive orders, proclamations, letters of instructions, and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed, or revoked.

39 Declaring the Tañon Strait Situated in the Provinces of Cebu, Negros Occidental and Negros Oriental as a Protected Area Pursuant to R.A. 7586 (NIPAS Act of 1992) and Shall be Known as Tañon Strait Protected Seascape, May 27, 1998.

40 Rep. Act No. 7856 (1992), sec. 14.

No law was passed by Congress specifically providing the standards, terms, and conditions of an oil exploration, extraction, and/or utilization for Tañon Strait and, therefore, no such activities could have been validly undertaken under SC-46. The National Integrated Protected Areas System Act of 1992 is clear that exploitation and utilization of energy resources in a protected seascape such as Tañon Strait shall only be allowed through a specific law.

VIII

Former President Gloria Macapagal-Arroyo was not the signatory to SC-46, contrary to the requirement set by paragraph 4 of Article XII, Section 2 for service contracts involving the exploration of petroleum. SC-46 was entered into by then Department of Energy Secretary Vicente S. Perez, Jr., on behalf of the government. I agree with the Main Opinion that in cases where the Constitution or law requires the President to act personally on the matter, the duty cannot be delegated to another public official.[41] La Bugal highlights the importance of the President's involvement, being one of the constitutional safeguards against abuse and corruption, as not mere formality:

At this point, we sum up the matters established, based on a careful reading of the ConCom deliberations, as follows:

- In their deliberations on what was to become paragraph 4, the framers used the term service contracts in referring to agreements x x x involving either technical or financial assistance.

- They spoke of service contracts as the concept was understood in the 1973 Constitution.

- It was obvious from their discussions that they were not about to ban or eradicate service contracts.

- Instead, they were plainly crafting provisions to. put in place safeguards that would eliminate or m minimize the abuses prevalent during the marital law regime.[42] (Emphasis in the original)

Public respondents failed to show that. Former President Gloria Macapagal-Arroyo was involved in the signing or execution of SC-46. The failure to comply with this constitutional requirement renders SC-46 null and void.

IX

Public respondents also failed to show that Congress was subsequently informed of the execution and existence of SC-46. The reporting requirement is an equally important requisite to the validity of any service contract involving the exploration, development, and utilization of Philippine petroleum. Public respondents' failure to report to Congress about SC-46 effectively took away any opportunity for the legislative branch to scrutinize its terms and conditions.

In sum, SC-46 was executed and implemented absent all the requirements provided under paragraph 4 of Article XII, Section 2. It is, therefore, null and void.

X

I am of the view that SC-46, aside from not having complied with the 1987 Constitution, is also null and void for being violative of environmental laws protecting Tañon Strait. In particular, SC-46 was implemented despite falling short of the requirements of the National Integrated Protected Areas System Act of 1992.

41 See Jason v. Executive Secretary Ruber Torres, 352 Phil. 888 (1998) [Per J. Puno, Second Division].

42 a Bugal-B'laan Tribal.Association, Inc. v. Ramos, 486 Phil. 754, 813-814 (2004) [Per J. Panganiban, En Banc].

As a protected seascape under Presidential Decree No. 1234,[43] Tañon Strait is covered by the National Integrated Protected Areas System Act of 1992. This law declares as a matter of policy:

> SEC. 2. Declaration of Policy. Cognizant of the profound impact of man's activities on all components of the natural environment particularly the effect of increasing population, resource exploitation and industrial advancement and recognizing the critical importance of protecting and maintaining the natural biological and physical diversities of the environment notably on areas with biologically unique features to sustain human life and development, as well as plant and animal life, it is hereby declared the policy of the State to secure for the Filipino people of present and future generations the perpetual existence of all native plants and animals through the establishment of a comprehensive system of integrated protected areas within the classification of national park as provided for in the Constitution.
>
> It is hereby recognized that these areas, although distinct in features, possess common ecological values that may be incorporated into a holistic plan representative of our natural heritage; that effective administration of these areas is possible only through cooperation among national government, local and concerned private organizations; that the use and enjoyment of these protected areas must be consistent with the principles of biological diversity and sustainable development.
>
> To this end, there is hereby established a National Integrated Protected Areas System (NIPAS), which shall encompass outstanding remarkable areas and biologically important public lands that are habitats of rare and endangered species of plants and animals, biogeographic zones and related ecosystems, whether terrestrial, wetland or marine, all of which shall be designated as "protected areas."[44] (Emphasis supplied)

Pursuant to this law, any proposed activity in Tañon Strait must undergo an Environmental Impact Assessment:

> SEC. 12. Environmental Impact Assessment. - Proposals for activities which are outside the scope of the management plan for protected areas shall be subject to an environmental impact assessment as required by law before they are adopted, and the results thereof shall be taken into consideration in the decision-making process.[45](Emphasis supplied)
>
> The same provision further requires that an Environmental Compliance Certificate be secured under the Philippine Environmental Impact Assessment System before arty project is implemented:
>
> No actual implementation of such activities shall be allowed without the required Environmental Compliance Certificate (ECC) under the Philippine Environment Impact Assessment (EIA) system. In instances where such activities are allowed to be

43 Declaring the Tañon Strait Situated in the Provinces of Cebu, Negros Occidental and Negros Oriental as a Protected Area Pursuant to R.A. 7586 (NIPAS Act of 1992) and Shall be Known as Tañon Strait Protected Seascape, May 27, 1998.

44 Rep. Act No. 7856 (1992), sec. 2.

45 Rep. Act No. 7856 (1992), sec. 12.

undertaken, the proponent shall plan and carry them out in such manner as will minimize any adverse effects and take preventive and remedial action when appropriate. The proponent shall be liable for any damage due to lack of caution or indiscretion.[46] (Emphasis supplied)

In projects involving the exploration or utilization of energy resources, the National Integrated Protected Areas System Act of 1992 additionally requires that a program be approved by the Department of Environment and Natural Resources, which shall be publicly accessible. The program shall also be submitted to the President, who in turn will recommend the program to Congress. Furthermore, Congress must enact a law specifically allowing the exploitation of energy resources found within a protected area such as Tañon Strait:

SEC. 14. Survey for Energy Resources. - Consistent with the policies declared in Section 2, hereof, protected areas, except strict nature reserves and natural parks, may be subjected to exploration only for the purpose of gathering information on energy resources and only if such activity is carried out with the least damage to surrounding areas. Surveys shall be conducted only in accordance with a program approved by the DENR, and the result of such surveys shall be made available to the public and submitted to the President for recommendation to Congress. Any exploitation and utilization of energy resources found within NIPAS areas shall be allowed only through a taw passed by Congress.[47] (Emphasis supplied)

Public respondents argue that SC-46 complied with the procedural requirements of obtaining an Environmental Compliance Certificate.[48] At any rate, they assert that the activities covered by SC-46 fell under Section 14 of the National Integrated Protected Areas System Act of 1992, which they interpret to be an exception to Section 12. They argue that the Environmental Compliance Certificate is not a strict requirement for the validity of SC-46 since (a) the Tañon Strait is not a nature' reserve or natural park; (b) the exploration was merely for gathering information; and (c) measures were in place to ensure that the exploration caused the least possible damage to the area.[49]

Section 14 is not an exception to Section 12, but instead provides additional requirements for cases involving Philippine energy resources. The National Integrated Protected Areas System Act of 1992 was enacted to recognize the importance of protecting the environment in light of resource exploitation, among others.[50] Systems are put in place to secure for Filipinos local resources under the most favorable conditions. With the status of Tañon Strait as a protected seascape, the institution of additional legal safeguards is even more significant.

Public respondents did not validly obtain an Environmental Compliance Certificate for SC-46. Based on the records, JAPEX commissioned an environmental impact evaluation only in the second subphase of its project, with the Environmental Management .Bureau of Region VII granting the project an Environmental Compliance Certificate on March 6, 2007.[51]

Despite its scale, the seismic surveys from May 9 to 18, 2005 were conducted without any environmental assessment contrary

46 Rep. Act No. 7856 (1992), sec. 12.

47 Rep. Act No. 7856 (1992), sec. 14.

48 Rollo (G.R No. 180771), p. 91-92.

49 Id. at 85.

50 Rep. Act No. 7856 (1992), sec. 2.

51 Rollo (G.R No. 181527), p. 58-59.

to Section 12 of the National Integrated Protected Areas System Act of 1992.

XI

Finally, we honor every living creature when we take care of our environment. As sentient species, we do not lack in the wisdom or sensitivity to realize that we only borrow the resources that we use to survive and to thrive. We are not incapable of mitigating the greed that is slowly causing the demise of our planet. Thus, there is no need for us to feign representation of any other species or some imagined unborn generation in filing any action in our courts of law to claim any of our fundamental rights to a healthful ecology. In this way and with candor and courage, we fully shoulder the responsibility deserving of the grace and power endowed on our species.

ACCORDINGLY, I vote:

(a) to DISMISS G.R. No. 180771 for lack of standing and STRIKE OUT the name of Former President Gloria Macapagal-Arroyo from the title of this case;

(b) to GRANT G.R. No. 181527; and

(c) to DECLARE SERVICE CONTRACT 46 NULL AND VOID for violating the 1987 Constitution, Republic Act No. 7586, and Presidential Decree No. 1234.

MARVIC M.V.F. LEONEN
Associate Justice

Renewable Energy

A. REPUBLIC ACT NO. 9513

AN ACT PROMOTING THE DEVELOPMENT, UTILIZATION AND COMMERCIALIZATION OF RENEWABLE ENERGY RESOURCES AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

CHAPTER I.
TITLE AND DECLARATION OF POLICIES

Section 1. Short Title. - This Act shall be known as the "Renewable Energy Act of 2008". It shall hereinafter be referred to as the "Act".

Section 2. Declaration of Policies. - It is hereby declared the policy of the State to:

(a) Accelerate the exploration and development of renewable energy resources such as, but not limited to, biomass, solar, wind, hydro, geothermal and ocean energy sources, including hybrid systems, to achieve energy self-reliance, through the adoption of sustainable energy development strategies to reduce the country's dependence on fossil fuels and thereby minimize the country's exposure to price fluctuations in the international markets, the effects of which spiral down to almost all sectors of the economy;

(b) Increase the utilization of renewable energy by institutionalizing the development of national and local capabilities in the use of renewable energy systems, and promoting its efficient and cost-effective commercial application by providing fiscal and nonfiscal incentives;

(c) Encourage the development and utilization of renewable energy resources as tools to effectively prevent or reduce harmful emissions and thereby balance the goals of economic growth and development with the protection of health and the environment; and

(d) Establish the necessary infrastructure and mechanism to carry out the mandates specified in this Act and other existing laws.

Section 3. Scope. - This Act shall establish the framework for the accelerated development and advancement of renewable energy resources, and the development of a strategic program to increase its utilization.

Section 4. Definition of Terms. - As used in this Act, the following terms are herein defined:

(a) "Biomass energy systems" refer to energy systems which use biomass resources to produce heat, steam, mechanical power or electricity through either thermochemical, biochemical or physico-chemical processes, or through such other technologies which shall comply with prescribed environmental standards pursuant to this Act;

(b) "Biomass resources" refer to non-fossilized, biodegradable organic material originating from naturally occurring or cultured plants, animals and micro-organisms, including agricultural products, by-products and residues such as, but not limited to, biofuels except corn, soya beans and rice but including sugarcane and coconut, rice hulls, rice straws, coconut husks and shells, corn cobs, corn stovers, bagasse, biodegradable organic fractions of industrial and municipal wastes that can be used in bioconversion process and other processes, as well as gases and liquids recovered from the decomposition and/or extraction of non-fossilized and biodegradable organic materials;

(c) "Board of Investments" (BOI) refers to an attached agency of the Department of Trade and Industry created under Republic Act No. 5186, as amended;

(d) "Co-generation systems" refer to facilities which produce electrical and/or mechanical energy and forms of useful thermal energy such as heat or steam which are used for industrial, commercial heating or cooling purposes through the sequential use of energy;

(e) "Department of Energy" (DOE) refers to the government agency created pursuant to Republic Act No. 7638 whose functions are expanded in Republic Act No. 9136 and further expanded in this Act;

(f) "Department of Environment and Natural Resources" (DENR) refers to the government agency created pursuant to Executive Order No. 192;

(g) "Department of Finance" (DOF) refers to the government agency created pursuant to Executive Order No. 127, as amended;

(h) "Department of Science and Technology" (DOST) refers to the government agency created pursuant to Executive Order No. 128;

(i) "Department of Trade and Industry" (DTI) refers to the government agency created pursuant to Executive Order No. 133;

(j) "Distributed generation" refers to a system of small generation entities supplying directly to the distribution grid, any one of which shall not exceed one hundred kilowatts (100 kW) in capacity;

(k) "Distribution of Electricity" refers to the conveyance of electricity by a Distribution Utility through its distribution system pursuant to the provision of Republic Act No. 9136;

(l) "Distribution Utility" (DU) refers to any electric cooperative, private corporation, government-owned utility or existing local government unit which has an exclusive franchise to operate a distribution system in accordance with its franchise and Republic Act No. 9136;

(m) "Electric Power Industry Reform Act of 2001" or Republic Act No. 9136 refers to the law mandating the restructuring of the electric power sector and the privatization of the National Power Corporation;

(n) "Energy Regulatory Commission" (ERC) refers to the independent quasi-judicial regulatory agency created pursuant to Republic Act No. 9136;

(o) "Generation Company" refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity;

(p) "Generation Facility" refers to a facility for the production of electricity and/or thermal energy such as, but not limited to, steam, hot or cold water;

(q) "Geothermal energy" as used herein and in the context of this Act, shall be considered renewable and the provisions of this Act is therefore applicable thereto if geothermal energy, as a mineral resource, is produced through: (1) natural recharge, where the water is replenished by rainfall and the heat is continuously produced inside the earth; and/or (2) enhanced recharge, where hot water used in the geothermal process is re-injected into the ground to produce more steam as well as to provide additional recharge to the convection system;

(r) "Geothermal Energy Systems" refer to machines or other equipment that converts geothermal energy into useful power;

(s) "Geothermal Resources" refer to mineral resources, classified as renewable energy resource, in the form of: (i) all products of geothermal processes, embracing indigenous steam, hot water, and hot brines; (ii) steam and other gases, hot water, and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations; (iii) heat or associated energy found in geothermal formations; and (iv) any by-product derived from them;

(t) "Government Share" refers to the amount due the National Government and Local Government Units from the exploitation, development, and utilization of naturally-occurring renewable energy resources such as geothermal, wind, solar, ocean and hydro excluding biomass;

(u) "Green Energy Option" refers to the mechanism to empower end-users to choose renewable energy in meeting their energy requirements;

(v) "Grid" refers to the high voltage backbone system of interconnected transmission lines, substations, and related facilities, located in each of Luzon, Visayas, and Mindanao, or as may otherwise be determined by the ERC in accordance with Republic Act No. 9136;

(w) "Hybrid Systems" refer to any power or energy generation facility which makes use of two or more types of technologies utilizing both conventional and/or renewable fuel sources, such as, but not limited to, integrated solar/wind systems, biomass/fossil fuel systems, hydro/fossil fuel systems, integrated solar/biomass systems, integrated wind/fossil fuel systems, with a minimum of ten (10) megawatts or ten percent (10%) of the annual energy output provided by the RE component;

(x) "Hydroelectric Power Systems" or "Hydropower Systems" refer to water-based energy systems which produce electricity by utilizing the kinetic energy of falling or running water to turn a turbine generator;

(y) "Hydroelectric Power Development" or "Hydropower Development" refers to the construction and installation of a hydroelectric power-generating plant and its auxiliary facilities, such as diversion structure, headrace, penstock, substation, transmission, and machine shop, among others;

(z) "Hydroelectric Power Resources" or "Hydropower Resources" refer to water resources found technically feasible for development of hydropower projects which include rivers, lakes, waterfalls, irrigation canals, springs, ponds, and other water bodies;

(aa) "Local government share" refers to the amount due the LGUs from the exploitation, development and utilization of naturally-occurring renewable energy resources;

(bb) "Micro-scale Project" refers to an RE project with capacity not exceeding one hundred (100) kilowatts;

(cc) "Missionary Electrification" refers to the provision of basic electricity service in unviable areas with the aim of bringing the operations in these areas to viability levels;

(dd) "National government share" refers to the amount due the national government from the exploitation, development and utilization of naturally-occurring renewable energy resources;

(ee) "National Power Corporation" (NPC) refers to the government corporation created under Republic Act No. 6395, as amended by Republic Act No. 9136;

(ff) "National Transmission Corporation" (TRANSCO) refers to the corporation created pursuant to Republic Act No. 9136 responsible for the planning, construction, and centralized operation and maintenance of high voltage transmission facilities, including grid interconnection and ancillary services;

(gg) "Net Metering" refers to a system, appropriate for distributed generation, in which a distribution grid user has a two-way connection to the grid and is only charged for his net electricity consumption and is credited for any overall contribution to the electricity grid;

(hh) "Non-power applications" refer to renewable energy systems or facilities that produce mechanical energy, combustible products such as methane gas, or forms of useful thermal energy such as heat or steam, that are not used for electricity generation, but for applications such as, but not limited to, industrial/commercial cooling, and fuel for cooking and transport;

(ii) "Ocean Energy Systems" refer to energy systems which convert ocean or tidal current, ocean thermal gradient or wave energy into electrical or mechanical energy;

(jj) "Off-Grid Systems" refer to electrical systems not connected to the wires and related facilities of the On-Grid Systems of the Philippines;

(kk) "On-Grid System" refers to electrical systems composed of interconnected transmission lines, distribution lines, substations, and related facilities for the purpose of conveyance of bulk power on the grid of the Philippines;

(ll) "Philippine Electricity Market Corporation" (PEMC) refers to the Corporation incorporated upon the initiative of the DOE composed of all Wholesale Electricity Spot Market (WESM) Members and whose Board of Directors will be the PEM Board;

(mm) "Philippine National Oil Company" (PNOC) refers to the government agency created pursuant to Presidential Decree No. 334, as amended;

(nn) "Power applications" refer to renewable energy systems or facilities that produce electricity;

(oo) "Registered RE Developer" refers to a RE Developer duly registered with the DOE;

(pp) "Renewable Energy (Systems) Developers" or "RE Developers"

refer to individual/s or a group of individuals formed in accordance with existing Philippine Laws engaged in the exploration, development and utilization of RE resources and actual operation of RE systems/facilities;

(qq) "Renewable Energy Market" (REM) refers to the market where the trading of the RE certificates equivalent to an amount of power generated from RE resources is made;

(rr) "Renewable Energy Policy Framework" (REPF) refers to the long-term policy developed by the DOE which identifies among others, the goals and targets for the development and utilization of renewable energy in the country;

(ss) "Renewable Portfolio Standards" refer to a market-based policy that requires electricity suppliers to source an agreed portion of their energy supply from eligible RE resources;

(tt) "Renewable Energy Service (Operating) Contract (RE Contract) " refers to the service agreement between the Government, through the DOE, and RE Developer over a period in which the RE Developer has the exclusive right to a particular RE area for exploration and development. The RE Contract shall be divided into two (2) stages: the pre-development stage and the development/commercial stage. The preliminary assessment and feasibility study up to financial closing shall refer to the pre-development stage. The construction and installation of facilities up to operation phase shall refer to the development stage;

(uu) "Renewable Energy Resources" (RE Resources) refer to energy resources that do not have an upper limit on the total quantity to be used. Such resources are renewable on a regular basis, and whose renewal rate is relatively rapid to consider availability over an indefinite period of time. These include, among others, biomass, solar, wind, geothermal, ocean energy, and hydropower conforming with internationally accepted norms and standards on dams, and other emerging renewable energy technologies;

(vv) "Renewable Energy Systems" (RE Systems) refer to energy systems which convert RE resources into useful energy forms, like electrical, mechanical, etc.;

(ww) "Rural Electrification" refers to the delivery of basic electricity services, consisting of power generation, sub-transmission, and/or extension of associated power delivery system that would bring about important social and economic benefits to the countryside;

(xx) "Solar Energy" refers to the energy derived from solar radiation that can be converted into useful thermal or electrical energy;

(yy) "Solar Energy Systems" refer to energy systems which convert solar energy into thermal or electrical energy;

(zz) "Small Power Utilities Group" (SPUG) refers to the functional unit of the NPC mandated under Republic Act No. 9136 to pursue missionary electrification function;

(aaa) "Supplier" refers to any person or entity authorized by the ERC to sell, broker, market or aggregate electricity to the end-users;

(bbb) "Transmission of Electricity" refers to the conveyance of electric power through transmission lines as defined under Republic Act No. 9136 by TRANSCO or its buyer/concessionaire in accordance with its franchise and Republic Act No. 9136;

(ccc) "Wind Energy" refers to the energy that can be derived from wind that is converted into useful electrical or mechanical energy;

(ddd) "Wind Energy Systems" refer to the machines or other related equipment that convert wind energy into useful electrical or mechanical energy;

(eee) "Wholesale Electricity Spot Market" (WESM) refers to the wholesale electricity spot market created pursuant to Republic Act No. 9136;

CHAPTER II
ORGANIZATION

Section 5. Lead Agency. - The DOE shall be the lead agency mandated to implement the provisions of this Act.

CHAPTER III

ON-GRID RENEWABLE ENERGY DEVELOPMENT

Section 6. Renewable Portfolio Standard (RPS). - All stakeholders in the electric power industry shall contribute to the growth of the renewable energy industry of the country. Towards this end, the National Renewable Energy Board (NREB), created under Section 27 of this Act, shall set the minimum percentage of generation from eligible renewable energy resources and determine to which sector RPS shall be imposed on a per grid basis within one (1) year from the effectivity of this Act.

Section 7. Feed-In Tariff System. - To accelerate the development of emerging renewable energy resources, a feed-in tariff system for electricity produced from wind, solar, ocean, run-of-river hydropower and biomass is hereby mandated. Towards this end, the ERC in consultation with the National Renewable Energy Board (NREB) created under Section 27 of this Act shall formulate and promulgate feed-in tariff system rules within one (1) year upon the effectivity of this Act which shall include, but not limited to the following:

(a) Priority connections to the grid for electricity generated from emerging renewable energy resources such as wind, solar, ocean, run-of-river hydropower and biomass power plants within the territory of the Philippines;

(b) The priority purchase and transmission of, and payment for, such electricity by the grid system operators;

(c) Determine the fixed tariff to be paid to electricity produced from each type of emerging renewable energy and the mandated number of years for the application of these rates, which shall not be less than twelve (12) years;

(d) The feed-in tariff to be set shall be applied to the emerging renewable energy to be used in compliance with the renewable portfolio standard as provided for in this Act and in accordance with the RPS rules that will be established by the DOE.

Section 8. Renewable Energy Market (REM). - To facilitate compliance with Section 6 of this Act, the DOE shall establish the REM and shall direct PEMC to implement changes to the WESM Rules in order to incorporate the rules specific to the operation of the REM under the WESM.

The PEMC shall, under the supervision of the DOE, establish a Renewable Energy Registrar within one (1) year from the effectivity of this Act and shall issue, keep and verify RE Certificates corresponding to energy generated from eligible RE facilities. Such certificates will be used for compliance with the RPS. For this purpose, a transaction fee, equal to half of what PEMC currently charges regular WESM players, may be imposed by PEMC.

Section 9. Green Energy Option. - The DOE shall establish a Green Energy Option program which provides end-users the option to choose RE resources as their sources of energy. In consultation with the NREB, the DOE shall promulgate the appropriate implementing rules and regulations which are necessary, incidental or convenient to achieve the objectives set forth herein.

Upon the determination of the DOE of its technical viability and consistent with the requirements of the green energy option program, end users may directly contract from RE facilities their energy requirements distributed through their respective distribution utilities.

Consistent herewith, TRANSCO or its successors-in-interest, DUs, PEMC and all relevant parties are hereby mandated to provide the mechanisms for the physical connection and commercial arrangements necessary to ensure the success of the Green Energy Option. The end-user who will enroll under the energy option program should be informed by way of its monthly electric bill, how much of its monthly energy consumption and generation charge is provided by RE facilities.

Section 10. Net-metering for Renewable Energy. - Subject to technical considerations and without discrimination and upon request by distribution end-users, the distribution utilities shall enter into net-metering agreements with qualified end-users who will be installing RE system.

The ERC, in consultation with the NREB and the electric power industry participants, shall establish net metering interconnection standards and pricing methodology and other commercial arrangements necessary to ensure success of the net-metering for renewable energy program within one (1) year upon the effectivity of this Act.

The distribution utility shall be entitled to any Renewable Energy Certificate resulting from net-metering arrangement with the qualified end-user who is using an RE resource to provide energy and the distribution utility shall be able to use this RE certificate in compliance with its obligations under RPS.

The DOE, ERC, TRANSCO or its successors-in-interest, DUs, PEMC and all relevant parties are hereby mandated to provide the mechanisms for the physical connection and commercial arrangements necessary to ensure the success of the Net-metering for Renewable Energy program, consistent with the Grid and Distribution Codes.

Section 11. Transmission and Distribution System Development. - TRANSCO or its successors-in-interest or its buyer/ concessionaire and all DUs, shall include the required connection facilities for RE-based power facilities in the Transmission and Distribution Development Plans: Provided, That such facilities are approved by the DOE. The connection facilities of RE power plants, including the extension of transmission and distribution lines, shall be subject only to ancillary services covering such connections.

CHAPTER IV
OFF-GRID RENEWABLE ENERGY DEVELOPMENT

Section 12. Off-Grid Areas. - Within one (1) year from the effectivity of this Act, NPC-SPUG or its successors-in-interest and/or qualified third parties in off-grid areas shall, in the performance of its mandate to provide missionary electrification, source a minimum percentage of its total annual generation upon recommendation of the NREB from available RE resources in the area concerned, as may be determined by the DOE.

As used in this Act, successors-in-interest refer to entities deemed technically and financially capable to serve/take over existing NPC-SPUG areas.

Eligible RE generation in off-grid and missionary areas shall be eligible for the provision of RE Certificates defined in Section 8 of this Act. In the event there are no viable RE resources in the off-grid and missionary areas, the relevant electricity supplier in the off-grid and missionary areas shall still be obligated under Section 6 of this Act.

CHAPTER V
GOVERNMENT SHARE

Section 13. Government Share. - The government share on existing and new RE development projects shall be equal to one percent (1%) of the gross income of RE resource developers resulting from the sale of renewable energy produced and such other income incidental to and arising from the renewable energy generation, transmission, and sale of electric power except for indigenous geothermal energy, which shall be at one and a half percent (1.5%) of gross income.

To further promote the development of RE projects, the government hereby waives its share from the proceeds of micro-scale projects for communal purposes and non-commercial operations, which are not greater than one hundred (100) kilowatts.

CHAPTER VI
ENVIRONMENTAL COMPLIANCE

Section 14. Compliance with Environmental Regulations. - All RE explorations, development, utilization, and RE systems operations shall be conducted in accordance with existing environmental regulations as prescribed by the DENR and/or any other concerned government agency.

CHAPTER VII
GENERAL INCENTIVES

Section 15. Incentives for Renewable Energy Projects and Activities. - RE developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives:

(a) Income Tax Holiday (ITH) - For the first seven (7) years of its commercial operations, the duly registered RE developer shall be exempt from income taxes levied by the national government.

Additional investments in the project shall be entitled to additional income tax exemption on the income attributable to the investment: Provided, That the discovery and development of new RE resource shall be treated as a new investment and shall therefore be entitled to a fresh package of incentives: Provided, further, That the entitlement period for additional investments shall not be more than three (3) times the period of the initial availment of the ITH.

(b) Duty-free Importation of RE Machinery, Equipment and Materials - Within the first ten (10) years upon the issuance of a certification of an RE developer, the importation of machinery and equipment, and materials and parts thereof, including control and communication equipment, shall not be subject to tariff duties: Provided, however, That the said machinery, equipment, materials and parts are directly and actually needed and used exclusively in the RE facilities for transformation into energy and delivery of energy to the point of use and covered by shipping documents in the name of the duly registered operator to whom the shipment will be directly delivered by customs authorities: Provided, further, That endorsement of the DOE is obtained before the importation of such machinery, equipment, materials and parts are made.

Endorsement of the DOE must be secured before any sale, transfer or disposition of the imported capital equipment, machinery or spare parts is made: Provided, That if such sale, transfer or disposition is made within the ten (10)-year period from the date of importation, any of the following conditions must be present:

(i) If made to another RE developer enjoying tax and duty exemption on imported capital equipment;

(ii) If made to a non-RE developer, upon payment of any taxes and duties due on the net book value of the capital equipment to be sold;

(iii) Exportation of the used capital equipment, machinery, spare parts or source documents or those required for RE development; and

(iv) For reasons of proven technical obsolescence.

When the aforementioned sale, transfer or disposition is made under any of the conditions provided for in the foregoing paragraphs after ten (10) years from the date of importation, the sale, transfer or disposition shall no longer be subject to the payment of taxes and duties;

(c) Special Realty Tax Rates on Equipment and Machinery. - Any law to the contrary notwithstanding, realty and other taxes on civil works, equipment, machinery, and other improvements of a Registered RE Developer actually and exclusively used for RE facilities shall not exceed one and a half percent (1.5%) of their original cost less accumulated normal depreciation or net book value: Provided, That in case of an integrated resource development and generation facility as provided under Republic Act No. 9136, the real property tax shall only be imposed on the power plant;

(d) Net Operating Loss Carry-Over (NOLCO). - The NOLCO of the RE Developer during the first three (3) years from the start of commercial operation which had not been previously offset as deduction from gross income shall be carried over as a deduction from gross income for the next seven (7) consecutive taxable years immediately following the year of such loss: Provided, however, That operating loss resulting from the availment of incentives provided for in this Act shall not be entitled to NOLCO;

(e) Corporate Tax Rate. - After seven (7) years of income tax holiday, all RE Developers shall pay a corporate tax of ten percent (10%) on its net taxable income as defined in the National Internal Revenue Act of 1997, as amended by Republic Act No. 9337. Provided, That the RE Developer shall pass on the savings to the end-users in the form of lower power rates.

(f) Accelerated Depreciation. - If, and only if, an RE project fails to receive an ITH before full operation, it may apply for Accelerated Depreciation in its tax books and be taxed based on such: Provided, That if it applies for Accelerated Depreciation, the project or its expansions shall no longer be eligible for an ITH. Accelerated depreciation of plant, machinery, and equipment that are reasonably needed and actually used for the exploration, development and utilization of RE resources may be depreciated using a rate not exceeding twice the rate which would have been used had the annual allowance been computed in accordance with the rules and regulations prescribed by the Secretary of the Department of Finance and the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended. Any of the following methods of accelerated depreciation may be adopted:

i) Declining balance method; and

ii) Sum-of-the years digit method

(g) Zero Percent Value-Added Tax Rate. - The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337.

All RE Developers shall be entitled to zero-rated value added tax on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities.

This provision shall also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors.

(h) Cash Incentive of Renewable Energy Developers for Missionary Electrification. - A renewable energy developer, established after the effectivity of this Act, shall be entitled to a cash generation-based incentive per kilowatt hour rate generated, equivalent to fifty percent (50%) of the universal charge for power needed to service missionary areas where it operates the same, to be chargeable against the universal charge for missionary electrification;

(i) Tax Exemption of Carbon Credits. - All proceeds from the sale of carbon emission credits shall be exempt from any and all taxes;

(j) Tax Credit on Domestic Capital Equipment and Services. - A tax credit equivalent to one hundred percent (100%) of the value of the value-added tax and custom duties that would have been paid on the RE machinery, equipment, materials and parts had these items been imported shall be given to an RE operating contract holder who purchases machinery, equipment, materials, and parts from a domestic manufacturer for purposes set forth in this Act: Provided, That prior approval by the DOE was obtained by the local manufacturer: Provided, further, That the acquisition of such machinery, equipment, materials, and parts shall be made within the validity of the RE operating contract.

Section 16. Environmental Compliance Certificate (ECC). - Notwithstanding Section 17 (b) (3) (iii) of Republic Act No. 7160, it would be sufficient for the renewable energy developer to secure the Environmental Compliance Certificate (ECC) from the corresponding regional office of the DENR.

Section 17. Exemption from the Universal Charge. - Power and electricity generated through the RES for the generator's own consumption and/or for free distribution in the off-grid areas shall be exempted from the payment of the universal charge provided for under Section 34 of Republic Act No. 9136.

Section 18. Payment of Transmission Charges. - A registered renewable energy developer producing power and electricity from an intermittent RE resource may opt to pay the transmission and wheeling charges of TRANSCO or its successors-in-interest on a per kilowatt-hour basis at a cost equivalent to the average per kilowatt-hour rate of all other electricity transmitted through the grid.

Section 19. Hybrid and Cogeneration Systems. - The tax exemptions and/or incentives provided for in Section 15 of this Act shall be availed of by registered RE Developer of hybrid and cogeneration systems utilizing both RE sources and conventional

energy: Provided, however, That the tax exemptions and incentives shall apply only to the equipment, machinery and/or devices utilizing RE resources.

Section 20. Intermittent RE Resources. - TRANSCO or its successors-in-interest, in consultation with stakeholders, shall determine the maximum penetration limit of the Intermittent RE-based power plants to the Grid, through technical and economic analysis. Qualified and registered RE generating units with intermittent RE resources shall be considered "must dispatch" based on available energy and shall enjoy the benefit of priority dispatch. All provisions under the WESM Rules, Distribution and Grid Codes which do not allow "must dispatch" status for intermittent RE resources shall be deemed amended or modified. The PEMC and TRANSCO or its successors-in-interest shall implement technical mitigation and improvements in the system in order to ensure safety and reliability of electricity transmission.

As used in this Act, RE generating unit with intermittent RE resources refers to a RE generating unit or group of units connected to a common connection point whose RE energy resource is location-specific naturally difficult to precisely predict the availability of RE energy resource thereby making the energy generated variable, unpredictable and irregular and the availability of the resource inherently uncontrollable, which include plants utilizing wind, solar, run-of-river hydro or ocean energy.

Section 21. Incentives for RE Commercialization. - All manufacturers, fabricators and suppliers of locally-produced RE equipment and components duly recognized and accredited by the DOE, in consultation with DOST, DOF and DTI, shall, upon registration with the BOI, be entitled to the privileges set forth under this section.

Consistent with Article 7, Item (20) of EO No. 226, the registration with the BOI, as provided for in Section 15 and Section 21 of this Act, shall be carried out through an agreement and an administrative arrangement between the BOI and the DOE, with the end-view of facilitating the registration of qualified RE facilities based on the implementing rules and regulations that will be developed by DOE. It is further mandated that the applications for registration will be positively acted upon by BOI on the basis of the accreditation issued by DOE.

The Renewable Energy Sector is hereby declared a priority investment sector that will regularly form part of the country's Investment Priority Plan, unless declared otherwise by law. As such, all entities duly accredited by the DOE under this Act shall be entitled to all the incentives provided herein.

(a) Tax and Duty-free Importation of Components, Parts and Materials. - All shipments necessary for the manufacture and/or fabrication of RE equipment and components shall be exempted from importation tariff and duties and value added tax: Provided, however, That the said components, parts and materials are: (i) not manufactured domestically in reasonable quantity and quality at competitive prices; (ii) directly and actually needed and shall be used exclusively in the manufacture/ fabrication of RE equipment; and (iii) covered by shipping documents in the name of the duly registered manufacturer/fabricator to whom the shipment will be directly delivered by customs authorities: Provided, further, That prior approval of the DOE was obtained before the importation of such components, parts and materials;

(b) Tax Credit on Domestic Capital Components, Parts and Materials. - A tax credit equivalent to one hundred percent (100%) of the amount of the value-added

tax and customs duties that would have been paid on the components, parts and materials had these items been imported shall be given to an RE equipment manufacturer, fabricator, and supplier duly recognized and accredited by the DOE who purchases RE components, parts and materials from a domestic manufacturer: Provided, That such components, and parts are directly needed and shall be used exclusively by the RE manufacturer, fabricator and supplier for the manufacture, fabrication and sale of the RE equipment: Provided, further, That prior approval by the DOE was obtained by the local manufacturer;

(c) Income Tax Holiday and Exemption. - For seven (7) years starting from the date of recognition/accreditation, an RE manufacturer, fabricator and supplier of RE equipment shall be fully exempt from income taxes levied by the National Government on net income derived only from the sale of RE equipment, machinery, parts and services; and

(d) Zero-rated value added tax transactions - All manufacturers, fabricators and suppliers of locally produced renewable energy equipment shall be subject to zero-rated value added tax on its transactions with local suppliers of goods, properties and services.

Section 22. Incentives for Farmers Engaged in the Plantation of Biomass Resources. - For a period of ten (10) years after the effectivity of this Act, all individuals and entities engaged in the plantation of crops and trees used as biomass resources such as but not limited to jatropha, coconut, and sugarcane, as certified by the Department of Energy, shall be entitled to duty-free importation and be exempted from Value-Added Tax (VAT) on all types of agricultural inputs, equipment and machinery such as, but not limited to, fertilizer, insecticide, pesticide, tractor, trailers, trucks, farm implements and machinery, harvesters, threshers, hybrid seeds, genetic materials, sprayers, packaging machinery and materials, bulk handling facilities, such as conveyors and mini-loaders, weighing scales, harvesting equipment, and spare parts of all agricultural equipment.

Section 23. Tax Rebate for Purchase of RE Components. - To encourage the adoption of RE technologies, the DOF, in consultation with DOST, DOE, and DTI, shall provide rebates for all or part of the tax paid for the purchase of RE equipment for residential, industrial, or community use. The DOF shall also prescribe the appropriate period for granting the tax rebates.

Section 24. Period of Grant of Fiscal Incentives. - The fiscal incentives granted under Section 15 of this Act shall apply to all RE capacities upon the effectivity of this Act. The National Renewable Energy Board, in coordination with the Department of Energy, shall submit a yearly report on the implementation of this Act to the Philippine Congress, through the Joint Congressional Power Commission, every January of each year following the period in review, indicating among others, the progress of RE development in the country and the benefits and impact generated by the development and utilization of its renewable energy resources in the context of its energy security and climate change imperatives. This shall serve as basis for the Joint Congressional Power Commission review of the incentives as provided for in this Act towards ensuring the full development of the country's RE capacities under a rationalized market and incentives scheme.

Section 25. Registration of RE Developers and local manufacturers, fabricators and suppliers of locally-produced renewable energy equipment. - RE Developers and local manufacturers, fabricators and suppliers of locally-produced renewable energy equipment shall register with the Department of Energy, through the Renewable Energy Management Bureau. Upon registration,

a certification shall be issued to each RE Developer and local manufacturer, fabricator and supplier of locally-produced renewable energy equipment to serve as the basis of their entitlement to incentives provided under Chapter VII of this Act.

Section 26. Certification from the Department of Energy. - All certifications required to qualify RE developers to avail of the incentives provided for under this Act shall be issued by the DOE through the Renewable Energy Management Bureau.

The Department of Energy, through the Renewable Energy Management Bureau shall issue said certification fifteen (15) days upon request of the renewable energy developer or manufacturer, fabricator or supplier.

Provided, That the certification issued by the Department of Energy shall be without prejudice to any further requirements that may be imposed by the concerned agencies of the government charged with the administration of the fiscal incentives abovementioned.

CHAPTER VIII
GENERAL PROVISIONS

Section 27. Creation of the National Renewable Energy Board (NREB). - The NREB is hereby created. It shall be composed of a Chairman and one (1) representative each from the following agencies: DOE, DTI, DOF, DENR, NPC, TRANSCO or its successors-in-interest, PNOC and PEMC who shall be designated by their respective secretaries on a permanent basis; and one (1) representative each from the following sectors: RE Developers, Government Financial Institutions (GFIs), private distribution utilities, electric cooperatives, electricity suppliers and non-governmental organizations, duly endorsed by their respective industry associations and all to be appointed by the President of the Republic of the Philippines.

The Chairman shall, within one (1) month from the effectivity of this Act, convene the NREB.

The NREB shall be assisted by a Technical Secretariat from the Renewable Energy Management Bureau of the DOE, created under Section 32 hereof, and shall directly report to the Office of the Secretary or the Undersecretary of the Department, as the case maybe, on matters pertaining to the activities of the NREB. The number of staff of the Technical Secretariat and the creation of corresponding positions necessary to complement and/or augment the existing plantilla of the REMB shall be determined by the Board, subject to approval by the Department of Budget and Management (DBM) and to existing civil service rules and regulations.

The NREB shall have the following powers and functions:

(a) Evaluate and recommend to the DOE the mandated RPS and minimum RE generation capacities in off-grid areas, as it deems appropriate;

(b) Recommend specific actions to facilitate the implementation of the National Renewable Energy Program (NREP) to be executed by the DOE and other appropriate agencies of government and to ensure that there shall be no overlapping and redundant functions within the national government departments and agencies concerned;

(c) Monitor and review the implementation of the NREP, including compliance with the RPS and minimum RE generation capacities in off-grid areas;

(d) Oversee and monitor the utilization of the Renewable Energy Trust Fund created pursuant to Section 28 of this Act and administered by the DOE; and

(e) Perform such other functions, as may be necessary, to attain the objectives of this Act.

Section 28. Renewable Energy Trust Fund (RETF). - A Renewable Energy Trust Fund is hereby established to enhance the development and greater utilization of renewable energy. It shall be administered by the DOE as a special account in any of the GFIs. The RETF shall be exclusively used to:

(a) Finance the research, development, demonstration, and promotion of the widespread and productive use of RE systems for power and non-power applications, as well as to provide funding for R & D institutions engaged in renewable energy studies undertaken jointly through public-private sector partnership, including provision for scholarship and fellowship for energy studies;

(b) Support the development and operation of new RE resources to improve their competitiveness in the market: Provided, That the grant thereof shall be done through a competitive and transparent manner;

(c) Conduct nationwide resource and market assessment studies for the power and non-power applications of renewable energy systems;

(d) Propagate RE knowledge by accrediting, tapping, training, and providing benefits to institutions, entities and organizations which can extend the promotion and dissemination of RE benefits to the national and local levels; and

(e) Fund such other activities necessary or incidental to the attainment of the objectives of this Act.

Use of the fund may be through grants, loans, equity investments, loan guarantees, insurance, counterpart fund or such other financial arrangements necessary for the attainment of the objectives of this Act: Provided, That the use or allocation thereof shall, as far as practicable, be done through a competitive and transparent manner.

The RETF shall be funded from:

(a) Proceeds from the emission fees collected from all generating facilities consistent with Republic Act No. 8749 or the Philippine Clean Air Act;

(b) One and 1/2 percent (1.5%) of the net annual income of the Philippine Charity Sweepstakes Office;

(c) One and 1/2 percent (1.5%) of the net annual income of the Philippine Amusement and Gaming Corporation;

(d) One and 1/2 percent (1.5%) of the net annual dividends remitted to the National Treasury of the Philippine National Oil Company and its subsidiaries;

(e) Contributions, grants and donations: Provided, That all contributions, grants and donations made to the RETF shall be tax deductible subject to the provisions of the National Internal Revenue Code. Towards this end, the BIR shall assist the DOE in formulating the Rules and Regulations to implement this provision;

(f) One and 1/2 percent (1.5%) of the proceeds of the Government share collected from the development and use of indigenous non-renewable energy resources;

(g) Any revenue generated from the utilization of the RETF; and

(h) Proceeds from the fines and penalties imposed under this Act.

Section 29. Financial Assistance Program. - Government financial institutions such as the Development Bank of the Philippines (DBP), Land Bank of the Philippines (LBP), Phil-Exim Bank and other government financial institutions shall, in accordance with and to the extent allowed by the enabling provisions of their respective charters or applicable laws, provide preferential financial packages for the development, utilization and commercialization of RE projects as duly recommended and endorsed by the DOE.

Section 30. Adoption of Waste-To-Energy Technologies. - The DOE shall, where practicable, encourage the adoption of waste-to-energy facilities such as, but not limited to, biogas systems. The DOE shall, in coordination with the DENR, ensure compliance with this provision.

As used in this Act, waste-to-energy technologies shall refer to systems which convert to biodegradable materials such as, but not limited to, animal manure or agricultural waste, into useful energy through processes such as anaerobic digestion, fermentation and gasification, among others, subject to the provisions and intent of Republic Act No. 8749 (Clean Air Act of 1999) and Republic Act No. 9003 (Ecological Solid Waste Management Act of 2000).

Section 31. Incentives for RE Host Communities/LGUs. - Eighty percent (80%) of the share from royalty and/or government share of RE host communities/LGUs from RE projects and activities shall be used directly to subsidize the electricity consumption of end users in the RE host communities/LGUs whose monthly consumption do not exceed one hundred (100) kwh. The subsidy may be in the form of rebates, refunds and/or any other forms as may be determined by DOE, DOF and ERC, in coordination with NREB.

The DOE, DOF and ERC, in coordination with the NREB and in consultation with the distribution utilities shall promulgate the mechanisms to implement this provision within six months from the effectivity of this Act.

Section 32. Creation of the Renewable Energy Management Bureau. - For the purpose of implementing the provisions of this Act, a Renewable Energy Management Bureau (REMB) under the DOE is hereby established, and the existing Renewable Energy Management Division of the Energy Utilization Management Bureau of the DOE, whose plantilla shall form the nucleus of REMB, is hereby dissolved. The organizational structure and staffing complement of the REMB shall be determined by the Secretary of the DOE, in consultation with the Department of Budget and Management, in accordance with existing civil service rules and regulations. The budgetary requirements necessary for the creation of the REMB shall be taken from the current appropriations of the DOE. Thereafter, the funding for the REMB shall be included in the annual General Appropriations Act.

The REMB shall have the following powers and functions:

(a) Implement policies, plans and programs related to the accelerated development, transformation, utilization and commercialization of renewable energy resources and technologies;

(b) Develop and maintain a centralized, comprehensive and unified data and information base on renewable energy resources to ensure the efficient evaluation, analysis, and dissemination of data and information on renewable energy resources, development, utilization, demand and technology application;

(c) Promote the commercialization/ application of renewable energy resources including new and emerging technologies for efficient and economical

transformation, conversion, processing, marketing and distribution to end users;

(d) Conduct technical research, socio-economic and environmental impact studies of renewable energy projects for the development of sustainable renewable energy systems;

(e) Supervise and monitor activities of government and private companies and entities on renewable energy resources development and utilization to ensure compliance with existing rules, regulations, guidelines and standards;

(f) Provide information, consultation and technical training and advisory services to developers, practitioners and entities involved in renewable energy technology and develop renewable energy technology development strategies; and

(g) Perform other functions that may be necessary for the effective implementation of this Act and the accelerated development and utilization of the renewable energy resources in the country.

CHAPTER IX
FINAL PROVISIONS

Section 33. Implementing Rules and Regulations (IRR). - Within six (6) months from the effectivity of this Act, the DOE shall, in consultation with the Senate and House Committees on Energy, relevant government agencies and RE stakeholders, promulgate the IRR of this Act.

Section 34. Congressional Oversight. - Upon the effectivity of this Act, the Joint Congressional Power Commission created under Section 62 of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" shall exercise oversight powers over the implementation of this Act.

Section 35. Prohibited Acts. - The following acts shall be prohibited:

(a) Non-compliance or violation of the RPS rules;

(b) Willful refusal to undertake net metering arrangements with qualified distribution grid users;

(c) Falsification or tampering of public documents or official records to avail of the fiscal and non-fiscal incentives provided under this Act;

(d) Failure and willful refusal to issue the single certificate referred to in Section 26 of this Act; and

(e) Non-compliance with the established guidelines that DOE will adopt for the implementation of this Act.

Section 36. Penalty Clause. - Any person who willfully commits any of the prohibited acts enumerated under this Act, shall be imposed with the penalties provided herein. Any person, who willfully aids or abets the commission of a crime prohibited herein or who causes the commission of any such act by another shall be liable in the same manner as the principal.

In the case of association, partnership or corporations, the penalty shall be imposed on the partner, president, chief operating officer, chief executive officer, directors or officers responsible for the violation.

The commission of any prohibited acts provided for under Section 35, upon conviction thereof, shall suffer the penalty of imprisonment of from one (1) year to five (5) years, or a fine ranging from a minimum of One Hundred Thousand Pesos (P100,000.00) to One Hundred Million Pesos (P100,000,000.00), or twice the amount of damages caused or costs avoided for non-compliance, whichever is higher, or both

upon the discretion of the court.

The DOE is further empowered to impose administrative fines and penalties for any violation of the provisions of this Act, its IRR and other issuances relative to this Act.

This is without prejudice to the penalties provided for under existing environmental regulations prescribed by the DENR and/or any other concerned government agency.

Section 37. Appropriations. - Such sums as may be necessary for the initial implementation of this Act shall be taken from the current appropriations of the DOE. Thereafter, the fund necessary to carry out the provisions of this Act shall be included in the annual General Appropriations Act.

Section 38. Separability Clause. - If any provision of this Act is held invalid unconstitutional, the remainder of the Act or the provision not otherwise affected shall remain valid and subsisting.

Section 39. Repealing Clause. - Any law, presidential decree or issuance, executive order, letter of instruction, administrative rule or regulation contrary to or inconsistent with the provisions of this Act is hereby repealed, modified or amended accordingly.

Consistent with the foregoing paragraph and Section 13 of this Act, Section 1 of Presidential Decree No. 1442 or the Geothermal Resources Exploration and Development Act, insofar as the exploration of geothermal resources by the government, and Section 10 (1) of Republic Act No. 7156 otherwise known as the "Mini-Hydro Electric Power Incentive Act", insofar as the special privilege tax rate of two percent (2%) are hereby repealed, modified or amended accordingly.

Section 40. Effectivity Clause. - This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved

PROSPERO C. NOGRALES
Speaker of the House of Representative

MANNY VILLAR
President of the Senate

This Act which is a consolidation of Senate Bill No. 2046 and House Bill No. 41935 was finally passed by the Senate and the House of Representative on October 8, 2008.

MARILYN B. BARUA-YAP
Secretary General
House of Representative

EMMA LIRIO-REYES
Secretary of the Senate

Approved: DEC 16, 2008

GLORIA MACAPAGAL-ARROYO
President of the Philippines

DEPARTMENT CIRCULAR NO. DC2009-05-0008

RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 9513

Pursuant to Section 33 of Republic Act No. 9513, otherwise known as the "Renewable Energy Act of 2008," the Department of Energy, in consultation with the Senate and House of Representatives Committees on Energy, relevant government agencies, and all Renewable Energy (RE) stakeholders, hereby issues, adopts and promulgates the following implementing rules and regulations.

PART I. GENERAL PROVISIONS

RULE 1.

TITLE, DECLARATION OF POLICIES AND DEFINITION OF TERMS

SECTION 1. Title and Scope

This Department Circular shall be known as the "Implementing Rules and Regulations (IRR) of Republic Act No. 9513," otherwise known as the "Renewable Energy Act of 2008," and hereinafter referred to as the "Act" in this IRR.

The scope of this IRR is to provide rules, regulations, and guidelines for the:

(a) Exploration, development, utilization and commercialization of renewable energy resources such as biomass, solar, wind, hydropower, geothermal and ocean energy sources, including application of hybrid systems and other emerging renewable energy technologies in the Philippines for the generation, transmission, distribution, sale and use of electricity, and fuel generated from renewable energy resources;

(b) Establishment of the framework for the accelerated sustainable development and advancement of renewable energy resources, and the development of a strategic program to increase its utilization;

(c) Clarification of specific provisions of the Act and the responsibilities and functions of various government agencies, institutions, government-owned and controlled corporations and local government units, the private sector and other stakeholders, and their relationships with the National Renewable Energy Board (NREB); and

(d) Direction and support for existing and new renewable energy developers and manufacturers, fabricators and suppliers of locally-produced renewable energy equipment.

SECTION. 2. Declaration of Policies

It is hereby declared the policy of the State to:

(a) Accelerate the exploration and development of renewable energy resources such as, but not limited to, biomass, solar, wind, hydropower, geothermal, and ocean energy sources, and including hybrid systems, to achieve energy self-reliance, through the adoption of sustainable energy development strategies to reduce the country's dependence on fossil fuels and thereby minimize the country's exposure to price fluctuations in the international markets, the effects of which spiral down to almost all sectors of the economy;

(b) Increase the utilization of renewable energy by institutionalizing the development of national and local

capabilities in the use of renewable energy systems, and promoting its efficient and cost-effective commercial application by providing fiscal and non-fiscal incentives;

(c) Encourage the sustainable development and utilization of renewable energy resources as tools to effectively prevent or reduce harmful emissions and thereby balance the goals of economic growth and development with the promotion of health and safety, and the protection of the environment;

(d) Promote the full development and use of renewable energy as a tool to address the cross-cutting issues of gender, poverty, and economic development; and

(e) Establish the necessary infrastructure and mechanisms to carry out the mandates specified in the Act and other existing laws.

SECTION. 3. Definition of Terms

As used in the Act and this IRR, the following terms shall be defined as follows:

(a) ***"Ancillary Services"*** refers to support services which are necessary to support the transmission capacity and transmission of energy from resources to loads towards maintaining power quality, reliability, and security of the grid through frequency regulating and contingency reserves, reactive power support, black start capability, and other services as may be determined by the Energy Regulatory Commission (ERC);

(b) ***"Biomass Energy Systems"*** refers to energy systems which use biomass resources to produce heat, steam, mechanical power or electricity through either thermochemical, biochemical or physico-chemical processes, or through such other technologies which shall comply with prescribed environmental standards pursuant to the Act;

(c) ***"Biomass Resources"*** refers to non-fossilized, biodegradable organic materials originating from naturally-occurring or cultured plants or parts thereof, animals and micro-organisms, including agricultural products, by-products and residues such as, but not limited to, biofuels except corn, soya beans and rice but including sugarcane and coconut, rice hulls, rice straws, coconut husks and shells, wood chips/ residues, forest residues, corn cobs, corn stovers, bagasse, biodegradable organic fractions of industrial and municipal wastes that can be used in bioconversion process and other processes, as well as gases and liquids recovered from the decomposition and/or extraction of non-fossilized and biodegradable organic materials;

(d) ***"Board of Investments" (BOI)*** refers to an attached agency of the Department of Trade and Industry (DTI) created under Republic Act No. 5186, as amended;

(e) ***"Co-Generation Systems"*** refers to facilities which produce electrical and/ or mechanical energy and forms of useful thermal energy such as heat or steam which are used for industrial, commercial heating or cooling purposes through the sequential use of energy;

(f) ***"Department of Energy" (DOE)*** refers to the government agency created pursuant to Republic Act No. 7638 whose functions are expanded in Republic Act No. 9136 and further expanded in the Act;

(g) ***"Department of Environment and Natural Resources" (DENR)*** refers to the government agency created pursuant to Executive Order No. 192;

(h) ***"Department of Finance" (DOF)*** refers to the government agency created pursuant to Executive Order No. 127, as amended;

(i) ***"Department of Science and Technology" (DOST)*** refers to the government agency created pursuant to Executive Order No. 128;

(j) ***"Department of Trade and Industry" (DTI)*** refers to the government agency created pursuant to Executive Order No. 133;

(k) ***"Distributed Generation"*** refers to a system of small generation entities supplying directly to the distribution grid, any one of which shall not exceed 100 kilowatts in capacity;

(l) ***"Distribution of Electricity"*** refers to the conveyance of electricity by a distribution utility through its distribution system pursuant to the provisions of Republic Act No. 9136;

(m) ***"Distribution Utility" (DU)*** refers to any electric cooperative, private corporation, government-owned utility or existing local government unit which has an exclusive franchise to operate a distribution system in accordance with its franchise and Republic Act No. 9136;

(n) ***"Electric Power Industry Reform Act (EPIRA) of 2001"*** or Republic Act No. 9136 refers to the law mandating the restructuring of the electric power sector and the privatization of the National Power Corporation (NPC);

(o) ***"Energy Regulatory Commission" (ERC)*** refers to the independent quasi-judicial regulatory agency created pursuant to Republic Act No. 9136;

(p) ***"Generation Company"*** refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity;

(q) ***"Generation Facility"*** refers to a facility for the production of electricity and/or thermal energy such as, but not limited to, steam, hot or cold water;

(r) ***"Geothermal Energy"*** as used herein and in the context of the Act, shall be considered renewable and the provisions of the Act is therefore applicable thereto if geothermal energy, as a mineral resource, is produced through: (1) natural recharge, where the water is replenished by rainfall and the heat is continuously produced inside the earth; and/or (2) enhanced recharge, where hot water used in the geothermal process is re-injected into the ground to produce more steam as well as to provide additional recharge to the convection system;

(s) ***"Geothermal Energy Systems"*** refers to machines or other equipment that converts Geothermal Energy into useful power;

(t) ***"Geothermal Resources"*** refers to mineral resources, classified as renewable energy resource, in the form of: (i) all products of geothermal processes, embracing indigenous steam, hot water, and hot brines; (ii) steam and other gases, hot water, and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations; (iii) heat or associated energy found in geothermal formations; and (iv) any by-product derived from them;

(u) ***"Government Share"*** refers to the amount due the national government and local government units (LGUs) from the exploitation, development, and utilization of naturally-occurring RE resources such as geothermal, wind, solar, ocean, and hydropower, excluding biomass;

(v) ***"Green Energy Option"*** refers to the mechanism to empower end-users to

choose renewable energy in meeting their energy requirements;

(w) ***"Grid"*** refers to the high voltage backbone system of interconnected transmission lines, sub-stations, and related facilities, located in each of Luzon, Visayas, and Mindanao, or as may otherwise be determined by the ERC in accordance with Republic Act No. 9136;

(x) ***"Host LGU"*** refers to the local government unit where the energy resource and/or energy generating facility is located;

(y) ***"Hybrid Systems"*** refers to any power or energy generation facility which makes use of two or more types of technologies utilizing both conventional and/or renewable fuel sources, such as, but not limited to, integrated solar/wind systems, biomass/fossil fuel systems, hydropower/ fossil fuel systems, integrated solar/ biomass systems, integrated wind/fossil fuel systems, with a minimum of ten megawatts (10 MW) or ten percent (10%) of the annual energy output provided by the RE component;

(z) ***"Hydroelectric Power Development"*** or ***"Hydropower Development"*** refers to the construction and installation of a hydroelectric power-generating plant and its auxiliary facilities, such as diversion structure, headrace, penstock, substation, transmission, and machine shop, among others;

(aa) ***"Hydroelectric Power Resources"*** or ***"Hydropower Resources"*** refers to water resources found technically feasible for the development of hydropower projects which include rivers, lakes, waterfalls, irrigation canals, springs, ponds, and other water bodies;

(bb) ***"Hydroelectric Power Systems"*** or ***"Hydropower Systems"*** refers to water-based energy systems which produce electricity by utilizing the kinetic energy of falling or running water to turn a turbine generator;

(cc) ***"Local Government"*** refers to the political subdivisions established by or in accordance with the Philippine Constitution pursuant to Executive Order No. 292 or Republic Act No. 7160, which include the province, city, municipality and barangay;

(dd) ***"Local Government Share"*** refers to the amount due the local government units (LGUs) from the exploitation, development and utilization of naturally-occurring renewable energy resources;

(ee) ***"Micro-Scale Project"*** refers to an RE project with capacity not exceeding one hundred kilowatts (100kW);

(ff) ***"Missionary Electrification"*** refers to the provision of basic electricity service in unviable areas with the aim of bringing the operations in these areas to viability levels;

(gg) ***"National Government"*** refers to the entire machinery of the central government, as distinguished from the different forms of local governments pursuant to Executive Order No. 292 or the Administrative Code of 1987;

(hh) ***"National Government Share"*** refers to the amount due the national government from the exploitation, development and utilization of naturally-occurring RE resources;

(ii) ***"National Power Corporation" (NPC)*** refers to the government corporation created under Republic Act No. 6395, as amended by Republic Act No. 9136;

(jj) ***"National Transmission Corporation" (TRANSCO)*** refers to the corporation

created pursuant to Republic Act No. 9136 responsible for the planning, construction, and centralized operation and maintenance of high-voltage transmission facilities, including grid interconnection and ancillary services;

(kk) ***"Net-Metering"*** refers to a system, appropriate for distributed generation, in which a distribution grid user has a two-way connection to the grid and is only charged for his net electricity consumption and is credited for any overall contribution to the electricity grid;

(ll) ***"Non-Power Applications"*** refers to renewable energy systems or facilities that produce mechanical energy, combustible products such as methane gas, or forms of useful thermal energy such as heat or steam, that are not used for electricity generation, but for other applications such as, but not limited to, industrial/commercial cooling, and fuel for cooking and transport;

(mm) ***"Ocean Energy Systems"*** refers to energy systems which convert ocean or tidal current, ocean thermal gradient or wave energy into electrical or mechanical energy;

(nn) ***"Off-Grid Systems"*** refers to electrical systems not connected to the wires and related facilities of the on-grid systems of the Philippines;

(oo) ***"On-Grid System"*** refers to the electrical system composed of interconnected transmission lines, distribution lines, sub-stations, and related facilities for the purpose of conveyance of bulk power on the grid of the Philippines;

(pp) ***"Philippine Electricity Market Corporation" (PEMC)*** refers to the corporation incorporated upon the initiative of the DOE composed of all Wholesale Electricity Spot Market (WESM) Members and whose Board of Directors will be the PEMC Board;

(qq) ***"Philippine National Oil Company" (PNOC)*** refers to the government agency created pursuant to Presidential Decree No. 334, as amended;

(rr) ***"Power Applications"*** refers to renewable energy systems or facilities that produce electricity;

(ss) ***"Registered RE Developer"*** refers to an RE developer duly registered with the DOE;

(tt) ***"Renewable Energy (RE) Certificate"*** refers to a certificate issued by the RE Registrar to electric power industry participants showing the energy sourced, produced, and sold or used. RE certificates may be traded in the RE Market in complying with the RPS;

(uu) ***"Renewable Energy (Systems) Developers"*** or ***"RE Developers"*** refers to individual/s or juridical entity created, registered and/or authorized to operate in the Philippines in accordance with existing Philippine laws and engaged in the exploration, development and utilization of RE resources and actual operation of RE systems/facilities. It shall include existing entities engaged in the exploration, development and/or utilization of RE resources, or the generation of electricity from RE resources, or both;

(vv) ***"Renewable Energy Market" (REM)*** refers to the market where the trading of the RE certificates equivalent to an amount of power generated from RE resources is made;

(ww) ***"Renewable Energy Policy Framework" (REPF)*** refers to the long-term policy developed by the DOE which identifies,

among others, the goals and targets for the development and utilization of renewable energy in the country;

(xx) ***"Renewable Energy (RE) Registrar"*** refers to an entity that issues, keeps and verifies RE certificates corresponding to energy generated from eligible RE facilities and sold to or used by end-users;

(yy) ***"Renewable Energy Service/Operating Contract (RE Contract)"*** refers to the service agreement between the Government, through the President or the DOE, and an RE Developer over an appropriate period as determined by the DOE in which the RE Developer has the exclusive right to explore and develop a particular RE area. The RE Contract shall be divided into two (2) stages: the pre-development stage and the development/commercial stage. The preliminary assessment and feasibility study up to financial closing shall refer to the pre-development stage. The construction and installation of facilities up to the operation phase shall refer to the development stage;

(zz) ***"Renewable Energy Resources" (RE Resources)*** refers to energy resources that do not have an upper limit on the total quantity to be used. Such resources are renewable on a regular basis, and whose renewal rate is relatively rapid to consider availability over an indefinite period of time. These include, among others, biomass, solar, wind, geothermal, ocean energy, and hydropower conforming with internationally accepted norms and standards on dams, and other emerging renewable energy technologies;

(aaa) ***"Renewable Energy Systems" (RE Systems)*** refers to energy systems which convert RE resources into useful energy forms, like electrical, mechanical, etc;

(bbb) ***"Renewable Portfolio Standards"*** (RPS) refers to a market-based policy that requires electric power industry participants, including suppliers, to source an agreed portion of their energy supply from eligible RE Resources;

(ccc) ***"Rural Electrification"*** refers to the delivery of basic electricity services, consisting of power generation, sub-transmission, and/or extension of associated power delivery system that would bring about important social and economic benefits to the countryside;

(ddd) ***"Solar Energy"*** refers to the energy derived from solar radiation that can be converted into useful thermal or electrical energy;

(eee) ***"Solar Energy Systems"*** refers to energy systems which convert solar energy into thermal or electrical energy;

(fff) ***"Small Power Utilities Group" (SPUG)*** refers to the functional unit of the NPC mandated under Republic Act No. 9136 to pursue missionary electrification function;

(ggg) ***"Supplier"*** refers to any person or entity authorized by the ERC to sell, broker, market or aggregate electricity to the end-users;

(hhh) ***"Transmission of Electricity"*** refers to the conveyance of electric power through transmission lines as defined under Republic Act No. 9136 by TRANSCO or its buyer/concessionaire in accordance with its franchise and Republic Act No. 9136;

(iii) ***"Wind Energy"*** refers to the energy that can be derived from wind that is converted into useful electrical or mechanical energy;

(jjj) ***"Wind Energy Systems"*** refers to the machines or other related equipment that convert wind energy into useful electrical or mechanical energy; and

(kkk) ***"Wholesale Electricity Spot Market" (WESM)*** refers to the wholesale electricity spot market established by the DOE pursuant to Republic Act No. 9136.

PART II.

RENEWABLE ENERGY INDUSTRY DEVELOPMENT AND OPERATIONS

RULE 2. RENEWABLE ENERGY POLICY MECHANISMS

SECTION 4. Renewable Portfolio Standards

The Renewable Portfolio Standards (RPS) is a policy which places an obligation on electric power industry participants such as generators, distribution utilities, or suppliers to source or produce a specified fraction of their electricity from eligible RE Resources, as may be determined by NREB.

(a) ***Purpose:*** The purpose of the RPS is to contribute to the growth of the renewable energy industry by diversifying energy supply and to help address environmental concerns of the country by reducing greenhouse gas emissions.

(b) ***Mandate:*** RPS shall be imposed on the electric power industry participants, serving on-grid areas, on a per grid basis, as may be determined by the NREB.

(c) ***Formulation of RPS Rules:*** The NREB shall, in consultation with appropriate government agencies and in accordance with the National Renewable Energy Program (NREP), set the minimum percentage of generation from eligible RE Resources based on the sustainability of the RE Resources, the available capacity of the relevant grids, the available RE Resources within the specific grid, and such other relevant parameters. The NREB shall, within one (1) year from the effectivity of the Act, determine to which sector the RPS shall be imposed on a per grid basis, in accordance with the NREP.

Upon the recommendation of the NREB, the DOE shall, within six (6) months from the effectivity of this IRR, formulate and promulgate the RPS Rules which shall include, but not be limited to, the following:

(1) Types of RE Resources, and identification and certification of generating facilities using said resources that shall be required to comply with the RPS obligations;

(2) Yearly minimum RPS requirements upon the establishment of the RPS Rules;

(3) Annual minimum incremental percentage of electricity sold by each RPS-mandated electricity industry participant which is required to be sourced from eligible RE Resources and which shall, in no case, be less than one percent (1%) of its annual energy demand over the next ten (10) years;

(4) Technical feasibility and stability of the transmission and/or distribution grid systems; and

(5) Means of compliance by RPS-mandated electricity industry participant of the minimum percentage set by the government to meet the RPS requirements including direct generation from eligible RE Resources, contracting the energy sourced from eligible RE Resources, or trading in the REM.

SECTION 5. Feed-in Tariff (FiT) System

The Feed-in Tariff system is a scheme that involves the obligation on the part of electric power industry participants to

source electricity from RE generation at a guaranteed fixed price applicable for a given period of time, which shall in no case be less than twelve (12) years, to be determined by the ERC.

(a) ***Purpose:*** This system shall be adopted to accelerate the development of emerging RE Resources through a fixed tariff mechanism.

(b) ***Mandate:*** A FiT system shall be mandated for wind, solar, ocean, run-of-river hydropower, and biomass energy resources.

(c) ***Guidelines Governing the FiT System:***

(1) Priority connections to the grid for electricity generated from emerging RE Resources such as wind, solar, ocean, run-of-river, hydropower, and biomass power plants within the territory of the Philippines;

(2) The priority purchase, transmission of, and payment for such electricity by the grid system operators;

(3) Determination of the fixed tariff to be paid for electricity produced from each type of emerging RE Resources and the mandated number of years for the application of such tariff, which shall in no case be less than twelve (12) years;

(4) Application of the FiT to the emerging RE Resources to be used in compliance with the RPS. Only electricity generated from wind, solar, ocean, run-of-river hydropower, and biomass power plants covered under the RPS, shall enjoy the FiT; and

(5) Other rules and mechanisms that are deemed appropriate and necessary by the ERC, in consultation with the NREB, for the full implementation of the FiT system.

Within one (1) year from the effectivity of the Act, the ERC shall, in consultation with the NREB, formulate and promulgate the FiT system rules.

SECTION 6. Green Energy Option Program

The Green Energy Option program is a mechanism to be established by the DOE which shall provide end-users the option to choose RE Resources as their source of energy.

Within six (6) months from the effectivity of this IRR, the DOE shall, in consultation with the NREB, promulgate the appropriate implementing rules and regulations which are necessary, incidental, or convenient to achieve the objectives of the Green Energy Option program.

The ERC shall, within six (6) months from the effectivity of this IRR, issue the necessary regulatory framework to effect and achieve the objectives of the Green Energy Option program.

The TRANSCO, its concessionaire, or its successors-in-interest, distribution utilities (DUs), PEMC, and all relevant parties are hereby mandated to provide the mechanisms for the physical connection and commercial arrangements necessary to ensure the success of the Green Energy Option program.

Any end-user who shall enroll under the Green Energy Option program shall be informed, by way of its monthly electric bill, how much of its monthly energy consumption and generation charge is provided by RE facilities.

SECTION 7. Net-Metering for Renewable Energy

Net-Metering is a consumer-based renewable energy incentive scheme wherein electric power generated by an end-user from an eligible on-site RE generating facility and delivered to the local distribution grid may

be used to offset electric energy provided by the DU to the end-user during the applicable period.

(a) ***Purpose:*** The Net-Metering program shall be implemented to encourage end-users to participate in renewable electricity generation.

(b) ***Mandate:*** Upon request by distribution end-users, the DUs shall, without discrimination, enter into Net-Metering agreements with qualified end-users who will be installing an RE System, subject to technical and economic considerations, such as the DU's metering technical standards for the RE System.

As used in this IRR, ***"Qualified End-users"*** refers to entities that generate electric power from an eligible on-site RE generating facility, such as, but not limited to, house or office building with photovoltaic system that can be connected to the grid, for the purpose of entering into a Net-Metering agreement.

Within one (1) year from the effectivity of the Act, the ERC shall, in consultation with the NREB and the electric power industry participants, establish net-metering interconnection standards, pricing methodology, and other commercial arrangements necessary to ensure the success of the Net-Metering for the RE program.

The DU shall be entitled to any RE Certificate resulting from Net-Metering arrangements with the qualified end-user who is using an RE Resource to provide energy. Such RE Certificate shall be credited in compliance with the obligations of the DUs under the RPS.

The DOE, ERC, TRANSCO, its concessionaire or its successor-in-interest, DUs, PEMC and all relevant parties are hereby mandated to provide the necessary mechanisms for the physical connection, consistent with the Grid and Distribution Codes, and commercial arrangements, necessary to ensure the success of the Net-Metering for the RE program.

SECTION 8. Transmission and Distribution System Development

The TRANSCO, its concessionaire or its successor-in-interest, and all DUs, shall:

(a) Include the required connection facilities for RE-based power facilities in the Transmission and Distribution Development Plans, subject to the approval by the DOE; and

(b) Effect connection of RE-based power facilities with the transmission or distribution system upon receipt of a formal notice of the approval by the DOE and the start of the commercial operations of such RE-based power facilities.

The connection facilities of RE power plants, including any extension of transmission and distribution lines, shall be subject only to ancillary services covering such connections, pursuant to the ERC Rules and Guidelines on Open Access Transmission Services.

The ERC shall, in consultation with the NREB, TRANSCO, its concessionaire or its successors-in-interest, provide the mechanism for the recovery of the cost of these connection facilities.

SECTION 9. Adoption of Waste-to-Energy Technologies

The DOE shall, where practicable, encourage the adoption of waste-to-energy facilities such as, but not limited to, biogas systems.

The DOE shall, in coordination with the DENR, ensure compliance with this provision.

As used in this IRR, ***"Waste-to-Energy Technologies"*** shall refer to systems which

convert biodegradable materials such as, but not limited to, animal manure or agricultural waste, into useful energy through processes such as anaerobic digestion, fermentation and gasification, among others, subject to the provisions and intent of Republic Act No. 8749 (Clean Air Act of 1999) and Republic Act No. 9003 (Ecological Solid Waste Management Act of 2000).

RULE 3. RENEWABLE ENERGY MARKET

SECTION 10. Creation of the Renewable Energy Market

To expedite compliance with the establishment of the RPS, the DOE shall establish the Renewable Energy Market (REM). The REM shall be a sub-market of the WESM where the trading of RE Certificates may be made.

The DOE shall, within six (6) months from the effectivity of this IRR, establish the framework that will govern the operation of the REM. The PEMC shall, within one (1) year from the effectivity of the Act, implement changes to incorporate the rules specific to the operation of the REM under the WESM.

SECTION 11. Establishment of the Renewable Energy Registrar

Under the supervision of the DOE, the PEMC shall, within one (1) year from the effectivity of the Act, establish and operate the Renewable Energy Registrar and shall issue, keep, and verify RE Certificates corresponding to energy generated from the eligible RE facilities.

Such RE Certificates shall be credited in compliance with any obligation under the RPS. For this purpose, the PEMC may impose a transaction fee equal to half of what the PEMC currently charges regular WESM players.

RULE 4. OFF-GRID DEVELOPMENT

SECTION 12. Off-Grid Renewable Energy Development

Within one (1) year from the effectivity of the Act, the NPC-SPUG or its successors-in-interest, DUs concerned, and/or qualified third parties in off-grid areas shall, in the performance of its mandate to provide missionary electrification, source a minimum percentage of its total annual generation from available RE Resources in the area concerned as may be determined by the DOE, upon recommendation of the NREB.

Eligible RE generation in off-grid and missionary areas shall be entitled to the issuance of RE Certificates pursuant to Chapter III, Section 8 of the Act and Rule 3, Section 11, of this IRR. In the event that there is no viable RE Resource in the off-grid and missionary areas, the relevant supplier in off-grid and missionary areas shall still be obligated to comply with the RPS requirements provided under Chapter III, Section 6 of the Act and Rule 2, Section 4, of this IRR.

PART III.

INCENTIVES FOR RENEWABLE ENERGY PROJECTS AND ACTIVITIES

RULE 5. GENERAL INCENTIVES AND PRIVILEGES FOR RENEWABLE ENERGY DEVELOPMENT

SECTION. 13. Fiscal Incentives for Renewable Energy Projects and Activities

DOE-certified existing and new RE Developers of RE facilities, including Hybrid Systems, in proportion to and to the extent of the RE component, for both Power and Non-Power Applications, shall be entitled to the following incentives:

A. Income Tax Holiday (ITH)

(1) ***Period of Availment*** – The duly registered RE Developer shall be fully

exempt from income taxes levied by the National Government for the period as follows:

(a) Existing RE Projects – seven (7) years from the start of commercial operations;

All RE Developers that acquire, operate and/or administer existing RE facilities that were or have been in commercial operation for more than seven (7) years, upon the effectivity of the Act, shall not be entitled to ITH, except for any additional investment.

(b) New investment in RE Resources – seven (7) years from the start of commercial operations resulting from new investments; and

(c) Additional investment in the RE Project – not more than three (3) times the period of the initial availment by the existing or new RE project or covering new or additional investments.

The maximum period within which an RE Developer may be entitled to an ITH shall be twenty-one (21) years, inclusive of the initial 7-year ITH for its new and additional investments in a specific RE facility.

(2) ***Entitlement for New and Additional Investments subject to prior approval by the DOE***

(a) **New Investment** – RE Developers undertaking discovery and development of new RE Resource distinct from their registered operations may qualify as new projects, subject to the setting up of separate books of accounts. In such cases, a fresh package of ITH from the start of commercial operations shall apply.

(b) **Additional Investment** – The ITH for additional investments in an existing RE project shall be applied only to the income attributable to the additional investment.

Additional investment may cover investments for improvements, modernization, or rehabilitation duly registered with the DOE, which may or may not result in increased capacity, subject to the conditions to be determined by the DOE, such as, but not limited to, the following:

(i) Identification of the phases/stages of production scheduled for modernization/ rehabilitation; and

(ii) Improvements such as reduced production/ operational costs, increased production/operational efficiency, and better product quality of the RE facilities.

B. Exemption from Duties on RE Machinery, Equipment, and Materials

Within the first ten (10) years from the issuance of a Certificate of Registration to an RE Developer, the importation of machinery and equipment, and materials and parts thereof, including control and communication equipment, shall be exempt from tariff duties.

(1) ***Conditions for Duty-Free Importation*** – An RE Developer may

import machinery and equipment, materials and parts thereof exempt from the payment of any and all tariff duties due thereon subject to the following conditions:

(a) The machinery and equipment are directly and actually needed and will be used exclusively in the RE facilities for the transformation of and delivery of energy to the point of use;

(b) The importation of materials and spare parts shall be restricted only to component materials and parts for the specific machinery and/or equipment authorized to be imported;

(c) The kind of capital machinery and equipment to be imported must be in accordance with the approved work and financial program of the RE facilities; and

(d) Such importation shall be covered by shipping documents in the name of the duly registered RE Developer/ operator to whom the shipment will be directly delivered by customs authorities.

(2) ***Sale or Disposition of Capital Equipment*** - Any sale, transfer, assignment, donation, or other modes of disposition of originally imported capital equipment/ machinery including materials and spare parts, brought into the RE facilities of the RE Developer which availed of duty-free importation within ten (10) years from date of importation shall require prior endorsement of the DOE. Such endorsement shall be granted only if any of the following conditions is present:

(a) If made to another RE Developer enjoying tax and duty exemption on imported capital equipment;

(b) If made to a non-RE Developer, upon payment of any taxes and duties due on the net book value of the capital equipment to be sold;

(c) Exportation of the used capital equipment, machinery, spare parts or source documents or those required for RE development; and

(d) For reasons of proven technical obsolescence as may be determined by the DOE.

When the aforementioned sale, transfer, or disposition is made under any of the conditions provided for in the foregoing paragraphs after ten (10) years from the date of importation, the sale, transfer, or disposition shall require prior endorsement by the DOE and shall no longer be subject to the payment of taxes and duties.

Within six (6) months from the issuance of this IRR, the DOF/Bureau of Customs (BOC) and the Bureau of Internal Revenue (BIR) shall, in consultation with the DOE, formulate the necessary mechanisms/ guidelines to implement this provision.

C. Special Realty Tax Rates on Equipment and Machinery

Realty and other taxes on civil works, equipment, machinery, and other improvements by a registered RE Developer actually and exclusively used for RE facilities shall not exceed one and a half percent (1.5%) of their original cost less accumulated normal depreciation or net book value: Provided, That in the case of an integrated RE resource development and Generation Facility as provided under Republic Act No. 9136, the real property tax shall be imposed only on the power plant.

As used in this IRR, ***"Original Cost"*** shall refer to (1) the tangible cost of construction of the power plant component, or of any improvement thereon, regardless of any subsequent transfer of ownership of such power plant; or (2) the assessed value prevailing at the time the Act took into effect or at the time of the completion of the power plant project after the effectivity of the Act, as the case may be, and in any case assessed at a maximum level of eighty percent (80%), whichever is lower.

"Net Book Value" shall refer to the amount determined by applying normal depreciation on the original cost based on the estimated useful life.

D. Net Operating Loss Carry-Over (NOLCO)

The NOLCO of the RE Developer during the first three (3) years from the start of commercial operation shall be carried over as a deduction from gross income for the next seven (7) consecutive taxable years immediately following the year of such loss, subject to the following conditions:

(a) The NOLCO had not been previously offset as a deduction from gross income; and

(b) The loss should be a result from the operation and not from the availment of incentives provided for in the Act.

E. Corporate Tax Rate

After availment of the ITH, all Registered RE Developers shall pay a corporate tax of ten percent (10%) on their net taxable income as defined in the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337: Provided, That the RE Developers shall pass on the savings to the end-users in the form of lower power rates.

All RE Developers that acquire, operate, and/or administer existing RE facilities that were or have been in commercial operation for more than seven (7) years, upon the effectivity of the Act, shall pay a corporate tax rate of 10% on their net taxable income, upon registration with the DOE.

Towards this end, the ERC shall, in coordination with the DOE, determine the appropriate mechanism to implement the power rate reduction.

(a) ***DOE Technical Study*** - Pursuant to Section 15(e) of the Act, the DOE shall conduct a technical study on the appropriate mechanisms to determine the savings actually realized directly on account of this incentive.

(b) ***Scope*** - The mechanisms shall be applied on RE development projects and bilateral supply agreements in commercial operation as of the effectivity of the Act.

(c) ***Guidelines*** - In developing the mechanisms to implement the power rate reduction under the preceding paragraphs, the DOE shall take into account the following:

(i) preservation of the purpose of Section 15(e) of the Act;

(ii) non-erosion of the competitive nature of the generation sector of the electric power industry under Section 6 of the EPIRA;

(iii) due consideration of the income tax regimes applicable to different RE Developers under existing or applicable laws, rules, and government undertakings or obligations under existing agreements; and

(iv) application of the various forms by which the savings may be implemented including, but not limited to, value-added services that reduce the DU's cost of service translating to lower retail rates and discounts that are required by regulations of the ERC to be passed through in the retail rate to end-users.

(d) ***Determination of Savings*** - The DOE shall, in coordination with the NREB, determine as to whether or not savings are actually realized with respect to each RE Developer. In such case, the extent thereof shall be determined in accordance with the pass-on mechanism as may be appropriate based on the results of the DOE Technical Study. In cases where the RE Developer charges generation rates that are lower than that of a non-RE facility, savings are deemed to have been passed on but only to the extent of the relevant supply contract.

The DOE and the RE Developer may also provide for the appropriate mechanism in determining the savings in the RE Service/Operating Contract. The DOE and the NREB shall, where necessary, coordinate with the ERC for the purpose of implementing the applicable mechanism.

F. Accelerated Depreciation

If an RE project fails to receive an ITH before full operation, the RE Developer may apply for accelerated depreciation in its tax books and be taxed on the basis of the same.

If an RE Developer applies for accelerated depreciation, the project or its expansions shall no longer be eligible to avail of the ITH.

Plant, machinery and equipment that are reasonably needed and actually used for the exploration, development and utilization of RE Resources may be depreciated using a rate not exceeding twice the rate which would have been used had the annual allowance been computed in accordance with the rules and regulations prescribed by the DOF and the provisions of the NIRC of 1997, as amended. Any of the following methods of accelerated depreciation may be adopted:

(a) Declining balance method; and

(b) Sum-of-the year's digit method.

G. Zero Percent Value-Added Tax Rate

The following transactions/activities shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337:

(a) Sale of fuel from RE sources or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels;

(b) Purchase of local goods, properties and services needed for the development, construction, and installation of the plant facilities of RE Developers; and

(c) Whole process of exploration and development of RE sources up to its conversion into power, including, but not limited to, the services performed by subcontractors and/or contractors.

(d) The DOE, BIR and DOF shall, within six (6) months from issuance of this IRR, formulate the necessary mechanisms / guidelines to implement this provision.

H. Tax Exemption of Carbon Credits

All proceeds from the sale of carbon emission credits shall be exempt from any and all taxes.

I. Tax Credit on Domestic Capital Equipment and Services Related to the Installation of Equipment and Machinery

A tax credit equivalent to one hundred percent (100%) of the value of the value-added tax (VAT) and customs duties that would have been paid on the RE machinery, equipment, materials and parts had these items been imported shall be given to a registered RE Developer who purchases machinery, equipment, materials, and parts from a domestic manufacturer, fabricator or supplier subject to the following conditions:

(a) That the said equipment, machinery, and spare parts are reasonably needed and shall be used exclusively by the Registered RE Developer in its registered activity;

(b) That the purchase of such equipment, machinery, and spare parts is made from an accredited or recognized domestic source, in which case, prior approval by the DOE should be obtained by the local manufacturer, fabricator, or supplier; and

(c) That the acquisition of such machinery, equipment, materials, and parts shall be made within the validity of the RE Service/Operating Contract.

Within six (6) months from the effectivity of this IRR, the BIR shall, in coordination with the DOE, promulgate a revenue regulation governing the granting of tax credit on domestic capital equipment.

Any sale, transfer, assignment, donation, or other mode of disposition of machinery, equipment, materials, and parts purchased from domestic source, if made within ten (10) years from the date of acquisition, shall require prior DOE approval.

SECTION 14. Hybrid and Co-generation Systems

The tax exemptions and/or incentives provided for in Section 13 and item D, Section 17 of this IRR shall be availed of by a registered RE Developer of hybrid and cogeneration systems utilizing both RE sources and conventional energy. However, the tax exemptions and incentives for hybrid and cogeneration systems shall apply only to the equipment, machinery, and/or devices utilizing RE Resources.

SECTION 15. Incentives for RE Commercialization

All manufacturers, fabricators, and suppliers of locally-produced RE equipment and components shall be entitled to the privileges set forth below:

A. Tax and Duty-free Importation of Components, Parts, and Materials

All shipments necessary for the manufacture and/or fabrication of RE equipment and components shall be exempted from importation tariff and duties and value-added tax (VAT): Provided, That the said components, parts, and materials are:

(1) Not manufactured domestically in reasonable quantity and quality at competitive prices;

(2) Directly and actually needed and shall be used exclusively in the manufacture/fabrication of RE equipment; and

(3) Covered by shipping documents in the name of the duly registered manufacturer/fabricator to whom the shipment will be directly delivered by customs authorities.

Prior approval of the DOE shall be required before the importation of such components, parts and materials.

B. Tax Credit on Domestic Capital Components, Parts, and Materials

A tax credit equivalent to one hundred percent (100%) of the amount of the value-added tax (VAT) and customs duties that would have been paid on the components, parts, and materials had these items been imported shall be given to an RE equipment manufacturer, fabricator, and supplier who purchases RE components, parts, and materials from a domestic manufacturer: Provided, That such components and parts are directly needed and shall be used exclusively by the RE manufacturer, fabricator, and supplier for the manufacture, fabrication and sale of the RE equipment. Provided, further, that prior approval by the DOE was obtained by the local manufacturer.

C. Income Tax Holiday and Exemption

For seven (7) years starting from the date of recognition/accreditation provided under Section 18 of this IRR, an RE manufacturer, fabricator, and supplier of RE equipment shall be fully exempt from income taxes levied by the National Government on net income derived only from the sale of RE equipment, machinery, parts, and services.

D. Zero-Rated Value-Added Tax Transactions

All manufacturers, fabricators, and suppliers of locally-produced RE equipment shall be subject to zero-rated value-added tax on their transactions with local suppliers of goods, properties, and services.

SECTION 16. Incentives for Farmers Engaged in the Plantation of Biomass Resources

All individuals and entities engaged in the plantation of crops and trees used as Biomass Resources shall be entitled to duty-free importation and exemption from payment of value-added tax (VAT) on all types of agricultural inputs, equipment, and machinery within ten (10) years from the effectivity of the Act, subject to the certification by the DOE and the following conditions:

(a) That the crops and trees such as, but not limited to, jatropha, coconut, and sugarcane shall be actually utilized for the production of Biomass Resources; and

(b) That the agricultural inputs, equipment and machinery such as, but not limited to, fertilizers, insecticides, pesticides, tractors, trailers, trucks, farm implements and machinery, harvesters, threshers, hybrid seeds, genetic materials, sprayers, packaging machinery and materials, bulk handling facilities, such as conveyors and mini-loaders, weighing scales, harvesting equipment, and spare parts of all agricultural equipment shall be used actually and primarily for the production of said Biomass Resources.

SECTION 17. Other Incentives and Privileges

A. Tax Rebate for Purchase of RE Components

To encourage the adoption of RE technologies, the DOF shall, in consultation with DOST, DOE, and DTI, provide rebates for all or part of the tax paid for the purchase of RE equipment for residential, industrial, or community use. For this purpose, the DOF shall, within one (1) year from the effectivity of the Act, also prescribe the procedure, mechanism, and appropriate period for granting the tax rebates.

B. Financial Assistance Program

Government financial institutions (GFIs) such as the Development Bank of the Philippines (DBP), Land Bank of the Philippines (LBP), Philippine Exim Bank and others shall, in accordance with and to the extent allowed by the enabling provisions of their respective charters or applicable laws, provide preferential financial packages for the development, utilization, and commercialization of RE projects that are duly recommended and endorsed by the DOE.

The concerned GFIs shall, within six (6) months from the effectivity of this IRR, formulate programs to implement the provision on the grant of preferential financial packages for RE projects.

C. Exemption from the Universal Charge

As used in this IRR, "Universal Charge" refers to the charge, if any, imposed for the recovery of the stranded cost and other purposes pursuant to Section 34 of Republic Act No. 9136.

All consumers shall be exempted from paying the Universal Charge under the following circumstances:

(1) If the power or electricity generated through the RE System is consumed by the generators themselves; and/or

(2) If the power or electricity through the RE System is distributed free of charge in the off-grid areas.

D. Cash Incentive of Renewable Energy Developers for Missionary Electrification

An RE Developer registered pursuant to Section 15 of the Act and Section 18 of this IRR, shall be entitled to a cash generation-based incentive per kilowatt-hour rate generated, equivalent to fifty percent (50%) of the universal charge for the power needed to service missionary areas where it operates the same, to be chargeable against the universal charge for Missionary Electrification. This provision shall apply to RE capacities for Missionary Electrification undertaken upon effectivity of the Act.

Within six (6) months from the issuance of this IRR, the ERC shall, in coordination with the DOE, develop a mechanism to implement the provision granting cash incentive to RE Developers for Missionary Electrification.

E. Payment of Transmission Charges

A registered RE Developer producing power and electricity from an intermittent RE Resource may opt to pay the transmission and wheeling charges of TRANSCO, its concessionaire or its successor-in-interests on a per kilowatt-hour basis at a cost equivalent to the average per kilowatt-hour rate of all other electricity transmitted through the Grid.

F. Priority and Must Dispatch for Intermittent RE Resource

Qualified and registered RE generating units with intermittent RE Resources shall be considered "must dispatch" based on available energy and shall enjoy the benefit of priority dispatch.

TRANSCO or its successor-in-interest shall, in consultation with stakeholders, determine, through technical and economic analysis, the maximum penetration limit of the intermittent RE -based power plants to the Grid.

The PEMC and TRANSCO or its successor-in-interest shall implement technical mitigation and improvements in the system in order to ensure safety and reliability of electricity transmission.

"RE generating units with intermittent RE Resources" refers to an RE generating unit or group of units connected to a common connection point whose RE Resource is location-specific, naturally difficult to precisely predict the availability of the RE Resource thereby making the energy generated variable, unpredictable and irregular, and the availability of the resource inherently uncontrollable, which include plants utilizing wind, solar, run-of-river hydropower, or ocean energy.

All provisions under the WESM rules, Distribution and Grid Codes which do not allow "must dispatch" status for intermittent RE Resources shall be deemed amended or modified.

SECTION 18. Conditions for Availment of Incentives and Other Privileges

A. Registration/Accreditation with the DOE

For purposes of entitlement to the incentives and privileges under the Act, existing and new RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall register with the DOE, through the Renewable Energy Management Bureau (REMB). The following certifications shall be issued:

(1) DOE Certificate of Registration – issued to an RE Developer holding a valid RE Service/Operating Contract.

For existing RE projects, the new RE Service/Operating Contract shall pre-terminate and replace the existing Service Contract that the RE Developer has executed with the DOE subject to the Transitory Provision in Rule 13, Section 39.

The DOE Certificate of Registration shall be issued immediately upon award of an RE Service/Operating Contract covering an existing or new RE project or upon approval of additional investment.

Any investment added to existing RE projects shall be subject to prior approval by the DOE.

(2) DOE Certificate of Accreditation – issued to RE manufacturers, fabricators, and suppliers of locally-produced RE equipment, upon submission of necessary requirements to be determined by the DOE, in coordination with the DTI.

B. Registration with the Board of Investments (BOI)

The RE sector is hereby declared a priority investment sector that will regularly form part of the country's Investment Priority Plan (IPP), unless declared otherwise by law.

To qualify for the availment of the incentives under Sections 13 and 15 of this IRR, RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment, shall register with the BOI.

The registration with the BOI shall be carried out through an agreement and an administrative arrangement between the BOI and the DOE, with the end-view of facilitating the registration of qualified RE facilities. The applications for registration shall be favorably acted upon immediately by the BOI, on the basis of the certification issued by the DOE.

C. Certificate of Endorsement by the DOE

RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall be qualified to avail of the incentives provided for in the Act only after securing a Certificate of Endorsement from the DOE, through the REMB, on a per transaction basis.

The DOE, through the REMB, shall issue said certification within fifteen (15) days upon request of the RE Developer or manufacturer, fabricator, and supplier; Provided, That the certification issued by the DOE shall be without prejudice to any further requirements that may be imposed by the government agencies tasked with the administration of the fiscal incentives mentioned under Rule 5 of this IRR.

For this purpose, the DOE shall, within six (6) months from the effectivity of this IRR, issue guidelines on the procedures and requirements for the availment of incentives based on specific criteria, such as, but not limited to:

(1) Compliance with Obligations - The RE Developer or manufacturers, fabricators, and suppliers of locally-produced RE equipment shall observe and abide by the provisions of the Act, this IRR, the applicable provisions of existing Philippine laws, and take adequate measures to ensure that its obligations thereunder as well as those of its officers are faithfully discharged;

(2) Compliance with Directives - The RE Developer or manufacturers, fabricators, and suppliers of locally-produced RE equipment shall comply with the directives and circulars which the DOE may issue from time to time in pursuance of its powers under the Act;

(3) Compliance with Pre-Registration/ Registration Conditions - The RE Developers or manufacturers, fabricators, and suppliers of locally-produced RE equipment shall comply with all the pre-registration and registration conditions as required by the DOE;

(4) Compliance with Reportorial Requirements - An RE Developer shall maintain distinct and separate books of accounts for its operations inside the RE facilities and shall submit technical, financial and other operational reports/documents to DOE on or before their respective due dates; and

(5) Remittance of Government Shares and Payment of Applicable Financial Obligations – An RE Developer shall observe timely remittance of Government Share, and payment of applicable fees and other financial obligations to the DOE.

RE Developers or manufacturers, fabricators, and suppliers of locally-produced RE equipment who comply with the above requirements shall be deemed in good standing and shall therefore be qualified to avail of the incentives as provided for in the Act and this IRR.

D. Revenue Regulations

Within six (6) months from the effectivity of this IRR, the BIR shall, in coordination with DOE, DOF, BOC, BOI and other concerned government agencies, promulgate revenue regulations governing the grant of fiscal incentives.

PART IV.

REGULATORY FRAMEWORK FOR THE RENEWABLE ENERGY INDUSTRY AND GOVERNMENT SHARE

RULE6.REGULATORY FRAMEWORK FOR THE RENEWABLE ENERGY INDUSTRY

SECTION 19. Renewable Energy Service/ Operating Contract

A. State Ownership of All Forces of Potential Energy

All forces of potential energy and other natural resources are owned by the State and shall not be alienated. These include potential energy sources such as kinetic energy from water, marine current and wind; thermal energy from solar, ocean, geothermal and biomass.

B. Parties to a Service/Operating Contract

The exploration, development, production, and utilization of natural resources shall be under the full control and supervision of the State.

The State may directly undertake such activities, or it may enter into co-production, joint venture or co-production sharing agreements with Filipino citizens or corporations or associations at least sixty percent (60%) of whose capital is owned by Filipinos. Foreign RE Developers may also be allowed to undertake RE development through an RE Service/Operating Contract with the government, subject to Article XII, Section 2 of the Philippine Constitution.

C. Guidelines on Award of RE Service/ Operating Contract

In compliance with this Constitutional mandate, the DOE shall, within one (1) month from the issuance of this IRR, formulate and promulgate the regulatory framework containing the guidelines governing a transparent and competitive system of awarding RE Service/Operating Contracts from pre-development to development/commercial stage, among others.

RE sectors which are developing or utilizing non-naturally occurring resources such as, but not limited to, biomass, biogas, methane capture, and other waste-to-energy technologies, shall be covered by an RE Operating Contract which shall take into consideration the peculiar conditions and realities attendant to such sector; Provided, That the biomass sector shall be covered by an RE Operating Contract wherein the biomass developer commits to develop, construct, install, commission, and operate an RE generating facility subject to the terms and conditions as specified therein.

D. Compliance with Existing Laws

The regulatory framework for the award of an RE Service/Operating Contract will take into consideration existing related laws on the exploration, development and utilization of RE Resources such as:

(1) RA No. 7160, otherwise known as the “Local Government Code”, on the necessity of prior and periodic consultations with the local government units before any RE exploration activity is conducted within their respective jurisdictions.

Existing projects shall be considered compliant with this requirement;

(2) RA No. 8371, otherwise known as the "Indigenous Peoples Rights Act"; and

(3) Existing environmental laws and regulations as prescribed by the DENR and/or any other concerned government agency, including compliance with the Environmental Impact Assessment (EIA) System.

An Environmental Compliance Certificate (ECC) from the appropriate regional office of the DENR would be sufficient to comply with the Act and this IRR.

RULE 7. GOVERNMENT SHARE

SECTION 20. Government Share

A. Government Share in General

The Government Share on existing and new RE development projects shall be equal to one percent (1%) of the gross income of RE Developers except for indigenous geothermal energy, which shall be at one and a half percent (1.5%) of gross income of the preceding fiscal year.

For purposes of determining the government share, the gross income of RE Developers shall include the proceeds resulting from the sale of RE produced and such other income incidental to and arising from RE generation, transmission, and sale of electric power.

As used in this IRR, "Gross Income" derived from business shall be equivalent to gross sales less sales returns, discounts and allowances, and cost of goods sold, consistent with Section 27, Paragraph A (7) of the NIRC of 1997, as amended by Republic Act No. 9337.

"Cost of Goods Sold" shall include all business expenses directly incurred to produce the merchandise to bring them to their present location and use, consistent with Section 27, Paragraph A (7) of the NIRC of 1997, as amended by Republic Act No. 9337.

Except for government-owned and controlled corporations, the Government Share shall be distributed as follows:

(1) National Government – 60%
(2) Local Government – 40%

B. Share from Geothermal Energy Resources

(1) For an integrated geothermal operation, the Government Share of one and a half percent (1.5%) shall be based on the Gross Income from the sale of electricity generated from geothermal energy. The Cost of Goods Sold shall be the direct cost of the generation of electricity.

(2) For steamfield development and production only, the Government Share of one and a half percent (1.5%) shall be based on the Gross Income from the sale of the geothermal steam. The Cost of Goods Sold shall be the direct cost of the geothermal steam production.

(3) For geothermal power plant operation only, the Government Share of one and a half percent (1.5%) shall be based on the Gross Income from the sale of electricity generated from geothermal energy. The Cost of Goods Sold shall be the direct cost of electricity generated from geothermal energy and the direct cost of the geothermal steam.

C. Local Government Share

In accordance with Section 292 of Republic Act No. 7160, the allocation and distribution of the local government share shall be as follows:

(1) Where the natural resources are located in the province:

(i) Province - Twenty percent (20%);

(ii) Component city/municipality - Forty-five percent (45%); and

(iii) Barangay - Thirty-five percent (35%)

(2) Where the natural resources are located in two (2) or more provinces, or in two (2) or more component cities or municipalities or in two (2) or more Barangays, their respective shares shall be computed on the basis of:

(i) Population - Seventy percent (70%); and

(ii) Land area - Thirty percent (30%)

(3) Where the natural resources are located in a highly urbanized or independent component city:

(i) City - Sixty-five percent (65%); and

(ii) Barangay - Thirty-five percent (35%)

(4) Where the natural resources are located in such two (2) or more cities, the allocation of shares shall be based on the formula on population and land area as specified in paragraph (2) of this Section.(5)

D. Remittance of the Share of Local Government Units

In accordance with Sections 286 and 293 of Republic Act No. 7160, as amended, the share of local government units from the utilization and development of national wealth shall be released, without need of any further action, directly to the provincial, city, municipal or barangay treasurer, as the case may be, on a quarterly basis within five (5) days after the end of each quarter, and which shall not be subject to any lien or holdback that may be imposed by the National Government for whatever purpose.

E. Exceptions on Government Share

No government share shall be collected from the following:

(1) Proceeds from the development of Biomass Resources; and

(2) Proceeds of micro-scale projects for communal purposes and non-commercial operations, such as community-based RE projects, which are not greater than one hundred kilowatts (100kW).

SECTION 21. RE Host Communities/LGUs

A. Determination of RE Host Communities/ LGUs

The LGUs hosting the energy resource and/or energy generating facility shall have an equitable share in the proceeds derived from the development and utilization of energy resource and sale of electric power. For the purposes of this IRR, Host LGU shall refer to the following:

(1) With respect to integrated energy generating facilities, the host LGU is where the energy-generating facilities and energy resources are located. The LGU shall be entitled to a share based on the sale of electric power;

(2) With respect to energy resources, the host LGU is where the renewable energy resources are located as delineated by geophysical and exploration surveys. The LGU shall be entitled to a share based on the sale of renewable energy produced by the RE Developer; and

(3) With respect to non-integrated generating facilities, the host LGU is where the energy generating facility is located. The LGU shall be entitled to a share based on the sale of electric power of the generating facility.

B. Incentives to RE Host Communities/ LGUs

Based on Sections 289 to 294 of Republic Act No. 7160, the benefits/incentives provided herein, shall be allocated to the Host LGUs defined in the preceding paragraph as follows:

(1) Eighty percent (80%)of the local government share from RE projects and activities shall be used directly to subsidize the electricity consumption of end-users in the RE host communities/LGUs whose monthly consumption does not exceed one hundred kilowatt-hours (100kWh); Provided, That excess funds shall, after serving the end-users referred to in the preceding paragraph, be used to subsidize the electricity consumption of consumers of the same class in the host city, municipality or the province, as the case may be;

(2) The subsidy may be in the form of rebates, refunds, and/or any other form as may be determined by the DOE, DOF, and ERC, in coordination with the NREB Within six (6) months from the effectivity of the Act, the DOE, DOF, and ERC shall, in coordination with the NREB and in consultation with the DUs, promulgate the mechanisms to implement this provision; and

(3) Twenty percent (20%) of the local government share shall be utilized to finance local government and livelihood projects which shall be appropriated by their respective Sanggunian, pursuant to Section 294 of Republic Act No. 7160.

PART V.

ORGANIZATION AND RENEWABLE ENERGY TRUST FUND

RULE 8. THE ROLE OF THE DEPARTMENT OF ENERGY

SECTION 22. Lead Agency

The DOE shall be the lead agency mandated to implement the provisions of the Act and this IRR. In pursuance thereof and in addition to its functions provided for under existing laws, the DOE shall:

(a) Promulgate the RPS Rules;

(b) Establish the REM and direct the PEMC to implement changes in order to incorporate the rules specific to the operation of the REM under the WESM;

(c) Supervise the establishment of the RE Registrar by the PEMC;

(d) Promulgate the appropriate implementing rules and regulations necessary to achieve the objectives of the Green Energy Option program;

(e) Determine the minimum percentage of generation which may be sourced from available RE Resources of the NPC-SPUG or its successors-in-interest and/or

qualified third parties in off-grid areas;

(f) Issue certification to RE Developers, local manufacturers, fabricators, and suppliers of locally-produced RE equipment to serve as basis for their entitlement to incentives, as provided for in the Act;

(g) Formulate and implement the NREP together with relevant government agencies;

(h) Administer the Renewable Energy Trust Fund (RETF) as a special account in any of the government financial institutions identified under Section 29 of the Act;

(i) Recommend and endorse RE projects applying for financial assistance with government financial institutions pursuant to Section 29 of the Act;

(j) Encourage the adoption of waste-to-energy technologies pursuant to Section 30 of the Act;

(k) Determine the mechanisms in the grant of subsidy to electric consumers of Host LGUs, together with DOF, ERC, and NREB; and

(l) Perform such other functions as may be necessary, to attain the objectives of the Act.

RULE 9. NATIONAL RENEWABLE ENERGY BOARD

SECTION 23. Creation of the NREB

Pursuant to Section 27 of the Act, the National Renewable Energy Board (NREB) is created and shall be composed of a Chairman, and one (1) representative each from the following agencies: DOE, DTI, DOF, DENR, NPC, TRANSCO or its successors-in-interest, PNOC and PEMC, who shall be designated by their respective secretaries on a permanent basis; and one (1) representative each from the following sectors: RE Developers, Government Financial Institutions (GFIs), private distribution utilities, electric cooperatives, electricity suppliers, and non-governmental organizations, duly endorsed by their respective industry associations and all to be appointed by the President of the Republic of the Philippines.

The members of the Board and their alternates must be of proven integrity and probity, with a working knowledge and understanding of the RE industry, and occupying the position of at least Director and Manager for government agencies and private entities, respectively.

The NREB shall act as a collegial body primarily tasked with recommending policies to the DOE and monitoring the implementation of the Act. As such, its private sector members shall not be required to divest. However, to avoid conflict of interest, the NREB shall adopt its own Code of Ethics that shall be observed by all its members.

SECTION 24. Meetings of the NREB

Regular meetings of the NREB shall be held at least once every quarter on a date and in a place fixed by the Board. Special meetings may also be called by the Chairman or by a majority vote of the Board, as necessary.

Representatives of other government agencies and private entities such as, but not limited to, the Department of Science and Technology (DOST), Department of Agriculture (DA), National Water Resources Board (NWRB), National Commission for Indigenous Peoples (NCIP), National Electrification Administration (NEA), National Research Council of the Philippines (NCRP), and the academe may be invited by the NREB as resource persons.

SECTION 25. Remuneration

The NREB shall determine the appropriate compensation/ remuneration of its members

in accordance with existing laws, rules and regulations, and shall make the necessary requests and representations with the Department of Budget and Management (DBM) for the allocation and appropriation of funds necessary to effectively perform its duties and functions.

SECTION 26. Technical Secretariat

The NREB shall be assisted by a Technical Secretariat from the REMB. The Technical Secretariat shall report directly to the Office of the Secretary or the Undersecretary of the Department, as the case may be, on matters pertaining to the activities of the NREB. The number of staff of the Technical Secretariat and the creation of corresponding positions necessary to complement and/or augment the existing plantilla of the REMB shall be determined by the Board, subject to existing civil service rules and regulations and approval by the DBM for the allocation and appropriation of funds necessary to effectively perform its duties and functions.

SECTION 27. Powers and Functions

The NREB shall have the following powers and functions:

(a) Evaluate and recommend to the DOE the mandated RPS and minimum RE generation capacities in off-grid areas, as it deems appropriate;

(b) Recommend specific actions to facilitate the implementation of the NREP to be executed by the DOE and/or other appropriate agencies of government and to ensure that there shall be no overlapping and redundant functions within the national government departments and agencies concerned;

(c) Monitor and review the implementation of the NREP, including compliance with the RPS and minimum RE generation capacities in off-grid areas;

(d) Oversee and monitor the utilization of the Renewable Energy Trust Fund (RETF) established pursuant to Section 28 of the Act and administered by the DOE;

(e) Cause the establishment of a one-stop shop facilitation scheme to accelerate implementation of RE projects; and

(f) Perform such other functions, as may be necessary, to attain the objectives of the Act.

RULE 10. RENEWABLE ENERGY MANAGEMENT BUREAU

SECTION 28. Creation of the REMB

To effectively implement the provisions of the Act, a Renewable Energy Management Bureau (REMB) shall be established under the DOE pursuant to Section 32 of the Act.

To facilitate the application for registration/ accreditation of RE Developers, REMB Desks shall be created in the field offices of the DOE in Luzon, Visayas, and Mindanao, pursuant to Section 2 (a) and (b) of the Act.

The existing plantilla of the Renewable Energy Management Division (REMD) of the Energy Utilization Management Bureau (EUMB) of the DOE shall form the nucleus of REMB to perform the duties, functions, and responsibilities of the said bureau. For this purpose, the existing REMD is hereby dissolved.

SECTION 29. Organizational Structure

Within six (6) months from effectivity of this IRR, the DOE through the Office of the Secretary shall determine the REMB organizational structure and staffing pattern/ staffing complement, in consultation with the DBM, and subject to existing civil service rules and regulations.

SECTION 30. Budget

The funds necessary for the creation of the REMB shall be taken from the current appropriations of the DOE. Thereafter, the budget for the REMB shall be included in the annual General Appropriations Act (GAA).

SECTION 31. Powers and Functions of the REMB

The REMB shall have the following powers and functions:

(a) Develop, formulate and implement policies, plans and programs such as the NREP, to accelerate the development, transformation, utilization, and commercialization of RE Resources and technologies;

(b) Develop and maintain a comprehensive, centralized and unified data and information base on RE Resources to ensure the efficient evaluation, analysis, and dissemination of data and information on RE Resources, development, utilization, demand, and technology application;

(c) Promote the commercialization/ application of RE Resources including new and emerging technologies for the efficient and economical transformation, conversion, processing, marketing and distribution to end-users;

(d) Conduct technical research, socio-economic, and environmental impact studies of RE projects for the development of sustainable RE Systems;

(e) Continue to strengthen the Affiliated Renewable Energy Centers (ARECs) nationwide;

(f) Create a unified database of RE projects for monitoring and planning purposes;

(g) Supervise and monitor activities of government and private companies and entities on RE Resources development and utilization to ensure compliance with existing rules, regulations, guidelines and standards;

(h) Provide information, consultation, technical training, and advisory services to RE Developers, practitioners, and entities involved in RE technology, and formulate RE technology development strategies including, but not limited to, standards and guidelines;

(i) Develop and implement an information, education, and communication (IEC) program to heighten awareness of and appreciation by all stakeholders of the RE industry;

(j) Evaluate, process, approve and issue RE Service/Operating Contracts, permits, certifications, and/or accreditations as provided for in the Act and this IRR;

(k) Monitor and evaluate the implementation of the NREP to determine the need to expand the same; and

(l) Perform other functions that may be necessary for the effective implementation of the Act and the accelerated development and utilization of the RE Resources in the country.

RULE 11. RENEWABLE ENERGY TRUST FUND

SECTION 32. Exclusive Fund Administration

Pursuant to Section 28 of the Act, the RETF is hereby established to enhance the development and greater utilization of renewable energy. It shall be administered by the DOE as a special account in any of the GFIs. The RETF shall be used exclusively to:

(a) Finance the research, development, demonstration, and promotion of the

widespread and productive use of RE Systems for Power and Non-Power Applications;

(b) Provide funding to qualified research and development institutions engaged in renewable energy studies undertaken jointly through public-private sector partnership, including provision for scholarship and fellowship for energy studies;

(c) Support the development and operation of new RE Resources to improve their competitiveness in the market: Provided, That the grant thereof shall be done through a competitive and transparent manner;

(d) Conduct nationwide resource and market assessment studies for the Power and Non-Power Applications of RE Systems;

(e) Propagate RE knowledge by accrediting, tapping, training, and providing benefits to institutions, entities, and organizations which can help widen the promotion and reach of RE benefits at the national and local levels; and

(f) Fund such other activities necessary or incidental to the attainment of the objectives of the Act.

SECTION 33. Fund Utilization

The funds may be used through grants, loans, equity investments, loan guarantees, insurance, counterpart fund or such other financial arrangements necessary for the attainment of the objectives of the Act: Provided, That the use or allocation thereof shall be, as far as practicable, done through a competitive and transparent manner.

SECTION 34. Sources of Funds

The RETF shall be funded from:

(a) Proceeds from the emission fees collected from all generating facilities consistent with Republic Act No. 8749 or the Philippine Clean Air Act;

(b) One and a half percent (1.5%) of the net annual income of the Philippine Charity Sweepstakes Office (PCSO);

(c) One and a half percent (1.5%) of the net annual income of the Philippine Amusement and Gaming Corporation (PAGCOR);

(d) One and a half percent (1.5%) of the net annual dividends remitted to the National Treasury by the Philippine National Oil Company (PNOC) and its subsidiaries;

(e) Contributions, grants and donations: Provided, That all contributions, grants and donations made to the RETF shall be tax deductible subject to the provisions of the NIRC. To ensure this goal, the BIR shall assist the DOE in formulating the rules and regulations to implement this provision;

(f) One and a half percent (1.5%) of the proceeds of the Government Share collected from the development and use of indigenous non-RE Resources;

(g) Any revenue generated from the utilization of the RETF; and

(h) Proceeds from fines and penalties imposed under the Act.

For this purpose, the DOE, PCSO, PAGCOR, DENR, and DBM shall, within six (6) months from the approval of this IRR, formulate the necessary mechanism for the transmittal of the Fund to the DOE.

Furthermore, the DOE shall, within six (6) months from the approval of this IRR, formulate the guidelines to ensure the competitive and transparent utilization of the fund.

PART VI.

PROHIBITED ACTS, PENAL, AND ADMINISTRATIVE PROVISIONS

RULE 12. PROHIBITED ACTS AND SANCTIONS

SECTION 35. Prohibited Acts

Pursuant to Section 35 of the Act, any person or entity found in violation of any of the following shall be subject to the appropriate criminal, civil, and/or administrative sanctions as provided in this IRR and other existing applicable laws, rules and regulations:

(a) Non-compliance with or violation of the RPS rules;

(b) Willful refusal to undertake Net-Metering arrangements with qualified distribution grid users;

(c) Falsification or tampering of public documents or official records to avail of the fiscal and non-fiscal incentives provided under the Act;

(d) Failure and willful refusal to issue the certificate referred to in Section 26 of the Act; and

(e) Non-compliance with the established guidelines that the DOE adopted for the implementation of the Act.

SECTION 36. Administrative Liability

Without prejudice to incurring criminal liability, any person who willfully commits any of the prohibited acts and violates other issuances relative to the implementation of the Act shall be subject to the following administrative fines and penalties:

(a) The DOE may impose a penalty ranging from Reprimand to Revocation of License with corresponding fine ranging from a minimum of One Hundred Thousand Pesos (P100,000.00) to Five Hundred Thousand Pesos (P500,000.00) depending on the gravity for the following offenses:

(1) Non-compliance or violation of the RPS rules;

(2) Willful refusal to undertake Net-Metering arrangements with qualified distribution grid users; and

(3) Non-compliance with the established guidelines that the DOE adopted for the implementation of the Act.

(b) The DOE may revoke the license, permit, certification, endorsement or accreditation, terminate RE Service/ Operating Contract and/or impose a fine ranging from a minimum of One Hundred Thousand Pesos (P100,000.00) to Five Hundred Thousand Pesos (P500,000.00) on any person or entity found to have committed the falsification or tampering of public documents or official records to avail of the fiscal and non-fiscal incentives, pursuant to Section 35 (c) of the Act.

This is without prejudice to the penalties provided for under existing environmental regulations prescribed by the DENR and/or any other concerned government agency.

Any employee of the DOE who shall fail or willfully refuse to issue the certificate pursuant to Section 26 of the Act shall be given a warning for the first offense, and meted the penalty of reprimand for the second offense, and suspension for the third offense.

SECTION 37. Administrative Procedures

The DOE may initiate, motu proprio or upon filing of any complaint, an administrative proceeding against any person or entity who

commits any of the prohibited acts under Section 35 of the Act, Section 35 of the IRR, or other related issuances. In the exercise thereof, the DOE may commence such hearing or inquiry by an order to show cause, setting forth the grounds for such order.

The administrative proceedings will be conducted to determine culpability of offenders and the applicable penalties in accordance with existing "Rules and Procedures Before the DOE."

Administrative actions initiated pursuant to this section shall be separate and independent from any criminal actions that may arise for violations of the Act.

SECTION 38. Criminal Liability

In accordance with Section 36 of the Act, any person who willfully aids or abets the commission of a crime prohibited herein or who causes the commission of any such act by another shall be liable in the same manner as the principal.

In the case of associations, partnerships, or corporations, the penalty shall be imposed on the partner, president, chief operating officer, chief executive officer, directors or officers responsible for the violation.

The perpetrators of any of the prohibited acts provided for under Section 35 of the Act, upon conviction thereof, shall suffer the penalty of imprisonment of from one (1) year to five (5) years, or a fine ranging from a minimum of One Hundred Thousand Pesos (P100,000.00) to One Hundred Million Pesos (P100,000,000.00), or twice the amount of damages caused or costs avoided for non-compliance, whichever is higher, or both upon the discretion of the court.

PART VII.

FINAL PROVISIONS

RULE 13. TRANSITORY AND OTHER PROVISIONS

SECTION 39. Transitory Provisions

Benefits or incentives extended to RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment under existing laws not amended or withdrawn under this Act shall remain in full force and effect. No provision of the Act shall be taken as to diminish any right vested by virtue of existing laws, contracts, or agreements. However, in order to qualify for the availment of the incentives provided under Chapter VII of the Act and this IRR, the RE Developer, and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall be required to secure a certificate of registration or accreditation with the DOE.

The fiscal incentives granted under Section 15 of the Act shall apply to all RE capacities upon the effectivity of the Act.

Pending the issuance of other necessary guidelines, the grant of provisional certificates of registration by the DOE shall be valid and effective.

SECTION 40. Reportorial Requirements

The DOE shall, in coordination with the NREB, submit a yearly report on the implementation of the Act to the Philippine Congress, through the Joint Congressional Power Commission (JCPC), every January of each year following the period in review, indicating among others, the progress of RE development in the country and the benefits and impact generated by the development and utilization of renewable energy resources in the context of energy security and climate change imperatives.

This shall serve as basis for the JCPC's review of the incentives as provided for in the Act towards ensuring the full development of the country's RE capacities under a rationalized market and incentives scheme.

SECTION 41. Congressional Oversight

Upon the effectivity of the Act, the JCPC, created under Section 62 of Republic Act No. 9136, shall exercise oversight powers over the implementation of the Act.

SECTION 42. Appropriations

Funds necessary to finance the activities of concerned government agencies, as provided in the Act and this IRR, shall be included in the annual General Appropriations Act.

SECTION 43. Separability Clause

If any provision of this IRR is declared unconstitutional, the remainder of the Act or the provision not otherwise affected, shall remain valid and subsisting.

SECTION 44. Repealing Clause

Any law, presidential decree or issuance, executive order, letter of instruction, administrative rule or regulation contrary to or inconsistent with the provisions of the Act and this IRR is hereby repealed, modified, or amended accordingly.

Section 1 of Presidential Decree No. 1442 or the Geothermal Resources Exploration and Development Act, insofar as the exploration of geothermal resources by the government, and Section 10 (1) of Republic Act No. 7156, otherwise known as the "Mini-Hydro Electric Power Incentive Act", insofar as the special privilege tax rate of two percent (2%), are hereby repealed, modified or amended accordingly.

SECTION 45. Effectivity

This IRR shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Signed this 25th of May 2009 at the Department of Energy, Energy Center, Merritt Road, Fort Bonifacio, Tagui City, Metro Manila.

ANGELO T. REYES
Secretary
(Signed)

DEPARTMENT CIRCULAR NO. DC2009-07-0010

GUIDELINES FOR THE ACCREDITATION OF MANUFACTURERS, FABRICATORS AND SUPPLIERS OF LOCALLY-PRODUCED RENEWABLE ENERGY EQUIPMENT AND COMPONENTS

WHEREAS, Republic Act No. 9513, otherwise known as the "Renewable Energy Act of 2008" (Act) provides that it is the policy of the State to increase the utilization of renewable energy resources such as, but not limited to, biomass, solar, wind, hydropower, geothermal, and ocean energy sources, and including hybrid system by institutionalizing the development of national and local capabilities in the use of renewable energy systems, and promoting its efficient and cost-effective commercial application by providing fiscal incentives;

WHEREAS, the Implementing Rules and Regulations (IRR) of the Act mandates the Department of Energy (DOE) to provide the guidelines for the accreditation of manufacturers, fabricators and suppliers of locally-produced RE equipment and components for purposes of availment of fiscal incentives;

NOW, THEREFORE, in consideration of the foregoing premises, the DOE hereby issues the following guidelines:

SECTION 1. Title – This Circular shall be known as the "Guidelines for the Accreditation of Manufacturers, Fabricators and Suppliers of Locally-Produced Renewable Energy Equipment and Components."

SECTION 2. Scope – This Circular shall govern the registration of renewable energy (RE) manufacturers, fabricators and suppliers of locally-produced RE equipment and components and the issuance of Certificate of Accreditation for the availment of incentives under the Act.

SECTION 3. Incentives for Manufacturers, Fabricators and Suppliers. – Without prejudice to any other requirements as may be imposed by other agencies tasked with the administration of incentives under the Act, all existing and new manufacturers, fabricators and suppliers of locally-produced RE equipment, parts and components shall be required to obtain an accreditation with the DOE through Renewable Energy Management Bureau (REMB) in order to enjoy any of the incentives as provided for under Section 21 of the Act.

SECTION 4. Who May Apply. – Any person, natural or juridical, registered and/or authorized to operate in the Philippines under existing Philippine laws and engaged in the manufacture, fabrication and supply of locally-produced RE equipment and components may apply for accreditation with the REMB.

SECTION 5. Application Requirements. – All applications for DOE Certificate of Accreditation shall be made in writing and must be verified. The applicant must submit the following documents:

a. Letter of Application addressed to REMB Director;

b. Company Profile or Business Background – must show proof of good standing, i.e., demonstrate full compliance with the pertinent rules and regulations governing the applicant's business;

c. A copy of Articles of Incorporation from the Securities and Exchange Commission (SEC) or a Certificate of Registration from Department of Trade and Industry (DTI)

for single proprietorship;

d. Nature and Scope of RE activities (RE manufacturing, fabricating, and/or supplying of locally-produced RE machineries, equipment, components and parts);

e. Appropriate Business Permit in the name of the Company or proprietor – that it must be actively engaged in the business involving similar activities applied for accreditation, including certified copy of Bureau of Internal Revenue (BIR) Registration;

f. Proof of technical, financial and physical or logistical capabilities to handle RE equipment, machinery, components and parts appropriate and commensurate to the scope of activity applied for accreditation;

g. Track record, if applicable; and

h. Such other documents as may be required by the REMB.

SECTION 6. Processing and Approval of Application – The application for accreditation shall be granted by the DOE upon evaluation that the applicant has complied with all the requirements specified above. The processing period for any application for accreditation shall be within thirty (30) days from the date of submission of complete requirements to the REMB. No application for accreditation shall be accepted without due payment of application and processing fees.

In case of incomplete application requirements, the REMB shall, within fifteen (15) days from receipt of application, notify the applicant, in writing, to correct the deficiency. If the applicant fails to correct the deficiency within fifteen (15) days from receipt of the notice, the application shall be deemed to have been abandoned.

SECTION 7. Obligations of Accredited RE Manufacturers, Fabricators and Suppliers. – The DOE-accredited manufacturers, fabricators and suppliers of locally-produced RE equipment, parts and components shall comply with the terms and conditions set forth in the Certificate of Accreditation, in addition to the following:

a. Comply with pertinent government rules and regulations including, but not limited to, payment of taxes, environmental protection, safety, as a requisite for availment of and continuous enjoyment of incentives under the Act;

b. Submit reports on the importation, local purchases, sales, and inventory, among others, in relation to accredited RE activities (manufacturing, fabrication, and supply of locally-produced RE machineries, equipment, components and parts);

c. Adhere to standards, or in its absence, to industry-accepted norms and practices in the manufacture, fabrication or supply of RE machineries, equipment and components;

d. Allow DOE personnel, at all reasonable time, full access to its facilities, books of accounts and other pertinent records relative to its business operation; and

e. Shall not assign, transfer, dispose or otherwise convey its interest acquired under the DOE accreditation.

SECTION 8. Period of Validity. – The DOE Certificate of Accreditation for RE manufacturers, fabricators and suppliers of locally-produced RE machineries, equipment, components and parts, shall be valid for a period of three (3) years from date of its issuance unless earlier revoked or cancelled by the DOE through REMB on valid grounds. The Certificate of Accreditation shall be renewable every three (3) years, subject to compliance with the requirements.

SECTION 9. Revocation or Cancellation of Certificate of Accreditation. – The DOE may, motu proprio or upon filing of any complaint, revoke or cancel any Certificate of Accreditation following the provisions of Department Circular No. 2002-07-004 or the "Rules of Practice and Procedure of the Department of Energy" due to, among others, failure of any of the accredited manufacturer, fabricator and/or supplier to comply with its obligations as provided in Section 6 hereof and the terms and conditions under which the accreditation was issued.

SECTION 10. Separability Clause. – If for any reason, any provision of this Circular is declared unconstitutional or invalid, the other parts or provisions not affected thereby shall remain in full force and effect.

SECTION 11. Repealing Clause. – The provisions of other department circulars which are inconsistent with the provisions of this Circular are hereby repealed, amended or modified accordingly.

SECTION 12. Effectivity. – This Circular shall take into effect fifteen (15) days following its publication in at least two (2) newspapers of general circulation.

Issued this 12th day of July 2009 in Fort Bonifacio, Taguig City, Metro Manila.

ANGELO T. REYES
Secretary
(Signed)

B. REPUBLIC ACT NO. 7156

AN ACT GRANTING INCENTIVES TO MINI-HYDROELECTRIC POWER DEVELOPERS AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Title. - This Act shall be known as the Mini- Hydroelectric Power Incentives Act".

SECTION 2. Declaration of Policy. - It is hereby declared the policy of the State to strengthen and enhance the development of the country's indigenous and self-reliant scientific and technological resources and capabilities and their adaptation to the country in order to attain energy self-sufficiency and thereby minimize dependence on outside source of energy supply. In pursuance thereof, it is further declared that mini-hydroelectric power developers shall be granted the necessary incentives and privileges to provide an environment conducive to the development of the country's hydroelectric power resources to their full potential.

SECTION 3. Declaration of Objectives. - The objectives of the framework being established for the development of mini-hydroelectric power generation are as follows;

(1) To encourage entrepreneurs to develop potential sites for hydroelectric power existing in their respective localities;

(2) To encourage entrepreneurs to develop potential sites for hydroelectric power existing in the country by granting the necessary incentives which will provide a reasonable rate of return;

(3) To facilitate hydroelectric power development by eliminating overlapping jurisdiction of the many government agencies whose permits, licenses, clearances and other similar authorizations issued by various government agencies as presently required for such development, and vesting in one agency the exclusive authority and responsibility for the development of mini-hydroelectric power;

(4) To apportion a part of the realty and special privilege taxes and other economic benefits of the hydroelectric power potential to the respective localities where they are established; and

(5) To provide a contractual framework wherein some stability of conditions can be relied upon for long-term financing purposes.

SECTION 4. Definition of Terms. - As used in this Act, the following terms shall be understood, applied and construed as follows:

(1) "Hydroelectric power" shall refer to electric power produced by utilizing the kinetic energy of falling or running water to turn a turbine generator;

(2) "Mini-hydroelectric power plant" shall refer to an electric-power-generating plant which: (a) utilizes the kinetic energy of falling or running water (run-of-river hydro plants) to turn the turbine generator producing electricity; and (b) has an installed capacity of not less than 101 kilowatts nor more than 10,000 kilowatts;

(3) "Mini-hydroelectric power development" shall refer to the construction and installation of a hydroelectric-power-generating plant and its auxiliary facilities such as transmission, substation and machine shop with an installed capacity of not less than 101 kilowatts nor more than 10,000 kilowatts;

(4) "Mini-hydroelectric power developer" or "developer" shall refer to any individual, cooperative, corporation or association engaged in the construction and installation the of a hydroelectric power-generating plant and with an installed capacity of not less than 101 kilowatts nor more than 10,000 kilowatts;

(5) "Domestic use" shall refer to the utilization of water for drinking, washing, bathing, cooking, or other household need, home gardens and watering of lawns or domestic animals;

(6) "Municipal use" shall refer to the utilization of water for supplying the water requirement of the community; and

(7) "Irrigation use" shall refer to the utilization of water for producing agricultural crops.

SECTION 5. Agency in Charge. - The Office of Energy Affairs, hereinafter referred to as the OEA, shall be the sole and exclusive authority responsible for the regulation, promotion and administration of mini-hydroelectric power development and the implementation of the provisions of this Act.

SECTION 6. Powers and Duties of the OEA. - The OEA shall exercise the following powers and duties:

(1) Within six (6) months from approval of this Act, promulgate, in consultation with the National Water Resources Board (NWRB), such rules and regulations as may be necessary for the proper implementation and administration of this Act;

(2) Process and approve applications for mini-hydroelectric power development,

imposing such terms and conditions as it may deem necessary to promote the objectives of this Act, subject to the following standards, namely:

(a) The applicant must be a citizen of the Philippines or a corporation, partnership, association or joint stock company, constituted and organized under the laws of the Philippines, at least sixty percent (60%) of the stock or paid-up capital of which belongs to citizens of the Philippines;

(b) The applicant must prove that the operation of the proposed mini-hydroelectric project and the authorization to do business will promote the public interest in a proper and suitable manner and, for this purpose, within six (6) months from approval of this Act, formulate, in consultation with the National Economic and Development Authority (NEDA), the National Electrification Administration (NEA), and the Department of Trade and Industry (DTI), standards to measure the technical and financial capability of the developer; and

(c) The applicant must be financially capable of undertaking the proposed mini-hydroelectric project and meeting the responsibilities incident to its operations;

(3) Charge reasonable fees in connection with the filing, processing, evaluation, and approval of applications for mini-hydroelectric power development in all suitable sites in the country;

(4) Exclusive authority to issue permits and licenses relative to mini-hydroelectric power development;

(5) Require the developer to post a bond or other guarantee of sufficient amount in favor of the Government and with surety or sureties satisfactory to the OEA upon the faithful performance by the contractor of any or all of the obligations under the pursuant to the contract within sixty (60) days after the effective date of the contract; and

(6) Generally, exercise all the powers necessary or incidental to attain the purposes of this Act and other laws vesting additional powers on the OEA.

SECTION 7. Sale of Power. - The mini-hydroelectric power developer must first offer to sell electric power to either the National Power Corporation (NPC), franchised private electric utilities or electric cooperatives at a price per kilowatt-hour based on the NPC's or the utility's avoided cost which shall refer to the costs of the affected grids had NPC generated the equivalent electric power itself before disposing the power to third parties. The NPC shall allow the mini-hydroelectric developer to deliver its generated electricity to the developer's customers through existing NPC line so as to serve such third parties under terms which are to be mutually agreed upon or, if no agreement can be reached, under terms set by the OEA.

SECTION 8. Non-exclusive Development. - Development of less than fifty percent (50%) of the hydroelectric power potential of the proposed site shall be non-exclusive. The OEA, after a thorough review and evaluation of its technical and economic viability, may grant the development of the site to its full power potential to any qualified developer: Provided, That first option shall be given to the original developer: Provided, further That, in case the original developer forfeits his option to pursue development of the hydroelectric power resource to its full potential, it shall be reimbursed by the successor-developer of the value of its investment based on the declared value of the development for real estate tax purposes over the immediately preceding three (3) years or, in case the declared value

over said period differs, on the average value thereof.

SECTION 9. Mandatory Restoration Work. - In all cases where the proposed mini-hydroelectric power development entails the closure or stoppage of existing water outlets, passageways, connections, conduits, apertures or the like from the water source, it shall be mandatory for the developer to restore or reengineer such water outlets, passageways, connections, conduits, apertures or the like on its account or expense, and in such manner that existing users or appropriators shall not be permanently deprived of their use or appropriation.

SECTION 10. Tax Incentives. – Any person, natural or juridical, authorized to engage in mini-hydroelectric power development shall be granted the following tax incentives or privileges:

(1) ***Special Privilege Tax Rates.*** – The tax payable by all grantees to develop potential sites for hydroelectric power and to generate, transmit and sell electric power shall be two percent (2%) of their gross receipts from the sale of electric power and from transactions incident to the generation, transmission and sale of electric power. Such privilege tax shall be made payable to the Commissioner of Internal Revenue or his duly authorized representative on or before the 20th day of the month following the end of each calendar or fiscal quarter;

(2) ***Tax - and Duty-free Importation of Machinery, Equipment and Materials.*** – Within seven (7) years from the date of award importation of machinery and equipment, materials and parts shipped with such machinery and equipment including control and communication equipment shall not be subject to tariff duties and value added tax: Provided, That the said machinery, equipment, materials and parts: (a) are not manufactured domestically in reasonable quantity and quality at reasonable prices; (b) are directly and actually needed and will be used exclusively in the construction and impounding of water transformation into energy, and transmission of electric energy to the point of use; and (c) are covered by shipping documents in the name of the duly registered developer to whom the shipment will be directly delivered by customs authorities: Provided, further, That prior approval of the OEA was obtained before the importation of such machinery, equipment, materials and parts was made:

(3) ***Tax Credit on Domestic Capital Equipment*** – A tax credit equivalent to one hundred percent (100%) of the value of the value-added tax and customs duties that would have been paid on the machinery, equipment, materials and parts had these items been imported shall be given to an awardee-developer who purchases machinery, equipment, materials and parts from a domestic manufacturer: Provided, That such machinery, equipment, materials and parts are directly needed and will be used exclusively by the awardee-developer: Provided, further, That prior approval by the OEA was obtained by the local manufacturer. Provided, finally, That the sale of such machinery, equipment, materials and parts shall be made within seven (7) years from the date of award;

(4) ***Special Realty Tax Rates on Equipment and Machinery.*** - Any provision of the Real Property Tax Code or any other law to the contrary notwithstanding, realty and other taxes on civil works, equipment, machinery and other improvements of a registered mini-hydroelectric power developer shall not exceed two and a half percent (2.5%) of their original cost;

(5) ***Value-added Tax Exemption.*** – Exemption from the ten percent (10%) value-added tax on the gross receipts derived from the sale of electric power whether wheeled through the NPC grid or through existing electric utility lines; and

(6) ***Income Tax Holiday.*** – For seven (7) years from the start of commercial operation, a registered mini-hydroelectric power developer shall be fully exempt from income taxes levied by the National Government.

SECTION 11. Disposition and Allotment of Special Privilege Taxes – If the mini-hydroelectric power development is located in city sixty percent (60%) of the special privilege taxes collected shall accrue to the city and forty percent (40%) to the National Government. If the mini-hydroelectric power development is located in a municipality, thirty percent (30%) of the special privilege taxes collected shall accrue to the municipality, thirty percent (30%) to the province and forty percent (40%) to the National Government.

SECTION 12. Term of Contract. – The term of contract shall be for a period of twenty-five (25) years extendible for another twenty-five (25) years under the same original terms and conditions: Provided, That said awardee has complied faithfully with all terms and conditions of the award.

SECTION 13. Official Development Assistance. - The provision of Executive Order No. 230 of 1986, on the power of the NEDA Board, and the rules and regulations governing the evaluation and authorization for the availment of Official Development Assistance notwithstanding, the privatization of the mini-hydroelectric power plants as provided for in the Act shall be eligible for foreign loans and grants without further evaluation by the NEDA Board, subject to Section 21, Article XII of the Constitution.

SECTION 14. Reporting Requirements. – The OEA shall submit an annual report to the Congress of the Philippines with respect to the implementation of this Act.

SECTION 15. Repealing Clause. – All laws, decrees, executive orders, rules and regulations, or parts thereof inconsistent with this Act are hereby repealed, amended or modified accordingly.

SECTION 16. Effectivity. – This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved,

ORIGINAL SIGNED

JOVITO R. SALONGA
President of the Senate

ORIGINAL SIGNED

RAMON V. MITRA
Speaker of the House of Representatives

This Act which is a consolidation of House Bill No. 32061 and Senate Bill No. 901 was finally passed by the House of Representatives and the Senate on June 5, 1991 and June 6, 1991, respectively.

ORIGINAL SIGNED

EDWIN P. ACOBA
Secretary of the Senate

ORIGINAL SIGNED

CAMILO L. SABIO
Secretary General House of Representatives

Approved: September 12, 1991

IRR OF REPUBLIC ACT NO. 7156

RULE AND REGULATIONS GOVERNING THE FILING PROCESSING OF APPLICATIONS FOR AUTHORITY TO CONSTRUCT AND OPERATE MINI-HYDROELECTRIC POWER PLANTS AND PROVIDING FOR THE TERMS AND CONDITIONS OF THE OPERATING CONTRACTS CONCLUDED PURSUANT THERETO

Pursuant to the authority vested upon it by SECTION. 6 (1) and (4) of Republic Act No. 7156, otherwise known as the Mini-Hydroelectric Power Incentives Act, the Office of Energy Affairs hereby adopts and promulgates the following rules and regulations governing the filing and processing of applications for authority to construct and operate mini-hydroelectric power plants providing for the terms and conditions of the operating contacts concluded pursuant thereto for the contracts concluded pursuant thereto for the information and guidance of all concerned.

RULE I
GENERAL PROVISIONS

SECTION 1. Title. – These rules shall be known and cited as the rules and regulations governing the construction and operation of mini-hydroelectric (mini-hydro) power plants.

SECTION 2. Definition of Terms. – Unless the context otherwise indicates, the following terms as used in these rules shall have the following meanings:

(a) Avoided cost shall refer to the costs of the affected grids had NAPOCOR generated the equivalent electric power itself before disposing the power to third parties.

(b) Capacity shall refer to the electric load for which a generating unit or other electrical apparatus is rated by the manufacturer; its unit of measurement is usually kilowatts (kw).

(c) Electric cooperative shall refer to cooperatives duly authorized to supply electricity or empowered to supply electric service.

(d) Electric utility shall refer to an electric cooperative, local government-owned or privately owned, operating a grid within the NAPOCOR grids or other electric systems.

(e) End-use shall refer to a user of electricity generated by a mini-hydro power plant.

(f) Feasibility study shall refer to a study which is based on data specific to the site where the mini-hydro power plant will be erected.

(g) Franchised area shall refer to a geographical area franchised to an electric utility for electricity supply to end-users.

(h) Grid operator shall refer to any operator of electrical systems of interconnected transmission lines, substations and generating plants of the National Power Corporation or the concerned electric utility as the case may be.

(i) Hydroelectric power shall refer to electric power produced by utilizing the kinetic energy of falling or running water to turn a turbine generator.

(j) Mini-hydroelectric power developer or developer shall refer to any individual, cooperative, corporation or association that is engaged in or one who intends to engage in the construction, installation and operation of a hydroelectric-power-generating plant with an installed

capacity of not less than 101 kilowatts nor more than 10,000 kilowatts. An end-user may also be a developer.

(k) Mini-hydroelectric power development shall refer to the construction and installation of a hydroelectric-power-generating plant and its auxiliary facilities such as transmission, substation and machine shop with an installed capacity of not less than 101 kilowatts nor more than 10,000 kilowatts.

(l) Mini-hydroelectric power plant shall refer to an electric-power-generating plant which (a) utilizes kinetic energy of falling or running water (run-of-river hydro plants) to turn a turbine generator producing electricity; and (b) has an installed capacity of not less than 101 kilowatts nor more than 10,000 kilowatts.

(m) NAPOCOR shall refer to the National Power Corporation created pursuant to R.A. 6395.

(n) OEA shall mean the Office of Energy Affairs.

(o) Rate shall refer to any price or tariffs with respect to sale or purchase of electric energy, usually measured in pesos per kilowatt-hour for energy payment and pesos per kilowatt for capacity payments.

(p) Person includes every individual not otherwise disqualified by law, or corporation, partnership, association or joint company, constituted and organized under the laws of the Philippines, at least sixty percent (60%) of the stock or paid-up capital of which belongs to the citizens of the Philippines.

(q) Water resource shall refer to a surface water course where the flow to be used by the turbines of the mini-hydro power plant is diverted form and restituted to after having passed the installations.

(r) Wheeling shall refer to the electric energy transmission services extended by NAPOCOR or an electric utility to enable the developer of a mini-hydro power plant to transmit power to another electric grid or end-user.

SECTION 3. Who May Apply. – Any person defined in Section 2.p if these rules, not otherwise disqualified by law, any apply for authority to construct and operate a mini-hydroelectric power plant. In cases of holders of permits to operate mini-hydro power plants existing and operating at the time of the effectivity of these rules and who wish to avail of the incentive under R.A. 7156, registration and payment with the OEA of the application fee as provided in these rules shall be sufficient bases for the granting of their operating contracts, provided, that they register within six (6) months form the effectivity of these rules.

SECTION 4. Content of the Application. – All applications shall be made in writing, verified, accomplished in two (2) copies, and must show, among other things, the jurisdictional facts, the name and address of the applicant, the brief description of the project stating, among others, how water will be used, amount of water needed, power to be generated, etc., and place where applicant proposes to construct a mini-hydro power plant.

SECTION 5. Documents to Accompany Application. – All applications shall be accompanied by such documents as would reasonably establish prima facie the truth of the factual allegation thereof, including but not limited to the following:

(a) Certificate of Registration from the Securities and Exchange Commission together with a copy of Articles of Incorporation or Certification from the Department of Trade and Industry in case the applicant is a single proprietorship;

(b) Proposed Memorandum of Agreement between the applicant and either the NAPOCOR, the franchised electric utility, or other end-user as the case may be, on power purchase as well as on the use of existing lines and the associated wheeling fees, as applicable;

(c) Comprehensive feasibility study providing the technical, economic, financial, social, as well as the administrative viability of the project. It shall likewise include a feasibility reports particularly highlighting the activities for the proposed project, such as:

(1) Data collection and review of any available pre-feasibility study, other pertinent data and study reports relevant to the proposed project;

(2) Detailed program for all survey and investigation works required in the study, such as topographic survey which will enable utilization of maps of sufficient scale (1:500) for layout purposes, geologic mapping, drilling (if any), establishment of gauging station, and others which may be deemed necessary;

(3) Site inspection and field reconnaissance from time to time to confirm data obtained and design made;

(4) Necessary hydrologic and hydraulic studies;

(5) Plant operation and maintenance studies for optimization and determination of the power and energy capability of the project;

(6) Determination as to whether or not the power and energy from the proposed mini-hydro power facility is marketable as an isolated facility;

(7) Alternative layout of developments on the basis of topographic data available for optimization of selected parameters in the project;

(8) Detailed layout and preliminary design to establish configuration of each structure in the development;

(9) Establishment of unit prices and preparation of detailed quantity and cost estimates of the recommended schemes;

(10) Project Description shall be submitted according to the guidelines set by the Department of Environment and Natural Resources (DENR). which should incorporate the measures that a project proponent intends to take to ensure that the adverse effects of the proposed project on the environment will be avoided if not minimized. It should also include a watershed development plan and the endorsement from the Local Government Unit;

(11) Construction schedule for the proposed project;

(12) Economic and financial evaluation including sensitivity analysis on specific factors;

(13) Recommendation on additional investigation program to be carried out during the detailed design and implementation phase, if deemed necessary; and

(14) Manual for operations of the power plant which shall be prepared in respect of all requirements provided by law for the operation of a mini-hydro power plant. If power is old to the grid, the operation of the plant shall be governed by dispatch rules assigned by the grid operator.

(d) Processing fee of one (1) Peso (P 1.00) per kilowatt estimated installed capacity.

(e) Such other papers and documents as may be required by the OEA.

SECTION. 6. Financial Requirements. – In determining the financial capability of the applicant, the OEA shall be guided by the following financial indicators:

(a) The applicant has minimum working capital of at least Thirty-Five Thousand Pesos (P 35,000.00) per kilowatt to support the first two (2) years of the project's work program and must demonstrate that it has the capability to raise additional working capital of at least sixty percent (60%) of the estimated project cost to fund the remaining works and the plant's subsequent operations;

(b) Current ratio of 1.5:1;

(c) Debt equity ratio of 3:1; and

(d) Such other factors which would substantially establish the applicant's financial capability.

SECTION 7. The amounts specified in Section 6.a shall be adjusted accordingly in cases of extraordinary inflation of the Philippines Peso in accordance with the provisions of Article 1250 of the Civil Code of the Philippines.

SECTION 8. Defective Application. –When an application is filed and it is found to be defective either in form or in substance or incomplete as to certain data, the OEA shall within two (2) days inform the applicant of such a fact in writing, with notice that the correction or deficiency must be supplied within fifteen (15) working days from receipt of the notice.

If the applicant fails to supply the required correction within the said period, the application shall be deemed to have been abandoned and forthwith, the same shall be returned to the applicant together with all the documents attached thereto. However, for good cause shown, the period may be extended by the OEA upon written request made before the expiration of the period sought to be extended.

RULE II

CRITERIA IN DETERMINING THE APPROVAL OR DISAPPROVAL OF THE APPLICATION

SECTION 1. The OEA, in processing an application, shall be guided, but not limited, the following:

(a) The operation of the proposed mini-hydro power projects will promote public interest in a proper and suitable manner.

(b) The applicant is financially and technically capable of undertaking the proposed mini-hydro power project and meeting the responsibilities incident to its operation.

(c) The construction and operation thereof will not result in the closure or stoppage of existing water outlets, passageways, conduits, or the like from the water source.

(d) The requirements of public safety and Environmental Compliance Certificate are complied with.

(e) Generally, the construction and operations thereof will promote and achieve the purposes of R.A. 7156.

SECTION 2. Processing Period. – The OEA shall resolve the application within four (4) months from receipt thereof provided that all the documents and clearances contemplated in these rules are timely submitted and no objection have been raised by concerned parties.

RULE III

GRANTING OF LICENSE OR AUTHORITY AND EXECUTION OF OPERATING CONTRACT

SECTION 1. Issuance of Authority or License. – If the OEA approves an application, it shall issue a certificate of authority or license to construct and operate a mini-hydro power plant to the applicant or to the person in whose name the application was made and an operating contract detailing the rights and obligation between the OEA and the developer shall forthwith be executed.

SECTION 2. Effectivity. – Unless sooner revoked for cause, the license shall be co-terminus with the term of the mini-hydro power operating contract which shall be for a period of 25 years, renewable for another 25 years.

SECTION 3. Grounds for Revocation. – any of the following among other things, may constitute a ground for the revocation or cancellation of the license and the operating contract:

(a) Failure of the licensee/contractor to comply with the conditions and requirements under which the license was issued;

(b) Licensee's/contractor's violation of any of the provisions of the operating contract or R.A. 7156.

SECTION 4. The mini-hydro power plant operating contract contemplated under these rules shall contain the following rights and privileges as well as the obligations of the developer:

RIGHTS AND PRIVILEGES OF THE DEVELOPER

(a) The developer shall be fully exempted from income taxes levied by the National Government for seven (7) years from the start of commercial operations.

(b) Within seven (7) years from the date of awarding the contract, it shall be exempted from payment of tariff duties and value-added tax on the importations into the Philippines of all machinery and equipment including control and communication equipment:

Provided, That said machinery, equipment, materials and parts: (a) are not manufactured domestically in reasonable quantity and quality at reasonable prices; (b) are directly and actually needed and will be used exclusively in the construction and impounding of water, transformation into energy, and transmission of electric energy to the point of use; and (c) are covered by shipping documents in the name of the duly registered developer to whom the shipment will be directly delivered by customs authorities: Provided, further, That prior approval of the OEA has been obtained before the importation of such machinery, equipment, materials and parts is made.

(c) The developer that purchases machinery, equipment, materials and parts from a domestic manufacturer shall be given a tax credit equivalent to one hundred percent (100%) of the value of the value-added tax and customs duties that would have been paid on the machinery, equipment, materials and parts had these items been imported. The tax credit on domestic capital equipment shall be given: Provided, That the sale of such machinery, equipment, materials and parts shall be made within seven (7) years from the date of issuance/awarding and if such machinery, equipment, materials and parts are directly needed and will be used exclusively by the developer. The approval by the OEA shall also by the developer. The approval by the OEA shall also be obtained by the local manufacturer.

(d) The developer shall enjoy special realty tax rates on equipment and machinery not exceeding two and a half percent (2.5%) of their original cost.

(e) The developer shall be exempted from the ten percent (10%) value-added tax on the gross receipts derived from the sale of electric power whether wheeled through the NAPOCOR grid or through existing electric utility lines.

OBLIGATIONS OF THE DEVELOPER

(a) The developer shall perform all mini-hydro power operations and provide all necessary services, technology and financing in connection therewith. It shall commence construction of the project within twelve (12) months from the awarding of the contract. An extension may be applied for another twelve (12) months for justifiable reasons, as determined by the OEA.

(b) The developer shall be responsible for securing and complying with all the legal requirements related to the construction of mini-hydro power plant facilities and shall be subject to the provisions of laws of general application relating to labor, health, safety and ecology.

(c) The developer shall develop and operate the field in accordance with accepted good mini-hydro power field practices using modern and scientific methods to enable maximum economic production of mini-hydro power and to avoid hazards to life, health and waters pursuant to an safeguard the watershed area of its mini-hydro power plant system against illegal logging and other forms of forest destruction and/or assist the DENR in the enforcement of forestry rules and regulations or rehabilitation of the watershed area.

(d) The developer shall furnish the OEA promptly with mini-hydro power information, data and reports relative to the operations, except for proprietary techniques use in developing such information, data and reports. It shall report to the OEA any socio-economic project/programs implemented in the mini-hydro power site/community.

(e) The developer shall maintain detailed financial and technical records and accounts of its operations.

(f) The developer shall conform to regulations regarding, among other, safety, demarcation of the contract area, noninterference with rights of other operations such as irrigation, geothermal, and coal mining, housing development, access roads, etc. It shall also undertake to negotiate for the acquisition, by whatever legal mode, of private properties affected by the project and the establishment of easement for the dam, access roads and the related structures/facilities. It shall be strictly required to observe its construction methods and techniques which could not hamper or disrupt the operations of other infrastructures at the upstream, downstream or near the vicinity of the projects site. In all cases where the proposed mini-hydro power development entails the closure or stoppage of existing water outlets, passageways, connections, conduits, apertures or the like from the water source, it shall be mandatory for the developer to restore or reengineer such water outlets, passageways, connections, conduits, apertures or the like on its account or expense, and in such a manner that existing users or appropriators shall not be permanently deprived of their use or appropriation.

(g) The developer shall maintain all meters and measuring equipment in good order and allow access to these as well as the

development sites and operations to inspectors authorized by the OEA.

(h) The developer shall operate and maintain the mini-hydro power plant or system at maximum efficiency as possible and promote highest possible production of power and energy. It shall provide the OEA with a quarterly report on electricity generated by the power plant.

(i) The developer shall negotiate on the provision for interconnection with either NAPOCOR, the local electric cooperative grid or electric utilities and shall furnish the OEA with a copy of its sales contract with the buyer. It shall first offer to sell electric power to either NAPOCOR, franchised private electric utilities or electric cooperatives. It shall install adequate protective devices at the power plant which are required to ensure safe and unperturbed operation of the local electricity network to which the plant is interconnected.

(j) The developer shall allow the OEA to inspect the plant during and after its construction, and shall also provide the OEA documents required for proper monitoring and planning purposes.

(k) At all times, the developer shall observe and maintain proper hygiene and sanitation at the projects site. Garbage, waste, chemicals and the like shall be disposed off or dumped properly on garbage pits. Chemicals such as acids, oils and grease shall be stored properly and shall not be allowed to contaminate the environment.

(l) The developer shall seek the approval of the OEA for any major change in its work program.

(m) The developer shall allow appropriate officials of the Bureau of Internal Revenue and authorized representatives of the OEA at all reasonable times full access to accounts, books and records relating to the mini-hydro power operations for tax and other fiscal operations.

(n) The developer shall be subject to Philippine income tax after seven (7) years of commercial operation. The OEA shall be furnished a copy of the official receipt covering payment to the Bureau of Internal Revenue for privilege tax paid, supported with pertinent documents required in the application for tax credits on domestic capital equipment procured in the Philippines.

(o) The developer shall give priority in employment to Philippine nationals. It shall agree to employ qualified Filipino personnel in the operations and, after commercial production commences, shall undertake, upon prior approval of the OEA, the schooling and training of Filipino personnel for labor and staff position, including administrative, technical and executive management positions. It shall undertake a program of training assistance for OEA. Costs and expenses of training Filipino personnel for the developer's own employment shall be included in the operating expenses. Costs and expenses of a program of training for the OEA's personnel shall be borne on a basis to be agreed upon by the OEA and the developer. The employment of alien technical and specialized personnel (including the immediate members of their families) who may exercise their professions solely for the mini-hydro power operations of the developer shall not be unreasonably withheld. However, the developer shall undertake a program of technology transfer by assigning at least one (1) understudy to work with each of the alien technical and specialized personnel. It shall be clear that upon the termination of the employment or connection of any such alien with developer, the pertinent

laws and regulations on immigration shall immediately apply to him and his immediate family.

(p) The developer shall post a bond or other guarantee of sufficient amount in favor of the OEA and with surety or sureties satisfactory to the OEA conditioned upon the faithful performance by the developer of any or all of the obligations under and pursuant to the contract within sixty (60) days after the effective date of the contract.

SECTION 5. The OEA shall verify and monitor the standards applied by the developer of the mini-hydro power plant and ascertain whether or not the construction and operation of the mini-hydro power plant by the developer is in accordance with the approved design and standards of optimum safety/electricity generation.

SECTION 6. The OEA shall appoint the developer its attorney-in-fact and shall give and grant to the developer authority to act for and in its behalf in the negotiation and conclusions of agreements and payment for the use of surface rights, rights-of-way and similar rights for the account of the developer so as to enable the developer to have ingress into and egress from the contract area and to perform all mini-hydro power operations in accordance with this contract and otherwise for any and all purposes necessary or proper in connection with this contract.

SECTION 7. Suspension of Obligations. – Any failure or delay on the part of either party in the performance of its obligations or duties hereunder shall be excused to the extent attributable to Force Majeure. If operations are delayed, curtailed or prevented by such causes, the time for enjoying the rights and carrying out the obligations hereunder shall be extended for a period equal to the period thus involved: Provided, however, That if operations are delayed, curtailed or prevented by force majeure for a continuous period of three (3) months, the operating contract may thereafter be terminated by either party at anytime that the force majeure exists. Force majeure shall include Acts of God, unavoidable accidents, acts of war or conditions arising out of or attributable to war (declared or undeclared), riots, insurrections, strikes, lockouts, and other similar labor disturbances, floods and storms. The party whose ability to perform its obligation is so affected shall notify the other party thereof in writing stating the cause, and both parties shall do all reasonably within their power to remove such cause.

RULE IV

NONEXCLUSIVE DEVELOPMENT

SECTION 1. The development of less than fifty percent (50%) of the mini-hydro power potential of the proposed site shall be nonexclusive. The OEA, after a thorough review and evaluation of its technical and economic viability, may grant the development of the site to its full power potential to any qualified developer forfeits his option shall be given to the original developer: Provided, further, That in case the original developer forfeits his option to pursue development of the hydroelectric power resource to its fullest potential, it shall be reimbursed by the successor developer of the value of its investment based on the declared value of the development for real estate tax purposes over the immediately preceding three (3) years or, in case the declared value over said period differs, on the average value thereof.

SECTION 2. Nonexclusive Permit. – The OEA may issue, on a first-come-first-served basis, a nonexclusive permit, to conduct a three-month reconnaissance study on the mini-hydro power potential of an area.

RULE V

TERMS AND CONDITIONS FOR THE PURCHASE AND TRANSMISSION OF ELECTRICITY GENERATED

SECTION 1. The NAPOCOR shall purchase the maximum electricity generated by the mini-hydro power plant in case the mini-hydro power plant cannot be connected with any other electric utilities or end-users.

SECTION 2. Use of Transmission Lines. – The NAPOCOR and other electric utilities shall allow the mini-hydro power developer to deliver its generated electricity to the developer's customers through their existing lines so as to serve such third parties under terms which are to be mutually agreed upon, or if no agreement can be reached, under terms set by the OEA.

SECTION 3. Rates for the Purchase of Electricity. – The rates for the purchase of electricity that the developer may charge to NAPOCOR and other electric utilities shall be at a price agreed upon by the parties. Such price shall be based on NAPOCOR's or the utility's avoided cost which shall refer to the costs of the affected grids had NAPOCOR generated the electric power itself before disposing the power to third parties.

SECTION 4. In cases where a developer needs new transmission facilities to bring the power from the mini-hydro power plant to such third parties, the developer shall negotiate with NAPOCOR or electric utility, as the case may be, for possible sharing of the cost of the facilities construction.

RULE VI

SETTLEMENT OF CONFLICTS

SECTION 1. All conflicts or disputes arising from the implementation of R.A. 7156 and the provisions of these rules, except those arising from debtor-creditor relations, shall be under the jurisdiction of the OEA.

RULE VII

SECTION 1. These rules and any amendments thereof shall take effect fifteen (15) days after publication in the Official Gazette.

Done this 10th day of March, nineteen hundred and ninety-two in Makati, Metro Manila.

(Signed)

RUFINO B. BOMASANG
Acting Executive Director
Office of Energy Affairs

Attested by:

GRISELDA J. G. BAUSA
Officer-in-Charge
Office of the Deputy Executive Director for Energy Operations

PRESIDENTIAL DECREE NO. 1442

AN ACT TO PROMOTE THE EXPLORATION AND DEVELOPMENT OF GEOTHERMAL RESOURCES

WHEREAS, it is necessary for the domestic and industrial development of the country to reduce our dependence on imported energy supplies and accelerate the development of geothermal resources which have been identified as a viable and untapped economical source of energy;

WHEREAS, it is in the national interest to allow service contracts for financial, technical, management or other forms of assistance with qualified domestic and foreign entities, for the exploration, development, exploitation, or utilization of the country's geothermal resources;

NOW THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, do hereby order and decree as follows:

SECTION 1. Exploration of and Development of Geothermal Resources by the Government. – Subject to existing private rights, the Government may directly explore for, exploit and develop geothermal resources. It may also indirectly undertake the same under service contracts awarded through public bidding or concluded through negotiation, with a domestic foreign contractor who must be technically and financially capable of undertaking the operations required in the service contract: Provided, That if the service contractor shall furnish the necessary services, technology and financing, the service contractor may be paid a fine not exceeding forty percentum (40%) of the balance of the gross value of the geothermal operations after deducting the necessary expenses incurred in the operations: Provided, further, That the execution of the activities and operations subject of the service contract, including the implementation of the work program and accounting procedures agreed upon, shall at all times be subject to direct supervision of the Government, through the Bureau of Energy Development.

Service contracts as above authorized shall be subject to approval of the Department of Energy.

Geothermal resources mean (a) all products of geothermal processes, embracing indigenous steam, hot water and hot brines; (b) steam and other gases, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations; (c) heat or associated energy found in geothermal formations; and (d) any by-product derived from them.

SECTION. 2. Geothermal Contract Areas. – Service contracts, as herein authorized, may cover public lands, government geothermal reservations, including those presently administered or unappropriated areas, as well as areas covered by exploration permits or leases granted under Republic Act No. 5092.

Service contracts for exploration and development of geothermal resources may also cover private lands, or other lands subject of agricultural, mining, petroleum or other rights devoted to purposes other than the exploration of geothermal energy: Provided, That the right to enter private lands, in the absence of a voluntary agreement with the private landowner, upon application of the contractor to the Court of First Instance of the province or the municipal court of the municipality where the land is situated, and upon posting of the necessary bond as may be fixed by said court, be allowed by the court subject to payment of reasonable compensation.

SECTION 3. Conversion of Geothermal Exploration Permits and Leases to Service Contract. – Holders of valid geothermal

exploration permits and geothermal leases granted by the Government prior to January 17, 1973, pursuant to Republic Act No. 5092, shall enter into service contracts as herein provided relative to the areas owned by their respective permits or leases within six months from the effective date of this Decree; and, in default thereof, the geothermal exploration permits and geothermal leases shall be deemed automatically cancelled and the area covered thereby shall revert back to the State.

All geothermal exploration permit applications filed under Republic Act No. 5092 shall be deemed withdrawn and of no effect as of the effective date of this Decree.

SECTION. 4. Privileges of Service Contractors. – The provisions of any law to the contrary notwithstanding, a service contract executed under this Decree may provide that the contractor shall have the following privileges:

(a) Exemption from payment of tariff duties and compensating tax on the importation of machinery and equipment, and spare parts and all materials required for geothermal operations subject to such conditions as may be imposed by the Director of Energy Development: Provided, That should the contractor or its sub-contractor sell, transfer, or dispose of these machinery, equipment, spare parts or materials without the prior consent of the Bureau of Energy Development, it shall pay twice the amount of the taxes and duties not paid because of the exemption granted;

(b) Entry, upon the sole approval of the Bureau of Energy Development which shall not be unreasonably withheld, and subject to such conditions as it may impose, of alien technical and specialized personnel (including the immediate members of their families), who may exercise their profession solely for the operations of the contractor as prescribed in its contract with the Government under this Act;

(c) Subject to the regulations of the Central Bank, repatriation of capital investment and remittance of earnings derived from its service contract operations, as well as such sums as may be necessary to cover principal and interest of foreign obligations incurred for the geothermal operations.

(d) Other privileges provided in Section 12 of Presidential Decree No. 87 as may be applied to the geothermal operation.

SECTION 5. Exploration Permits. – In cases where discovered geothermal resources are deemed inappropriate for service contract arrangements in view of economic and/or technical reasons, the Bureau of Energy Development may issue development and exploitation permits for such resources and formulate the applicable rules and regulations to govern the same.

SECTION 6. Rules and Regulations. – The Director of Energy Development shall be vested with the authority to promulgate such rules and regulations as may be necessary to implement the provisions of this Act, subject to approval by the Secretary of Energy.

SECTION 7. Repealing Clause. – The provisions of Republic Act No. 5092 and other laws, rules and regulations inconsistent with this Decree are hereby repealed.

SECTION 8. Effectivity. – This Decree shall take effect immediately upon approval.

Done in the City of Manila, this 11th day of June, in the year of Our Lord, nineteen hundred and seventy-eight.

(Signed)
FERDINAND E. MARCOS
President

By the President:
(Signed)
JACOB C. CLAVE
President Executive Assistant

C. REPUBLIC ACT NO. 9367

AN ACT TO DIRECT THE USE OF BIOFUELS, ESTABLISHING FOR THIS PURPOSE THE BIOFUEL PROGRAM, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

SECTION 1. Short Title – This act shall be known as the "Biofuels Act of 2006".

SECTION. 2. Declaration Policy – It is hereby declared the policy of the State to reduce dependence on imported fuels with due regard to the protection of public health, the environment, and the natural ecosystems consistent with the country's sustainable economic growth that would expand opportunities for livelihood by mandating the use of biofuels as a measure to:

(a) develop and utilize indigenous renewable and sustainable-sources clean energy sources to reduce dependence on imported oil.

(b) mitigate toxic and greenhouse gas (GSG) emissions;

(c) increase rural employment and income; and

(d) ensure the availability of alternative and renewable clean energy without any detriment to the natural ecosystem, biodiversity and food reserves of the country.

SECTION 3. Definition of terms – As used in this act, the following term shall be taken to means as follows:

(a) ***AFTA*** – shall refer to the ASIAN free trade agreement initiated by the Association of South East Asian Nation;

(b) ***Alternative Fuel Vehicle/Engine*** – shall refer to vehicle/engines that use alternative fuels such as biodiesel, bioethanel, natural gas, electricity, hydrogen and automotive LPG instead of gasoline and diesel;

(c) ***Bioethanol fuel*** – shall refer to ethanol (C2H30H) produce from feedback and other biomass.

(d) ***Biodiesel*** – shall refer to Fatty Acid Methyl Ester (FAME) or mono-alkyl ester delivered from vegetable oil, or animal fats and other biomass-derived oils that shall be technically proven and approved by the DOE for use in diesel engines, with quality specifications in accordance with the Philippine National Standards (PNS)

(e) ***Bioethanol fuels*** – shall refer to the hydrous and anhydrous bioethanol suitably denatured for use as motor fuel with quality specifications in accordance with the PNS;

(f) ***Biofuel*** – shall refer to the bioethanol and biodiesel and other fuels made from biomass and primary used for motive, thermal power generation, with quality specifications in accordance with PNS;

(g) ***Biomass*** – shall refer to any organic matter, particularly cellulosic or ligno-cellulosic matter, which is available on a renewable or recurring basis, including trees, crops and associated residues, plant fiber, poultry litter and other animal wastes, industrial wastes and biodegradable component of solid waste;

(h) ***DA*** – shall refer to the Department of Agriculture created under Executive Order No. 116, as amended;

(i) ***Diesel*** – shall refer to the refined petroleum distillate, which may contain small amount of hydrocarbon or nonhydrocarbon additives to improve ignition quality or other characteristic, suitable for compression ignition engine and other suitable types of engines with quality specifications in accordance with PNS;

(j) ***DENR*** – shall refer to the Department of Environment and Natural Resources created under Executive No. 192, as amended;

(k) ***DOE*** – shall refer to the Department of Energy created under Republic Act No. 7638, as amended;

(l) ***DOLE*** – shall refer to the Department of Labor and Employment created under Executive Order No. 126, as amended;

(m) ***DOF*** – shall refer to the Department of Finance created under Administrative Orders No. 127 and 127-A;

(n) ***DOST*** – shall refer to the Department of Science and Technology created under Republic Act No. 2067;

(o) ***DOTC*** – shall refer to the Department of Transportation and Communication created under Executive Order No. 125-A, as amended;

(p) ***DTI*** – shall refer to the Department of Trade and Industry created under Executive Order No. 133;

(q) ***Feedstock*** – shall refer to the organic sources such as molasses, sugarcane, cassava, coconut, jatropha, sweet sorghum or other biomass used in the production of biofuels;

(r) ***Gasoline*** – shall refer to volatile mixture of liquid hydrocarbon, generally containing small amounts of additives suitable for use as fuel in spark-ignition internal combustion engines with quality specifications in accordance with the PNS;

(s) ***Motor fuel*** – shall refer to all volatile and inflammable liquids and gas produced, blended or compounded for the purpose of, or which are suitable or practicable for, operating motor vehicle;

(t) ***MTBE*** – shall refer to Methyl Tertiary Butyl Ether;

(u) ***NBB or Board*** – shall refer to the National Biofuel Board created under Section 8 of this Act;

(v) ***Oil Company*** – shall refer to any entity that distributes and sells petroleum fuel products;

(w) ***Oxygenate*** – shall refer to substances, which, when added to gasoline, increase the amount of oxygen in that gasoline blend;

(x) ***PNS*** – shall refer to the Philippine National Standard; consistent with section 26 of R.A. No. 8749 otherwise known as the 'Philippine Clean Air Act of 1999;

(y) ***Renewable Energy Sources*** – shall refer to energy sources that do not have an upper limit on the total quantity to be used. Such resources are renewable on a regular basis; and

(z) ***WTO*** – shall refer to the World Trade Organization.

SECTION 4. Phasing Out of the Use of Harmful Gasoline Additives and/or Oxygenates. – Within six months from affectivity of this Act, the DOE, according to duly accepted international standards, shall gradually phase out the use of harmful gasoline additives such as, but not limited to MTBE

SECTION. 5. Mandatory Use of Biofuels. – Pursuant to the above policy, it is hereby mandated that all liquid fuels for motors and engines sold in the Philippines shall contain locally-sourced biofuels components as follows:

5.1 Within two years from the effectivity of this Act, at least five percent (5%) bioethanol shall comprise the annual total volume of gasoline fuel actually sold and distributed by each and every oil company in the country; subject to requirement that all bioethanol blended gasoline shall contain a minimum of five percent (5%) bioethanol fuel by volume Provided, that ethanol blend conforms to PNS.

5.2 Within four years from the effectivity of this Act, the NBB created under this Act is empowered to determine the feasibility thereafter recommend to DOE to mandate a minimum of ten percent (10%) blend of bioethanol by volume into all gasoline fuel distributed and sold by each and every oil company in the country.

In the event of supply shortage of locally-produced bioethanol during the four–year period, oil companies shall be allowed to import bioethanol but only to the extent of the shortage as may be determined by NBB.

5.3 Within three months from the effectivity of this Act, a minimum of one percent (1%) biodiesel by volume shall be blended into all diesel engine fuels sold in the country: Provided That the biodiesel blend conforms to PNS for biodiesel.

Within two years from the effectivity of this Act, the NBB created under this Act is empowered to determine the feasibility and thereafter recommend to DOE to mandate a minimum of two percent (2%) blend of biodiesel by volume which may be increased taking into account considerations including but not limited to domestic supply and availability of locally-sourced biodiesel component.

SECTION 6. Incentive Scheme – To encourage investments in the production, distribution and use of locally-produced biofuels at and above the minimum mandated blends, and without prejudice to enjoying applicable incentives and benefits under existing laws, rules and regulations, the following additional incentives are hereby provided under this Act.

a) ***Specific tax***

The specific tax on local or imported biofuels component, per liter of volume shall be zero (0). The gasoline and diesel fuel component, shall remain subject to the prevailing specific tax rate.

b) ***Value Added Tax***

The sale of raw material used in the production of biofuels such as, but not limited to, coconut, jatropha, sugarcane, cassava, corn, and sweet sorghum shall be exempt from the value added tax.

c) ***Water Effluents***

All water effluents, such as but not limited to distillery slops from the production of biofuels used as liquid fertilizer and for other agricultural purposes are considered "reuse", and are therefore, exempt from wastewater charges under the system provided under section 13 of R.A No. 9275, also known as the Philippine Clean Water Act: Provided, however, That such application shall be in accordance with the guidelines issued pursuant to R.A. No. 9275, subject to the monitoring and evaluation by DENR and approved by DA.

d) ***Financial Assistance***

Government financial institutions, such as the Development Bank of the Philippines, Land Bank of the Philippines,

Quedancor and other government institutions providing financial services shall, in accordance with and to the extent by the enabling provisions of their respective charters or applicable laws, accord high priority to extend financing to Filipino citizens or entities, at least sixty percent (60%) of the capital stock of which belongs to citizens of the Philippines that shall engage in activities involving production storage, handling and transport of biofuel feedstock, including the blending of biofuels with petroleum, as certified by the DOE.

SECTION 7. Powers and Functions of the DOE. – In addition to its existing powers and functions, the DOE is hereby mandated to take appropriate and necessary actions to implement the provisions of this Act. In pursuance thereof, it shall within three months from effectivity of this Act:

a) Formulate the implementing rules and regulations under Section 15 of this Act;

b) Prepare the Philippines Biofuel program consistent with the Philippine Energy Plan and taking into consideration the DOE's existing biofuels program;

c) Establish technical fuel quality standards for biofuels and biofuel-blended gasoline and diesel which comply with the PNS;

d) Establish guidelines for the transport, storage and handling of biofuels;

e) Impose fines and penalties against persons or entities found to have committed any of the prohibited acts under Section 12 (b) to (e) of this Act;

f) Stop the sale of biofuels and biofuel-blended gasoline and diesel that are not in conformity with the specifications provided for under Section 5 of this Act, the PNS and corresponding issuances of the Department; and

g) Conduct an information campaign to promote the use of biofuels

SECTION 8. Creation of the National Biofuel Board (NBB) – The National Biofuel Board is hereby created. It shall be composed of the Secretary of the DOE as chairman and the Secretaries of the DTI, DOST, DA, DOF, DOLE, and the Administrators of the PCA, and the SRA, as members.

The DOE Secretary, in his capacity as Chairperson, shall, within one month from the effectivity of this Act, convene the NBB.

The Board shall by assisted by a Technical Secretariat attached to the Office of the Secretary of the DOE. It shall be headed by a Director to be appointed by the Board. The number of staff of the Technical Secretariat and the corresponding positions shall be determined by the Board, subject to approval by the Department of Budget and Management (DBM) and existing civil services rules and regulations.

SECTION 9. Powers and Functions of the NBB. – The NBB shall have the following powers and functions:

a) Monitor the implementation of, and evaluate for further expansion, the National Biofuel Program (NBP) prepares by the DOE pursuant to Section 7 (b) of this Act;

b) Monitor the supply and utilization of biofuels and biofuel-blends and recommend appropriate measures in cases of shortage of feedstock supply for approval of the Secretary of DOE. For this purpose:

    1. The NBB is empowered to require all entities engaged in the production, blending and distribution of biofuels to submit reports of their actual and projected sales and inventory of biofuels, in a format to be prescribed

for this purpose; and

2. The NBB shall determine availability of locally-sourced biofuels and recommend to DOE the appropriate level or percentage of locally–sourced biofuels to the total annual volume of gasoline and diesel sold and distributed in the country.

c) Review and recommend to DOE the adjustment in the minimum mandated biofuel blends subject to the availability of locally–sourced biofuels: Provided, That the minimum blend may be decreased only within the first four years from the effectivity of this Act. Thereafter, the minimum blends of the five percent (5%) and two percent (2%) for bioethanol and biodiesel respectively, shall not be decreased;

d) Recommend to DOE a program that will ensure the availability of alternative fuel technology for vehicles, engine and parts in consonance with the mandated minimum biofuel-blends, and to maximize the utilization of biofuels including other biofuels;

e) Recommend to DOE the use of biofuel–blends in air transport taking into account safety and technical viability; and

f) Recommend specific actions to be executed by the DOE and other appropriate government agencies concerning the implementation of the NBP, including its economic, technical, environment, and social impact.

SECTION 10. Security of Domestic Sugar Supply. – Any provision of this Act to the contrary notwithstanding, the SRA, pursuant to its mandate, shall, at all times, ensures that the supply of sugar is sufficient to meet the domestic demand and that the price of sugar is stable.

To this end, the SRA shall recommend and the proper agencies shall undertake the importation of sugar whenever necessary and shall make appropriate adjustments to the minimum access volume parameters for sugar in the Tariff and Custom Code.

SECTION 11. Role of Government Agencies. – To ensure the effective implementation of the NBP, concerned agencies shall perform the following functions:

a) The DOF shall monitor the production and importation of biofuels through the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC);

b) The DOST and the DA shall coordinate in identifying and developing viable feedstock for the production of biofuels;

c) The DOST, through the Philippine Council for Industry and Energy Research and Development (PCIERD), shall develop and implement a research and development program supporting a sustainable improvement in biofuel production and utilization technology. It shall also publish and promote related technologies developed locally and abroad;

d) The DA through its relevant agencies shall:

(1) Within three months from effectivity of this Act, develop a national program for the production of crops for use as feedstock supply. For this purpose, the Administrators of the SRA and the PCA, and other DA-attached agencies shall, within their authority develop and implement policies supporting the Philippine Biofuel Program and submit the same to the Secretary of the DA for consideration;

(2) Ensure increased productivity and sustainable supply of biofuel

feedstocks. It shall institute program that would guarantee that a sufficient and reliable supply of feedstocks is allocated for biofuel production; and

(3) Publish information on available and suitable areas for cultivation and production of such crops.

e) The DOLE shall:

(1) Promote gainful livelihood opportunities and facilitate productive employment through effective employment services and regulation;

(2) Ensure the access of workers to productive resources and social coverage; and

(3) Recommend plans, policies and programs that will enhance the social impact of the NBP.

f) The Tariff Commission, in coordination with the appropriate government agencies, shall create and classify a tariff line for biofuels and biofuel-blends in consideration of WTO and AFTA agreements; and

g) The local government units (LGU) shall assist the DOE in monitoring the distribution sale in use of biofuels and biofuel-blends

SECTION 12. Prohibited Acts. The following acts shall be prohibited:

a) Diversion of biofuels, whether locally produced or imported, to purposes other than those envisioned in this Act;

b) Sale of biofuel–blended gasoline or diesel that fails to comply with the minimum biofuel–blend by volume in violation of the requirement under Section 5 of this Act;

c) Distribution, sale and use of automotive fuel containing harmful additives such as, but not limited to, MTBE at such concentration exceeding the limits to be determined by the NBB;

d) Noncompliance with the established guidelines of the PNS and DOE adopted for the implementation of this Act; and

e) False labeling of gasoline, diesel, biofuels and biofuel-blended gasoline and diesel.

SECTION 13. Penal Provisions. – Any person, who willfully aids or abets in the commission of a crime prohibited herein or who causes the commission of any such act by another shall be liable in the same manner as the principal.

In the case of association, partnerships or corporations, the penalty shall be imposed on the partner, president, chief operating officer, chief executive officer, directors or officers, responsible for the violation.

The commission of an act enumerated in Section 12, upon conviction thereof, shall suffer the penalty of one year to five years imprisonment and a fine ranging from a minimum of One million pesos (P 1,000,000.00) to Five million pesos (P 5,000,000.00).

In addition, the DOE shall confiscate any amount of such products that fail to comply with the requirements of Sections 4 & 5 of this Act, and implementing issuance of the DOE. The DOE shall determine the appropriate process and the manner of disposal and utilization of the confiscated products. The DOE is also empowered to stop and suspend the operation of businesses for refusal to comply with any order or instruction of the DOE Secretary in the exercise of his functions under this Act.

Further, the DOE is empowered to impose administrative fines and penalties for any

violation of the provisions of this Act, implementing rules and regulations and other issuance relative to this Act.

SECTION 14. Appropriations. – Such sums as may be necessary for the initial implementation of this Act shall be taken from the current appropriations of the DOE. Thereafter, the fund necessary to carry out provisions of this Act shall be included in the annual General Appropriation Act.

SECTION 15. Implementing Rules and Regulations (IRR). – The DOE, in consultation with the NBB, the stakeholders and the other agencies concerned, shall within three months from affectivity of this Act, promulgated the IRR of this Act: Provided, That prior to its effectively, the draft of the IRR shall be posted at the DOE web site for at least one month, and shall be published in at least two newspapers of general circulation.

SECTION 16. Congressional Oversight Committee. – Upon affectivity of this act, a Congressional Committee, hereinafter referred to as the Biofuels Oversight Committee, is hereby constituted. The biofuels oversight committee shall be compose of (14) members, with the Chairmen of the Committees on Energy of both House of Congress as co-chairmen. The Chairmen of the Committee on Agriculture and Trade and Industry shall be ex officio members. An additional four members from each House, to be designated by the Senate President and Speaker of the House of Representatives, respectively. The minority shall be entitled to pro-rata representation but shall have at least one representative in the Biofuel Oversight Committee.

SECTION 17. Benefits of Biofuel Workers. – This Act shall not in any way result in the forfeiture or diminution of existing benefits enjoyed by the sugar workers as prescribed under the R.A. No. 6982, or the Sugar Amelioration Act of 1991. In case sugarcane shall be used as feedstock.

The NBB shall establish a mechanism similar to that provided under the Sugar Amelioration Act of 1991 for the benefit of other biofuel workers.

SECTION 18. Special Clause. – This act shall not be interpreted as prejudicial to clean development mechanism (CDM) projects that cause carbon dioxide (CO2) and greenhouse gasses (GHG) emission reductions by means of biofuel use.

SECTION 19. Repealing Clause. – The provision of Section 148 (d) of R.A. No. 8424, otherwise known as Tax Reform Act. of 1997, and all other laws, presidential decrees or issuance, executive orders, presidential proclamations. rules and regulations or part thereof inconsistent with the provisions of this Act, are hereby repealed, modified or amended accordingly.

SECTION 20. Separability Clause. – If any provision of this Act is declared unconstitutional in the same shall not affect the validity and effectivity of the other provision hereof.

SECTION 21. Effectivity. – This act shall effect fifteen (15) day after publication in at least two newspapers of general circulation.

Approved: January 12, 2007

DEPARTMENT CIRCULAR NO. DC2007-05-0006

RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 9367

Pursuant to Republic Act No. 9367, otherwise known as the Biofuels Act of 2006, the Department of Energy, in consultation with National Biofuels Board, appropriate government agencies, and other stakeholders, hereby issues, adopts and promulgates the following implementing rules and regulations.

Rule 1. General Provisions

Section 1. Title, Purpose, and Scope.

1.1 This Department Circular shall be known as the Implementing Rules and Regulations (IRR) of Republic Act No. 9367, otherwise known as the Biofuels Act of 2006 and referred to as the "Act" in this IRR.

1.2 It shall cover the production, blending, storage, handling, transportation, distribution, use, and sale of biofuels, biofuel-blends, and biofuel feedstock in the Philippines.

1.3 Further, it clarifies specific provisions of the Act and the roles and functions of the different government agencies and their relationship with the National Biofuels Board.

Section 2. Declaration of Policy.

It is hereby declared the policy of the State to reduce dependence on imported fuels with due regard to the protection of public health, the environment, and natural ecosystems consistent with the country's sustainable economic growth that would expand opportunities for livelihood by mandating the use of biofuels as a measure to:

a) develop and utilize indigenous renewable and sustainably-sourced clean energy sources to reduce dependence on imported oil;

b) mitigate toxic and greenhouse gas (GHG) emissions;

c) increase rural employment and income; and

d) ensure the availability of alternative and renewable clean energy without any detriment to the natural ecosystem, biodiversity and food reserves of the country.

Section 3. Definition of Terms.

3.1 As used in the Biofuels Act of 2006 and this Implementing Rules and Regulations (IRR), the following terms shall be defined as follows:

a) ***Act*** – shall refer to the Biofuels Act of 2006;

b) ***AFTA*** – shall refer to the ASEAN Free Trade Agreement initiated by the Association of Southeast Asian Nations;

c) ***Alternative Fuel Vehicles/Engines*** – shall refer to vehicles/engines that use alternative fuels such as biodiesel, bioethanol, natural gas, electricity, hydrogen, and automotive LPG, instead of gasoline and diesel;

d) ***Bioethanol*** – shall refer to ethanol (C2H5OH) produced from feedstock and other biomass;

e) ***Biodiesel*** – shall refer to Fatty Acid Methyl Ester (FAME) or mono-alkyl esters derived from vegetable oils

or animal fats and other biomass-derived oils that shall be technically proven and approved by the DOE for use in diesel engines with quality specifications in accordance with the Philippine National Standards (PNS);

f) ***Bioethanol Fuel*** – shall refer to hydrous or anhydrous bioethanol suitably denatured for use as motor fuel, with quality specifications in accordance with the PNS;

g) ***Biofuel*** – shall refer to bioethanol and biodiesel and other fuels made from biomass and primarily used for motive, thermal and power generation with quality specifications in accordance with the PNS;

h) ***Biofuel blends*** – shall refer to gasoline or diesel that has been blended with biofuels such as, but not limited to, bioethanol and biodiesel;

i) ***Biomass*** – shall refer to any organic matter, particularly cellulosic or ligno-cellulosic matter, which is available on a renewable or recurring basis, including trees, crops and associated residues, plant fiber, poultry litter and other animal wastes, industrial wastes, and the biodegradable component of solid waste;

j) ***DA*** – shall refer to the Department of Agriculture created under Executive Order No. 116, as amended;

k) ***DENR*** – shall refer to the Department of Environment and Natural Resources created under Executive Order No. 192, as amended;

l) ***Diesel*** – shall refer to refined petroleum distillate, which may contain small amounts of hydrocarbon or nonhydrocarbon additives to improve ignition quality or other characteristics, suitable for compression ignition engine and other suitable types of engines with quality specifications in compliance with the PNS;

m) ***DOE*** – shall refer to the Department of Energy created under Republic Act No. 7638, as amended;

n) ***DOF*** – shall refer to the Department of Finance created under Administrative Order Nos. 127 and 127-A;

o) ***DOLE*** – shall refer to the Department of Labor and Employment created under Executive Order No. 126, as amended;

p) ***DOST*** – shall refer to the Department of Science and Technology created under Republic Act No. 2067;

q) ***DOTC*** – shall refer to the Department of Transportation and Communications created under Executive Order No. 125-A, as amended;

r) ***DTI*** – shall refer to the Department of Trade and Industry created under Executive Order No. 133;

s) ***Feedstock*** – shall refer to organic sources such as molasses, sugarcane, cassava, coconut, jatropha, sweet sorghum or other biomass used in the production of biofuels;

t) ***Gasoline*** – shall refer to volatile mixture of hydrocarbon, generally containing small amounts of additives, suitable for use as a fuel in spark-combustion engine with quality specifications in compliance with the PNS;

u) ***Locally-sourced biofuels*** – shall refer to biofuels derived from feedstocks grown/planted harvested and processed in the Philippines;

v) ***Motor Fuel*** – shall refer to all volatile and inflammable liquids and gas produced, blended or compounded for the purpose of, or which are suitable or practicable for, operating motor vehicles;

w) ***MTBE*** – shall refer to Methyl Tertiary Butyl Ether;

x) ***National Biofuels Program/ Philippine Biofuel Program*** – shall refer to the program which the DOE is mandated to formulate under Section 7 of the Act;

y) ***NBB or Board*** – shall refer to the National Biofuels Board, created under Section 8 of the Act;

z) ***Oil Company*** – shall refer to any entity that distributes and sells petroleum fuel products;

aa) ***Oxygenate*** – shall refer to substances which, when added to gasoline, increases the amount of oxygen in that gasoline blend;

bb) ***PCA*** – shall refer to the Philippine Coconut Authority created under P.D. 232 as amended by Presidential Decrees 961 and 1468;

cc) ***Petroleum Depot or Terminal*** – shall refer to the supply point of petroleum products (or bulk storage facilities) operated by oil companies;

dd) ***PNS*** – shall refer to the Philippine National Standards consistent with Section 26 of R.A. No. 8749 otherwise known as the "Philippine Clean Air Act of 1999";

ee) ***Renewable Energy Sources*** – shall refer to energy sources that do not have an upper limit on the total quantity to be used. Such resources are renewable on a regular basis, and whose renewal rate is relatively rapid to consider availability over an indefinite period of time;

ff) ***SRA*** – shall refer to Sugar Regulatory Administration created under Executive Order No. 18, s. 1986;

gg) ***Sugarcane industry*** – shall refer to the industry that integrates the agricultural production systems of growing sugarcane into the processing of the same into sugar, ethanol and other products with the consequent production of by-products including but not limited to bagasse, filter cake, and molasses. The sugarcane industry also covers the processing and manufacture of any of the by-products (bagasse, filter cake, molasses and others) into other value-added products or commodities; and

hh) ***WTO*** – shall refer to the World Trade Organization.

3.2 All other terms not covered in the Act or in this IRR shall be defined by concerned government agencies in the exercise of their respective regulatory and/or policy formulating functions.

Rule 2. Operation of the Mandate

Section 4. Phasing Out of the Use of Harmful Gasoline Additives and/or Oxygenates

4.1 Pursuant to Section 4 of the Act, the DOE shall gradually phase out the use of harmful gasoline additives and/or oxygenates, such as, but not limited

to MTBE, according to duly accepted international standards.

4.1 The DOE, in consultation with the concerned government agencies and stakeholders, shall issue the appropriate department circular for the purpose within six (6) months from the effectivity of the Act.

Section 5. Mandatory Use of Biofuels.

Pursuant to Section 5 of the Act, all liquid fuels for motor vehicles shall contain locally-sourced biofuels components as follows:

5.1 Bioethanol

a) Within two (2) years from the effectivity of the Act, at least five percent (5%) bioethanol shall comprise the annual total volume of gasoline fuel actually sold and distributed by each and every oil company in the country, subject to the requirement that all bioethanol blended gasoline shall contain a minimum five percent (5%) bioethanol fuel by volume: Provided, That the bioethanol blend conforms to the PNS.

b) Within four (4) years from the effectivity of the Act, the NBB created under Section 8 of the Act is empowered to determine the feasibility and thereafter recommend to the DOE to mandate a minimum of ten percent (10%) blend of bioethanol by volume into all gasoline fuel distributed and sold by each and every oil company in the country: Provided, That the same conforms to the PNS.

5.2 Biodiesel

a) Within three (3) months from the effectivity of the Act, a minimum of one percent (1%) biodiesel by volume shall be blended into all diesel fuels sold in the country: Provided, That the biodiesel blend conforms to the PNS.

b) Within two (2) years from the effectivity of the Act, the NBB is empowered to determine the feasibility and thereafter recommend to DOE to mandate a minimum of two percent (2%) blend of biodiesel by volume which may be increased after taking into account considerations including, but not limited to, domestic supply and availability of locally-sourced biodiesel component.

5.3 Other Biofuels

In the event that fuels derived from biomass other than bioethanol and biodiesel are developed pursuant to the Act as technically validated by the DOST, the DOE shall issue, upon consultation with the entities concerned and upon the recommendation of the NBB, the appropriate department circular to promote the utilization of such fuels and provide the appropriate initiatives consistent with the provisions of the Act: Provided, That the appropriate PNS for such fuel is established and complied with.

5.4 The DOE shall issue, in consultation with the concerned government agencies and entities, further guidelines relative to the above provisions which shall include among others, the standards and reportorial requirements to be complied with. The issuance of these further guidelines shall not be a condition precedent to the implementation of the above provisions.

Section 6. Importation in case of supply shortage of locally-produced bioethanol.

6.1 Pursuant to Section 5.2 of the Act, in the event of a supply shortage of locally-produced bioethanol during the first four-year period of implementation of the Act, as may be confirmed by the NBB, oil companies shall be allowed to import bioethanol to the extent of the shortage as may be determined by the NBB.

6.2 Prior to the importation of bioethanol due to a supply shortage, the importing oil company may apply for the issuance of a DOE Certification to the effect that the bioethanol to be imported shall be used for the National Biofuels Program.

6.3 The DOE Certification may be used by the oil company to avail itself of reduced tariff on bioethanol pursuant to Executive Order No. 449.

6.4 The issuance of the DOE Certification shall be made in accordance with existing DOE guidelines.

Section 7. Incentives under the Act.

7.1 To encourage investments in the production, distribution, and use of locally-produced biofuels at and above the minimum mandated blends, and without prejudice to enjoying applicable incentives and benefits under existing laws, rules, regulations, the following additional incentives are hereby provided:

a) ***Specific Tax.*** The specific tax on local or imported biofuels component of the blend per liter of volume shall be zero. For the purpose of availing of a zero specific tax, local or imported bioethanol shall be suitably denatured into bioethanol fuel in accordance with existing revenue regulations. The gasoline and diesel fuel component shall remain subject to the prevailing specific tax rates.

b) ***Value Added Tax.*** The sale of raw material used in the production of biofuels such as but not limited to, coconut, jathropha, sugarcane, cassava, corn, and sweet sorghum shall be exempt from the value added tax.

The tax incentive provided under Items (a) and (b) of this Section shall be subject to rules and regulations promulgated by the DOF.

c) ***Water Effluents.*** All water effluents, such as but not limited to distillery slops from the production of biofuels used as liquid fertilizer and other agricultural purposes are considered "reuse" and are therefore, exempt from wastewater charges under the system provided under Section 13 of R.A. 9275, otherwise known as the Philippine Clean Water Act: Provided, however, That such application shall be in accordance with the guidelines issued pursuant to R.A. 9275, subject to the monitoring and evaluation by the DENR and approved by the DA; and

d) ***Financial Assistance.***

Government financial institutions, such as the Development Bank of the Philippines, Land Bank of the Philippines, Quedancor, and other government institutions providing financial services shall, in accordance with and to the extent allowed by the enabling provisions of their respective charters or applicable laws, accord high priority to extend financing to Filipino citizens or entities, at least sixty per cent (60%) of the capital stock of which belongs to citizens of the Philippines that shall engage in activities involving production, storage, handling, and transport of biofuel and biofuel

feedstock, including blending of biofuels with petroleum, as certified by the DOE.

7.2 The appropriate government agencies shall issue the necessary guidelines for the availment of such incentives.

Rule 3. The National Biofuels Board

Section 8. Creation and Organizational Structure of the National Biofuels Board.

8.1 Pursuant to Section 8 of the Act, the National Biofuels Board (NBB) is created and shall be composed of the Secretary of the DOE, as Chairman, and the Secretaries of the DTI, DOST, DA, DOF, DOLE, and the Administrators of the PCA and SRA, as members.

a) The Secretary of the DOE, as the Chairman, shall be assisted by a duly designated Undersecretary who shall as act as his alternate; and

b) The member Secretaries and Administrators may assign alternate representatives who must be occupying at least the level of Assistant Secretary: Provided, That only the Department Secretaries/ Administrators shall sign official documents and issuances of the NBB.

8.2 The NBB shall create a Technical Secretariat which shall provide for the administrative, policy, and technical services of the Board.

8.3 The NBB shall determine the appropriate compensation/ remuneration of the members and the Technical Secretariat staff and personnel in accordance with existing laws, rules and regulations, and shall make appropriate requests and representations with the Office of the President and the DBM for the allocation and appropriation of funds necessary to effectively perform its duties and functions.

Section 9. Meetings of the NBB.

Regular meetings of the NBB shall be held at least once every quarter on a date and in a place fixed by the Board.

Section 10. Powers and Functions of the NBB.

Pursuant to Section 9 of the Act, the NBB shall have the following powers and functions:

a) Monior the implementation of, and evaluate for further expansion, the National Biofuels Program prepared by the DOE pursuant to Section 7 (b) of the Act;

b) Monitor the supply and utilization of biofuels and biofuel-blends and recommend appropriate measures in cases of shortage of feedstock supply for approval by the Secretary of DOE. For this purpose:

i. The NBB is empowered to require all entities engaged in the production, blending and distribution of biofuels to submit reports of their actual and projected sales and inventory of biofuels in a format to be prescribed for this purpose;

ii. The NBB shall determine the availability of locally sourced biofuels and recommend to the DOE the appropriate level or percentage of locally sourced biofuels to the annual volume of gasoline and diesel sold and distributed in the country.

iii. To ensure an adequate supply of bioethanol, the NBB shall recommend to the DOE the amount of bioethanol that may be imported

at any given time by DOE-certified oil companies in the event of shortage of supply of locally-sourced ethanol during the first four years from the effectivity of the Act.

c) Review and recommend to the DOE the adjustment in the minimum mandated biofuel blends subject to the availability of locally-sourced biofuels: Provided, That the minimum blend may be decreased only within the first four (4) years from the effectivity of the Act. Thereafter, the minimum blends of five percent (5%) and two percent (2%) for bioethanol and biodiesel, respectively, shall not be decreased.

   In determining the availability of locally-produced biofuels, the NBB may take into account the factors such as, but not limited to, shortage in the supply of biofuels and feedstock and constraints or difficulties in the distribution of biofuel blends.

d) Recommend to the DOE a program that will ensure that availability of alternative fuel technology for vehicles, engines and parts in consonance with the mandated minimum biofuel-blends, and to maximize the utilization of biofuels, including other biofuels;

e) Recommend to the DOE the use of biofuel-blends in air transport taking into account safety and technical viability;

f) Recommend specific activity to be executed by the DOE and other appropriate government agencies concerning the implementation of the NBP, including its economic, technical, environment and social impact; and

g) Exercise such other powers and functions as may be necessary or incidental to attain the objectives of the Act.

Section 11. The Technical Secretariat.

Pursuant to Section 8 of the Act, the NBB shall be assisted by a Technical Secretariat attached to the Office of the Secretary of the DOE.

a) ***Composition.*** The Technical Secretariat shall be headed by a Director to be appointed by the NBB. The number of staff of the Technical Secretariat and corresponding positions shall be determined by the NBB subject to existing civil service rules and regulations and the approval of the Department of Budget and Management.

b) ***Functions and responsibilities.*** The Technical Secretariat shall have the following functions and responsibilities:

   i. Provide administrative and general support service to the NBB in collecting, securing, and processing pertinent information/data from all entities engaged in the production, blending and distribution of biofuels and biofuel blends, including, but not limited to, actual and projected sales and inventory and data on the availability of locally-sourced biofuels;

   ii. Provide all members of the NBB appropriate information/data on appropriate vehicle technologies, including air transportation, in consonance with the mandated minimum biofuel blends;

   iii. Monitor and coordinate with all government entities in the performance of their respective functions and responsibilities in the implementation of the National Biofuels Program;

   iv. Identify issues, concerns and/or barriers on the implementation of the National Biofuels Program, including

the mandated minimum biofuel blends, and propose measures/ solutions to address the same, in coordination with all stakeholders of the biofuel industry; and

v. Perform such other functions as may be directed by the NBB.

c) Creation of an Interim Technical Secretariat. Within one (1) month from the effectivity of this IRR, the NBB shall designate an interim technical secretariat to be known as the NBB-Project Management Office (NBB-PMO) to hold office for a period of one (1) year or until such time that the organization of the Technical Secretariat is completed, subject to existing rules and regulations of the Department of Budget and Management and the Civil Service Commission. Prior to the organization of the NBB-PMO, the Energy Utilization Management Bureau of the DOE shall serve as the Technical Secretariat to the NBB; and

The NBB-PMO staff and personnel shall be provided with appropriate compensation and remuneration in accordance with existing rules and regulations of the Department of Budget and Management and the Civil Service Commission.

Rule 4. Role of the Department of Energy and Other Government Agencies

Section 12. The Department of Energy.

Pursuant to Section 7 of the Act, the DOE is mandated to take appropriate and necessary actions to implement the provisions of the Act, in addition to its existing powers and functions. In pursuance hereof, it shall, within three (3) months from the effectivity of the Act:

a) Prepare the National Biofuels Program consistent with the Philippine Energy Plan and taking into consideration the DOE's existing biofuels program and the programs of other government agencies, such as, but not limited to, the feedstock supply program of the DA, PCA and SRA technology research and development program of the DOST, and the vehicle development program of the DTI;

b) Establish technical and fuel quality standards for biofuels and biofuel-blended gasoline and diesel which comply with the PNS;

c) Establish the guidelines for the transport, storage and handling of biofuels and biofuel-blends;

d) Accredit producers and distributors of biofuels and developers/owners of biofuel production facilities following DOE's accreditation guidelines;

e) Endorse qualified biofuel producers to the Board of Investments for the availment of appropriate fiscal incentives;

f) Conduct regular monitoring, announced or unannounced inspections sampling and laboratory testing of biofuels in all biofuel production facilities and feedstock production areas, and biofuel-blended gasoline and diesel in all blending/ storage/distribution facilities and retail stations;

g) Stop the sale of biofuels and biofuel-blended gasoline and diesel that are not in conformity with the specifications provided for under Section 5 of the Act, the PNS and corresponding issuances of the Department;

h) Impose fines and penalties against persons or entities found to have committed any of the acts under Section 12 (b) to (e) of the Act;

i) Conduct various research and development activities and studies on biofuels, biofuel-blended gasoline and diesel, and/or other biomass-derived fuels for use in motors and engines, including air transport, and other vehicle technologies;

j) Provide laboratory support services to other government entities and the private sector in the conduct of research and development activities on biofuels, biofuel-blends, and other biomass-derived fuels;

k) Formulate guidelines for the importation of biofuels, taking into consideration relevant existing rules and regulations issued by the DOE and other government agencies; and

l) Conduct, in coordination with biofuel stakeholders, information campaign to promote the use of biofuels.

Section 13. The Department of Finance.

The DOF shall monitor, in coordination with other concerned government agencies, the production and importation of biofuels through the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC).

The DOF shall promulgate the rules and regulations necessary to implement its mandate under the Act.

Section 14. The Department of Science and Technology.

The DOST shall:

a) Coordinate with the DA in identifying and developing viable feedstock for the production of biofuels;

b) Develop and implement, through the Philippine Council for Industry and Energy Research and Development (PCIERD), a research and development program supporting a sustainable improvement in biofuel production and utilization technology. For this purpose, the DOST shall establish a network of academic and research institutions; and

c) Publish and promote related technologies developed locally and abroad.

Section 15. The Department of Agriculture.

The DA, through its relevant agencies, shall have the following functions and responsibilities:

a) Coordinate with the DOST in identifying and developing viable and quality feedstock, including production and primary postharvest processing technologies for biofuels;

b) Within three (3) months from the effectivity of the Act, develop a national program for the production of crops for use as feedstock supply. For this purpose, the administrators of the SRA and the PCA, and other related DA agencies, within their authority, shall develop and implement policies in support of the National Biofuels Program and submit the same for consideration and approval by the Secretary of the DA;

c) Ensure increased productivity and sustainable supply of biofuel feedstocks. The DA shall institute a program that would guarantee that a sufficient and reliable supply of feedstocks is allocated for biofuel production;

d) Publish information on available and suitable areas for cultivation and production of biofuel crops, available and accessible technologies, sources of planting materials, and financial assistance;

e) In cooperation with SRA, PCA, other attached agencies, and bureaus, shall undertake the identification and publication of potential areas suitable for the expansion and production of raw materials as feedstocks for biofuels;

f) Undertake biofuel feedstock research and development which may include identifying new feedstock, developing high yielding varieties, and developing new processing technologies in cooperation with public and private research agencies, and international research institutes; and

g) Promulgate such necessary rules and regulations necessary to implement its mandate under the Act.

Section 16. The Sugar Regulatory Administration.

Pursuant to its mandate under Executive Order No. 18 and the Act, the SRA shall:

a) at all times ensure that the supply of sugar is sufficient to meet the domestic demand and that the price of sugar is stable; and

b) together with the DA, PCA, and other DA-attached agencies, develop and implement policies supporting the National Biofuels Program and submit the same to the Secretary of the DA for consideration.

Section 17. The Philippine Coconut Authority.

Pursuant to its mandate to formulate and adopt a general program of development for the coconut and other palm oil industry in its all aspects, under PD 1468, Article II, Section (3) (a), the PCA shall develop, implement policies within the coconut industry in support of the National Biofuels Program.

To this end, the PCA shall:

a) Review and assess the policies, projects and activities of all other government agencies related to the National Biofuels Program and integrate/adopt them into the National Coconut Industry Development Program;

b) Develop, formulate, and implement a massive nationwide rehabilitation, planting, and replanting program using high-yielding coconut varieties including the strengthening of its organization, manpower and capabilities to fully support the National Biofuels Program;

c) Formulate and implement the necessary regulatory measures to ensure the availability, sufficiency, quality, and sustainability of the supply of coconut raw materials for the National Biofuels Program;

d) Require the accreditation/registration of reputable and credible oil mills who shall supply the coconut oil (CNO) requirements of coco biodiesel producers;

e) Formulate industry policies and regulations which shall include the retention of CNO volume to support the required minimum of one percent (1%), and later on two percent (2%), coconut methyl ester (CME) of the biodiesel blends which may be increased later upon the recommendation of the NBB;

f) Explore and expand the domestic and foreign markets of coconut biofuel products and by-products; and

g) Seek funds for its sustainable operation and continuous support for the National Biodiesel component program.

Section 18. The Department of Labor and Employment.

The DOLE shall:

a) Promote gainful livelihood opportunities and facilitate productive employment through effective employment services and regulation;

b) Ensure the access of workers to productive resources and social protection coverage;

c) Recommend policies, plans, and programs that will enhance the social impact of the National Biofuels Program; and

d) Promulgate such necessary rules and regulations necessary to implement its mandate under the Act.

Section 19. The Department of Trade and Industry.

19.1 Pursuant to the State's policy of protecting public health through, among others, the reduction of toxic and greenhouse gas emissions, the DTI shall formulate and implement, in coordination with the DOTC and the DENR, a national motor vehicle inspection and maintenance program as a measure to substantially reduce emissions from motor vehicles pursuant to Art. 4, Section 21 (d) of R.A. 8749, otherwise known as the Philippine Clean Air Act of 1999.

19.2 Pursuant to its program under existing laws, the DTI shall promote the development of an alternative fuel technology for vehicles, engines and parts in consonance with the requirements of the mandated minimum biofuel-blends.

Section 20. The Tariff Commission.

The Tariff Commission, in coordination with the appropriate government agencies, shall create and classify a tariff line for biofuels and biofuel-blends in consideration of WTO and AFTA agreements.

Section 21. The Local Government Units.

The Local Government Units shall assist the DOE in monitoring the distribution, sale and use of biofuels and biofuel-blends by:

a) Ensuring strict implementation of local permitting requirements applicable to businesses engaged in the distribution and sale of biofuel and biofuel blends;

b) Ordering the closure of any business engaged in the distribution and sale of biofuel and biofuel blends found to be operating without the necessary permits and licenses;

c) Reporting to the DOE violations of the Act being committed by any person involved in the distribution, sale, and use of biofuels and biofuel blends;

d) Revoking local permits previously issued to business entities found to have violated pertinent rules and regulations of the DOE and other concerned government agencies, upon the recommendation of the DOE or other concerned agency, as the case may be.

Rule 5. Role of the Players in the Biofuels Industry.

Section 22. Oil Companies.

22.1 ***Blending of Biofuels.*** Blending of biodiesel shall and bioethanol with diesel and gasoline fuels, respectively, shall be undertaken by the oil companies using appropriate blending methodologies at their respective refineries, depots or blending facilities prior to the sale of biofuel-blends to consumers/end-users: Provided, That blending methodologies shall be in accordance with duly accepted

international standards as well as the guidelines issued by the DOE for this purpose: Provided, further, That oil companies shall ensure compliance of the biofuel blends with the PNS.

22.2 ***Supply and Distribution.*** To ensure compliance of the minimum mandated biofuel blends with the PNS, oil companies shall observe the following guidelines, in addition to what may be prescribed by the DOE under subsequent issuances:

a) Supply of biofuels shall be sourced only from biofuel producers accredited by the DOE. The procurement of biofuels may be covered by biofuels supply contracts or agreements;

b) Ensure proper logistics and application of appropriate technologies in blending, handling, transporting, and distributing biofuel blends; and

c) Observe proper diligence in the supervision of company-operated, dealer-owned, or dealer-operated retail service stations carrying their brand in order to ensure that the quality and integrity of PNS-compliant biofuels shall be maintained.

22.3 ***Supply Shortage.*** In the event of supply shortage of locally-produced bioethanol during the first four-year period from the effectivity of the Act, oil companies may apply for the issuance of a certification to import bioethanol from the DOE in accordance with existing guidelines.

22.4 ***Reportorial Requirements.*** For proper monitoring of the compliance by oil companies with this IRR, each oil company shall submit to the DOE the following reports:

a) ***Performance Compliance Report.*** Every oil company shall submit on an annual basis a Performance Compliance Report containing its compliance plan with the mandated biofuel blends as well as other information that may be required by the DOE. Such report shall be duly certified and signed under oath by an authorized responsible officer of the oil company who shall attest to the veracity and accuracy of its contents.

b) ***Periodic Reports.*** The oil companies shall likewise submit periodic reports as may be required by the DOE.

Section 23. Biofuel Producers.

23.1 Accreditation of Biofuels Producers.

a) Any individual or entity intending to engage in the production of biofuels shall apply for accreditation as a biofuel producer with the DOE. The DOE, in consultation with the stakeholders, shall issue the appropriate guidelines for this purpose, which shall indicate the requirements for quality assurance, quality management system, and analogous quality production standards.

b) Pending the issuance of these guidelines, only those biofuel producers who have existing accreditation or have been issued a permanent Certificate of Fuel Additive Registration (CFAR) and who have pending applications for accreditation pursuant to Memorandum Circular No. 55 shall be allowed to produce and sell biofuels.

23.2 All biofuels producers, in addition to what may be required by the DOE under subsequent guidelines shall:

a) Register their distributors with the DOE;

b) Ensure proper logistics and application or appropriate technologies in handling biofuels;

c) Submit to the DOE the following data and information:

i. Monthly production, sales and inventory of biofuels;

ii. Monthly report on projected production, sales and inventory of biofuels;

iii. Report on the application of technologies in the production, handling, storage and distribution of biofuels; and

iv. Such other data and information as may be required by the DOE and/or the NBB.

d) Maintain a minimum inventory of biofuels equivalent to its average monthly sales to meet the minimum mandate;

e) Conduct and/or support local research and development to improve biofuels feedstock productivity; and

f) Report to DOE the weekly price of biofuels.

Section 24. Importer End-Users. End-users who are direct importers of diesel or gasoline shall also be subject to the required use of the mandated biofuel blend. To determine their compliance, such entities shall submit the following reports, in addition to what may be required by the DOE under subsequent guidelines:

a) Monthly report to the DOE of its importation and consumption of gasoline/diesel; and

b) Monthly report on the purchase and consumption of biofuels and biofuel blends.

Rule 6. Standards for Biofuel and Biofuel Blends

Section 25. Quality Standards. All biofuels and biofuel blends that qualify under the Act shall be limited to those compliant with the PNS.

Facilities for the production, handling, distribution and storage of biofuels and biofuel blends shall likewise conform to standards and guidelines set by the DOE.

Section 26. Quality Assurance. All biofuels producers shall assure compliance with quality standards in accordance with the following guidelines, in addition to what may be required by the DOE under subsequent issuances:

a) All biofuel deliveries must be accompanied by a Certificate of Quality to be issued by the distributor/supplier indicating the properties of the delivered biofuels, which must be in compliance with the PNS;

b) Biofuels packaged in individual containers shall be appropriately labeled and shall contain information such as DOE CFAR number, batch manufacturing date, and expiry date in accordance with the guidelines that will be issued by the DOE; and

c) Biofuel producers shall establish management systems covering quality assurance, environmental management and occupational health and safety standards in accordance with the accreditation guidelines to be issued by the DOE.

Rule 7. Security of Domestic Sugar and Feedstock Supply

Section 27. Security of Domestic Sugar Supply.

27.1 The SRA shall develop and implement policies within the sugarcane industry in support of the National Biofuels Program. It shall form a consultative body within the sugarcane industry to undertake the initiatives stated herein.

27.2 Towards this end, the SRA shall formulate the necessary guidelines in ensuring the supply of sugar is sufficient to meet the domestic demand and that the price of sugar is stable.

a) The SRA shall ensure full utilization of sugarcane and adequate supply of sugar in the domestic market and for other requirements. To this end, it shall conduct a periodic assessment of the domestic sugar supply and demand situation, and report the same to the NBB on a regular basis: Provided, That in case of shortage of locally produced bioethanol, the SRA in consultation with stakeholders, shall initiate appropriate action to increase local production and propose measures to the NBB to address the supply shortage.

b) The SRA shall develop appropriate schemes to facilitate orderly allocation of sugarcane for both sugar and ethanol. For this purpose, it shall report to the NBB the supply and demand situation of sugarcane and shall require regular submission of prescribed reports from bioethanol producers.

The SRA, pursuant to its existing mandate, shall formulate the issuances consistent with its existing sugar classification functions, to effect an appropriate system of classification and allocation in terms of sugar and sugar equivalent.

Section 28. Security of Domestic Biofuels Feedstock Supply.

Pursuant to Section 11, paragraph (d) (2) of the Act, the DA shall ensure increased productivity and sustainable supply of biofuels feedstocks. Towards this end, the DA in consultation with PCA, SRA, and other entities concerned, shall develop and implement appropriate programs and guidelines in order to ensure a reliable supply of biofuel feedstocks.

Rule 8. Development of Social Amelioration and Welfare Program for Workers in the Production of Biofuels

Section 29. Objectives of the Program. A Social Amelioration and Welfare Program ("Program") similar to that of the Sugar Administration Act of 1991 or R.A. 6982, shall be developed for the following objectives:

a) Promote gainful livelihood opportunities;

b) Facilitate productive employment through effective employment services and regulation; and

c) Ensure the access of workers to productive resources and social protection coverage.

Section 30. Coverage. The program shall cover all rank and file employees of biofuel plants, workers and farmers engaged in the production of crops used as feedstocks in biofuels.

Section 31. Components of the Program. The program shall provide basic benefits and assistance that will augment the income and improve the standard of living of workers engaged in the production of biofuels. It may consist of, among others:

a) training and education assistance;

b) livelihood assistance;

c) social protection and welfare benefits; and

d) distribution of financial benefits.

Section 32. Establishment of Guidelines and Mechanisms.

Pursuant to Section 17 of the Act, the NBB shall formulate and issue, through the appropriate NBB member agency/ies, the guidelines covering or governing the mechanisms, management and monitoring of the Program, similar to that prescribed under R.A. 6982 or the Sugar Amelioration Act of 1991.

However, the Act and this IRR shall not in any way result in the forfeiture or diminution of existing benefits enjoyed by the sugar workers as prescribed in the Sugar Amelioration Act, in case sugarcane shall be used as feedstock.

Rule 9. Prohibited Acts, Penal and Administrative Provisions

Section 33. Prohibited Acts. Any person or entity found in violation of any provision of the Act and this IRR shall be subject to appropriate criminal, civil, and /or administrative sanctions as provided herein and other existing applicable laws, rules and regulations.

Under Section 12 of the Act, the following shall be prohibited:

a) Diversion of biofuels, whether locally produced or imported, to purposes other than those envisioned in the Act;

b) Sale of biofuel-blended gasoline or diesel that fails to comply with the minimum biofuel-blend by volume in violation of the requirement under Section 5 of the Act;

c) Distribution, sale, and use of automotive fuel containing harmful additives such as, but not limited to, MTBE at such concentration exceeding the limits to be determined by the NBB;

d) Non-compliance with the established guidelines of the PNS and DOE adopted for the implementation of the Act; and

e) False labeling of gasoline, diesel, biofuels, and biofuel-blended gasoline and diesel.

Section 34. Penal Provisions.

34.1 In accordance with Section 13 of the Act, any person, who willfully aids or abets in the commission of a crime prohibited in the Act, or who causes the commission of any such act by another shall be liable in the same manner as the principal;

34.2 In the case of association, partnership or corporations, the penalty shall be imposed on the partner, president, chief operating officer, chief executive officer, directors or officers, responsible for the violation; and

34.3 The commission of an act enumerated in Section 12 of the Act, upon conviction thereof, shall suffer the penalty of one year to five years imprisonment and a fine ranging from One Million (P 1,000,000) to Five Million pesos (P 5,000,000).

Section 35. Administrative Liability.

35.1 Without prejudice to incurring criminal liability, any person who commits any of the prohibited acts under Section 12 (b) to (e) of the Act, this IRR and other issuances relative to the implementation of the Act shall likewise be subject to administrative fines and penalties, in accordance with a schedule of administrative fines and penalties to be issued by the DOE.

For avoidance of doubt, administrative actions initiated pursuant to this Section shall be separate and independent from any criminal actions that may arise for violations of Section 12 of the Act.

35.2 In addition to imposing fines and penalties, the DOE shall be authorized to:

a) Confiscate any amount of such products that shall comply with the requirements of Sections 4 and 5 of the Act and implementing issuances of the DOE;

b) Determine the appropriate process and the manner of disposal of the confiscated products; and

c) Stop and suspend the operation of businesses for refusal to comply with any order or instruction of the DOE Secretary in the exercise of his functions under the Act.

Section 36. Administrative Procedures.

36.1 The DOE may initiate, motu propio, or upon the filing of any complaint for the violation of any prohibited act under Section 12 (b) to (e) of the Act, the IRR or related issuances, an administrative proceeding against any such person or entity. In the exercise thereof, the DOE may commence such hearing or inquiry by an order to show cause, setting forth the grounds for such order.

36.2 The administrative proceeding shall be conducted before the DOE to determine the culpability of alleged offenders and to determine the applicable penalties. The administrative proceedings under this IRR shall be governed by the existing rules of practice and procedure before the DOE.

Rule 10. Other Provisions

Section 37. Congressional Oversight Committee.

37.1 Pursuant to Section 16 of the Act, a Congressional Oversight Committee, called the Biofuel Oversight Committee, is hereby constituted with fourteen (14) members, with the Chairpersons of the Committees on Energy of both Houses of Congress as co-chairpersons.

37.2 The Chairpersons of the Committees on Agriculture and on Trade and Industry in each chamber shall be ex-officio members of the Biofuels Oversight Committee.

37.3 The Senate President and the Speaker of the House of Representatives shall each designate four members from their respective chambers to sit in the Biofuels Oversight Committee. In designating such four members, the minority in each chamber shall be entitled to pro-rata representation provided that at the very least, they shall have one representative in the Biofuels Oversight Committee.

Section 38. Appropriations. Funds necessary to finance the activities of concerned government agencies as provided in the Act and in this IRR shall be included in the annual General Appropriations Act.

Section 39. Special Clause. The Act and the IRR shall not be interpreted as prejudicial to clean development mechanism (CDM) projects that cause carbon dioxide (CO2) and greenhouse gases (GHG) emission reductions of biofuels use.

Section 40. Village Level and/or Community-Based Facilities. The promotion and utilization of biofuels for household and community equipment for lighting, cooking, farming, post-harvest processing, off-road operations, and other analogous uses shall be included as part of the National Biofuels Program in accordance with the government policy under the Act.

Section 41. Separability Clause. If any provision of this IRR is declared unconstitutional, the same shall not affect the validity and effectivity of the other provisions thereof.

Section 42. Effectivity. This IRR shall take effect fifteen (15) days after its publication in two newspapers of general circulation.

Signed this 17th day of May 2007 at the DOE, Energy Center, Merritt Road, Fort Bonifacio, Taguig City, Metro Manila.

RAPHAEL P.M. LOTILLA
Secretary of Energy

D. PROCLAMATION NO. 1763

PROCLAMATION NO. 1763

CONFIRMING THE ADMINISTRATIVE AUTHORITY AND JURISDICTION OF THE DEPARTMENT OF ENERGY (DOE) TO EXPLORE, DEVELOP, AND/OR UTILIZE THE GEOTHERMAL RESERVES OVER THE AREAS COVERED BY PROCLAMATION NOS. 739 AND 1111 AND WITH FULL AUTHORITY TO ENTER INTO SERVICE CONTRACTS OR ANY LAWFUL AGREEMENT IN RELATION THERETO

WHEREAS, Proclamation No. 739 established as reservation under the administration of the National Power Corporation (NPC) for the purposes of the exploration, development, exploitation, development and utilization of geothermal energy, natural gas and methane gas, a parcel of land in the Municipalities of Malinao and Tiwi, Province of Albay;

WHEREAS, Proclamation No. 1111 established as reservation under the administration of the NPC for the purpose of the exploration, development, exploitation and utilization of geothermal energy, natural gas and methane gas, a parcel of land in the Provinces of Laguna, Quezon and Batangas;

WHEREAS, these reservations covered by both Proclamations No. 739 and 1111 are collectively and commonly referred to as the "Tiwi-MakBan Geothermal Reservation Areas";

WHEREAS, NPC, through its service contractor, has developed the Tiwi-MakBan Geothermal Power Complex supplying electric power to the Luzon Grid;

WHEREAS, on July 11, 1978, Presidential Decree No. 1442 was issued, which, under Section 1 thereof, accordingly placed under the direct supervision of the Government, through the Department of Energy (DOE), the exploration, exploitation and development of geothermal resources, including those in areas situated in geothermal reservations, subject to existing private right;

WHEREAS, under Executive Order No. 224 dated 16 July 1987, NPC shall exercise

complete jurisdiction, control and regulation over certain watershed areas, including among others, the Makiling-Banahaw Geothermal Reservation as covered by Proclamation No. 1111 and the Tiwi Geothermal Reservation as covered by Proclamation No. 739;

WHEREAS, pursuant to Section 47 (g) of Republic Act No. 9136, "the steamfield assets and generating plants of each geothermal complex [of NPC] shall not be sold separately. They shall be sold as one package through public bidding. The geothermal complexes covered by this requirement include, but are not limited to, Tiwi-MakBan, Leyte A and B (Tongonan), Palimpinon and Mt. Apo";

WHEREAS, the Power Sector Assets and Liabilities Management Corporation (PSALM), pursuant to its mandate under Republic Act No. 9136, took ownership of all existing generation assets, real estate and other disposable assets of NPC with the principal purpose of managing the orderly sale, disposition and privatization thereof;

WHEREAS, on 30 July 2008, PSALM concluded the conduct of a public bidding for the Tiwi-MakBan Geothermal Complex and selected the highest qualified bid for the purchase of the said assets;

WHEREAS, as the DOE proceeds to implement a program for the continued exploration, development and utilization of the Tiwi-MakBan Geothermal Areas in accordance with law, there is a need for close coordination among the various agencies and affected parties to ensure the continued operation of the Tiwi-MakBan Geothermal Complex and the supply of electric power to the Luzon Grid;

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Philippines, by virtue of the powers vested in me by law, do hereby confirm the administrative authority and jurisdiction of the Department of Energy over geothermal reservations commonly known as the Tiwi-MakBan Geothermal Reservation Areas established respectively under Proclamation Nos. 739 and 1111, subject to existing rights of parties. Pursuant to this:

(1) The DOE, on behalf of the State, and in coordination with NPC, is directed to further develop the Tiwi-MakBan Geothermal Reservation Areas, subject to existing rights of parties vested upon by law or contract. For this purpose, the DOE may enter into service or renewable energy contracts for the exploration, development and/or utilization of geothermal resources or to enter into any other lawful agreement for the utilization of the same, under existing laws.

(2) The DOE and/or its service contractor, shall likewise coordinate among PSALM, NPC and the affected private parties for the implementation of the privatization of the Tiwi-MakBan Geothermal Complex to ensure that the transition of ownership thereof will not result in any disruption of the operations for the supply of steam and generation of power.

(3) All orders, rules, regulations issuances, or parts thereof, which are inconsistent with this Order are hereby repealed or modified accordingly.

(4) This Proclamation shall take effect immediately following its publication in the Official Gazette or in two (2) newspapers of general circulation.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 1st day of May, in the year of Our Lord, Two Thousand and Nine.

(Sgd.) GLORIA MACAPAGAL-ARROYO
President

By the President
(Sgd.) Eduardo R. Ermita

DEPARTMENT CIRCULAR NO. DC 2012-11-0009

RENEWABLE ENERGY SAFETY, HEALTH AND ENVIRONMENT RULES AND REGULATIONS

STATEMENT OF AUTHORITY

Pursuant to Republic Act No. 9513, otherwise known as the ***"Renewable Energy Act of 2008"*** and Section 5 of Republic Act No. 7638, otherwise known as the ***"Department of Energy Act of 1992",*** and in order to ensure adequate safety and protection against hazards to health, life and property as well as pollution of air, land and water from Renewable Energy (RE) Operations, the following safety, health and environment rules and regulations are hereby promulgated:

RULE 1
GENERAL PROVISIONS

Section 1. Title. This Department Circular shall be known as the "Renewable Energy Safety, Health and Environment Rules and Regulations of 2012" (RESHERR) and shall be hereinafter referred to as the Circular.

Section 2. Scope and Coverage. This Circular shall apply to all Employers, Employees, contractors and other entities engaged in RE Operations in the Philippines.

Section 3. Definition of Terms. Terms and expressions that are generally defined in other existing regulations or in the Occupational Safety and Health Standards (OSHS) shall have the same meaning in this Circular. For purposes of this Circular, however, the following terms shall be defined as follows:

1. **Authorized Representatives** refers to any Employee of the Renewable Energy Management Bureau (REMB) or other units of the Department of Energy (DOE), who has been authorized by the REMB Director to enforce the provisions of the Rules;

2. **Bureau** refers to the REMB;

3. **Code of Practice** refers to that set of safety, health and environment standards for each RE resource/ technology to be promulgated by the Bureau as stated in Section 8, Rule 2 hereof;

4. **Contract** refers to a RE Service/ Operating Contract;

5. **Department** refers to the DOE;

6. **Director** refers to the Director of the REMB;

7. **DENR** refers to the Department of Environment and Natural Resources;

8. **DOLE** refers to the Department of Labor and Employment;

9. **Environment** refers to the Occupational Environmental Control as provided m Rule 1070 of OSHS;

10. **Employee** refers to any person who works for wage or salary in the service of an Employer;

11. **Employer** refers to the service/ operating contractor referred to in a RE Service/ Operating Contract, and other entities, whether government or private, engaged in RE Operations, whether acting alone or in consortium with others, that hires one or more persons to work for wages or salaries;

12. **Lost Time Accident** refers to an accident that will prevent the injured person from performing his regular job on the next working day following the day of the injury or, after reporting for work

on the next working day following the day of the injury, the injured person fails to continue his normal work due to complications resulting in permanent injury and disability;

13. **Non-Lost Time Accident** refers to an accident that will not prevent the injured person from performing his regular work on the day following the day of injury and thereafter;

14. **OSHS** refers to the Occupational, Safety and Health Standards issued by the DOLE;

15. **RE Facilities** refer to facilities related to exploration, development and utilization of RE resources, and including the manufacturing, fabrication, and supply of locally-produced RE machineries, equipment, components and parts;

16. **RE Operations** refer to all activities related to exploration, development and utilization of RE resources, and including the manufacturing, fabrication, and supply of locally-produced RE machineries, equipment, components and parts; and

17. **Workplace** refers to the office, premises or worksites where the Employees are situated, and shall include the office or place where the workers who have no fixed or definite worksite, regularly report for assignment in the course of their employment.

RULE 2
ADMINISTRATION AND ENFORCEMENT

Section 4. Powers and Duties of the Director or His Duly Authorized Representative.

1. Enforce the provisions of this Circular and all other pertinent regulations concerning occupational safety, health and environment;

2. Inquire into or inspect at regarding safety of all RE Operations, and in compliance with the terms and conditions of the Contract and/or accreditation;

3. In case of investigation and inquiry under this Circular, summon company officials, Employees or other persons having knowledge on the subject of investigation or inquiry, and require the production of pertinent documents relative thereto;

4. Issue suspension/ variation order in accordance with Rule 1012.03 and 1012.04 of OSHS, as amended;

5. Conduct separate incident/ accident investigations involving fatal accidents and dangerous occurrences to determine cause/ s of such accidents and occurrences, and introduce remedial measures to prevent their recurrence; and

6. Suspend any particular activity or operation when such activity or operation causes or will cause imminent danger until necessary actions are taken.

Section 5. Duties of Employers.

1. Every Employer shall make and give effect to such arrangements as are appropriate, having regard to the nature and size of its activities and undertaking, for the effective planning, organization, control, monitoring and review of the relevant preventive and protective measures;

2. For purposes of identifying the measures necessary to enable the Employer to comply with the requirements and prohibitions of these Rules, every Employer shall conduct and record suitable and sufficient assessment of the following:

    a) The risk to the health, safety and environment of its Employees while

they are at work; and

b) The risk to the health, safety and environment of persons not under its employ as a result of or in relation to the activities of its operations.

3. The Employer in any of the following instances shall review the assessment referred to in Number 2 above:

a) There is reasonable ground to believe that the assessment is no longer valid;

b) There has been a significant change in the matter to which the assessment relates; or

c) Where, as a result of any such review, changes to the assessment are required.

4. Every Employer shall provide its Employees with comprehensible and relevant hazard information consisting of the following:

a) The risk to their health, safety and environment identified by the assessment;

b) The preventive and protective measures;

c) The procedures used in hazard assessment; and

d) The identity of the persons appointed to conduct hazard assessment.

5. Every Employer shall submit to the Director an annual comprehensive Safety, Health and Environmental Management Plans and Programs for the succeeding year on or before December 1 of the current year.

Section 6. Duties of Employees.

1. Every Employee using any machinery, equipment, dangerous substance, transport equipment, means of production or safety device supplied to him by his Employer shall use it in accordance with company policies and the relevant provisions of this Circular;

2. Every Employee shall inform his Employer or the person with specific responsibility for the safety, health and environment of his fellow Employees:

a) Of any work situation which a person equipped with the necessary training and instruction would reasonably consider as posing a serious and immediate danger to safety, health and environment; and

b) Of any matter, which a person equipped with the necessary training and instruction, would reasonably consider as a shortcoming in the Employer's protection arrangements for safety, health and environment.

Section 7. Cooperation and Coordination. Where two or more Employers share a Workplace, whether on temporary or permanent basis, each shall:

1. Cooperate with the other contractor(s) concerned insofar as practicable and necessary to enable then to comply with the requirements and prohibitions imposed upon them by or under this Rules;

2. Take all reasonable steps to coordinate the measures which are necessary to comply with the measures that the other contractor(s) concerned is/are taking; and

3. Take all reasonable steps to inform the other Employers of the risks to their Employee's health and safety arising from or in connection with the conduct of their undertaking.

Section 8. Code of Practice. Within six (6) months upon the effectivity of this Circular, the Bureau shall, in consultation with RE stakeholders and relevant government agencies, promulgate the Code of Practice of this Circular.

RULE 3
SAFETY, HEALTH AND ENVIRONMENT ORGANIZATION

Section 9. Policy Statement. A general safety, health and environment policy statement in writing shall be issued by the Employer or corporate organization to reflect management's positive attitude, support and commitment to effective leadership and program administration for safety, health and environment.

Section 10. The Safety, Health and Environment Organization. The safety, Health and Environment Organization shall be under the direct and immediate control and supervision of the highest official. The Safety, health and environment unit is assigned in each operation to maximize effective implementation of the Employer's safety, health and environment program and enforcement of the Rules.

Section 11. Personnel.

1. Every Employer shall appoint the number of qualified full-time Safety Engineers/ Officers in accordance with the following:

Minimum Number of Full-time Safety Engineer/Officers

Number of Employees in RE Operations	1000 and above	500 to 999	50 to 499
Pre-Development/ Exploration	2	1	1
Development	3	2	1
Construction	3	2	1
Production	2	1	1
Plant Operation	3	2	1

2. Every Employer shall designate a qualified supervisor, with minimum Basic Occupational Safety and Health (BOSH) training with DOE-Accredited Safety Training Organization (STO), as part-time Safety Officer when RE Operations involves less than 50 persons.

3. Every Employer shall appoint the number of qualified occupational health personnel in accordance with Rule 1960 of the OSHS, as amended.

Section 12. Safety, Health and Environment Committee. A Safety, Health and Environment Committee (the "Committee") shall be organized in all RE Facilities upon commencement of its operations. The minimum composition of the Committee shall be determined based on the number of the workers, as follows:

In every Workplace with less than one hundred (100) workers, the following shall compose the Committee:

Chairman	-	Manager
Members	-	One (1) Foreman/ Supervisor
	-	Three (3) workers
	-	Nurse/First-aider
	-	Environmental Officer
	-	Contractor Safety Officer (if applicable)
Secretary	-	Safety Officer

In case there are more than one hundred (100) workers in a Workplace, the following shall compose the Committee:

Chairman	-	Manager
Members	-	One (1) Foreman/ Supervisor
	-	Four (4) workers
	-	Nurse/First-aider
	-	Environmental Officer
	-	Contractor Safety Officer (if applicable)
Secretary	-	Safety Officer

Section 13. Qualification of Safety Engineer/ Officer and Issuance, Cancellation of Safety Engineer's/Officer's Permit

1. An Employee shall be regarded as a qualified Safety Engineer/Officer for the purpose of Section 10 hereof if she/he has the sufficient training, experience, knowledge and other qualities to enable her/him to fulfill the tasks required under this Circular.

2. All persons employed in the practice of occupational safety in the RE industry shall be duly qualified and accredited by the Bureau.

3. The Bureau may issue a certification/ permit, attesting to the competence, of a person possessing any of the following qualifications:

    a) Duly licensed engineer with at least two (2) years actual experience in occupational safety in RE industry-related work and has attended the minimum training requirement on BOSH;

    b) Degree holder or two years in college with at least five (5) years actual experience in occupational safety in RE industry-related work and has attended the minimum training requirement on BOSH; and

    c) Accredited as a Safety Practitioner by the DOLE.

4. A Safety Engineer's/ Officer's Permit shall be issued upon submission of the following requirements:

    a) A duly accomplished and sworn application (refer to Appendix "A") with emphasis on service record;

    b) Endorsement and certification from the Employer and/or contractor;

    c) Two (2) pieces of 2" X 2" size pictures (any color) taken not less than three (3) months at the time of application; and

    d) Payment of application/ processing fee in the amount of Three Hundred Pesos (Php300.00), subject to the approval of the DOE Revised Schedule of Fees and Charges.

5. Annual renewal of permit shall be made within one (1) month prior to the date of expiration of the previously-issued permit. The Bureau shall issue a new permit only after reviewing the qualifications and meritorious service record of the applicant, and compliance with the aforementioned accreditation requirements;

6. The Director may, upon the recommendation of the concerned Division Chief of the Bureau, cancel accreditation of safety personnel for any of the following reasons:

    a) Conviction of any criminal offense involving moral turpitude;

    b) Violation of professional ethics; or

    c) Gross negligence resulting in incidents/ accidents as referred, but not limited to, Rule 4 Section 14 (2) of this Circular.

RULE 4
REPORTING AND RECORDING OF INCIDENTS/ACCIDENTS/ ILLNESSES/DISEASES

Section 14. Notification and Reporting.

1. Every Employer shall report to the Bureau in writing, the result of the investigation of all Lost Time Accidents with major loss/ damages;

2. In the transmittal of the written report required under paragraph (1) above, to the Bureau, every Employer shall utilize the fastest available means of communication and shall be made within twenty-four (24) hours after occurrence of any, but not limited to, the following incidents:

    a. Fatal accidents;

    b. Hospitalization of three (3) or more persons;

    c. Accidental detonation of explosives including blasting agents;

    d. Explosion or blowout;

    e. Accidental or over-exposure to ionizing radiation;

    f. Accidental exposure to immediately dangerous to life and health levels of toxic substances; and

    g. Property damages amounting to One Million Pesos

3. Each report shall be made using the prescribed form in Appendix "B" and

4. A quarterly statistical accident/ incident/ illnesses/ diseases report shall be submitted by every Employer to the Bureau within twenty (20) days following the end of each quarter using the prescribed form Appendix "C".

Section 15. Record-keeping

1. Every Employer shall maintain a log and summary, on a calendar year basis, of all reportable incidents, which shall be completed in detail in the prescribed form; and

2. The log and summary shall be made available during inspection to the Director or Authorized Representatives.

Section 16. Evaluation of Disability and Measurement of Performance. Charges for the Evaluation of Disability and Measurement of Exposure to Industrial Injuries, determination of Employee-Hours of Exposure and measurement of Injury/ Illnesses Experience, shall be in accordance with Rule 1055 and 1056 of the OSHS, as amended, respectively.

RULE 5
GENERAL SAFETY, HEALTH AND ENVIRONMENT PROVISIONS

Section 17. General Applicability. If a particular standard or regulation is applicable to a specific condition, practice, means, method, process or operation, that standard or regulation shall prevail over a general standard or regulation which might also be applicable to the same condition, practice, means, method, process or operation.

Section 18. Safety and Health Training

1. Every Employer shall ensure that his Employees are provided with adequate safety and health training to be conducted by DOLE-Accredited STO upon employment and on their being exposed to new or increased risks due to any of the following:

    a. Transferred or given a change of responsibilities within the Employer's undertaking;

    b. The introduction of new work equipment into or a change concerning work equipment already in use within the Employer's undertaking;

    c. The introduction of new technology into the Employer's undertaking; or

    d. The introduction of a new system of work into or a change concerning a system of work already in use within the Employer's undertaking.

2. The safety and health training shall:

    a. Be conducted every 3 years or as directed by the Bureau and shall be conducted by a duly DOLE Accredited STO

    b. Be adapted to take account of any new or changed risks to the health and safety of the Employees concerned;

    c. Take place during working hours; and

    d. Be recorded to include the title, duration, facilitators/ lecturers and results of course evaluations, among others.

Section 19. Personal Protective Equipment (PPE)

1. Every Employer shall determine the presence of hazards or potential risks requiring the use of the PPE. If such hazards are present, or likely to be present, the Employer/ contractor shall:

    a. Select PPE that properly fits each affected Employee;

    b. Communicate selection decisions;

    c. Require affected Employee to use the PPE; and

    d. Provide training on the proper use and care of the PPE to each Employee who is required to use the same.

2. Employees shall be provided with the appropriate PPE, safety devices and equipment as required at the expense of the Employer.

    All PPE to be used shall be of the approved design and construction appropriate for the exposure and the work to be performed that meets the minimum OSHS.

3. Prior to use, appropriate fit test examination shall be conducted to ensure that the PPE conforms to the following minimum requirements:

    a. Provide adequate protection against the specific hazard for which they are designed or intended;

    b. Be reasonably comfortable to use; and

    c. Fit properly and shall not unduly interfere with the movements of the user.

4. No Employee in a plant or field shall be subjected or exposed to a hazardous environmental condition without the necessary protection; and

5. The Employee is physically fit to use the PPE.

Section 20. Workplace Monitoring and Control.

1. Every Employer shall monitor and control the Employees' exposure to Workplace hazards, and shall maintain such records for each Employee in accordance with Rule 1070 of the OSHS, as amended;

2. All regular measurements of the Workplace hazards shall be carried out in operations and work processes, and a record of such measurement shall be made available during the Bureau's inspection;

3. Periodic monitoring of airborne toxic and hazardous substances; and

4. Every Employer shall develop an appropriate procedure relative to works involving toxic and hazardous substances.

Section 21. Electrical and Mechanical Works. All electrical and mechanical installations,

constructions and equipment shall be in accordance with the provisions of the latest edition of the Philippine Electrical Code and Philippine Society of Mechanical Engineering Code. Operations, maintenance and repair works of electrical and mechanical equipment or machinery shall be done by qualified and duly authorized personnel in complete adherence to RA 7920 or otherwise known as the "New Electrical Engineering Law", in particular Ethics on Professional Practice, and RA 8495 or otherwise known as the "Mechanical Engineering Law."

Section 22. Guarding of Machinery. All moving parts of machinery and all dangerous parts of equipment shall be effectively guarded in conformity with Rule 1200 of the OSHS, as amended.

Section 23. Work Permit System.

1. Every Employer shall adopt and implement a work permit system;

2. Every Employer shall not allow any critical activity such as hot work, work on electrical system, excavation, critical lift, work on heights and work on confined spaces and any other activity deemed critical unless all hazards are removed or controlled; and

3. Every Employer shall ensure that Employees exposed to the hazards created by hot work, energy isolation, excavation, critical lift, work on heights, and work on confined spaces and any other activity deemed critical are protected by PPE in accordance with the requirements of Section 19 of this Circular.

Section 24. Use of Commercial Explosives. No Employer shall store, handle or transport explosives or blasting agents within RE Facilities when such storage, handling and transportation of explosives or blasting agents constitutes an undue hazard to life or limb. For this purpose, pertinent requirements under Rule 10, Chapter IV, Div. 5 of the Fire Code of the Philippines, and the requirement of the Philippine National Police-Explosives and Ordinance Division are hereby adopted. A quarterly transaction report shall be submitted by every Employer to the Bureau within twenty (20) days following the end of each quarter using the prescribed form in Appendix "D".

Section 25. Construction Works. Every Employer shall safeguard their Employees engaged in construction work by complying with appropriate standards. The construction safety standards provided under OSHS and the DOLE Department Order No. 13, series of 1998-Guidelines Governing Occupational Safety and Health in the Construction Industry are hereby adopted and shall apply, according to the provisions thereof, to every RE Workplace.

Section 26. Fire Protection and Control.

1. Every Employer, in consideration of the potential risks involved, shall construct, install, provide, incorporate, adopt and maintain in RE Facilities, under operable and practical conditions, the following:

    a. Fire suppression devices, equipment or systems;

    b. Fire safety structures; and

    c. Fire protection and warning systems.

2. Every Employer shall ensure that RE Operations and/or processes with potential for serious fire and explosion are segregated or so located in areas where only a minimum number of Employees required in the process is allowed at any given time; and

3. For basic safety measures and special precautions required for fire prevention in hazardous work processes, as well as use, handling and/or storage of

hazardous materials, relevant provisions of the Fire Code of the Philippines shall be adopted.

Section 27. Serious Imminent Danger.

1. Every Employer shall:

    a. Create a Disaster Emergency Preparedness/Contingency Plan and Response Team;

    b. Establish appropriate emergency action plan to be implemented in the event of serious and imminent danger;

    c. Designate a sufficient number of competent persons to implement those procedures insofar as they relate to the evacuation of Employees from their work; and

    d. Ensure that none of its Employees has access to any area to which it is necessary to restrict access on grounds of health and safety instructions and the Employee's presence is necessary for the abatement of the imminent danger.

2. Every Employer shall set up, communicate and maintain an appropriate emergency alarm system to alert or warn all persons likely to be affected by existing or imminent disaster conditions. The alarm shall be distinctive and recognizable as a signal to evacuate the area or to perform actions designated under the emergency action plan;

3. Every Employer shall conduct emergency drills at least twice every year to ensure safe and orderly evacuation of personnel as well as timely and effective action or response team;

4. For the purpose of No. 1 (b) above, the procedures that may be adopted by the Employer shall include the following:

    a. Inform any person at work who is exposed to serious and imminent danger, of the nature of the hazard and of the steps taken or to be taken to protect him/her from the hazard;

    b. Enable the persons concerned, without prejudice to taking appropriate steps in the absence of guidance or instruction and in the light of their knowledge and the technical means at their disposal, to stop work and immediately proceed to a safe place in the event of their being exposed to serious, imminent and unavoidable danger; and

    c. In exceptional cases, for reasons duly substantiated, prevent the persons concerned from resuming work in any situation where there is serious and imminent danger.

5. A person shall be regarded as competent for the purpose of No. 1 (c) above where he has sufficient training, experience or knowledge and other qualities, to enable him/her to properly implement the evacuation procedure referred to therein.

Section 28. Hazard Communication. Every Employer shall inform all its Employees on the safety and health hazards associated with their work. Hazardous substance and chemicals used, processed or produced shall be evaluated, stored in approved containers and properly labeled.

Standard instructional/warning sign and color code for identification of materials conveyed in piping system shall be used be every Employer consistent with the requirements of OSHS, as amended, and the Philippine Society of Mechanical Engineers Code, respectively.

Section 29. Engineering Change Management. As part of the engineering functions or process management, all new

installations, plant, equipment and changes in facility shall have a hazard screening and review conducted to ensure compliance with standards.

Section 30. Environmental Compliance. All RE Operations shall be conducted in accordance with existing environmental regulations as prescribed by the DENR and/ or any other concerned agency.

RULE 6
OCCUPATIONAL HEALTH REQUIREMENTS

Section 31. Health Program.

1. Every Employer shall promote, protect and maintain the health and well-being of its Employees through the implementation of an occupational health program which includes the following:

    a. Health examination for pre-employment, periodic, special, transfer/ separation and other health examination deemed necessary by qualified health authorities;

    b. Management and treatment of occupational injuries and diseases;

    c. Immunization programs;

    d. Health education and counselling;

    e. Keeping of medical records; and

    f. Other relevant health programs.

2. Health surveillance shall include the following activities:

    a. Biological monitoring;

    b. Medical surveillance; and

    c. Symptoms and injury, inspection and examination.

Section 32. Health Services.

1. Every Employer shall, in accordance with the requirements of Rule 1960 of the OSHS, as amended, provide the necessary medical and dental services and facilities;

2. Every Employer shall maintain necessary additional emergency medical supplies and medicines as recommended by the Employer's, medical personnel;

3. In the absence of a clinic or hospital near and/or in proximity to the place of work, every Employer shall ensure that suitable transport facilities are readily available, and sufficient number of persons are adequately trained and readily available to render first aid; and

4. The Employer shall provide the necessary sanitary and welfare facilities in the work place as required under Chapter VII of P.D. 856 otherwise known as the "Sanitation Code of the Philippines."

RULE 7
ADMINISTRATIVE FINES AND PENALTIES

Section 33. Administrative Fines and Penalties. Pursuant to Rule 2 of this Circular, the Director shall impose administrative fines and penalties for the following violations:

1. Failure or late submission of quarterly statistical reports for incident/ accident/ illnesses/ diseases:

    a) First Offense - Fine of P10,000.00;

    b) Second Offense - Fine of P20,000.00; and

    c) Third Offense and Succeeding Offenses - Fine of P50,000.00.

2. Failure to register or secure/renew a permit for safety engineers/officers:

   a) Within one (1) month after the expiration of the old permit – Fine of P10,000.00; and

   b) After one (1) month after the expiration of the old permit – Fine of P20,000.00 per month on the succeeding months.

3. Failure to employ a qualified safety officer:

   a) Within six (6) months after the signing of service/operating Contract and/or certificate of registration - -Fine of P100,000.00; and

   b) After the sixth (6th) month and every succeeding month an additional – Fine of P20,000.00 per month.

4. Failure to notify the Bureau using the fastest and efficient means of communication the occurrence of any incident/accident specified and within the period set forth in Rule 4 Section 14 of this Circular – Fine of P10,000.00.

5. Failure to correct any unsafe condition(s) noted by the Bureau's Authorized Representative:

   a) First Offense - Fine of P10,000.00;

   b) Second Offense - Fine of P20,000.00; and

   c) Third Offense and Succeeding Offenses - Fine of P50,000.00 and suspension of operation in the area affected until the unsafe conditions(s) is/are rectified.

6. Withholding or failure to provide pertinent data or information regarding the safety aspects of RE Operations as required by the Bureau:

   a) First Offense - Fine of P10,000.00;

   b) Second Offense - Fine of P20,000.00; and

   c) Third Offense and Succeeding Offenses - Fine of P50,000.00.

7. Official receipts shall cover all fines collected in accordance with paragraph (1) hereof.

RULE 8
FINAL PROVISIONS

Section 34. Separability Clause. In the event that any provision of this Circular or the application of such a provision to any person or circumstance is declared invalid, the remainder of this Circular and the application of such a provision to other persons or circumstances shall not be affected by such declaration.

Section 35. Resolution of Conflicts and Overlapping Jurisdictions. In case any provision of this Circular conflicts, duplicates or overlaps with rules and regulations being implemented by other government agencies, such conflict, duplication or overlapping shall be resolved by coordination or any other means of cooperation among such agencies.

Section 36. Interpretation. Notwithstanding the provisions of Section 36, Rule 8 hereof, where the requirements thereof overlap or duplicate an existing regulation, compliance with a more specific regulation shall be considered substantial compliance. However, where the requirements go beyond those in the more specific regulations, additional

measures shall be instituted to comply fully with this Circular. The Director shall determine such measures that are or will be at least as effective as the standards prescribed under this Circular.

Section 37. Repealing Clause. All rules and regulations pertaining to safety, health and environment in RE Operations, orders or parts thereof which are inconsistent with or contrary to this Circular are hereby repealed, amended, or modified accordingly.

Section 38. Effectivity. This Circular shall take effect fifteen (15) days after publication in at least two (2) newspapers of general circulation.

Issued on 21 November 2012 in Energy Center, Bonifacio Global City, Taguig City.

CARLOS JERICHO L. PETILLA
Secretary
Signed

APPENDIX A

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF ENERGY
Renewable Energy Management Bureau
Fort Bonifacio, Metro Manila

APPLICATION FOR SAFETY ENGINEER'S/OFFICER'S PERMIT

NAME :______________________ SEX :___________________
RESIDENCE :____

DATE OF BIRTH :______________________ PLACE OF BIRTH :___________________
CITIZENSHIP :______________________ CIVIL STATUS :___________________
EMPLOYER :______________________ ADDRESS :___________________
DESIGNATION :______________________ ACR NO. :___________________

EDUCATIONAL ATTAINMENT

		DATE ATTENDED	DEGREE COMPLETED
ELEMENTARY	:________________________	_______________	_______________________
SECONDARY	:________________________	_______________	_______________________
VOCATIONAL	:________________________	_______________	_______________________
COLLEGE	:________________________	_______________	_______________________
POST GRADUATE	:________________________	_______________	_______________________

WORK EXPERIENCE

NAME & ADDRESS OF EMPLOYER: ____
____
INCLUSIVE DATE: ____________________________ LAST POSITION HELD: ____________________
TRAININGS/SEMINARS: _______________________ INCLUSIVE DATES: _______________________
____
____
SKILLS/SPECIAL QUALIFICATIONS: ____
GOVERNMENT EXAMINATION PASSED: ____

I hereby certify that the statements given above are true and correct to the best of my knowledge.

__________________________ ______________________

Signature of Applicant Date

SUBSCRIBED AND SWORN to before me, affiant exhibit to me his/her Residence Certificate No. ________
Issued at _______________ on ______________.

NOTARY PUBLIC

Doc No._______:
Page No.______:
Book No.______:
Series of ______:

- -

Do not fill beyond this point

Date Received/Evaluated: ___________________ Evaluated by: _______________________
Result of Evaluation: _______________________ Recommending Approval: _____________
Action Taken: _____________________________ Approved by: _______________________

ACCIDENT REPORT

IDENTIFYING INFORMATION

1. COMPANY OR DIVISION		3. COMPANY OR DIVISION	
2. LOCATION OF INCIDENT		4. DATE OF INCIDENT	5. TIME AM PM / 6. DATE OF REPORT
INJURY OR ILLNESS		PROPERTY DAMAGE	OTHER ACTUAL OR POTENTIAL LOSS
7. INJURED NAME		14. PROPERTY DAMAGE	18. TYPE
8. PARTS OF THE BODY	9. DAYS LOST	15. NATURE OF DAMAGE	19. COST
10. NATURE OF BODY OR ILLNESS		16. COST	20. NATURE OF LOSS
11. OBJECT/EQUIPMENT/SUBSTANCE INFLICTING HARM		17. OBJECT/EQUIPMENT/SUBSTANCE INFLICTING DAMAGE	21. OBJECT/EQUIPMENT/SUBSTANCE RELATED
12. OCCUPATION	13. EXPERIENCE	22. PERSON IN CONTROL OF ACTIVITY AT THE TIME OF OCCURENCE	

RISK

23. LOST SEVERITY POTENTIAL: ☐ major ☐ serious ☐ minor

24. PROBABILITY: ☐ high ☐ moderate ☐ low

DESCRIPTION

23. DESCRIBE HOW THE EVENT OCCURRED

CAUSE ANALYSIS

26. IMMEDIATE CAUSES WHAT SUBSTANDARD ACTIONS OR COULD CAUSE THE EVENT (REFER TO 26A)

27. BASIC CAUSES WHAT SPECIFIC PERSONAL OR JOB FACTORS CAUSED OR COULD CAUSE THE EVENT (REFER TO 26A)

ACTION PLAN

28. REMEDIAL ACTIONS WHAT HAS BEEN AND/OR SHOULD BE DONE TO CONTROL THE CAUSES LISTED

29. SIGNATURE OF INVESTIGATOR

31. SIGNATURE OF REVIEWER 32. DATE

30. FOLLOW-UP CIRCLE NUMBER FOR TEMPORARY X FOR FINAL ACTION DATE

1_____ 2_____ 3_____ 4_____ 5_____6_____

CAUSE CHECKLIST

26.A CODING OF IMMEDIATE CAUSES: CHECK APPLICABLE

SUBSTANDARD ACTIONS

- [ ] 1. Operating Equipment without authority
- [ ] 2. Failure to warn
- [ ] 3. Failure to secure
- [ ] 4. Operating at improper speed
- [ ] 5. Making safety devices inoperable
- [ ] 6. Removing safety devices
- [ ] 7. Using defective equipment
- [ ] 8. Using equipment improperly
- [ ] 9. Failure to use PPE properly
- [ ] 10. Improper loading
- [ ] 11. Improper placement
- [ ] 12. Improper lifting
- [ ] 13. Improper position of task
- [ ] 14. Servicing equipment
- [ ] 15. Horseplay

SUBSTANDARD CONDITIONS

- [ ] 1. Inadequate guards or barriers
- [ ] 2. Inadequate or improper PPE
- [ ] 3. Defective tools, equipment or materials
- [ ] 4. Congestion or restricted action
- [ ] 5. Inadequate warning system
- [ ] 6. Fire and explosion hazards
- [ ] 7. Poor housekeeping disorder
- [ ] 8. Hazardous environmental conditions, Gases, dusts, smokes, fumes, vapors
- [ ] 9. Noise exposures
- [ ] 10. Radiation exposures
- [ ] 11. High or low temperature exposures
- [ ] 12. Inadequate or excess illumination
- [ ] 13. Inadequate ventilation

27.A CODING OF BASIC CAUSES

PERSONAL FACTORS

- [ ] 1. Inadequate capability
- [ ] 2. Lack of knowledge
- [ ] 3. Lack of skill
- [ ] 4. Stress
- [ ] 5. Improper motivation

JOB FACTORS

- [ ] 1. Inadequate leadership/supervision
- [ ] 2. Inadequate engineering
- [ ] 3. Inadequate purchasing
- [ ] 4. Inadequate maintenance
- [ ] 5. Inadequate equipment
- [ ] 6. Inadequate work standard
- [ ] 7. Wear and tear
- [ ] 8. Abuse or misuse

33. TYPE OF CONTRACT CONTRACT WITH

- [ ] 1. Struck against
- [ ] 2. Struck by
- [ ] 3. Caught in
- [ ] 4. Caught on
- [ ] 5. Caught in between
- [ ] 6. Slip
- [ ] 7. Fall on same level
- [ ] 8. Fall to below
- [ ] 9. Over exertion
- [ ] 10. Electricity
- [ ] 11. Heat
- [ ] 12. Cold
- [ ] 13. Radiation
- [ ] 14. Caustics
- [ ] 15. Noise
- [ ] 16. Toxic or noxious substance

CAUSE CHECKLIST

34. REVIEWER'S REACTIONS TO THE INVESTIGATORS ANALYSIS OF THE BASIC CAUSES OF THIS ACCIDENT AND THE REMEDIAL ACTIONS DIRECTED AT POSSIBLE INADEQUACIES IN THE PROGRAM, ITS STANDARD OR COMPLIANCE TO THE STANDARDS

35. SIGNATURE	36. TITLE	37. DATE

SKETCH OF SITE INVOLVED/CONTINUATION OF EXPLANATION: LIST NUMBER OF REPORT IITEM BEING CONTINUED

APPENDIX C

MONTHLY ACCIDENT STATISTICS

(For the month of _____, 20___)

For the period there were a total of _____accident cases

I. COMPANY OWNED:	This Month	YTD
A. Personal Accident		
1. Number of Lost-time Accidents (Fatal) LTA		
2. Number of Lost-time Accidents (Non-Fatal) LTA		
3. Number of Days Lost		
4. Number of Non Lost-time Accidents (NLTA)		
5. Total Number of Accidents		
6. Number of Man-hours Worked		
7. Total Number		
8. Frequency Rate		
9. Severity Rate		
10. Property Damage Cost (MP)		
11. Physical Injury Cost (MP)		
12. Total Accident Cost (MP)		
B. Other Accidents		
1. Number of Vehicular Accidents (LV and HE)		
2. Number of Other Equipment Damage Accidents		
3. Vehicular Damage Cost (MP)		
4. Other Equipment Cost (MP)		
5. Total Vehicular and Other Equipment Damage Cost (MP)		
C. No Lost-Time Man-hours Worked Data		
1. Last LTA Occurrence		
2. Man-hours Worked to Date without LTA		
3. Period Attained		
4. Number of Calendar Days Attained		

Prepared by:	Attested by:
_____	_____
Safety Officer	Resident Manager

APPENDIX C1

_____
(Month and Year)

ANALYSIS OF PERSONAL ACCIDENTS

MONTH	ACCIDENTS								DAYS LOST		TOTAL Man-Hours		FREQUENCY RATE (SR)		SEVERITY RATE (SR)	
	NLTA		LOST-TIME				TOTAL									
			Fatal		Non-Fatal											
	This Month	To Date	This Month	To Date	This Month	To Date	This Month	To Date	This Month	To Date	This Month	To Date	This Month	To Date	This Month	To Date
JANUARY																
FEBRUARY																
MARCH																
APRIL																
MAY																
JUNE																
JULY																
AUGUST																
SEPTEMBER																
OCTOBER																
NOVEMBER																
DECEMBER																

APPENDIX C3

_____
(Month and Year)

ANALYSIS OF PERSONAL ACCIDENTS WITH THE SAME PERIOD LAST YEAR

MONTH	ACCIDENTS								DAYS LOST		TOTAL Man-Hours		FREQUENCY RATE (SR)		SEVERITY RATE (SR)	
	NLTA		LOST-TIME				TOTAL									
			Fatal		Non-Fatal											
	This Month	To Date	This Month	To Date	This Month	To Date	This Month	To Date	This Month	To Date	This Month	To Date	This Month	To Date	This Month	To Date
JANUARY																
FEBRUARY																
MARCH																
APRIL																
MAY																
JUNE																
JULY																
AUGUST																
SEPTEMBER																
OCTOBER																
NOVEMBER																
DECEMBER																

APPENDIX C4

_____
(Month and Year)

ANALYSIS OF PERSONAL ACCIDENTS BY DEPARTEMENT

MONTH	ACCIDENTS								DAYS LOST		TOTAL Man-Hours		FREQUENCY RATE (SR)		SEVERITY RATE (SR)	
	NLTA		LOST-TIME				TOTAL									
			Fatal		Non-Fatal											
	This Month	To Date	This Month	To Date	This Month	To Date	This Month	To Date	This Month	To Date	This Month	To Date	This Month	To Date	This Month	To Date
JANUARY																
FEBRUARY																
MARCH																
APRIL																
MAY																
JUNE																
JULY																
AUGUST																
SEPTEMBER																
OCTOBER																
NOVEMBER																
DECEMBER																

APPENDIX C5

_____
(Month and Year)

ANALYSIS OF PERSONAL ACCIDENTS BY OCCUPATION

OCCUPPATION	ACCIDENTS								PERCENTAGE	
	NLTA		LOST-TIME				TOTAL			
			Fatal		Non-Fatal					
	This Month	To Date	This Month	To Date	This Month	To Date	This Month	To Date	This Month	To Date

APPENDIX C6

_____
(Month and Year)

ANALYSIS OF PERSONAL ACCIDENTS BY PART OF THE BODY

PARTS	ACCIDENTS						TOTAL		PERCENTAGE	
	NLTA		LOST-TIME							
			Fatal		Non-Fatal					
	This Month	To Date	This Month	To Date	This Month	To Date	This Month	To Date	This Month	To Date
HEAD										
EYES										
HAND/FINGER										
ARM										
TRUNK										
BACK										
LEG										
FOOT/TOE										
OTHERS (SPECIFY)										

_____
(Month and Year)

ANALYSIS OF PERSONAL ACCIDENTS BY WORKPLACE

WORKPLACE	ACCIDENTS						TOTAL		PERCENTAGE	
	NLTA		LOST-TIME							
			Fatal		Non-Fatal					
	This Month	To Date	This Month	To Date	This Month	To Date	This Month	To Date	This Month	To Date

_____
(Month and Year)

ANALYSIS OF PERSONAL ACCIDENTS BY IMMEDIATE CAUSES

IMMEDIATE CAUSE	ACCIDENTS						TOTAL		PERCENTAGE	
	NLTA		LOST-TIME							
			Fatal		Non-Fatal					
	This Month	To Date	This Month	To Date	This Month	To Date	This Month	To Date	This Month	To Date
HANDLING MATERIALS										
STRUCK BY/AGAINST										
CAUGHT IN/BETWEEN										
CONTACT WITH SHARP OBJECT										
FOREIGN BODY ENTRY										
BURN (FIRE/STEAM)										
SLIP/FALL										
RUBBED OR ABRADED BY										
CONTACT WITH ELECTRICITY										
OVER EXERTION										
HAND TOOLS										
OTHERS (SPECIFY)										

APPENDIX D

EXPLOSIVE MONTHLY TRANSACTION REPORT
Use/Disposition, Purchase and Current Inventory of Explosives
For the Month of _____, 20 _____

ITEM	Code	Unit	Previous Balance	Purchase/ Adjustment	Imports	Total	Disposal	Sold/ Issued to	Used/ Issued to	Total	Balance

Prepared/Verified True and Correct:

Attested By:

Submitted By:

DEPARTMENT CIRCULAR NO. 2015-07-0014

PRESCRIBING THE POLICY FOR MAINTAINING THE SHARE OF RENEWABLE ENERGY (RE) RESOURCES IN THE COUNTRY'S INSTALLED CAPACITY THROUGH THE WHOLISTIC IMPLEMENTATION OF THE PERTINENT PROVISIONS OF REPUBLIC ACT NO. 9513 OR THE RE ACT ON FEED-IN TARIFF (FIT) SYSTEM, PRIORITY AND MUST DISPATCH, AMONG OTHERS

WHEREAS, Republic Act No. 7638 or the "Department of Energy (DOE) Act of 1992" declares as a policy of State, among others, to ensure a continuous. adequate, and economic supply of energy through the integrated and intensive exploration, production, management, and development of the country's indigenous energy resources;

WHEREAS, Republic Act No. 9136 or the "Electric Power Industry Reform Act of 2001" or, the EPIRA declares the policy of the State to:

(a) Ensure the quality, reliability, security and affordability of the supply of electric power; and

(b) Promote the utilization of indigenous and new and RE resources in power generation in order to reduce dependence on imported energy,

WHEREAS, pursuant to Section 37 of the EPIRA, the DOE is mandated to supervise the restructuring of the electric power industry as well as among other things, to:

(a) Formulate policies for the planning and implementation of a comprehensive program for the efficient supply and economical use of energy consistent with the approved national economic plan and with the policies on environmental protection and conservation and maintenance of ecological balance, and provide a mechanism for the integration, rationalization, and coordination of the various energy programs of the Government;

(b) Develop policies and procedures and, as appropriate, promote a system of energy development incentives to enable and encourage electric power industry participants to provide adequate capacity to meet demand including, among others, reserve requirements; and

(c) Formulate such rules and regulations as may be necessary to implement and attain the objectives of the EPIRA.

WHEREAS, Republic Act No. 9513, or the "Renewable Energy Act of 2008" (RE Act) declares the following as the policy of the State to:

(a) Accelerate the exploration and development of RE resources to achieve energy self-reliance, through the adoption of sustainable energy development strategies to reduce the country's dependence on fossil fuels and thereby minimize the country's exposure to price fluctuations in the international markets, the effects of which spiral down to almost all sectors of the economy;

(b) Increase the utilization of renewable energy by institutionalizing the development of national and local capabilities in the use of RE systems, and promoting its efficient and cost-effective commercial application by providing fiscal and non-fiscal incentives;

(c) Encourage the development and utilization of RE resources as tools to effectively prevent or reduce harmful emissions and thereby balance the goals of economic growth and development

with the protection of health and the environment; and

(d) Establish the necessary infrastructure and mechanism to carry out the mandates specified in the Act and other existing laws.

WHEREAS, on 25 May 2009, the DOE issued DC0009-05-0008 entitled the "Rules and Regulations Implementing Republic Act No. 9513 (RE IRR)" which provided the general rules, regulations and guidelines for the development of RE resources in the country;

WHEREAS, the DOE issued DC2009-07-0011 entitled "Guidelines Governing a Transparent and Competitive System for Awarding RE Service Contracts" on 12 July 2009 in support of the awarding of RE service contracts;

WHEREAS, on 12 July 2010, pursuant to Section 7 of the RE Act and Section 5 of the RE-IRR, the Energy Regulatory Commission (ERC) issued Resolution No. 16, Series of 2010 entitled "Resolution Adopting the FIT Rules;"

WHEREAS, on 14 June 2011, the DOE published the National RE Plan (NREP) providing for the target to increase the share of RE resources share in installed capacity from 5,438 MW in 2010 to 15,304 MW by 2030;

WHEREAS, on 30 June 2011, after public consultation and review of the recommendation of the National RE Board (NREB), the DOE endorsed to the ERC the installation targets for FIT-eligible RE resources as follows:

RE Resource	Revised Installation Target (in MW)
Run-of-River Hydro	250
Biomass	250
Wind	400
Solar PV	500
Ocean	10

WHEREAS, the DOE through DC2011-07-0007 dated 05 July 2011 entitled "Ensuring the Adequacy and Readiness of the National Transmission System to Accommodate New Generating Capacities from RE Technologies" directed for the full cooperation of the National Grid Corporation of the Philippine (NGCP) for the integration of RE resources to the country's transmission development plan;

WHEREAS, the DOE issued DC2013-05-0009 dated 28 May 2013 entitled "Guidelines for the Selection Process of RE Projects under the FIT System and the Award of Certificate for FIT Eligibility" instituting the first-come-first-serve the basis for the DOE - Certificate of Endorsement (COE) for FIT Eligibility;

WHEREAS, the DOE issued DC2015-03-0001 on 20 March 2015 entitled "Promulgating the Framework for the Implementation of Must Dispatch and Priority Dispatch of RE Resources in the Wholesale Electricity Spot Market (WESM);"

WHEREAS, the development and optimal use of the country's RE resources is an integral part of the DOE's Energy Reform Agenda, with RE resources being vital to addressing the challenges of climate change, energy security, sustainability and the broader access to energy;

WHEREAS, the country's RE resource assessment shows vast amounts of RE sources that are yet to be developed on top of the more than 10,600 MW potential capacity already covered by registered RE projects with existing RE service/ operating contracts that are currently being implemented as of 31 March 2015;

WHEREAS, to date the DOE has endorsed an increase of the FIT installation targets for solar from 50 MW to 500 MW and wind from 200 to 400 MW in light of the developments in the demand-supply situation, as follows:

RE Resource	Installation Target (in MW)
Run-of-River Hydro	250
Biomass	250
Wind	200
Solar PV	50
Ocean	10

WHEREAS, based on the 2014 DOE Power Statistics, 25.64 percent (25.64%) of the country's total power generation are sourced from RE facilities or equivalent to installed generating capacity of about 32.87 percent (32.87%) of the country's total installed capacity; and

WHEREAS, there is a need for the DOE to issue a policy that ensures and maintains the share of RE in the country's installed capacity thus ensuring energy sustainability, security and independence.

NOW, THEREFORE, for and in consideration of the foregoing premises and pursuant to its mandate under the DOE Act, EPIRA and the RE Act and its implementing rules and regulations, the DOE declares the following:

Section 1. Title. This Circular shall be known as the "Guidelines for the Policy of Maintaining the Share of RE in the Country."

Section 2. Policy Statement. To maintain the share of RE in power generation, the DOE hereby adopts a policy of adopting at least 30 percent (30%) share of RE in the country's total power generation capacity through the holistic implementation of the FIT System and other pertinent provisions under the RE Act and RE IRR.

Section 3. Responsibility for Forecasting and Replacement Power. To balance the impact of RE in the grid, the RE Developer of FIT-eligible resources shall be responsible for the nomination and the dispatch of generated power from its generation facilities: *Provided*, That deviations outside the prescribed range set per FIT-eligible technology, the RE developer shall be responsible for procuring the replacement power.

Section 4. FIT Auction. To ensure the attainment of Section 2 of this Circular, the DOE will use the FIT installation targets. Upon the full subscription of the existing FIT installation targets, the succeeding rounds for the installation targets for FIT-eligible resources shall be made through an auction system to be adopted by the DOE.

In the determination of the installation targets for each FIT-eligible resource, the DOE shall be guided by among other, the impact or taking into account distribution and grid security (interconnection, location and technical), cost and other considerations: Provided, That the auction for the installation targets for FIT-eligible resources may only be made upon the issuance of the implementation of the Must-Dispatch Implementing Rules and Regulations.

Section 5. Compliance with the Renewable Portfolio Standard (RPS). Upon the issuance of the Renewable Portfolio Standard (RPS) Rules under Section 6 of the RE Act, compliance with the provisions herewith shall likewise be deemed compliance with the RPS.

Section 6. Information, Education and Communication (IEC) Activities to Stakeholders. Pursuant to Rule 10, Section 31 of the RE IRR, the DOE shall implement an intensive and massive IEC activities that are designed to increase public awareness and appreciation of the Guidelines and the RE industry as a whole.

Section 7. Separability Clause. If for any reason, any section or provision of this Circular is declared unconstitutional or invalid, such parts that are not affected shall remain in full force and effect.

Section 8. Repealing Clause. Any department circular or issuance, contrary to or inconsistent with this Circular is hereby repealed, modified or amended accordingly.

Section 9. Effectivity. This Circular shall take effect fifteen (15) days after publication in two (2) newspapers of general circulation and shall remain in effect until otherwise revoked. Issued at Energy Center, Rizal Drive, Bonifacio Global City, Taguig City.

CARLOS JERICHO L. PETILLA
Secretary
(Signed)

DEPARTMENT ORDER NO. 2013-10-0018

ADOPTING THE REVISED EVALUATION PROCESS FLOW AND TIMELINES OF RENEWABLE ENERGY SERVICE CONTRACTS (RESC) AND MANDATING THE ADOPTION OF THE MILESTONE APPROACH

WHEREAS, Article Xli, Section 2 of the 1987 Philippine Constitution provides that all forces of potential energy and other natural resources within the Philippine territory belong to the State and their exploration, development and utilization shall be under the full control of the State;

WHEREAS, Republic Act No. (RA) 7638, otherwise known as the "Department of Energy Act of 1992," as amended mandates the Department of •Energy (DOE) to prepare, integrate, coordinate, supervise and control all plans, programs, projects and activities of the Government relative to energy exploration, development, utilization, distribution and conservation, among others;

WHEREAS, RA 9513, otherwise known as the "Renewable Energy Act of 2008", provides that it is the policy of the State to encourage and accelerate the exploration, development and increase the utilization of renewable energy (RE) resources such as, but not limited to, biomass, solar, wind, hydropower, geothermal, and ocean energy sources, and including hybrid systems;

WHEREAS, the DOE is continuously adopting new mechanisms and strategies to effectively carry out its plans and programs as mandated under the RA 9513 and its implementing rules and regulations;

WHEREAS, the RE Review Committee (REC) was created under Department Circular No. DC2009-07-0011 to provide recommendations to the DOE Secretary for the award of RE Service Contracts; and

WHEREAS, after careful review of the existing application processes flow and timelines on RE Service Contract application, the REC has recommended the adoption of a new evaluation process flow and timeline, and to further enhance monitoring, the REC has recommended the adoption of a Milestone Approach during the Pre-Development and Development Stages of the RE Service Contract.

NOW THEREFORE, for and in consideration of the foregoing premises, the DOE hereby orders the following.

Section 1. Enhanced Process Flow of RE Service Contract Applications. For the enhanced evaluation process of RE Service Contracts applications, the attached flow chart on Evaluation Process and Timelines shall be adopted ("Annex A").

Section 2. Enhanced Monitoring of RE Service Contracts. For the enhanced monitoring process of all awarded RE Service Contracts, the attached matrix on the Milestone Approach during the Pre-Development

and Development Stages of the RE Service Contract shall be adopted ("Annex B-1" and "Annex B-2"),

Section 3. Enhanced Timelines in the Application Process. Except for reasons attributable to force majeure or other justifiable reasons, the evaluation process of RE Service Contracts shall not exceed forty-five (45) working days.

Section 4. Applicability of this Department Order to Pending RE Applications. This DO shall be applicable to all pending applications for RE service contracts: Provided, That all RE service contracts already issued at the time of the effectivity of this Department Order shall remain valid.

Section 5. Advisory to RE Applicants. Acting as Chairman of REC, the Assistant Secretary in charge of the Renewable Energy Management Board (REMB) is hereby directed to inform all concerned RE Developers of the revised templates and the requirements thereof.

Section 6. Supervision and Proper Implementation. The Assistant Secretary in charge of REMB shall strictly supervise and ensure the implementation of this Department Order and other issuances relevant thereto.

Section 7. Repealing Clause. All circulars and all other issuances which are inconsistent with any of the provisions of this Department Order are hereby amended or repealed accordingly

Section 8. Separability Clause. If for any reason, any provision of this Department Order is declared unconstitutional or invalid, such parts which are not affected shall remain in full force and effect.

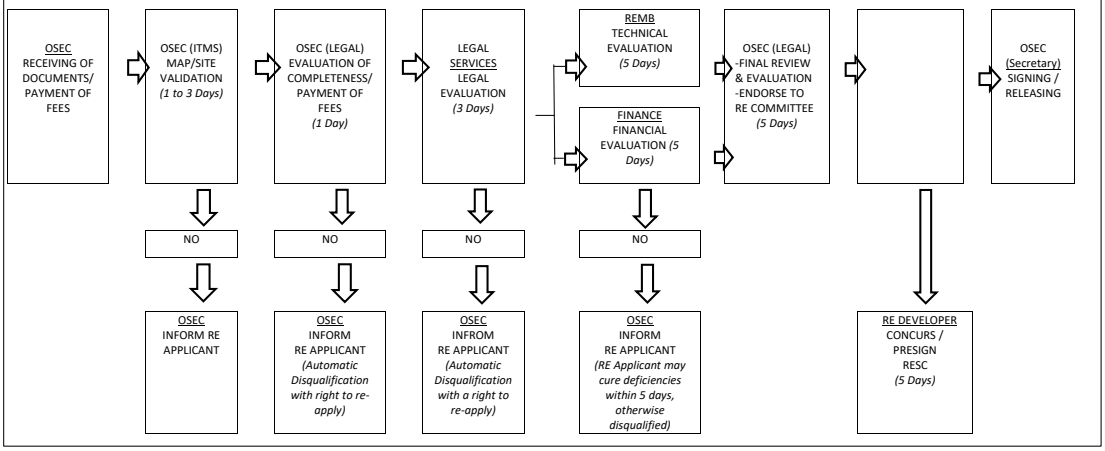
This Department Order shall take effect immediately.

Issued at the Energy Center, Rizal Drive, Bonifacio Global City, Taguig City.

CARLOS JERICHO L. PETILLA

Secretary
(Signed)

EVALUATION PROCESS FLOW AND TIMELINES OF RESC APPLICATIONS
(DIRECT NEGOTIATIONS)



ANNEX B-1

MILESTONE APPROACH MATRIX
(PRE-DEVELOPMENT STAGE)

RESC Type	Milestone Activity	Milestone Period (From Effective Date)	Milestone Cost (AT 100%)	Remarks
Geothermal	1. Completion of Reconnaissance Geological/Geochemical Surveys 2. Mandatory Activities* 2.1 LGU Endorsements 2.2 Licenses/Permits Acquisition	12 Months	Php 6,500,000.00	Pre-Development at 5 years
Ocean	1. Pre-Feasibility Study/Prelim. Resource Assessment 2. Detailed Site Survey 3. Field Based Investigation (NCIP**) 4. Mandatory Activities* 4.1 LGU Endorsements 4.2 Licenses/Permits (BFAR, MARINA, PPA, PN, PCG)	12 months	Php 1,500,000.00	Pre-Development at 3 years
Hydropower	1. Pre-Feasibility Study/Reconnaissance Study 2. Detailed Topography Survey 3. Completion of Hydrological Study 4. Field Based Investigation (NCIP**) 5. Mandatory Activities* 5.1 LGU Endorsements 5.2 Licenses/Permits (BFAR, MARINA, PPA, PN, PCG)	12 months	Php 1,500,000.00	Pre-Development at 2 years
Wind	1. Procurement of meteorological mast 2. Installation of meteorological mast* 3. Land/rights acquisition* 4. Mandatory Activities* 4.1 Public Consultations 4.2 LGU Endorsements	12 months	Php 2,000,000.00	Pre-Development at 3 years
Solar	1. Initial modeling and annual energy yield estimates* 2. Land/rights acquisition** 3. Mandatory Activities* 3.1 Public Consultations 3.2 LGU Endorsements	6 months	Php 500,000.00	Pre-Development at 2 years

ANNEX B-2

RESC Type	Milestone Activity	Milestone Period (From Effective Date)	Milestone Cost (AT 100%)	Remarks
Geothermal	1. Site preparation and civil/structural works 2. Drilling of production and reinjection wells 3. Flow Test and Bore Output Measurement 4. Construction of Fluid Collection and Disposal System 5. Power Plant and Cooling Tower site preparation and construction 6. Construction of switching station to connect to the Transmission Lines of NGCP 7. Commissioning/Commercial Operations	Year 6 to 8	Php 200,000,000.00/MW	Pre-Development at 5 years
Ocean	Procurement of Electromechanical Equipment (EME) or Proof of Contract with the supplier of EME	Year 5 to 6	Php 30,000,000.00/MW	Pre-Development at 3 years
Hydropower	Procurement of Electromechanical Equipment (EME) or Proof of Contract with the supplier of EME	Year 5 to 6	Php 30,000,000.00/MW	
Wind	Electro-Mechanical Equipment (At 80% Completion)	Year 5 to 6	Php 95,000,000.00/MW	
Solar	Electro-Mechanical Equipment (At 80% Completion)	Year 4	Php 95,000,000.00/MW	
Biomass	1. Site acquisition and pre-developmental activities (groundwater test, soil and geotechnical analyses) 2. Licensing, Permits, and Clearances 3. Signed Feedstock Supply Agreement (FSAs)	Milestone: 6 months Development: 3 years	Milestone: Php 7,000,000.00 (fixed) Development: Php 100,000,000.00/MW	Biomass (Non-Existing Facility) – the Pre-Development stage is subsumed and made part of the Development Stage already Biomass (Existing Facility) – this automatically goes to Development stage

DEPARTMENT ORDER NO. 2013-12-0019

STRENGTHENING THE MANAGEMENT AND OPERATIONS OF THE AFFILIATED RENEWABLE ENERGY CENTERS (ARECS) IN THE PHILIPPINES

WHEREAS, pursuant to Article XII, Section 2, of the 1987 Philippine Constitution, all forces of potential energy and other natural resources within the Philippine territory belong to the State and their exploration, development and utilization shall be under the full control of the State;

WHEREAS, Republic Act No. 7638, as amended, otherwise known as the "Department of Energy Act of 1992," mandates the DOE to prepare, integrate, coordinate, supervise and control all plans, programs, projects and activities of the Government relative to energy exploration, development, utilization, distribution and conservation, among others;

WHEREAS, Republic Act No. 9513, otherwise known as the "Renewable Energy Act of 2008", provides that it is the policy of the State to encourage and accelerate the exploration, development and increase the utilization of renewable energy resources such as, but not limited to, biomass, solar, wind, hydropower, geothermal, and ocean energy sources, and including hybrid systems;

WHEREAS, Section 31 (e) Rule 10 of the Implementing Rules and Regulations of R.A. No. 9513 embodied under Department Circular No. D02009-05-0008 provides "Continue to strengthen the Affiliated Renewable Energy Centers (ARECs) nationwide;"

WHEREAS, the DOE is continuously adopting new mechanisms and strategies to effectively carry out its plans and programs as mandated under the R.A. No. 9513 and its Implementing Rules and Regulations (IRR);

WHEREAS, the DOE recognizes the potentials of the ARECs in terms of expertise, resources and contributions in ensuring proper and effective formulation, implementation and evaluation programs, projects and activities that are responsive and complementary to the ever changing needs of the stakeholders and clienteles in the Renewable Energy sector in the Philippines;

WHEREAS, there is a need to institutionalize accreditation process and strengthen the management and operations of Affiliated Renewable Energy Centers (ARECs) in the Philippines in order to ensure sustainability of its operation, promote complementation of resources, accountability, and to implement programs and projects in a unified direction congruent with the DOE's mandates, mission and thrusts;

NOW THEREFORE, in consideration of the foregoing, the following provisions are hereby promulgated and ordered for strict compliance of all concerned;

Section 1. Application and Coverage. This Department Order shall be applied suppletorily to relevant Department Orders and issuances of the Department of Energy (DOE or Department) and shall cover all existing and prospective applications as Affiliated Renewable Energy Centers (ARECs) in various parts of the Philippines.

Section 2. Accreditation. All Affiliated Renewable Energy Centers (ARECs) shall undergo a competitive accreditation process subject to the criteria, requirements and processes provided hereunder:

1. **Criteria and Requirements.** An institution-applicant, which can be an academic institution, or research and development entity, or consortium of academic institutions or R&D organizations, shall comply with the following criteria and requirements/ indicators:

Table 1
ACCREDITATION CRITERIA AND REQUIREMENTS/INDICATORS

Criteria	Weight Allocation *(Max.)*	Requirements Indicators
1. Institution's Counterpart	60%	
1.1 AREC's Office	20%	Conducive area dedicated for AREC's Office with standard office space with complete facilities, ventilation, furniture and fixtures that can accommodate the Team Leader/Director, three Division Heads and at least two (2) staff.
1.2 Personnel Complement	20%	- The institution shall provide at least three five (5) counterpart qualified personnel: a Team Leader/Director or its equivalent and at three (3) technical experts (with at least master's degree) assigned to three major divisions: Technical, Socio-Economic and Extension, and Research and Development; and at least two (2) reasonable administrative staff. Special Order issued for their designations with appropriate documents (e.g. TOR's, Diplomas, Personal Data Sheet/Curriculum Vitae, Licenses/eligibility and Certificates of Trainings Attended [15%} - Approved organizational structure [5%]
1.3 Fund Complement	20%	- Certification on the availability of funds/Check/Deposit Slip at least equivalent to the DOE counterpart or as determined by the DOE-CFAC [10%]. - Liquidation report/s validated by COA [10%].
2. Commitment Plan and Accomplishment Report	20%	- Work and Financial Plan or Line Item Budget approved by the President/Head of the Institution [5%]. - Accomplished Report with pictorials following the standard format for the last three (3) years [15%].
3. Research and Development Capability	15%	- At least five (5) completed researches on energy, socio-economic and policy oriented (copy of the researches/studies) [5%]. - At least two (2) publications in reputable journal or international proceedings of personnel/faculty members on topics mentioned above during the first evaluation, and at least one (1) publication every year during the succeeding evaluations (copy of the publication/journal) [10%]
4. Energy related accreditation, awards/citations received	5%	- Duly certified certification/s issued by the appropriate agencies.
Total	**100%**	

2. **Accreditation Process.** Using the foregoing criteria and requirements/ indicators, the following processes shall be strictly observed:

   a. For existing ARECs:

      Step 1. Mandatory evaluation by the Accreditation Committee.

      a. Duly accomplished self-survey report

      b. Validation/evaluation by the Accreditation Committee

      Step 2. Endorsement by the AREC Advisory Committee.

      Step 3. Board Resolution granting authority to sign the Memorandum of Agreement and to disburse funds as counterpart of the institution.

      Step 4. Signing of the Memorandum of Agreement and Board Resolution ratifying the MOA and issuance of the Certificate of Accreditation.

      Step 5. Release of the DOE and Institution's counterpart funds.

   b. For new applicants:

      Step 1. Letter of Intent by the President/Head of the Institution.

      Step 2. Mandatory Evaluation by the Accreditation Committee.

      a. Duly accomplished self-survey report

      b. Validation/evaluation by the Accreditation Committee

      Step 3. Endorsement by the AREC Advisory Committee.

      Step 4. Board Resolution granting authority to sign the Memorandum of Agreement and to disburse funds as counterpart of the institution.

      Step 5. Signing of the Memorandum of Agreement and Board Resolution

ratifying the MOA and issuance of the Certificate of Accreditation.

Step 6. Release of the DOE and Institution's counterpart funds.

3. **Composition and Duties of the Accreditation Committee for AREC.** The Accreditation Committee for AREC or AC-AREC is hereby created composed of the Assistant Secretary supervising REMB or any official designated by the DOE Secretary, as Chair, REMB Director or his authorized representative as Vice Chair, and an AREC Team Leader/Director not connected with the institution under evaluation, and the Director or his authorized representative of DOE Field Office concerned, as Members to be designated by the Committee Chair.

   The AC-AREC shall develop specific guidelines on the conduct of the required evaluation processes and discharge all the duties as provided under this Department Order.

4. **Institutionalization of the Accreditation.** The accreditation shall cover the entire institution and henceforth be called as the Affiliated Renewable Energy Center (AREC). However, the institution shall be responsible for determining of where the Office of the AREC will be attached. Moreover, all personnel, faculty members, staff and students of the AREC shall be provided with the corresponding benefits in accordance with its obligations under the MOA, its Charter and existing laws, rules and regulations.

   Provided, That at any given time, the DOE has the authority to suspend, revoke or terminate the accreditation for violations of the terms and conditions in the memorandum of agreement or any act that would constitute offense/s inimical to the interest of the DOE during the accreditation process and effectivity thereof.

   Provided, further, That any ARECs refuses to undergo the evaluation process shall automatically be disqualified from enjoying the rights and privileges provided under this Department Order, and its accreditation and MOA shall be terminated upon receipt of the notice of termination by the DOE.

5. **Validity of the Accreditation;** Effect of Accreditation Results, and Mandatory Re-accreditation. The validity of the accreditation shall be based on the total points earned during the accreditation processes, but in no case, it shall be more than five (5) years, and the effect of the accreditation results and mandatory re-accreditation (mid-term and end-term) shall be, as provided below.

Table 2
ACCREDITATION VALIDITY AND EFFECTS OF ACCREDITATION RESULTS, AND MANDATORY RE-ACCREDITATION

Ranges of Total Earned Points	Validity/Effects		Mandatory Re-Accreditation	
	Existing AREC	New Accredited AREC	Mid-term	End-term
90-100	5 years	5 years	2 months after the 2.5th year	3 months before 5th year ends
80-89	3-4 years	3-4 years	2 months after the 1.5th or the 2nd year	3 months before 3rd or 4th year ends
70-79	2 years	2 years	1 month after the 1st year	2 months before 1st 2nd year ends
60-69	Back to applicant status	1 year (mentoring with other AREC)	Not Applicable	1 month before 1st year ends
50-59	Suspension for 1 year	Automatic disqualification and can apply after 1 year	2 months after the service of suspension	
40-49 and below	Termination and disqualification for 2 years or more		3 months after the service of termination or disqualification	

The accreditation of the AREC shall be valid as specifically stated in its certification and can be renewed at the discretion of the Department of Energy, subject to the compliance of the criteria and the requirements in this Department Order as well as the obligations indicated in the Memorandum of Agreement.

The mandatory mid-tem accreditation shall be conducted to provide the AREC measures to further improve its compliance to the requirements set forth in this Department Order.

However, the conduct of the mandatory mid-term accreditation and the final-term accreditation may be requested by the institution/AREC but the actual evaluation shall not be earlier or later, as the case may be, as indicated in Table 2 above.

6. **Scope of Locations/Jurisdiction.** The scope of locations/jurisdiction of an AREC shall be by geographical in nature such as, by province or a group of provinces or municipalities. To facilitate the delivery of services, a certain area may be carved out from any AREC in the event that an applicant institution has earned a total points of at least sixty (60) based on the criteria and requirements under Section 2 hereof.

7. **Certificate of Accreditation.** The Certificate of Accreditation [copy hereto attached as Annex A] shall be in accordance with the form and style as prescribed by the DOE duly signed by its Secretary. It shall contain, among others, the period of validity, scope of location/s or jurisdiction and other salient information.

Section 3. Management and Operations of the ARECs. The ARECs shall be managed and operated in accordance with the provisions of this Department Order and such terms and conditions set forth in the duly signed Memorandum of Agreement between the DOE and the institution concerned. It shall be headed by a Team Leader/Director or any equivalent as may be determined by the President/Head of the institution.

To ensure proper coordination and accountability, the AREC shall be under the joint administrative supervision by the President or Head of the AREC and the Assistant Secretary supervising the Renewable Energy Management Bureau (REMB) of the DOE or any official of the DOE duly designated by its Secretary.

Section 4. Duties and Responsibilities of the ARECs. The ARECs shall perform the following duties and responsibilities:

1. Meet and maintain the accreditation criteria and requirements, and undergo the processes, and if necessary, continually improve the previous total earned points to upgrade its status, as provided under Section 2 and Section 5 of this Department Order;

2. Undertake the implementation of any project, such as, but not limited to, the Household Electrification Program (HEP), Barangay Electrification Program (BEP) and other RE related programs, projects and activities to be assigned by the DOE taking into account the following conditions:

    a. Issue an official receipt for every amount received from the DOE and maintains a separate bank account dedicated for the Project funds in a government depository bank, preferably the Land Bank of the Philippines (LBP);

    b. Keep and maintain separate and complete book of accounts for the Project funds and shall allow the DOE to have access to this book for audit purposes;

    c. Use the Project fund/s exclusively for the Project in accordance with the approved Line Item Budget (LIB) and Work and Financial Plan (WFP) [copy hereto attached as Annex B];

    d. Undertake the implementation of the Project and submit to the DOE the final report of all activities within ten (10) days after the expiry of the Terms of Reference (TOR) and/or relevant agreement;

e. Submit to the DOE a quarterly technical and financial reports on its accomplishments and Project funds utilization/disbursement duly certified by its accountant and verified by an Auditor, within fifteen (15) days after the end of each quarter, duly authorized by the Commission on Audit (COA);

f. Allow the DOE to conduct an inspection of the Project and full access to all pertinent records, documents and books in support of disbursements made pertaining to the Project under the appropriate TOR or agreement;

g. Return the corresponding amount to the DOE in the event that disbursements made by the institution are inconsistent with the (1) approved Line Item Budget (LIB) and Work and Financial Plan (WFP), (2) existing government accounting and auditing rules; and (3) are not acceptable to DOE based on its relevant policies and guidelines; and

h. Hold the DOE free from any suits/ liabilities whatsoever that may be filed by any party in connection with and arising from the implementation of any program, project or activity.

3. Engage with RE Developers in the conceptualization, implementation and evaluation of their respective Corporate Social Responsibility (CSR) programs, projects and activities. For this purpose, a MOA shall be signed between AREC and the RE Developer subject to the provisions of the duly signed Service/ Operating Contract/s between the RE Developer and the DOE and other applicable laws, rules and regulations;

4. Implement at least two (2) energy related researches or studies and publish the same in a reputable journal, copies of which be submitted to the DOE;

5. Allocate adequate counterpart fund/s chargeable against its income and/ or appropriate fund/s that shall be used, among others, for the MOOE, Capital Outlay and Personnel Services requirements of the Office of the AREC based on the approved Annual Line Item Budget (LIB) and Work and Financial Plan (WFP);

6. Authorize its Officials and Staff of the Office of the AREC including responsible personnel and students, as the case may be, to attend meetings, conferences, and workshops relative to the formulation, implementation, and monitoring of AREC s programs, projects and activities including in the monitoring and evaluation of the implementation of the duly signed Service/Operating Contracts between the DOE and RE Developers;

7. Attend and present researches and studies during the Annual NREB-ARECs-RE Developers Conference and other fora and consultations;

8. Subject to its institutional capabilities and relevant requirements as may be prescribed by competent authorities, consider the offering of degree programs on Renewable Energy and other energy related degrees and trainings;

9. Negotiate, receive and utilize any form of assistance or grants from other benefactors Subject to the specific instruction/s of the latter and other applicable laws, rules and regulations that are relevant, contributory or essentials to the attainment of the foregoing duties and responsibilities: Provided, That the DOE shall be furnished of the agreement/s and actual utilization report thereof for reference; and

10. Discharge such other duties and functions as expressly provided under this Department Order and/or as may be determined by the DOE from time to time.

Section 5. Duties and Responsibilities of the DOE. The Department of Energy (DOE) shall perform the following duties and responsibilities:

1. Provide financial assistance to the ARECs based on the allocation provided under Section 8 of this Department Order which shall be used exclusively for the purposes specified in the approved Annual Line Item Budget (LIB) and the Work and Financial Plan (WFP). In addition, it shall appropriate such sums that may be necessary in the establishment and continued publications of the Journal on Applied Renewable Energy Technologies as provided under Section 12 of this Department Order;

2. Direct any AREC to refund the corresponding and applicable amount to the DOE in the event that the disbursements made by such AREC are inconsistent with the (a) approved LIB and WFP, (b) existing government accounting and auditing rules, and (c) are not acceptable to DOE based on its relevant policies and guidelines;

3. Perform technical inspection on any program, project or activity undertaken by the ARECs;

4. Provide necessary assistance to the ARECs relevant program, project or activity;

5. Act on any request by the ARECs for deviation in the approved WPF and LIB within thirty (30) days after receipt of the request, which action shall form an integral part of the agreement or TOR; and

6. Discharge such other duties and responsibilities as may be provided under this Department Order and other issuances and/or as may be agreed upon with any party in accordance with existing laws, rules and regulations.

Section 6. The Memorandum of Agreement (MOA), Terms of Reference or Contracts. The Memorandum of Agreement or MOA [copy hereto attached as Annex C] to be entered into between the institution and the DOE shall contain, among others, the duties and responsibilities in Section 4 and 5 hereof and such other terms and conditions as may be mutually agreed upon by the institution and DOE subject to existing laws, rules and regulations.

The validity and renewal of the MOA shall be the same as provided in Section 2 hereof, and subject to the periodic evaluation and accreditation processes provided under this Department Order.

In addition to any ground as provided in any of the provisions of this Department Order, the MOA may be suspended, terminated or revoked by the DOE on any and/or all of the following grounds:

1. Inability to maintain the criteria and requirements based on the duly validated report by the Accreditation Committee;

2. Failure to submit liquidation report/s duly validated by the Commission on Audit;

3. Inadequate fund/s by both the DOE and the institution which may substantially hamper the ARECs operations and delivery of services;

4. Violation/s of any and/or all provisions of the Memorandum of Agreement; and

5. Such other acts that may constitute violation/s of existing laws, rules and regulations.

Further, the Department of Energy and any AREC may sign or execute a Term of Reference (TOR) or Contract [copy hereto attached as Annex D] for the implementation of a particular project or activity. The agreements and conditions of the TOR or contract shall be based on the nature, objectives and outcomes of the project or activity taking into consideration the provisions of this Department Order and such other relevant laws, rules and regulations.

Section 7. Management and Disbursement of Counterpart Funds. The DOE and the institution of AREC shall release their respective counterpart fund/s within thirty (30) days upon the execution of the MOA and/or approval of the Work and Financial Plan. Considering that the MOA has maximum validity of five (5) years, the duly approved Annual Line Item Budget (LIB) and Work and Financial Plan (WFP) shall be sufficient as supporting document/s for the release of funds: Provided, That the MOA and Certificate of Accreditation are in full force and effect: Provided, further, That the approved Annual LIB and WFP shall be submitted to the DOE and institution on or before 15th day of December of every year thereafter.

The amount of the annual counterpart fund or fund complement of the Institution or AREC shall not be less than the amount provided by the DOE as provided under Section 8 of this Department Order. In the event that the Institution has insufficient fund source/s, the DOE-Counterpart Fund Allocation Committee shall determine the amount of the Institution's counterpart taking into consideration the expenses allocated to the various commitments of the Institution in the LIB and WFP.

Should there be delay in the allocation of the DOE counterpart fund, the amount in the immediate Fiscal Year shall be used as basis in the computation of the institutional or ARECs fund complement and any adjustment thereof may be made through supplemental budget to support the ARECs expenses.

All unutilized fund/s allocated for ARECs may be disbursed to support any expenses necessary in the implementation of any related AREC and DOE's programs? projects and activities upon written authority by the President or Head of the Institution and the Secretary of the Department of Energy, through the Assistant Secretary supervising the REMB, as the case may be.

Section 8. Establishment of the DOE Counterpart Fund for ARECs; Its Allocation Through Performance-Based. There is hereby established a DOE Fund that shall be used exclusively as its counterpart fund to the different ARECs to be charged from any and/or of the following:

1. Annual sources of funds of the DOE for AREC and relevant budget from the GAA;

2. Fund allocations from the DBM on specific program or project such as, but not limited to, HEP, BEP, and others subject to DBM rules and regulations;

3. Unutilized development fund provided by the RE Developers; and

4. Financial assistance provided by any RE Developer or benefactor.

Provided, That the allocation of the DOE Counterpart Fund/s shall be as follows:

a. 40% of the Total Fund shall be allocated equally among the existing ARECs and new accredited ARECs; and

b. 55% of the Total Fund shall be allocated on Performance-Based scheme as evidenced by their respective total earned points during the immediate preceding accreditation using the following:

Ranges of Total Earned Points of the Accreditation	Performance-Based DOE Counterpart Allocation	
	Existing ARECs	New Accredited ARECs
90-100	Equivalent to 120% of the amount allocated in sub-section (a) above	Equivalent to 100% of the amount allocated in subsection (a) above
80-89	Equivalent to 100% of the amount allocated in sub-section (a) above	Equivalent to 90% of the amount allocated in subsection (a) above
70-79	Equivalent to 90% of the amount allocated in sub-section (a) above	Equivalent to 80% of the amount allocated in subsection (a) above
60-69	Equivalent to 80% of the amount allocated in sub-section (a) above	Equivalent to 70% of the amount allocated in subsection (a) above

c. 5% of the Total Fund shall be used for the conduct of periodic meetings on AREC, the establishment and continued publications including the honorarium of the Editorial Board and Editorial Staff of the Journal on Applied Renewable Energy Technologies, and the MOOE of AREC at the DOE Central Office.

Provided, further, That adjustment to the percentage under the Performance-Based scheme may be made by the DOE-Counterpart Fund Allocation Committee until the fund is fully allocated proportionately.

Provided, furthermore, That the adjustment on the actual fund allocations from the DOE counterpart from the sources provided above may be made based on the actual needs and priorities and thrusts of the DOE and of the national government.

Section 9. The DOE-Counterpart Fund Allocation Committee, Its Composition and Duties. There shall be a DOE-Counterpart Fund Allocation Committee hereinafter referred to as the DOE-CFAC composed of the Assistant Secretary supervising REMB or any official designated by the DOE Secretary as Chair, Director for Financial Services as Vice Chair, REMB Director and at least three (3) AREC Team Leaders/Directors with at least one representative each from Luzon, Visayas and Mindanao, designated by the Committee Chair, as Members.

The DOE-CFAC shall, among others, discharge the following functions and duties:

1. On or before the 15th day of every December, determine the actual allocation of the DOE counterpart fund to all accredited ARECs and the same be submitted to the DOE AREC Advisory Committee for further deliberation and recommendation to the Secretary of the Department;

2. Recommend to the Secretary, taking into consideration the financial evaluation report and the grounds provided under Section 6 (2 and 3) of this Department Order, for the suspension or termination of any AREC. All motions for reconsideration or requests for lifting of the suspension or termination on the bases of any of the two (2) identified grounds shall be recommended by the duly constituted DOE-CFAC;

3. Devise mechanism that are necessary for the implementation of Section 8 of this Department Order; and

4. Discharge such other duties and responsibilities as may be delegated by the Assistant Secretary supervising the REMB and/or by the Department's Secretary.

Section 10. Search and Awards for Most Outstanding ARECs in the Philippines. An Annual Search for Most Outstanding ARECs in the Philippines is hereby authorized to be conducted and to be participated in by all accredited ARECs. The Committee on Most Outstanding ARECs in the Philippines shall be composed of the DOE representative as Chair designated by the Secretary, one representative each from the National Renewable Energy Board (NREB), RE Sector,

and any scientific government agency or private organization.

The Committee shall design the criteria and requirements including the corresponding awards or recognition for the following categories: Outstanding AREC (Institutional Level), Leadership (for President and Team Leader/Director), and Researcher, and the same be submitted to the DOE Secretary for review and approval. The awarding ceremonies shall be held simultaneously during the Energy Month on December.

All expenses necessary for the conduct of the search shall be charged from any appropriate fund/s of the DOE and/or financial assistance from RE Developers or any benefactors.

Section 11. AREC Advisory Committee; Its Composition and Functions. An AREC Advisory Committee is hereby created composed of the Assistant Secretary supervising the REMB or any official of the DOE designated by Secretary, as Chair, Director of the REMB, as Vice-Chair, and the Director of the Legal Services and all Team Leaders/Directors of the duly accredited ARECs in the Philippines, as Members.

The AREC Advisory Committee shall perform the following functions:

1. Assist the DOE in the conduct of periodic review and recommend measures necessary to further improve the implementation of this Department Order;

2. Deliberate the allocation of the DOE Counterpart fund and recommend the same to the DOE for further review and approval;

3. Review the evaluation report/s by the Accreditation Committee and recommend the same to the DOE for further review and approval; and

4. Perform such other duties and functions as expressly provided in this Department Order and/or as may be authorized by the Department of Energy.

Section 12. Establishment and Continued Publications of the Journal On Applied Renewable Energy Technologies. In support to the Research and Development or scientific activities of the different ARECs and to ensure that the results of their activities are shared or communicated to different stakeholders, a refereed Journal on Applied Renewable Energy Technologies (JARET) is hereby established to be published annually and registered by the Department of Energy in the ISBN or ISSN registry, subject to existing laws, rules and regulations. The management of the JARET may be assigned to any of the accredited ARECs consistent with the policies and guidelines hereof.

The Secretary of the Department of Energy shall constitute the Editorial Board and Editorial Staff of the JARET upon the recommendation by the AREC Advisory Committee and by the Assistant Secretary supervising the REMB and/or any official designated by the Secretary. The term of office of the Editorial Board and Staff shall be at least three (3) years renewable at the discretion of the DOE Secretary. Provided, That any personnel of the AREC under suspension or disqualification shall be prohibited membership to the Editorial Board and Editorial Staff of the JARET.

The Chair, Vice Chair and at least three (3) Members of the Editorial Board and the Editorial Staff including the Referees or External Evaluators may be entitled to reasonable monthly honorarium subject to appropriate Department of Budget and Management (DBM) and Commission on Audit (COA) laws, rules and regulations.

Articles or technical papers from contributors or researchers other than submitted by ARECs may be accepted upon payment of

review and publication fees and subject to the policies formulated by the AREC Advisory Committee, upon the recommendation by the JARET Editorial Board.

The duly constituted AREC Advisory Committee shall, upon the recommendation by the JARET Editorial Board, formulate and implement internal rules of procedure, evaluation and publication standards and requirements, and such guidelines necessary to fully implement this provision subject to the approval by the Secretary of the Department of Energy.

Section 13. Point Credit Equivalency on the Participation/Involvement of the Personnel. The participation/involvement of the personnel of both parties shall be credited as research or extension services, as may be applicable, and with point equivalent subject to their respective charters and relevant policies and guidelines. To enjoy with the credits, a Certificate of Participation
shall be issued jointly by the Team Leader/ Director of the ARECs concerned and the Assistant Secretary supervising REMB.

Section 14. Transitory Provisions. The following measures shall be undertaken after the issuance of this Department Order:

1. Within ten (10) days, the Assistant Secretary supervising REMB and/or any official designated by the Secretary shall constitute the AR EC-Accreditation Committee responsible of conducting the mandatory accreditation processes.

2. Within fifteen (15) days, the existing ARECs shall be convened as the Interim AREC Advisory Committee until the end of January 31, 201 f The Interim AREC Advisory Committee shall, among others, devise the evaluation materials and instrument based on the criteria and requirements under this Department Order.

3. On or before January 15, 2014, all existing ARECs shall undergo the mandatory accreditation process provided under this Department Order. All expenses necessary in the conduct of the mandatory accreditation processes shall be charged from the existing unutilized funds of the ARECs and such other appropriate funds identified under Section 8 of this Department Order, and/or such appropriate fund of the Institution, subject to usual accounting and auditing rules and regulations.

4. On or before January 31, 2014, the Memorandum of Agreement (MOA) shall be executed between the DOE and the existing ARECs in accordance with the provisions of this Department Order.

5. The applications of new institutions shall be processed simultaneously with the existing ARECs and the signing of the Memorandum of Agreement shall be in accordance with the provisions of this Department Order.

6. Within fifteen (15) days, the Interim Editorial Board and Editorial Staff of the JARET shall be constituted and convene, to formulate the policies and guidelines necessary to implement the provisions of Section 12 hereof. The existing ARECs may be allowed to submit article/s or technical papers to facilitate the printing of the first issue of the JARET as a requirement for the registration at the ISSN or ISBN registry. The funds necessary to print and register the first issue of the JARET shall be charged against the unutilized funds of the DOE subject to usual accounting and auditing rules and regulations.

7. Within fifteen (15) days, the DOE Counterpart Fund Allocation Committee (DOE-CFAC) shall be constituted and convene to immediately perform its duties to discuss the DOE counterpart allocation for Fiscal Year 2014.

8. The First Annual Search for Most Outstanding ARECs for Institutional, Leadership and Researchers categories shall be held on or before November 20, 2014 and the schedule for the next search shall be determined by the duly constituted Committee.

Section 15. Repealing Clause. All circulars, orders, issuances and the like which are inconsistent with any part/s of this Department Order are hereby amended or repealed accordingly: Provided, That the provisions of those circulars or issuances and the like which are not affected hereof shall remain in full force and effect.

Section 16. Separability Clause. If for any reason, any provision of this Department Order is declared unconstitutional or invalid, such part/s which are not affected thereby shall remain in full force and effect.

Section 17. Effectivrty. This Department Order shall take effect immediately upon its issuance.

Issued this 2nd day of December 2013 at the Department of Energy, Taguig City, Philippines.

CARLOS JERICHO L. PETILLA
Secretary
(Signed)

Republic of the Philippines
DEPARTMENT OF ENERGY

Annex A
(D.O. No. _____)

CERTIFICATE OF ACCREDITATION

DOE-AREC No. _____-20_____
This is to certify that the Department of Energy (DOE) has duly accredited the

As an **AFFILIATED RENEWABLE ENERGY CENTER (AREC)** for _____.

This Certificate of Accreditation shall serve as the basis of entitlement to the DOE's counterpart fund and other financial assistance provided under Department Order No. _____ entitled, "Strengthening the Management and Operations of the Affiliated Renewable Energy Centers (ARECs) in the Philippines," the implementing Rules and Regulations of Republic Act No. 9513, otherwise known as the "Renewable Energy Act of 2008", subject to compliance and performance of its duties or obligations under the Memorandum of Agreement executed on _____ and such other issuances of the Department of Energy (DOE) and relevant laws, rules and regulations.

This ACCREDITATION shall be valid for the period of _____ (_____) year/s starting _____ until _____ and may be suspended, terminated or revoked by the Department of Energy on any of the ground/s stipulated under pertinent DOE issuances and existing laws, rules and regulations.

IN TESTIMONY WHEREOF, the seal of the DOE and the Signature of its Secretary are hereunto affixed.

ISSUED in Taguig City, Metro Manila, Philippines, this ____ day of _____.

Carlos Jericho L. Petilla
Secretary

Annex B
(D.O. No. _____)

SUMMARY OF WORK PLAN
AND FINANCIAL PLAN
For Fiscal Year_____

Name of the AREC: _____ AREC Certificate of Accreditation No. _____-20_____
Name of the Project: _____ Source of Funds: DOE: _____; AREC: _____

Key Result Areas	Strategies	Strategies	Targets or Outcomes	Period/Months											
				J	F	M	A	M	J	J	A	S	O	N	D

Prepared by: APPROVED:

_____ _____ _____
AREC Team Leader/Director President of the Institution/AREC Assistant Secretary Supervising REMB. DOE

ANNEX C
(D.O. No. _____)

MEMORANDUM OF AGREEMENT

This **Memorandum of Agreement, "MOA"** in brevity, made and entered into this _____ in _____, by and between:

The DEPARTMENT OF ENERGY, hereinafter referred to as "DOE" or "Department of Energy", a government agency established pursuant to Republic Act No. 7638, as amended, and is mandated to implement Republic Act No. 9513, otherwise known as the "Renewable Energy Act of 2008", with principal office address at the Energy Center, Rizal Drive, Bonifacio Global City, Taguig City, Metro Manila, represented herein by its Secretary, **HON. CARLOS JERICHO L. PETILLA**;

-and-

The [_____Complete name_____] hereinafter referred to as the "_____" a [State University or College/Private University or College/ Consortium/Research and Development], duly organized per (Republic No. _____ or _____] and existing under the laws of the Republic of the Philippines, with principal office address at _____ represented herein by its President/Chair/Head,_____;

WITNESSETH:

WHEREAS, pursuant to Article XII, Section 2, of the 1987 Philippine Constitution," all forces of potential energy and other natural resources within the Philippine territory belong to the State and their exploration, development and utilization shall be under the full control of the State;

WHEREAS, Republic Act No. 7638, as amended, otherwise known as the "Department of Energy Act of 1992," mandates the DOE to prepare, integrate, coordinate, supervise and control all plans, programs, projects and activities of the Government relative to energy exploration, development, utilization, distribution and conservation, among others;

WHEREAS, Republic Act No. 9513, otherwise known as the "Renewable Energy Act of 2008", provides that it is the policy of the State to encourage and accelerate the exploration, development and increase the utilization of renewable energy resources such as, but not limited to, biomass, solar, wind, hydropower, geothermal, and ocean energy sources, and including hybrid systems;

WHEREAS, Section 31 (e) Rule 10 of the Implementing Rules and Regulations of R.A. No. 9513 embodied under Department Circular No. D02009-05-0008 provides "Continue to strengthen the Affiliated Renewable Energy Centers (ARECs) nationwide;"

WHEREAS, the DOE is continuously adopting new mechanisms and strategies to effectively carry out its plans and programs as mandated under the R.A. No. 9513 and its implementing rules and regulations;

WHEREAS, the DOE recognizes the potentials of the _____ in terms of expertise, resources and contributions in ensuring proper and effective formulation, implementation and evaluation programs, projects and activities that are responsive and

complementary to the ever changing needs of the stakeholders in _____ and clienteles in the Renewable Energy sector in the Philippines;

WHEREAS, the _____ is mandated under its charter to undertake research and extension services or outreach programs, and to establish partnership with any entity for the attainment of its mandates along with the thrusts and priorities of the national government;

WHEREAS, Department Order No. _____ was issued on _____ by the there is a need to institutionalize accreditation process and strengthen the management and operations of Affiliated Renewable Energy Centers (ARECs) in the Philippines in order to ensure sustainability of its operation, promote complementation of resources, accountability, and to implement programs and projects in the _____.

NOW, THEREFORE:

In consideration of the terms and conditions set forth herein, and pursuant to the provisions of DOE D.O. No. _____ and Board Resolution No._____adopted by the _____- [Board of Regents/Trustees/Director] on _____, the parties hereby stipulate and agree as follows:

Section 1. Suppletory Application of Department Order No. _____ and Other Relevant Policies Issued by the Secretary of the Department of Energy. Department Order No. _____, hereinafter referred to as "DOE D.O. No._____and other relevant policies issued by the Secretary of Energy shall be applied suppletorily to and shall serve as the governing guidelines of this MOA.

Section 2. Designation of the _____ as the Affiliated Renewable Energy Center (AREC) for _____. In view of the Accreditation [copy hereto attached as integral part hereof labeled as **Annex A**], the Department of Energy hereby designates the as the Affiliated Renewable Energy Center (AREC) for _____and henceforth be called as the _____-AREC.

Section 3. Management and Operations of the AREC. The ARECs shall be managed and operated in accordance with the provisions of DOE D.O. No. _____, and such terms and conditions setforth in this Memorandum of Agreement.

It shall be headed by a Team Leader/Director or any equivalent as may be determined by the President of the _____. The specific duties and responsibilities of the Team Leader/Director shall be prescribed by the President of the _____.

To ensure proper coordination and accountability, the AREC shall be under the joint administrative supervision by the President or Head of the AREC and the Assistant Secretary supervising the Renewable Energy Management Bureau (REMB) of the DOE or any official of the DOE duly designated by its Secretary.

Section 4. Duties and Responsibilities of the _____
The _____shall perform the following duties and responsibilities:

1. Meet and maintain the accreditation criteria and requirements, and undergo the processes, and if necessary, continually improve the previous total earned points to upgrade its status, as provided under Section 2 and 5 of DOE D.O. No. _____ its subsequent issuances issued by the Secretary of the Department of Energy;

2. Undertake the implementation of any project, such as, but not limited to, the Household Electrification Program (HEP), Barangay Electrification Program (BEP) and other RE related programs, projects and activities to be assigned by the DOE taking into account the following conditions:

    a. Issue an official receipt for every amount received from the DOE and maintains a separate bank account dedicated for the Project funds in a government depository bank, preferably the Land Bank of the Philippines (LBP);

    b. Keep and maintain separate and complete book of accounts for the Project funds and shall allow the DOE to have access to this book for audit purposes;

    c. Use the Project fund/s exclusively for the Project in accordance with the approved Line Item Budget (LIB) and Work and Financial Plan (WFP) [copy hereto attached as **Annex A**];

    d. Undertake the implementation of the Project and submit to the DOE the final report of all activities within ten (10) days after the expiry of the Terms of Reference (TOR) and/or relevant agreement;

    e. Submit to the DOE a quarterly technical and financial reports on its accomplishments and Project funds utilization/disbursement duly certified by its accountant and verified by an Auditor, within fifteen (15) days after the end of each quarter, duly authorized by the Commission on Audit;

    f. Allow the DOE to conduct an inspection of the Project and full access to all pertinent records, documents and books in support of disbursements made pertaining to the Project under the appropriate TOR or agreement;

    g. Return the corresponding amount to the DOE in the event that disbursements made by the institution are inconsistent with the (1) approved Line Item Budget (LIB) and Work and Financial Plan (WFP), (2) existing government accounting and auditing rules; and (3) are not acceptable to DOE based on its relevant policies and guidelines; and

    h. Hold the DOE free from any suits/liabilities whatsoever that may be filed by any party in connection with and arising from the implementation of any program, project or activity.

3. Engage with RE Developers in the conceptualization, implementation and evaluation of their respective Corporate Social Responsibility (CSR) programs, projects and activities.

    For this purpose, a MOA shall be signed between AREC and the RE Developer subject to the provisions of the duly signed Service/Operating Contract/s between the RE Developer and the DOE and other applicable laws, rules and regulations;

4. Implement at least two (2) energy related researches or studies and publish the same in a reputable journal, copies of which be submitted to the DOE;

5. Allocate adequate counterpart fund/s chargeable against its income and/or appropriate fund/s that shall be used, among others, for the MOOE, Capital Outlay and Personnel Services requirements of the Office of the AREC based on the approved Annual Line Item Budget (LIB) and Work and Financial Plan (WFP);

6. Authorize its Officials and Staff of the Office of the AREC including responsible faculty member/ personnel and students, as the case may be, to attend meetings, conferences, and workshops relative to the formulation, implementation, and monitoring of ARECs programs, projects and activities including in the monitoring and evaluation of the implementation of the duly signed Service/Operating Contracts between the DOE and RE Developers;

7. Attend and present researches and studies during the Annual NREB-ARECs-RE Developers Conference and other fora and consultations;
8. Subject to its institutional capabilities and relevant requirements as may be prescribed by competent authorities, consider the offering of degree programs on Renewable Energy and other energy related degrees and trainings;
9. Negotiate, receive and utilize any form of assistance or grants from other benefactors subject to the specific instruction/s of the latter and other applicable laws, rules and regulations that are relevant, contributory or essentials to the attainment of the foregoing duties and responsibilities: Provided, That the DOE shall be furnished of the agreement/s and actual utilization report thereof for reference; and
10. Discharge such other duties and functions as expressly provided under this Department Order and/or as may be determined by the DOE from time to time.

Section 5. Duties and Responsibilities of the DOE. The Department of Energy (DOE) shall perform the following duties and responsibilities.

1. Provide financial assistance to the _____ based on the allocation provided under Section 8 of DOE D.O. No. _____, which shall be used exclusively for the purposes specified in the approved Annual Line Item Budget (LIB) and the Work and Financial Plan (WFP).
2. Direct the _____ to refund the corresponding and applicable amount to the DOE in the event that the disbursements made by the _____ are inconsistent with the (a) approved LIB and WFP, (b) existing government accounting and auditing rules, and (c) are not acceptable to DOE based on its relevant policies and guidelines;
3. Perform technical inspection on any program, project or activity undertaken by the _____.
4. Provide necessary assistance to the _____-ARECs relevant program, project or activity;
5. Act on any request by the _____ for deviation in the approved WPF and LIB within thirty (30) days after receipt of the request, which action shall form an integral part of the agreement or TOR; and
6. Discharge such other duties and responsibilities as may be provided under this Department Order and other issuances and/or as may be agreed upon with any party in accordance with existing laws, rules and regulations.

Section 6. Management and Disbursement of Annual Counterpart Funds. The DOE and the _____ _____ shall release their respective annual counterpart fund/s within thirty (30) days upon the execution of the MOA and/or approval of the Work and Financial Plan. Considering that the MOA has a validity of _____ years, the duly approved Annual Line Item Budget (LIB) and Work and Financial Plan (WFP) shall be sufficient as supporting document/s for the release of funds: *Provided*, That the MOA and Certificate of Accreditation are in full force and effect: *Provided, further*, That the approved Annual LIB and WFP shall be submitted to the DOE and _____ on or before 15th day of December of every year thereafter.

The amount of the annual counterpart fund or fund complement of the _____ _____ shall not be[1] less than the amount provided by the DOE as provided under Section 8 of DOE D.O. No. _____. Should there be delay in the allocation of the DOE counterpart fund, the amount in the immediate Fiscal Year shall be used as basis in the computation of the institutional or ARECs fund complement and any adjustment

thereof may be made through supplemental budget to support.

All unutilized fund/s allocated for _____ may be disbursed to support any expenses necessary in the implementation of any related _____, -AREC and DOE's programs, projects and activities upon written authority by the President or Head of the Institution and the Secretary of the Department of Energy, through the Assistant Secretary supervising the REMB, as the case may be.

Section 7. Submission of Articles or Technical Papers for Publications in the Journal On Applied Renewable Energy Technologies. The _____ shall submit at least two (2) articles or technical papers per year for publication in the refereed Journal on Applied Renewable Energy Technologies (JARET) subject to approved internal rules of procedure, evaluation and publication standards and requirements, and such guidelines.

Section 8. Signing of the Term of Reference (TOR) or Contract. The Department of Energy and any AREC may sign or execute a Term of Reference (TOR) or Contract for the implementation of a particular project or activity provided under this MOA, whenever necessary, including those project or activity that may arise or may be identified within the effectivity of this MOA. The agreements and conditions of the TOR or contract shall be based on the nature, objectives and outcomes of the project or activity taking into consideration the provisions of DOE D.O. No._____ and such other relevant laws, rules and regulations.

To facilitate the signing and implementation, the parties hereby designate the following authorized signing officials for the TOR or Contract, to wit:

a. For the Department of Energy- Assistant Secretary supervising the REMB or any official duly authorized by the DOE Secretary.

b. For the _____- the duly designated Team Leader/Director of the AREC.

Section 9. Point Credit Equifvalency on the Participation/Involvement of the Personnel. The participation/involvement of the personnel of both parties shall be credited as research or extension services, as may be applicable, and with point equivalent subject to their respective charters and relevant policies and guidelines. To enjoy with the credits, a Certificate of Participation shall be issued jointly by the Team Leader/Director of the_____and the Assistant Secretary supervising REMB.

Section 10. Grounds for Suspension or Termination. In addition to any ground as provided in any of the provisions of DOE D.O. No. _____, this Memorandum of Agreement or MOA may be suspended, terminated or revoked by the DOE on any and/or all of the following grounds:

1. Inability to maintain the criteria and requirements based on the duly validated report by the Accreditation Committee;
2. Failure to submit liquidation report/s duly validated by the Commission on Audit;
3. Inadequate fund/s by both the DOE and the institution which may substantially hamper the AREC's operations and delivery of services;
4. Violation/s of any and/or all provisions of the Memorandum of Agreement; and
5. Such other acts that may constitute violation/s of existing laws, rules and regulations.

Section 11. Validity and Renewal. The validity of the MOA shall be _____years from reckoned from the date of notary, and subject to the periodic evaluation and accreditation processes provided under DOE D.O. No. _____ . This MOA may be renewed at mutual consent by the parties subject to the provisions of DOE D.O. No. _____.

Section 12. Repealing Clause. All agreements inconsistent with any part/s of this Memorandum of Agreement are hereby amended or repealed accordingly.

Section 13. Separability Clause. If for any reason, any provision of this Memorandum of Agreement is declared unconstitutional or invalid, such part/s which are not affected thereby shall remain in full force and effect.

Section 14. Effectivity. This Memorandum of Agreement shall take effect immediately.

IN WITNESS WHEREOF, the Parties have caused this Memorandum of Agreement to be executed by their respective representatives on the date above written.

DEPARTMENT OF ENERGY

By:

CARLOS JERICHO L PETILLA
Secretary

By:

President/Head/Chair
President/Head/Chair

Witnesses:

_____ _____

ACKNOWLEDGEMENT

REPUBLIC OF THE PHILIPPINES)
) S.S.

I. _____. a Notary Public duly authorized in the city named above to take acknowledgments, certify that on this , personally appeared:

Name	Passport No.	Date & Place of Issuance
Carlos Jericho L. Petilla		

known to be the same person described in the foregoing instrument, who acknowledged before me that his signature on the instrument was voluntarily affixed by him for the purposes stated therein, and who declared to me that he executed the instrument as his free and voluntary act and deed as well as the free and voluntary act and deed of the government agency herein represented.

This Memorandum of Agreement consisting of eight (8) pages, including the page on which this Acknowledgment is written, is signed on each and every page thereof by the Party and his instrumental witness and sealed with my notarial seal.

WITNESS MY HAND AND SEAL on _____ at _____.

NOTARY PUBLIC

Doc. No. _____:
Page No. _____:
Book No. _____:
Series of _____:

ACKNOWLEDGEMENT

REPUBLIC OF THE PHILIPPINES)
) S.S.

I. _____, a Notary Public duly authorized in the city named above to take acknowledgments, certify that on this _____, personally appeared:

Name	Passport No.	Date & Place of Issuance

known to be the same person described in the foregoing instrument, who acknowledged before me that his signature on the instrument was voluntarily affixed by him for the purposes stated therein, and who declared to me that he executed the instrument as his free and voluntary act and deed as well as the free and voluntary act and deed of the government agency herein represented.

This Memorandum of Agreement consisting of eight (8) pages, including the page on which this Acknowledgment is written, is signed on each and every page thereof by the Party and his instrumental witness and sealed with my notarial seal.

WITNESS MY HAND AND SEAL on _____ at _____.

NOTARY PUBLIC

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Page No. _____:
Book No. _____:
Series of _____:

ANNEX D
(D.O. No. _____)

TERMS OF REFERENCES OR CONTRACT

This **TERMS OF REFERENCE OR CONTRACT** in brevity, made and entered into this_____ in _____, by and between:

The **DEPARTMENT OF ENERGY**, a government agency established pursuant to Republic Act No. 7638, as amended, and is mandated to implement Republic Act No. 9513, otherwise known as the "Renewable Energy Act of 2008", with principal office address at the Energy Center, Rizal Drive, Bonifacio Global City, Taguig City, Metro Manila, represented herein by its Secretary, **HON. CARLOS JERICHO L. PETILLA, hereinafter referred to** as **the "DOE"**;

-and-

The [_____ *Complete name* _____] a [State University or College/Private University or College/Consortium/Research and Development], duly organized per [Republic No. _____ or _____ and existing under the laws of the Republic of the Philippines, with principal office address at _____ represented herein by its President/Chair/Head, hereinafter referred to as the " or "AREC";

WITNESSETH:

WHEREAS, Republic Act No. 7638, as amended, otherwise known as the "Department of Energy Act of 1992," mandates the DOE to prepare, integrate, coordinate, supervise and control all plans, programs, projects and activities of the Government relative to energy exploration, development, utilization, distribution and conservation, among others;

WHEREAS, Republic Act No. 9513, otherwise known as the "Renewable Energy Act of 2008", provides that it is the policy of the State to encourage and accelerate the exploration, development and increase the utilization of renewable energy resources such as, but not limited to, biomass, solar, wind, hydropower, geothermal, and ocean energy sources, and including hybrid systems;

WHEREAS, the DOE is continuously adopting new mechanisms and strategies to effectively carry out its plans and programs as mandated under the R.A. No. 9513 and its implementing rules and regulations;

WHEREAS, the _____, is an Affiliated Renewable Energy Center (AREC) per Certificate of Accreditation No._____-20_____, and Memorandum of Agreement executed on _____ which has been recognized by the DOE of its potentials in terms of expertise, resources and contributions in ensuring proper and effective formulation, implementation and evaluation programs, projects and activities that are responsive and complementary to the ever changing needs of the stakeholders in _____ and clienteles in the Renewable Energy sector in the Philippines;

WHEREAS, the _____ is mandated under its charter to undertake research and extension services or outreach programs, and to establish partnership with any entity for the attainment of its mandates along with the thrusts and priorities of the national government;

NOW, THEREFORE:

In consideration of the terms and conditions set forth herein, and pursuant to the provisions of DOE D.O. No._____, the parties hereby stipulate and agree as follows:

Section 1. Application. This Terms of Reference (TOR) or Contract shall cover for the implementation of _____.

Section 2. Duties and Responsibilities of the _____. The _____ shall perform the following duties and responsibilities:

1. Undertake the implementation of any project, such as, but not limited to, the Household Electrification Program (HEP), Barangay Electrification Program (BEP) and other RE related programs, projects and activities to be assigned by the DOE taking into account the following conditions:

    a. Issue an official receipt for every amount received from the DOE and maintains a separate bank account dedicated for the Project funds in a government depository bank, preferably the Land Bank of the Philippines (LBP);

    b. Keep and maintain separate and complete book of accounts for the Project funds and shall allow the DOE to have access to this book for audit purposes;

    c. Use the Project fund/s exclusively for the Project in accordance with the approved Line Item Budget (LIB) and Work and Financial Plan (WFP) [copy hereto attached as Annex A];

    d. Undertake the implementation of the Project and submit to the DOE the final report of all activities within ten (10) days after the expiry of the Terms . of Reference (TOR) and/or relevant agreement;

    e. Submit to the DOE a quarterly technical and financial reports on its accomplishments and Project funds utilization/disbursement duly certified by its accountant and verified by an Auditor, within fifteen (15) days after the end of each quarter, duly authorized by the Commission on Audit;

    f. Allow the DOE to conduct an inspection of the Project and full access to all pertinent records, documents and books in support of disbursements made pertaining to the Project under the appropriate TOR or agreement;

    g. Return the corresponding amount to the DOE in the event that disbursements made by the institution are inconsistent with the (1) approved Line Item Budget (LIB) and Work and Financial Plan (WFP), (2) existing government accounting and auditing rules; and (3) are not acceptable to DOE based on its relevant policies and guidelines; and

    h. Hold the DOE free from any suits/liabilities whatsoever that may be filed by any party in connection with and arising from the implementation of any program, project or activity.

2. Discharge such other duties and functions as expressly provided under this Department Order and/or as may be determined by the DOE from time to time.

Section 3. Duties and Responsibilities of the DOE. The Department of Energy (DOE) shall perform the following duties and responsibilities:

1. Provide financial assistance to the _____based on the allocation provided under Section 8 of DOE D.O. No. _____, which shall be used exclusively for the purposes specified in the approved Annual Line Item Budget (LIB) and the Work and Financial Plan (WFP).

2. Direct the _____ to refund the corresponding and applicable amount to the DOE in the event that the disbursements made by the _____. are inconsistent with the (a) approved LIB and WFP, (b) existing government accounting and auditing rules, and (c) are not acceptable to DOE based on its relevant policies and guidelines;

3. Perform technical inspection on any program, project or activity undertaken by the _____;

4. Provide necessary assistance to the _____-ARECs relevant program, project or activity;

5. Act on any request by the _____ for deviation in the approved WPF and LIB within thirty (30) days after receipt of the request, which action shall form an integral part of the agreemenl or TOR; and

6. Discharge such other duties and responsibilities as may be provided under this Department Order and other issuances and/or as may be agreed upon with any party in accordance with existing laws, rules and regulations.

Section 4. Ownership of Properties. The following shall strictly be observed:

1. All non-expendable materials and properties purchased out of funds granted by the DOE for the Project shall exclusively belong to the DOE. They shall be inventoried and a copy of such inventory furnished to the DOE within thirty (30) days calendar days from the date of purchase and such materials and properties shall be marked as DOE property. Upon written request of _____ non-expendable materials and properties may be donated to _____ provided that they are essential to the operations of AREC, upon approval by the Assistant Secretary supervising the REMB and/or any official duly designated by the Secretary of DOE.

2. Patents, trademarks, copyrights and other intellectual property rights arising directly out of the conduct of the activities funded by this Project shall be owned by the Government of the Philippines represented by the DOE and _____ being the grantor of the project funds and implementer of the Project, respectively, in accordance with Republic Act No. 8293, otherwise known as the "Intellectual Property Code of the Philippines."

Section 5. Warranties. The _____hereby warrants the following:

1. None of its officials or employees has given any money or gift to any official or employee of DOE to influence the decision regarding the execution of this TOR or Contract and that none of its officials and employees have exerted influence to secure this TOR or Contract;

2. Personnel and support staff to be employed by the AREC shall not be considered employees of the DOE;

3. An breath of the warranties aforementioned shall be considered a ground for termination of this TOR or Contract upon prior written notice to _____.

Section 6. Fidelity Bond. The duly designated Project Leader of _____shall secure a Fidelity Bond in favor to the DOE from the National Treasury within thirty (30) days upon execution of this TOR or Contract. *Provided,* That the bond shall be equal to 10% of the Project fund/s for the faithful compliance of its obligations under this TOR or Contract. *Provided, further,* That the Fidelity bond shall be released and cancelled thirty (30) days from the submission of all reports required under this TOR or Contract as certified by the DOE Counterpart Fund Allocation Committee duly constituted under DOE. D.O. No. _____.

Section 7. Grounds for Suspension or Termination. In addition to any ground as provided in any of the provisions of DOE D.O. No._____, this Terms of Reference or Contract may be suspended, terminated or revoked by the DOE on any and/or all of the following grounds:

1. Non-compliance with any of the obligations of the parties;
2. Non-posting of Fidelity Bond;
3. Breach of warranties mentioned in Section 5 hereof;
4. Such other acts that may constitute violation/s of existing laws, rules and regulations.

Provided, That written notice of termination must be sent to the Party who caused any of the grounds mentioned in the preceding section. *Provided, further,* That in case of early termination based on a valid cause, the _____ shall return the remainder of the Project fund/s to the satisfaction of the DOE, in cognizant of the WFP and LIB, duly accepted by the DOE Counterpart Fund Allocation Committee duly constituted under DOE. D.O. No._____.

Section 8. Settlement of Disputes. Any dispute or differences arising out of the interpretation/ implementation/application of the provisions of this TOR or Contract shall be settled amicably through consultation/negotiations between the Parties without reference to any third party subject to relevant policies of the DOE and existing laws, rules and regulations.

Section 9. Amendment and Modification. Any amendment or modification, if necessary, may be negotiated between the parties hereto and shall be agreed by a written document signed by the principals or authorized representatives of the both Parties.

Section 10. Validity and Renewal. The validity of the Terms of Reference or Contract shall be _____ year/s from reckoned from the date of notary, and this may be renewed at mutual consent by the parties subject to the provisions of DOE D.O. No. _____ and such other relevant DOE issuances.

Section 11. Notice. All notices and reports pertaining to this TOR or Contract shall be sent in writing by registered mail, facsimile or shall be handed personally to the addressed so stated in the preliminary proportion of this TOR or Contract. Such notices and reports shall take effect from the date of receipt by the other party.

In case either party changes the address or contract numbers, the part concerned shall give such notice to the other party beforehand.

Section 12. Effectlvity. This TOR or Contract shall take effect immediately.

IN WITNESS WHEREOF, the Parties have caused this TOR or Contract to be executed by their respective representatives on the date above written.

DEPARTMENT OF ENERGY
By: _____ By: _____
CARLOS JERICHO L. PETILLA Secretary President/Head/Chair

ACKNOWLEDGEMENT

REPUBLIC OF THE PHILIPPINES)
) S.S.

I. _____, a Notary Public duly authorized in the city named above to take acknowledgments, certify that on this _____, personally appeared:

Name	Passport No.	Date & Place of Issuance

known to be the same person described in the foregoing instrument, who acknowledged before me that his signature on the instrument was voluntarily affixed by him for the purposes stated therein, and who declared to me that he executed the instrument as his free and voluntary act and deed as well as the free and voluntary act and deed of the government agency herein represented.

This Memorandum of Agreement consisting of eight (8) pages, including the page on which this Acknowledgment is written, is signed on each and every page thereof by the Party and his instrumental witness and sealed with my notarial seal.

WITNESS MY HAND AND SEAL on _____ at _____.

NOTARY PUBLIC

Doc. No. _____:
Page No. _____:
Book No. _____:
Series of _____:

DEPARTMENT ORDER NO. DO2013-12-0020

STRENGTHENING THE RENEWABLE ENERGY-REVIEW AND EVALUATION COMMITTEE (FORMERLY RE-CONTRACTS REVIEW COMMITTEE), AND FOR OTHER PURPOSES

WHEREAS, pursuant to Article XII, Section 2, of the 1987 Philippine Constitution, all forces of potential energy and other natural resources within the Philippine territory belong to the State and their exploration, development and utilization shall be under the full control of the State;

WHEREAS, Republic Act No. 9513, otherwise known as the "Renewable Energy Act of 2008", provides that it is the policy of the State to encourage and accelerate the exploration, development and increase the utilization of renewable energy resources such as, but not limited to, biomass, solar, wind, hydropower, geothermal, and ocean energy sources, and including hybrid systems;

WHEREAS, Republic Act No. 7638, as amended, otherwise known as the "Department of Energy Act of 1992," mandates the Department of Energy (DOE or Department) to prepare, integrate, coordinate, supervise and control all plans, programs, projects and activities of the Government relative to energy exploration, development, utilization, distribution and conservation, among others;

WHEREAS, the DOE is continuously adopting new mechanisms and strategies to effectively carry out its plans and programs as mandated under the RA 9513 and its implementing rules and regulations;

WHEREAS, Department Order No. DO2013-08-0011 was issued on July 26, 2013 which adopted policies in relation to the processing of Renewable Energy Service Contracts and mandated the adoption of the revised templates for Renewable Energy service contracts;

WHEREAS, the RE-Review and Evaluation Committee (RE-REC) has been authorized by the Secretary to issue clarificatory resolutions to the comments and inputs submitted by RE Developers and stakeholders;

WHEREAS, taking into consideration the streamlined and enhanced process flow implemented by the Department and the foregoing authority to resolve comments and inputs, there is a need to strengthen the RE-Review and Evaluation Committee formerly the RE-Review Contracts Committee;

NOW THEREFORE, in consideration of the foregoing and upon favorable recommendation by the duly constituted Renewable Energy-Review and Evaluation Committee (RE-REC), it is hereby ordered as follows:

Section 1. Declaration of Principles and Policies. Consistent with the mandates of the Department of Energy (Department) under Republic Act No. 7638 and Republic Act No. 9513, the Department hereby adopts or adheres the following principles and policies relative to the review and issuance of all applications for and the implementation, monitoring and evaluation of service or operating contracts, to wit:

1. The exploration and utilization of Renewable Energy (RE) resources shall be in accordance with the requirements enshrined under the 1987 Constitution, relevant enabling laws and the Department's policies;

2. The maximum number of days for the processing of application for service or operating contracts shall be forty-five

(45) days from its submission at the Office of the Secretary. The evaluation and tracking system including the timelines in the different evaluation stages shall be strictly observed;

3. The milestone approach mandated under relevant issuance of the Department must be strictly observed by all parties concerned; and

4. The issuance of the RE-service or operating contracts shall contribute to the Energy Reform Agenda, the Philippine Energy Plan (PEP) for 2012-2030 and/or subsequent Philippine Energy Plans and the energy thrusts and programs of the national, regional and local governments.

Section 2. Composition. The RE-Review and Evaluation Committee (RE-REC), formerly the RE-Review Contracts Committee, shall be composed of the following:

Chairperson- Any official with a position of at least Assistant Secretary supervising the Renewable Energy Management Bureau

Vice Chair- Director for Renewable Energy Management Bureau (REMB)

Members- Director for Legal Services (LS)
Director for Information and Technology Management Services (ITMS)
Director, Finncial Services (FS)
REMBDivsion Chief concerned the represe ntative/s from the OSEC Legal Team shall serve as non-voting member/s of the RE-REC.

To ensure quorum for every meeting, the following shall serve as the alternate representatives who shall immediately assume in a particular meeting during the absence of their respective principals and with all the rights and duties as regular members, to wit:

Principal:	**Alternate Representative:**
Chairperson:	Designated Officer-In-Charge (OIC)
Vice Chairperson:	Assistant Director, REMB
Members:	Director, LS - Chief, Contracts Division
	Director, ITMS-Chief, Information Services Division
	Director, FS- Chief, Compliance Division
	REMB Division Chief-Supervising Science Research Specialist

Provided, That should the Vice Chair or any Member is designated OIC of the Chair, her/his alternate representative shall not be allowed to vote in the particular meeting.

Section 3. Functions and Duties of the Renewable Energy-Review and Evaluation Committee (RE-REC). The duly constituted RE-REC shall perform the following functions and duties:

1. Deliberate and review the evaluation reports on the application for service or operating contracts, as the case may be, prepared by the ITMS, Legal Team of the Office of the Secretary (OSEC Legal Team), Legal Services, and REMB Technical Division;

2. Endorse to the Secretary of the Department any application for service or operating contract for further review and issuance of the same or appropriate action;

3. Issue clarificatory resolutions on the various comments or inputs to the templates of the service or operating contracts, motu propio or submitted by the RE-Developers or applicants or any stakeholders, subject to the following conditions:

a. The clarificatory resolutions shall be issued to clarify and explain the intent and meaning of certain provisions or terms of the different RE Service/ Operating Contracts, as the case may be, which does not require the issuance of a Department Order or any issuance by the Secretary;

b. The clarifications/explanations to be issued shall in no way modify, amend or diminish or alter the true intent and purposes of any provision;

c. Any clarificatory resolution shall have the same weight and effect as if issued by the Secretary and the same be appended to the Service/ Operating Contract which shall be binding or subsisting between the Department of Energy and the RE-Developer/s; and

d. A clarificatory resolution shall apply retroactively to a particular provision or term being clarified and explained and shall remain enforced until sooner modified, revoked or reversed by the Secretary.

4. Review and revise forms and designs used in the review and approval of the RE-service or operating contracts, provided, that any revision or amendment to be made to the template of the RE-service or operating contract shall be approved by the Secretary of the Department through the issuance of an appropriate order or circular;

5. Constitute monitoring or evaluation teams on the implementation of RE-service or operating contracts in accordance with the provision of appropriate issuance/s of the Department;

6. Review and recommend the Monitoring and Evaluation Team reports to the Secretary in accordance with the provision of appropriate issuance/s of the Department;

7. Recommend to the Secretary the issuance of the Certificate of Commerciality, conversion and assignment including the termination of service or operating contracts and such other related actions as it may deemed necessary;

8. Recommend measures deemed necessary to settle disputes and issues regarding the issuance and implementation of any RE-service or operating contract;

9. Devise system to ensure proper and safe record keeping and tracking of various processes in the evaluation, implementation and evaluation of applications and duly issued RE-service or operating contracts;

10. Conduct periodic stakeholder's conference, seminars, fora and coordinate with the duly accredited Affiliated Renewable Energy Centers (ARECs) and other academic institutions, research and development groups, civil society groups and other interested individuals in the formulation and conduct of information and education campaigns (IECs) and well-pronounced research programs, projects, studies and activities;

11. Formulate its internal rules of procedure that shall govern the conduct of meetings and disposition of matters under its jurisdiction;

12. Manage and recommend measures to ensure proper, effective and efficient allocation and utilization of all income and grants generating out of the issuance and implementation of the RE-service or operating contract. For this purpose, there shall be a separate special trust fund account to be established and maintained so as to ensure proper recording and monitoring of the

collections thereof subject to existing laws, rules and regulations; and

13. Discharge such other responsibilities as may be delegated by the Secretary and/or competent authority of the Department subject to existing laws, rules and regulations.

Section 4. Term of Office; Hold-Over Capacity. The Chair, Vice-Chair and Members of the RE-REC shall have a fixed term of three (3) years reckoned from the date of designation, renewable, at the discretion of the Secretary. In case of resignation, retirement, separation, transfer, re-assignment or removal, the replacement shall serve only for the unexpired term, provided, however, that in case of leave or suspension, the replacement shall serve only for the duration of the leave or suspension.

In order to avoid hiatus in the RE-REC, it's incumbent Chair, Vice-Chair and Members, shall continue to perform their respective duties and responsibilities, in hold-over capacity, until their corresponding replacements are duly designated or appointed by the Secretary.

Section 5. Meetings and Quorum. The RE-REC shall meet at least every month or as often as may be necessary to ensure proper disposition of all applications and matters under its jurisdiction. Special meetings may be called by the Chair or upon the direction by the Secretary of the Department.

The Chairperson or, in his absence, the Officer-in-Charge of the Chairperson or RE-REC Vice-Chair, shall call and preside at all meetings of the RE-REC. The decision of at least a majority of those present at a meeting at which there is quorum shall be valid and binding as an act of the RE-REC: *Provided, however,* That the Chairperson or, in his absence, the OIC of the Chair or Vice-Chair, shall vote only in case of a tie. Provided, further, That a majority of the all RE-REC members, at the exclusion of non-voting members, shall constitute a quorum for the transaction of business; Provided, furthermore, That the presence of the Chair or Vice-Chair in any meeting shall be required.

Section 6. Secretariat of the RE-REC; Composition, Duties and Responsibilities, Administrative Control and Supervision, Term of Office, and Hiring of Staff. There shall be a Secretariat of the RE-REC to be pooled from the staff of the Chair and REMB Technical Staff. The office of the Secretariat shall be at the Office of the Chair to ensure proper coordination and execution of the decision of the RE-REC and instructions of the Chair.

The Secretariat shall be headed by at least an Executive Assistant with the following duties and responsibilities:

1. Prepare and distribute notice of meetings and order of business including invitation to concerned individuals duly issued by the Chair;

2. Record, prepare and route minutes, resolutions or decisions, and cause for the dissemination or publication thereof duly, approved by the RE-REC;

3. Provide administrative services to the RE-REC;

4. Assist in the preparation of reports to be submitted to the Office of the Secretary;

5. Assist in the monitoring of status on the evaluation processes as provided in relevant issuances of the Department; and

6. Discharge such other duties as may be directed by the Chair and the RE-REC.

The Secretariat shall be under the administrative control and supervision of the RE-REC Chair and shall serve co-terminus with the Chair and/or until sooner revoked by the

Secretary and/or competent authority.

In order to augment the Secretariat Staff, hiring of Job Orders or permanent staff is allowed subject to availability of funds, and usual accounting and auditing rules and regulations.

Section 7. Decisions of the RE-REC. The decisions of the duly constituted RE-REC shall be in the form of resolutions taking into account the generally accepted style or as may be provided in its Internal Rules of Procedure.

Section 8. Appropriations and Sources. All expenses so appropriated necessary in the performance of the duties and functions of the RE-REC and its Secretariat shall be charged against the REMB fund and/or such appropriate sources subject to usual accounting and auditing rules and regulations.

Section 9. Suppletory Application of Relevant Laws, Rules and Regulations. The provisions of laws, rules and regulations promulgated by the Office of the President, Congress of the Philippines, all relevant issuances of the Department shall, if applicable, be integral parts of this Department Order and shall serve as part of the governing policies of the RE-REC.

Section 10. Transitory Provisions. Pending the establishment of the regular Compliance Division for the Renewable Energy of the Department, the current Compliance Division of the Financial Services shall perform the duties and responsibilities provided under this Department Order.

To augment the staff of the present Compliance Division of the Financial Services, the hiring of reasonable job orders with relevant educational and technical qualifications is hereby authorized subject to existing laws, rules and regulations.

Section 11, Repealing Clause. Department Circular No. DC2009-07-0011 and all circulars, orders, issuances and the like which are inconsistent with any of the provisions or parts of this Department Order are hereby amended or repealed accordingly: Provided, That the provisions of those circulars or issuances and the like which are not affected hereof shall remain in full force and effect.

Section 12. Separability Clause. If for any reason, any provision of this Department Order is declared unconstitutional or invalid such part/s which are not affected shall remain in full force and effect.

Section 13. Effectivity. This Department Order shall take effect immediately upon its issuance.

Issued this 2nd day of December 2013 at the Department of Energy, Rizal Drive, Bonifacio Global City, Taguig City, Philippines.

CARLOS JERICHO L. PETILLA
Secretary
(Signed)

DEPARTMENT ORDER NO. DO 2013-12-0023

FURTHER AMENDING DEPARTMENT ORDER NO. 002013-12-0020 AND DEPARTMENT ORDER NO. D02013-12-0021

WHEREAS, the Department of Energy (DOE) is continuously adopting new mechanisms and strategies to effectively carry out its plans and programs including those mandated under the Republic Act No. 9513 and its implementing rules and regulations;

WHEREAS, Department Order No. D02013-12-0020 adopted policies to strengthen the Renewable Energy Evaluation Committee (Formerly RE-Contracts Review Committee);

WHEREAS, Department Order No. D02013-12-0021 provided for the "Guidelines Governing the Evaluation and Monitoring on the Implementation of the Service and Operating Contracts between the Department of Energy and Renewable Energy (RE) Developers;" and

WHEREAS, upon further consultation with concerned stakeholders it was agreed upon to amend certain provisions of D02013-12-0020 and repeal D02013-12-0021 to provide the implementing units an opportunity to discharge their original mandate.

NOW THEREFORE, in consideration of the foregoing, the following is hereby ordered:

Section 1. Amendments to D02013-12-0020. Section 4 of D020'13-12-0020 is hereby repealed and the following sections are hereby amended:

> Section 6. Secretariat of the RE-REC; Composition, Duties and Responsibilities, Administrative Control and Supervision, Term of Office and Hiring of Staff.
>
> xxx xxx xxx
>
> Section 8. Appropriations and Sources.
>
> xxx xxx xxx
>
> Section 10. Transitory Provisions.
>
> xxx xxx xxx

In the implementation of the abovementioned provisions, the Administrative and Financial Services shall coordinate with the Renewable Energy Evaluation Committee and the Renewable Energy Management Bureau for the of the required positions: Provided, That hiring of personnel shall be subject the DOE's existing guidelines and consistent with government rules and regulations.

Section 2. Repealing of D02013-12-0021. Department Order No. DC2013-12-0021 is hereby repealed and all previous issuance affected thereby are reinstated.

Section 3. Separability Clause. If for any reason, any provision of unis Department Order is declared unconstitutional or invalid, such part/s which are not affected shall remain in full force and effect.

Section 4. Effectivity. This Department Order shall take effect immediately.

Issued on 27 July 2013 at Energy Center, Bonifacio Global City, Taguig City.

CARLOS JERICHO L. PETILLA
Secretary
(Signed)

DEPARTMENT ORDER NO. 2014-06-0010

Adopting a Template for Large Hydropower Service Contract (HSC), Amending Department Order No. DO2013-08-0011 and Other Pertinent Rules and Regulations Inconsistent Thereto, and for Other Purposes

WHEREAS, the Department of Energy (DO) is continuously adopting new mechanisms and strategies to effectively carry out its plans and program including those mandated under Republic Act No. 9513 and its implementing rules and regulations;

WHEREAS, Department Order No. DO2013-08-0011 adopted a new set of templates for all Renewable Energy (RE) Service Contracts, as well as the enhanced process flow for the award of RE Service Contracts;

WHEREAS, the DOE received several requests from RE developers for the adoption of a template for the exploration, development and utilization of hydropower resources with a capacity of fifty megawatts (50 MW) and above;

WHEREAS, the exploration, development and utilization of hydropower resources with a capacity of 50 MW and above involves additional activities and extended timelines in view of several significant issues, including additional time for the acquisition of necessary permits. social acceptability, among others;

WHEREAS, in order for the DOE to hasten the exploration, development and utilization of hydropower resources with a capacity of over 50 MW, there is a need to adopt a service contract template that is more appropriate and fitting for large hydropower resources;

WHEREAS, the RE-Review and Evaluation Committee (RE-REC) was created under Department Circular No. DC2009-07-0011, and further strengthened under Department Circular No. DC2013-12-0021 and Department Circular No. DC2013-12-0023, to provide recommendations to the DOE Secretary for the award of RE Service Contracts, among others; and

WHEREAS, after careful review of the existing process in the issuance and award of RE Service Contracts for hydropower, the RE-REC has thoroughly discussed and thereafter recommended the adoption of a service contract template for the large hydropower resources development.

NOW THEREFORE, for and in consideration of the foregoing premises, the DOE hereby orders the following:

Section 1. Large Hydropower Service Contract. The exploration, development and utilization of hydropower resources with a capacity of fifty megawatts (50 MW) and above shall be undertaken through a Large Hydropower Service Contract adopted under this Department Order.

Section 2. Adoption of the Service Contract Template for large Hydropower Service Contracts. The DOE shall adopt the service contract template for Large Hydropower Resources attached hereto as Annex "A".

Section 3. Application, Evaluation and Awarding Service Contract. In the evaluation, processing and contracts, the Renewable Energy-Review and Evaluation observe the existing procedures under the following issuances, to wit:

1. Department Circular No. DC2009-07-0011; and

2. Department Circular No. DC2013-08-0011.

Section 4. Application to the Duly Signed Hydropower Service Contracts (HSCs). The pertinent provisions of Section 3.1 (Pre-Development Stage) and Section III (Term) of the template HSC as provided in Section 2 of this Department Order may not automatically or retroactively apply to existing hydropower service contracts with capacity of fifty megawatts (50 MW) and above, except upon a written request by the RE Developer concerned, and upon favorable recommendation by the RE-REC duly approved by the Secretary of the Department of Energy.

Section 5. Advisory to RE Developers and Applicants. Acting as Chairman of the RE-REC, the Assistant Secretary in charge of the Renewable Energy Management Bureau (REMB) is hereby directed to inform all concerned RE Developers and Applicants of the revised templates and the requirements thereof.

Section 6. Implementing Guidelines. The RE-REC shall promulgate such guidelines may be necessary to fully implement this Department Order.

Section 7. Repealing Clause. Department Order No. DO2013 08-0011 entitled, "Adopting Policies in Relation to the Processing of Renewable Energy Service Contracts and Mandating the Adoption of the Revised Templates for Renewable Energy Service Contracts" with respect to the Hydropower Service Contract (HSC) labeled as Annex A thereof, and such other issuances which are inconsistent with any of the provisions of this Department Order are hereby amended or repealed accordingly.

Section 8. Separability Clause. If for any reason, any provision of this Department Order is declared unconstitutional or invalid, such part/s which are not affected shall remain in full force and effect.

Section 9. Effectivity. This Department Order shall take effect immediately.

Issued on 9 June 2014 at Energy Center, Bonifacio Global City, Taguig City.

CARLOS JERICHO L. PETILLA
Secretary
(signed)

ANNEX "A"

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF ENERGY

HYDROPOWER SERVICE CONTRACT
(HSC No. _____)

This HYDROPOWER SERVICE CONTRACT (this "RE Contract"), made and entered into this _____ in Bonifacio Global City, Taguig City by and between:

The REPUBLIC OF THE PHILIPPINES, hereinafter referred to as "GOVERNMENT", through the "Department of Energy", hereinafter referred to as the "DEPARTMENT", a government agency established pursuant to Republic Act No. 7638, as amended, with principal office address at the Energy Center, Rizal Drive, Bonifacio Global City, Taguig City, Metro Manila, represented herein by its Secretary, HON. ALFONSO G. CUSI;

-and-

_____, hereinafter referred to as the "RE DEVELOPER", a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at _____
_____,_____, represented herein by its _____, _____;

Each of the DEPARTMENT and the RE DEVELOPER is referred to as a "Party", and collectively as the "Parties". In the implementation of this RE Contract, the GOVERNMENT shall act through and be represented by the DEPARTMENT.

WITNESSETH:

WHEREAS, all forces of potential energy in public and/or private lands, within the Philippine territory, belong to the State and their exploration, development and utilization are governed by Section 2, Article XII of the 1987 Constitution;

WHEREAS, under Republic Act No. 7638, as amended, otherwise known as the Department of Energy Act of 1992, the DEPARTMENT shall establish and administer programs for the exploration, development and utilization of energy resources, including Hydropower Resources;

WHEREAS, under Republic Act No. 9513, otherwise known as the Renewable Energy Act of 2008 (the "Act"), the exclusive right to explore and develop a particular renewable energy area under the said Act shall be through a Renewable Energy Service Contract;

WHEREAS, pursuant to the Act, the RE DEVELOPER has agreed to enter into this RE Contract with the DEPARTMENT covering the Contract Area for the Project with the corresponding rights and obligations stipulated herein;

WHEREAS, the RE DEVELOPER has been evaluated and recommended by the duly constituted RE Contract Review Committee and duly confirmed by the Secretary to be legally, technically, and financially qualified to enter into this RE Contract;

NOW, THEREFORE, for and in consideration of the terms and conditions set forth herein, the Parties hereby stipulate and agree as follows:

SECTION I
SCOPE

1.1 This RE Contract is entered into pursuant to the Act, with the services, technology and financing to be furnished by the RE DEVELOPER for its conduct of Hydropower Operations, in an economically viable manner and in accordance with this RE Contract.

1.2 This RE Contract shall cover the Contract Area only as provided under Section IV (Contract Area) hereof.

1.3 The RE DEVELOPER is hereby appointed and constituted by the DEPARTMENT as the Party having the exclusive right to explore, develop, and utilize the Hydropower Resources within the Contract Area as defined herein. The DEPARTMENT shall have the right to require performance of any or all obligations of the RE DEVELOPER under this RE Contract.

1.4 The RE DEVELOPER may pursue any Additional Investment or New Investment within the Contract Area and shall be solely responsible for providing the necessary services, technology, equipment and financing therefor. In case of New Investment, the Parties shall enter into a new Renewable Energy (RE) Service Contract at the option of the RE DEVELOPER, subject to approval of the DEPARTMENT.

1.5 The RE DEVELOPER shall assume all the technical and financial risks under this RE Contract without any guarantee from the GOVERNMENT and shall not be entitled to reimbursement for any expense incurred in connection with this RE Contract.

SECTION II
DEFINITION OF TERMS

2.1 The words and terms under this RE Contract, unless otherwise specified in the Act and its IRR or in relevant laws and regulations, shall have the meaning in accordance with the following definitions:

a) ***"Abandonment and Termination Plan"***¬¬ refers to the plan prepared by the RE DEVELOPER submitted within three (3) months from Effective Date in the case of Pre-Development Stage and at least five (5) years from confirmation of the Declaration of Commerciality and approved by the Department of Environment and Natural Resources (DENR) and the DEPARTMENT for the decommissioning, abandonment and surface restoration or rehabilitation of the Contract Area, and such abandonment work plan may be amended, supplemented or modified by the Parties from time to time;

b) ***"Accounting Procedures"*** refers to the set of procedures, guidelines, and arrangement between the Parties, and any amendments thereto, to govern the applicable treatment of

expenses, costs, and income, set forth in Annex "B", which forms an integral part of this RE Contract;

c) ***"Additional Investment"*** refers to investments relating to improvements, modernization, rehabilitation, or expansion duly registered with the DEPARTMENT, subject to the conditions to be determined by the DEPARTMENT, such as, but not limited to, the following:

   i. Identification of and investment in sequential phases/stages of production, or undertaking scheduled modernization or rehabilitation of the Hydropower Systems; and

   ii. Improvements to the Hydropower Systems such as reduced production/operational costs, increased production, improved operational efficiency, and better ¬reliability of the Project;

d) ***"Affiliate"*** refers to any person or group of persons, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the RE DEVELOPER. As used herein, "control" shall mean the power to direct or cause the direction of the management's policies of a person by contract, agency or otherwise;

e) ***"Calendar Year"*** refers to the period beginning January 1 to December 31 of each year;

f) ***"Certificate of Confirmation of Commerciality"*** refers to the certification issued by the DEPARTMENT confirming the declaration made by the RE DEVELOPER that the Project is commercially feasible;

g) ***"Certificate of Registration"*** refers to that certification issued to the RE DEVELOPER upon the Effective Date of this RE Contract and upon approval of Additional Investment, to serve as the basis for its entitlement to the incentives provided under the Act;

h) ***"Commercial Operation"*** refers to the stage when the RE DEVELOPER has completed its commissioning and test operations and is ready to sell or apply its produced Hydropower, as duly confirmed by the DEPARTMENT;

i) ***"Commercial Quantities"*** refer to quantities of electricity to be generated from the Hydropower Resources, providing, or capable of providing, revenue from sales of electricity that exceed or would exceed the RE DEVELOPER's Cost of Goods Sold by a margin sufficient to cause a reasonably prudent person employing standard industry practices as to hydropower resources and using commercially available technology to develop the Hydropower Systems;

j) ***"Contract Area"*** refers to the area located along the _____ River in the Province of _____ and more particularly described in Annex "A" specifying the point of water diversion and the proposed location of the Generation Facility, exclusively reserved by the DEPARTMENT for the RE DEVELOPER, over which the RE DEVELOPER has exclusive right to explore, develop, and utilize the Hydropower Resource in accordance with this RE Contract subject to Section IV of this RE Contract, exclusive of the Watershed Area;

k) ***"Contract Year"*** refers to a period of twelve (12) consecutive calendar months counted from the Effective Date of this RE Contract and thereafter, from the anniversary of such Effective Date: Provided, however, That the last Contract Year shall end on the date of Expiration or Termination of this RE Contract;

l) ***"Corporate Income Tax"*** refers to the tax imposed upon net taxable income under the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337 and the Act. After availing of the Income Tax Holiday (ITH) under the Act, the RE DEVELOPER shall be subject to a Corporate Income Tax rate of ten percent (10%);

m) ***"Cost of Goods Sold"*** refers to all business expenses directly incurred in the exploration, development, and utilization of the Hydropower Resources in order to produce and sell electricity and transmit the same to its intended location and use, which expenses are particularly described in Annex "B" hereof;

n) ***"Declaration of Commerciality"*** refers to a written declaration by the RE DEVELOPER stating that the electricity to be generated from the Hydropower Resources is in Commercial Quantities;

o) ***"Development Stage"*** refers to the development, production, or utilization of RE resources, including the construction and installation of relevant facilities up to the operation phase thereof;

p) ***"Effective Date"*** refers to the date of the execution of this RE Contract;

q) ***"Expatriate Employee"*** refers to a foreign national engaged by the RE DEVELOPER and/or its Subcontractor/s involved in the Hydropower Operations, who shall exercise his technical profession, as allowed under existing laws;

r) ***"Expiration"*** refers to either the lapse of the term of this RE Contract as provided in Section III (Term) or the surrender or waiver of the RE DEVELOPER of the Contract Area including the abandonment thereof to the DEPARTMENT: Provided, That in case of a partial surrender or waiver, this RE Contract shall subsist with respect to the remaining portion;

s) ***"Filipino Employee"*** refers to any citizen of the Republic of the Philippines employed and/or engaged by the RE DEVELOPER and/or its Subcontractor/s involved in the Hydropower Operations under this RE Contract;

t) ***"Fiscal Year"*** refers to a period of twelve (12) consecutive months;

u) ***"Force Majeure"*** refers to extraordinary events not foreseeable or avoidable, events that could not be foreseen, or which, though foreseen, are inevitable;

v) ***"Generation Facility"*** refers to a facility for the production of electricity;

w) ***"Government Share"*** refers to the amount due the national government and LGUs from the exploration, development and utilization of the Hydropower Resources computed in accordance with the Act and its Implementing Rules and Regulations (IRR), and described in Section X (Government Share);

x) ***"Gross Income"*** refers to income derived from the RE DEVELOPER's Hydropower Operations equivalent to the gross sales of Hydropower less sales returns, discounts and allowance, and Cost of Goods Sold, which is more particularly described in the Accounting Procedures attached as Annex "B";

y) ***"Host LGU"*** refers to the LGU where the Hydropower Resources and/or Generation Facility is located;

z) ***"Hydropower"*** refers to the energy that can be derived from Hydropower Resources that is converted into useful electrical or mechanical energy;

aa) ***"Hydropower Operations"*** shall include Hydropower exploration, development, production, and utilization, including the construction, installation, operation and maintenance of Hydropower Systems to convert Hydropower to electrical power and the transmission of such electrical power and/or other non-electrical uses;

bb) ***"Hydropower Resources"*** refer to the water resources found within the Contract Area to be technically feasible for the development of Hydropower projects, which include rivers, lakes, waterfalls, irrigation canals, springs, ponds, and other water bodies;

cc) ***"Hydropower Systems"*** refer to the machines or other related equipment that convert Hydropower into useful electrical or mechanical energy; includes, but is not limited to, Hydro Turbine Generators (HTGs), electrical connection and transmission grids, overhead and underground electrical transmission and communications lines, electric transformers and conditioning equipment, energy storage facilities, telecommunications equipment, power generation facilities to be operated in conjunction with HTG installations, climatological and measurement equipment, control facilities, maintenance yards, access facilities, intake, spillways, dams, and related facilities and equipment deemed by the RE DEVELOPER to be necessary or convenient for the production and delivery of electricity from Hydropower;

dd) ***"Local Government Unit/LGU"*** refers to the territorial and political subdivisions of the State which organization and function are fully described under the Local Government Code of 1991;

ee) ***"Milestones"*** refer to the specific activity or set of activities within the Contract Year indicated in the Work Program that will be a basis for evaluation and monitoring by the DEPARTMENT;

ff) ***"New Investment"*** refers to investments relating to discovery, exploration, development and/or utilization of new RE resources or the development of new Generation Facilities within the Contract Area distinct from the originally registered operations having separate books of accounts;

gg) ***"Pre-Development Stage"*** refers to the preliminary assessment and feasibility study up to the financial closing of the Project and specifically covers the term provided in Section 3.1 of this RE Contract;

hh) ***"Production Area"*** refers to that portion of the Contract Area designated by the RE DEVELOPER where Hydropower Resources are utilized to produce electricity in Commercial Quantities;

ii) ***"Project"*** refers to the RE DEVELOPER's Hydropower Systems within the Contract Area, which may be implemented in one or more phases;

jj) ***"RE Contract"*** refers to this Hydropower Energy Service Contract, as may be amended or extended by the Parties and shall have the same meaning as provided under the Act;

kk) ***"Subcontractor"*** refers to any person or entity contracted by the RE DEVELOPER to provide goods or services for the purpose of this RE Contract, subject to the provisions of existing laws;

ll) ***"Termination"*** refers to the right of the Parties to cancel this RE Contract pursuant to Section XIII (Suspension and Termination) hereof;

{mm) ***"Watershed Area"*** refers to an area drained by a river and its tributaries and enclosed by a boundary or divide that separates it from adjacent watershed and from which the river, where the proposed weir and Generation Facility of the Project are located, gets its water;

nn) ***"Work Plan"*** refers to the plan and activities prepared and to be submitted by the RE DEVELOPER during the Development Stage with the corresponding budgetary estimate; and

oo) ***"Work Program"*** refers to all types of plans and programs and related activities formulated for the performance of the work obligations by the RE DEVELOPER during the Pre-Development Stage, along with the corresponding budgetary estimate, submitted to the DEPARTMENT under this RE Contract as Annex "C".

SECTION III
TERM

3.1 Pre-Development Stage. The Pre-Development Stage of this RE Contract shall be a non-extendible period of two (2) years from the Effective Date: *Provided,* That the failure to accomplish the first annual Milestone indicated in the Work Program shall result in the expiration of the contract term. However, the submission by the RE Developer of a Declaration of Commerciality at any time during the Pre-Development Stage and the confirmation thereof by the DEPARTMENT shall supersede the foregoing requirement on annual milestones.

3.2 Development Stage. Upon submission of the Declaration of Commerciality by the RE Developer, as confirmed by the DEPARTMENT through the issuance of a Certificate of Confirmation of Commerciality, this RE CONTRACT shall remain in force for the balance of a period of twenty five (25) years from Effective Date: Provided, That at the option of the RE DEVELOPER, by written notice to the DEPARTMENT not later than one (1) year prior to the expiration of the initial twenty-five (25)-year period and so long as the RE DEVELOPER is not in default of any material obligations under this RE Contract, the DEPARTMENT may approve the extension of this RE Contract for another twenty-five (25) years, subject to the terms and conditions to be mutually agreed upon by the Parties.

SECTION IV
CONTRACT AREA

4.1 The Contract Area refers to the area as described in Annex "A" hereof reserved by the DEPARTMENT for the RE DEVELOPER over which the RE DEVELOPER has exclusive right to explore, develop and utilize the Hydropower Resources in accordance with this RE Contract, but does not include the Watershed Area.

4.2 The RE DEVELOPER shall, upon submission of written notice to the DEPARTMENT, have the right to surrender or waive the entire Contract Area or any portion thereof, within thirty (30) days prior to the intended date of surrender, without liability or cost, and be relieved from any work and expenditure commitments thereon without prejudice to any other outstanding liability or costs. In case the RE DEVELOPER completely ceases its operations, the provisions under its Abandonment and Termination Plan shall apply consistent with its Environmental Compliance Certificate (ECC).

4.3 Any portion of the Contract Area where feasibility study was not conducted and wherein the RE DEVELOPER has no intention to conduct any development activities as indicated under the proposed Work Plan shall be deemed relinquished on the date of Declaration of Commerciality.

4.4 During Development Stage, the RE DEVELOPER shall delineate its Production Area by identifying the final location of the diversion point and the Generating Facility.

SECTION V
WORK PROGRAM, WORK PLAN AND ESTIMATED EXPENDITURES

5.1 The RE DEVELOPER shall carry out its existing work according to good industry practices.

5.2 During the Pre-Development Stage, the RE DEVELOPER shall conduct preliminary Hydropower Resources data gathering activities and, if warranted by the results of such Hydropower Resources data gathering, conduct a full Hydropower Resources assessment.

5.3 Attached to this RE Contract is a Work Program and its corresponding budget, details of which are particularly described in Annex "C" hereof.

5.4 During the implementation of the Work Program, the RE DEVELOPER shall submit for evaluation and approval by the DEPARTMENT of any revisions thereto at least one (1) month prior to the end of each Contract Year: Provided, however, That revision shall not be allowed within the first Contract Year: Provided further, That the RE Developer shall be allowed to subsequently revise its Work Program only if it has substantially complied with all its material financial and technical obligations under the Work Program for the immediate preceding Contract Year.

5.5 The RE DEVELOPER shall submit to the DEPARTMENT a Work Plan for the first five (5) years from its Declaration of Commerciality and its corresponding budget thereof.

5.6 Not later than two (2) months prior to the end of the first five (5) years from the RE DEVELOPER's Declaration of Commerciality, the RE DEVELOPER shall submit a Work Plan for the next five (5) years and shall do so every five (5) years thereafter. The Work Plan or any revisions thereof shall need the approval from the DEPARTMENT.

5.7 During the implementation of the Work Plan, the RE DEVELOPER shall submit for evaluation and approval by the DEPARTMENT any revisions thereto, at least one (1) month prior to the end of each Contract Year.

5.8 In the event of failure to comply with its commitments under the Work Program, the RE DEVELOPER shall pay the DEPARTMENT the amount it should have spent for the execution of the same. Should the RE DEVELOPER fail to pay the assessed financial deficiency within the period prescribed by the DEPARTMENT, the DEPARTMENT shall enforce the collection thereof, and/or call the performance guarantee posted by the RE DEVELOPER, at the option of the DEPARTMENT. This is without prejudice to the right of the DEPARTMENT to terminate the RE Contract.

SECTION VI
RIGHTS AND OBLIGATIONS

6.1 The RE DEVELOPER shall have the following rights:

a) To be granted fiscal and non-fiscal incentives and privileges under the Act and its IRR, and all other existing laws that are not otherwise modified or repealed by the Act;

b) To receive assistance from the DEPARTMENT:

i. In securing access to lands and other areas where Hydro Resources shall be harnessed; and

ii. In indorsing the Project to the National Government, LGUs, Board of Investments (BOI) and other entities for the acquisition of permits, licenses and clearances and availment of applicable fiscal and non-fiscal incentives;

c) Have at all times the right of ingress to and egress from the Contract Area to and from facilities wherever located;

d) Acquire rights-of-way and similar rights on, over, under, across and through the Contract Area or properties adjacent to the Contract Area, which constitute or is reasonably expected to constitute the Contract Area as the RE DEVELOPER may reasonably deem necessary.

The DEPARTMENT shall, upon request by the RE DEVELOPER as may be reasonable given the attendant circumstances, assist the RE DEVELOPER in securing such rights. For such purpose, the DEPARTMENT shall and does hereby appoint the RE DEVELOPER as its attorney-in-fact and does hereby give and grant to the RE DEVELOPER full authority to act for and on its behalf in the negotiation and conclusion of agreements and payments for such rights. All obligations, payments and expenses arising from or incidental to the acquisition of such rights shall be for the account of the RE DEVELOPER so as to enable the RE DEVELOPER to have ingress into and egress from the Contract Area and to perform all Hydropower Operations in accordance with this RE Contract and in consideration of which, entitlement to such rights shall be held in trust in favor of the RE DEVELOPER.

The DEPARTMENT undertakes to provide further assistance to the RE DEVELOPER, including the exercise of the power of eminent domain if necessary, to secure such necessary or proper rights at such cost for the account of the RE DEVELOPER, if the RE DEVELOPER is unable to secure such rights at commercially reasonable costs through negotiations or if the same is the most expedient course of action to support the timely execution of Hydropower Operations;

e) Allow, in accordance with the existing laws, entry into the Philippines and employment by the RE DEVELOPER of Expatriate Employees who shall exercise their technical professions solely for the Hydropower Operations: Provided, That Filipino Employees shall be given preference to positions for which they have adequate training and experience required by the RE DEVELOPER: Provided further, That if the employment or connection of such Expatriate Employee with the RE DEVELOPER ceases, applicable laws and regulations shall apply to him and his immediate family;

f) Have a free and unimpeded use of Hydropower Resources within the Contract Area in view of the Hydropower Operations, Additional Investments and New Investments in regard of which, the DEPARTMENT shall ensure that rights, privileges and other authorizations it may grant to third parties will not defeat or impair such use;

g) Be informed by the DEPARTMENT, if at any time the latter becomes aware of any intended exploration, extraction, or use of energy resources other than Hydropower Resources on the Contract Area and adjacent areas thereof, within thirty (30) days of the date it becomes so aware of such intended exploration, extraction, or other use; and

h) Be granted an exclusive easement to use, convert, maintain and capture the free and unobstructed flow of Hydropower Resources within the Contract Area.

6.2 The RE DEVELOPER shall have the following obligations:

a) Secure any necessary permits and clearances from all relevant government entities for the Project;

b) Perform exploration, assessment, field verification, harnessing, piloting and other activities in accordance with the Work Program and provide technology and financing in connection with the Pre-Development Stage;

c) Perform the required Hydropower Operations and provide services, technology, and financing in connection therewith;

d) Maintain complete and accurate accounting, financial and technical records of its Hydropower Operations, subject to Sections IX (Technical Data and Reports Submission) and XI (Confidentiality), and in accordance with the Accounting Procedures as provided under Annex “B” hereof;

e) Allow officials and representatives authorized by the DEPARTMENT access to the Contract Area, and to the accounts, books and records directly relating to the Hydropower Operations during reasonable hours and without causing disruption, subject to fifteen (15) calendar days prior written notice to the RE DEVELOPER;

f) Give priority in employment to qualified personnel in the Host LGU subject to Section XV (Employment, Training and Development Programs);

g) Within sixty (60) days after the Effective Date of this RE Contract, and at the start of every Contract Year thereafter, post a performance bond or other guarantee of sufficient amount but not less than the annual budgetary estimate for the corresponding Contract Year in favor of the DEPARTMENT from a list of DEPARTMENT-accredited insurance or surety companies, conditioned upon the faithful performance by the RE DEVELOPER of any or all of the commitments and obligations under the Work Program and Work Plan insofar as the period prior to Commercial Operation;

h) After availing of the Income Tax Holiday (ITH), be subject to Corporate Income Tax: Provided, That New or Additional Investment shall be eligible for ITH;

i) Be subject to the provisions of law of general application relating to labor, health, safety, environment and indigenous peoples' rights;

j) Develop, operate, and maintain the Contract Area in accordance with accepted industry practices to enable maximum economic production of the Hydropower Resources;

k) Be responsible for procurement of installation, equipment and supplies, and for entering into subcontracts related to the Hydropower Operations;

l) Give preference to Philippine companies/agencies entering into subcontracts on goods or services that are required in the Hydropower Operations but are not carried out by the RE DEVELOPER: Provided, That the goods or services are competitive as to cost, quality and availability;

m) Be responsible in the proper handling of data, samples, information, reports, and other documents;

n) Maintain all meters and measuring equipment in good order and allow access to these as well as to the exploration sites to inspectors authorized by the DEPARTMENT;

o) Pay the Government Share in accordance with the computation in the Act's IRR and taxes as may be applicable;

p) Organize Information, Education and Communication (IEC) Campaign on benefits to the Host LGUs pursuant to Section 18 of the DEPARTMENT's Department Circular No. DC2009-07-0011; and

q) Comply with all rules, regulations, and guidelines issued by the DEPARTMENT that are applicable hereto.

6.3 Upon the Effective Date of this RE Contract or upon the approval of the RE DEVELOPER's Additional Investment, the DEPARTMENT shall issue a Certificate of Registration to the RE DEVELOPER, to enable it to avail of the fiscal and non-fiscal incentives and privileges as stated under the Act and its IRR. The registration shall be valid and effective for the entire term and effectivity of this RE Contract.

SECTION VII
REPRESENTATIONS AND WARRANTIES

Acknowledging that the GOVERNMENT, through the DEPARTMENT, has entered into this RE Contract in reliance upon the representations and warranties in this Section, the RE DEVELOPER represents and warrants as follows:

7.1 It is a corporation or entity duly formed, established, validly existing and in good standing under the laws of the Philippines with full power to own its property; to carry on its business as it is now being conducted; and to execute, deliver and perform its obligations under this RE Contract, and the entering into and performance of this RE Contract by the RE DEVELOPER does not conflict with the articles of incorporation, by-laws and other constitutive documents of the RE DEVELOPER and has been duly authorized by all necessary corporate and legal action on the part of the RE DEVELOPER;

7.2 The individual signing this RE Contract on behalf of the RE DEVELOPER is duly authorized to sign as of the Effective Date;

7.3 There is no litigation, arbitration, or administrative proceeding pending or, to the best knowledge of the RE DEVELOPER, threatened against the RE DEVELOPER or its properties the adverse determination of which would adversely affect the ability of the RE DEVELOPER to perform or comply with any of its material obligations under this RE Contract;

7.4 The RE DEVELOPER:

a) Has not been declared in default in respect to any of its material financial commitments or obligations based on their reports duly validated by the DEPARTMENT;

b) Is not otherwise in default of any kind in respect of any financial commitment or obligation or in respect of any agreement, undertaking or instrument as a party thereof by which it or any of its assets or properties may be bound; and

c) Is not aware of a fact that by the service of notice and/or lapse of time would constitute a default in any or both of sub-paragraphs (a) and (b) above;

7.5 No written material information given by the RE DEVELOPER to the DEPARTMENT under this RE Contract contains any misstatement of fact as of the Effective Date or omits to state a fact that is materially adverse to the interests of the DEPARTMENT; and

7.6 The ownership of the RE DEVELOPER's capital stock complies with applicable laws and regulations.

SECTION VIII
ASSETS AND EQUIPMENT

8.1 The RE DEVELOPER shall acquire and maintain for the Project and for its Hydropower Operations and such assets as are reasonably estimated to be required in carrying out the exploration, assessment, harnessing, piloting and other studies for the Hydropower Resources in the Contract Area; and the development, utilization, and commercialization of Hydropower

Resources therein, including the construction, installation, operation and maintenance of the Hydropower Systems.

8.2 All materials, equipment, plants and other installations that are erected or placed on the Contract Area by the RE DEVELOPER and are owned by the RE DEVELOPER shall remain the property of the RE DEVELOPER up to one (1) year from the Expiration or Termination of this RE Contract: Provided, That upon the written request of the RE DEVELOPER, the DEPARTMENT shall approve an additional non-extendible period of one (1) year within which to remove such assets in the Contract Area. Thereafter, the ownership of any remaining materials, equipment, plants, and other installations shall be vested in the Government.

8.3 The RE DEVELOPER shall be responsible for the removal and the disposal of all materials, equipment, and facilities from the Contract Area in accordance with the ECC and the provisions of the Abandonment and Termination Plan as provided under Section II hereof.

8.4 The ownership of all data, records, accounts, samples and other technical data produced or generated in the course of the Hydropower Operations that are confidential, proprietary in nature, or otherwise not generally available to the public shall remain with the DEPARTMENT and RE DEVELOPER and shall be kept confidential in accordance with Section XI (Confidentiality) hereof.

SECTION IX
TECHNICAL DATA AND REPORTS SUBMISSION

9.1 All technical data and reports, except for proprietary techniques used in developing such technical data and reports, must be submitted by the RE DEVELOPER in accordance with the format approved by the DEPARTMENT.

9.2 The technical data and reports to be submitted to the DEPARTMENT shall include, but not limited to, the following:

a) Annual Progress Report – shall be submitted not later than two (2) months prior to the end of each Contract Year and shall contain the summary of all the activities, i.e. exploration, drilling or infrastructure development, with relevant comments and recommendation on any technical findings;

b) Procurement Plan – shall be designed according to the approved work obligations containing an itemized list of equipment, materials and supplies to be procured with corresponding estimated costs. It shall be submitted not later that one (1) month from the approval of the Work Program or Work Plan or revision thereof, as the case may be;

c) Quarter Progress Report – shall be submitted not later than one (1) month from the end of each Contract Quarter and shall contain the work and financial accomplishment under Work Program or Work Plan;

d) Monthly Generation Report; and

e) Other technical data and reports relevant to the Hydropower Resources, when necessary as determined by the DEPARTMENT.

SECTION X
GOVERNMENT SHARE

10.1 The Government Share shall be equal to one percent (1%) of the Gross Income from the sale of electricity generated from Hydropower Operations in accordance with the Accounting Procedures as prescribed under Annex "B" hereof.

10.2 The RE DEVELOPER shall within sixty (60) days following the end of each quarter of a Calendar or Fiscal Year remit to the DEPARTMENT the Government Share: Provided, That any unremitted amount shall carry an interest of ten percent (10%) per annum reckoned from the day immediately following the end of each quarter of a Calendar or Fiscal Year, as may be applicable.

SECTION XI
CONFIDENTIALITY

11.1 All documents, information, data and reports produced or generated during the Hydropower Operations under this RE Contract shall be kept strictly confidential over the term of this RE Contract or any extension thereof: Provided, That proprietary information shall be kept strictly confidential at all times subject to lawful acquisitions of such information under existing laws and regulations.

11.2 Without the written consent of the other Party, no Party shall use or disclose the confidential information to any third party and/or to any Affiliate not directly connected with the implementation of this RE Contract except the third parties and Affiliates in Section 11.5, and no Party shall otherwise transfer, present, sell or publish it in any way within the confidentiality periods.

11.3 The DEPARTMENT may use such confidential information belonging to the RE DEVELOPER for the DEPARTMENT's resource mapping, data gathering, policy making and for government planning purposes.

11.4 Upon the Expiration or Termination of this RE Contract, the DEPARTMENT may provide third parties with the data and reports submitted by the RE DEVELOPER pursuant to this Section: Provided, That the same are not proprietary in nature.

11.5 Contrary stipulations notwithstanding, the RE DEVELOPER may furnish the information to the following third parties, subsidiaries and Affiliates, such as, but not limited to:

a) Banks or other credit institutions from which finance is sought by the RE DEVELOPER;

b) Third parties, subsidiaries and Affiliates that provide services for the Hydropower Operations, including Subcontractors and other service contractors;

c) Prospective assignee/s to whom rights and obligations under this RE Contract are intended to be assigned;

d) Prospective investor/s or entities with whom the RE DEVELOPER intends to enter into joint venture or other similar agreements for the Project;

e) Governments and stock/commodity exchanges in accordance with the laws, regulations, or rules of the relevant country or stock/commodity exchange; and

f) Government authorities, entities and judicial courts if required by law, regulation, directive, or order, to disclose.

11.6 The information shall be revealed to those persons allowed under this RE Contract only if and to the extent necessary and desirable for the purpose intended. Each Party shall ensure that each such person to whom information is disclosed is informed of the confidential nature of the information and the purpose for which it may be used and that each such person is bound by this Section.

11.7 The RE DEVELOPER and its Affiliates or the DEPARTMENT, its officers, employees, consultants and other duly authorized representatives shall not make any public statement or announcement of any information produced, generated or acquired in the course of the Hydropower Operations, without prior written consent of the other Party.

SECTION XII
PERFORMANCE BOND

12.1 The initial amount of the bond or other guarantee as specified in Sub-section 6.2(g) shall not be less than the annual financial commitment/budgetary estimate for the first Contract Year based on the Work Program.

12.2 The amount of performance bond or other guarantee may be adjusted, subject to the following conditions:

a) In the event of surrender by the RE DEVELOPER of a portion of the Contract Area covered by this RE Contract, the performance bond or other guarantee shall be reduced proportionately in accordance with the Work Program and Work Plan as applicable;

b) In the event that the RE DEVELOPER has fully expended its budgetary estimate under the Work Program or Work Plan as applicable but has not fully performed its work obligations, the amount of bond or other guarantee shall be equal to the succeeding Contract Year's budgetary estimate under the revised Work Program or Work Plan as applicable; and

c) Such other conditions or circumstances as would reasonably warrant the modification of the amount of the performance bond or other guarantee.

12.3 If the RE DEVELOPER, through its own fault, fails to observe or perform its work obligations under the Work Program or Work Plan as applicable, the DEPARTMENT, upon prior written notice, may proceed against the performance bond or other guarantee: Provided, That should the work obligations under the Work Program and Work Plan be fulfilled, and through the efficiency of the RE DEVELOPER, the corresponding actual expenditures thereon are lower than the estimated expenditures stated in the Work Program, the same shall be considered as full compliance of the work obligations.

12.4 The DEPARTMENT shall release the performance bond or other guarantee not later than thirty (30) days from the date of confirmation by the DEPARTMENT on the start of the Commercial Operations.

SECTION XIII
SUSPENSION AND TERMINATION

13.1 In case of the Pre-Development Stage, the DEPARTMENT shall have the power to suspend or terminate this RE Contract after due notice to the RE DEVELOPER on any of the following grounds:

a) Non-compliance with the Work Program and the material terms and conditions of this RE Contract;

b) Non-compliance with the RE technical design standards adopted by the DEPARTMENT;

c) Non-observance of environmental regulations imposed by the DENR during the conduct of feasibility study;

d) Tampering or plagiarizing of technical design and feasibility study reports;

e) Non-payment of the financial obligations agreed upon under this RE Contract; and

f) Non-posting of performance bond or other guarantee within the period/s provided under Section XII (Performance Bond).

13.2 In case of the Development Stage, the DEPARTMENT shall have the power to suspend or terminate this RE Contract after due notice to the RE DEVELOPER on any of the following grounds:

a) Non-compliance with the material terms and conditions of this RE Contract;

b) Violation of the Renewable Portfolio Standards Rules, as defined in the Act and its IRR, and relevant Department Circulars;

c) Non-compliance with the approved Work Plan and any other material obligations herein;

d) Non-compliance with the RE technical design standards adopted by the DEPARTMENT;

e) Non-observance of environmental regulations imposed by the DENR during construction and operation;

f) Tampering with or plagiarizing of technical design, feasibility study generation and operation reports;

g) Non-remittance of Government Share as determined by the Compliance Division - Financial Services of the DEPARTMENT;

h) Non-payment of the financial obligations agreed upon under this RE Contract;

i) Non-posting of performance bond or other guarantee within the period/s provided under Section XII (Performance Bond);

j) Failure to comply with material reportorial obligations under this RE Contract; and

k) Any representation or warranty made by the RE DEVELOPER under Section VII (Representations and Warranties) which shall prove to have been incorrect in any material respect when made.

13.3 The RE DEVELOPER shall have sixty (60) days from written notice from the DEPARTMENT of any of the foregoing to cure the default. Failure of the RE DEVELOPER to cure the default at the end of the sixty (60)-day period shall result in the automatic Termination of this RE Contract: Provided, however, That in case the ground for the Termination is non-compliance with the approved Work Program for reasons not attributable to Force Majeure, the Termination shall not be subject to curing period and shall be effective immediately as indicated in the notice duly issued by the Department: Provided further, That non-compliance with the approved Work Program during the Pre-Development Stage shall be determined on the basis of the following:

i. Failure of the RE DEVELOPER to comply with its first annual Milestone under the approved Work Program taking into consideration the effective date of this contract; and

ii. Failure of the RE DEVELOPER to disburse the cost equivalent of at least eighty per cent (80%) of the total financial cost of its first annual Milestone which is set by the DEPARTMENT at One Million Five Hundred Thousand Pesos (Php1,500,000).

Provided finally, That during the Development Stage, non-compliance with the Milestone for the succeeding years under the approved Work Plan and failure to disburse the cost equivalent of Thirty Million Pesos (Php30,000,000) per megawatt shall result in the Termination of this RE Contract or give rise to the right of the DEPARTMENT for recourse on the Performance Bond.

13.4 Notwithstanding the foregoing, this RE Contract shall be terminated without prejudice to the RE DEVELOPER's obligation under its Abandonment and Termination Plan as approved by the DEPARTMENT.

SECTION XIV
DISPUTES AND ARBITRATION

14.1 Any dispute, controversy or claim arising out of or relating to this RE Contract, except Section 13.1.a hereof on Milestone activities, shall be settled amicably within a period of sixty (60) days after receipt by one Party of a notice from the other Party of the existence of the dispute.

14.2 If the dispute cannot be settled amicably within the sixty (60)-day period, the Parties shall, with respect to disputes arising out of or in connection with Sections IV (Contract Area), V (Work Program, Work Plan and Estimated Expenditures), and X (Government Share),

refer the dispute to an independent expert for resolution in the manner provided below: Provided, That any Party, in its sole discretion, may require that the dispute be referred to arbitration under Section 14.4 hereof.

14.3 The following shall govern the rules of referral to independent expert:

a) After the sixty (60) day period in Section 14.1 has passed, any Party may give notice to the other Party of its intention to refer the dispute to an expert in accordance with the provisions of this RE Contract;

b) The respondent shall, within twenty-one (21) days from receipt of the notice of intention to refer, serve the applicant a notice of intention to defend;

c) If within fourteen (14) days after the applicant's receipt of the respondent's notice of intention to defend, the Parties have agreed on an expert and on the terms under which the dispute shall be referred to the independent expert mentioned in Section 14.2 hereof. In the event that within such fourteen (14)-day period, the Parties are unable to agree upon an expert to be appointed hereunder or upon the terms of such expert's reference or both, then either Party may request the International Chamber of Commerce (ICC) International Centre for Expertise to appoint an expert, and the matters to be determined by such expert shall be those set out in the notice of intention to refer and the notice of intention to defend;

d) Unless the Parties agree otherwise, any expert proceedings under this Section shall be required to follow the ICC Rules for Expertise in force as of Effective Date;

e) The language of the expert proceedings and the expert's determinations shall be in English;

f) The Parties hereby agree to be bound by, to perform this RE Contract in accordance with, and to implement, as the case may be, the determination of the expert. Failure by one Party to act shall constitute a breach of this RE Contract and shall be submitted to arbitration in accordance with Section 14.4 as the sole means of enforcing the determination; and

g) Each Party shall bear the costs and expenses of all lawyers, advisors, witnesses and employees retained by it in connection with the expert proceedings: Provided however, That in circumstances where the expert determines that a matter referred to him was not subject to a bona fide dispute, the costs and expenses incurred by the prevailing Party and the expert in connection with such matter shall be paid by the non-prevailing Party.

14.4 If the dispute cannot be settled within sixty (60) days by mutual discussions as contemplated in Section 14.1, and referral to an expert is neither prescribed nor elected by the Parties with respect to any technical dispute, upon written demand of either Party, the dispute shall finally be settled by an arbitral tribunal (the "Tribunal") governed by and conducted in accordance with the ICC Rules of Arbitration (the "Rules") in force as of Effective Date (or such Rules as may be in force at the time such arbitration is commenced), as follows:

a) The RE DEVELOPER will nominate one (1) arbitrator and the DEPARTMENT will nominate one (1) arbitrator within thirty (30) days from the date of a request by either Party to initiate arbitration. The two Party-nominated arbitrators will then jointly nominate a third arbitrator within thirty (30) days of the date of the appointment of the second arbitrator, to act as Chairman of the Tribunal. Arbitrators not nominated within the time limits set forth in the preceding sentence shall be appointed by the ICC Court of International Arbitration;

b) Unless otherwise agreed by the Parties, the venue of the arbitration shall be in Metro Manila, Philippines;

c) The language of the arbitration and award shall be in English;

d) The Tribunal shall not be authorized to impose, and either Party shall not be authorized to seek from any judicial authority, any requirement that the other post security for the costs of either Party; and

e) The decision of the Tribunal shall be final and binding upon the Parties. Judgment upon the award rendered may be entered into any court having jurisdiction, or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be.

14.5 The right to arbitrate disputes under this RE Contract shall survive the Expiration or Termination of this RE Contract.

SECTION XV
EMPLOYMENT, TRAINING AND DEVELOPMENT PROGRAMS

15.1. The RE DEVELOPER agrees to give preference in employment to qualified Filipino Employees who are residents of Host LGUs and will undertake the development and training of Filipino Employees for labor and staff positions, including administrative, technical, and executive management positions.

15.2. During the Pre-Development Stage, the RE DEVELOPER shall, upon request of the DEPARTMENT, provide development assistance in kind in the amount of _____ PESOS (Php _____). Upon confirmation of the Declaration of Commerciality, the RE DEVELOPER shall, upon request of the DEPARTMENT, provide development assistance in kind in the amount of _____ PESOS (Php _____).

15.3. During the Pre-Development Stage, the RE DEVELOPER shall provide assistance for training programs, conferences, seminars and other similar activities for the DEPARTMENT's personnel in the amount of _____PESOS (Php _____) per Contract Year. Upon confirmation of the Declaration of Commerciality, the RE DEVELOPER shall, upon request of the DEPARTMENT, provide assistance for training programs, conference seminars and other similar activities for the DEPARTMENT's personnel in the amount of _____ PESOS (Php _____) per Contract Year. This assistance shall be accumulated for the succeeding Contract Years if not availed of in a given Contract Year. The RE DEVELOPER shall pay the unutilized amount of the training commitment prior to the Expiration or Termination of this RE Contract.

15.4. The RE DEVELOPER shall undertake corporate social responsibility projects in Host LGUs focused on education and training of qualified and deserving beneficiaries, as determined by the RE DEVELOPER.

15.5. Upon execution of this RE Contract, the RE DEVELOPER shall pay the DEPARTMENT a signing fee in the amount of _____ PESOS (Php _____).

SECTION XVI
MISCELLANEOUS PROVISIONS

16.1 NOTICES

Any notice required or given by either Party to the other Party shall be in writing and shall be effective when a copy thereof is handed to or served upon the Party's duly designated representative or the person in charge of the office or place of business, or when sent by registered mail, notice shall be effective upon actual receipt by the addressee, but if it fails to claim its mail from the post office within five (5) days from the date of the first notice of the postmaster, service shall take effect at the expiration of such time. All such notices shall be addressed:

To the DEPARTMENT:

The Secretary
Department of Energy
Energy Center, Rizal Drive, Bonifacio Global City
Taguig City, Metro Manila, Philippines

To the RE DEVELOPER:

_____
_____
_____

Any Party may substitute or change such address with prior written notice thereof to the other Party.

16.2 GOVERNING LAW

The laws of the Republic of the Philippines shall apply to this RE Contract.

16.3 ASSIGNMENT

a) This RE Contract cannot be assigned without the prior written approval of the Parties.

b) The RE DEVELOPER may assign or transfer part or all of its rights and/or obligations under this RE Contract to its Affiliate upon compliance with the following provisions:

i. The RE DEVELOPER shall submit to the DEPARTMENT copies of a written agreement on the corresponding part of its rights and/or obligations to be assigned; and,

ii. The RE DEVELOPER shall guarantee in writing to the DEPARTMENT its performance of the assigned obligations.

c) Pursuant to the foregoing Sub-section, this RE Contract shall not be assigned to any third party unless such third party is qualified in accordance with the Act and its IRR.

d) The RE DEVELOPER may authorize its subsidiaries, branches or regional corporations to implement this RE Contract, but the RE DEVELOPER shall remain responsible for the performance of this RE Contract.

e) During the Pre-Development Stage, this RE Contract shall not be assigned except where the assignee is a subsidiary, branch or regional corporation of the RE DEVELOPER created for the special purpose of handling the project covered by the RE Contract.

f) No assignment shall be granted if the RE Developer is in default of its Work Program or any of its obligations under this RE Contract and other RE agreements with the DEPARTMENT.

16.4 SUSPENSION OF OBLIGATIONS

a) Any failure or delay on the part of either Party in the performance of its obligations or duties hereunder shall be excused to the extent attributable to Force Majeure.

b) If the Hydropower Operations are curtailed or prevented by such causes, then the time for enjoying the rights and carrying out the obligations thereby affected, and all rights and obligations hereunder shall be extended for a period equal to the period of delay, curtailment or prevention: Provided, however, That if operations are delayed, curtailed or prevented by Force Majeure for a continuous period of twelve (12) months, this RE Contract may thereafter be terminated, at the option of the RE DEVELOPER, at anytime that the Force Majeure condition still exists, subject to the confirmation of the DEPARTMENT.

c) The Party whose ability to perform its obligations is so affected shall notify the other Party thereof in writing stating the cause and such affected Party shall do all reasonably within its power to remove such cause.

16.5 AMENDMENTS

The RE Contract shall not be amended or modified in any respect except by the mutual consent in writing of the Parties.

16.6 BOOKS OF ACCOUNTS AND AUDITS

a) The RE DEVELOPER shall be responsible for keeping complete books and accounts, in Philippine currency denominations, reflecting all transactions in connection with this RE Contract in accordance with the Annex “B” hereof.

b) The DEPARTMENT shall have the right to inspect the RE DEVELOPER’s books and accounts directly relating to this RE Contract for any Calendar or Fiscal Year within twenty-four (24) months following the end of each Calendar or Fiscal Year. Any such audit shall be completed within twelve (12) months after its commencement. Any exceptions must be made to the RE DEVELOPER in writing within ninety (90) days following the completion

of such audit. If the DEPARMENT fails to give such written exception within such time, then the RE DEVELOPER's books of accounts and statements for such Calendar or Fiscal Year shall be established as correct and final for all purpose.

c) The DEPARTMENT, upon at least fifteen (15) days' advance written notice to the RE DEVELOPER, is entitled to access, during reasonable hours without affecting Hydropower Operations, all books of accounts and records and may inspect such sites and facilities as necessary.

d) If the DEPARTMENT notifies the RE DEVELOPER of an exception to the RE DEVELOPER's books of accounts within the period specified in Sub-section 16.6 (b), the RE DEVELOPER shall within ninety (90) days from receipt of written exception from the DEPARTMENT, question its validity, otherwise, the same shall become final and binding on the RE DEVELOPER. If the Parties are not able to agree on the exceptions or adjustments after ninety (90) days from the date of receipt of the RE DEVELOPER's response to the DEPARTMENT's exception report, the Parties shall resolve the dispute in accordance with Section XIV (Disputes and Arbitration).

16.7 HEALTH, SAFETY, AND ENVIRONMENT PROTECTION

a. In the performance of this RE Contract, the RE DEVELOPER shall: (1) be subject to the laws, rules and regulations on environmental protection, indigenous people rights, health and safety promulgated by the GOVERNMENT; (2) endeavor to make its best efforts to prevent pollution and damage to the atmosphere, oceans, rivers, lakes, harbors and land; and (3) ensure the safety and health of its operating personnel.

b. When the GOVERNMENT assigns any person to inspect for environmental protection, health and safety compliance of the RE DEVELOPER, the RE DEVELOPER shall provide such reasonable facilities and assistance as are applicable to ensure appropriate inspection by the GOVERNMENT. The RE DEVELOPER shall be given reasonable notice of such inspections.

16.8 SEPARABILITY CLAUSE

Should any provision of this RE Contract or the application thereof to any situation or circumstance be declared null and void and/or invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining provisions hereof which shall remain valid and enforceable to the fullest extent. In the event of such partial invalidity or unenforceability, the Parties shall seek in good faith to agree on replacing the invalid or unenforceable provisions with a provision that in effect will most nearly and fairly approximate the effect of the invalid or unenforceable provision through the issuance of appropriate supplemental contract/s or agreement/s.

IN WITNESS WHEREOF, the Parties have caused this RE Contract to be executed by their respective representatives at the place and on the date above written.

DEPARTMENT OF ENERGY By:	RE DEVELOPER By:
_____ Secretary	_____ NAME Designation
_____ (Name and Position) Witness	_____ (Name and Position) Witness

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
_____) S.S.

I, _____, a Notary Public duly authorized in the city named above to take acknowledgments, certify that on this _____ , personally appeared:

Name	**Passport No.**	**Date & Place of Issuance**

known to be the same person described in the foregoing instrument, who acknowledged before me that his signature on the instrument was voluntarily affixed by him for the purposes stated therein, and who declared to me that he executed the instrument as his free and voluntary act and deed as well as the free and voluntary act and deed of the government agency herein represented.

This RE Contract consisting of twenty-seven (27) pages, including the page on which the acknowledgment is written, is signed on each and every page thereof by the Party and his instrumental witness and sealed with my notarial seal.

WITNESS MY HAND AND SEAL on _____ at _____.

NOTARY PUBLIC

Doc. No. _____;
Page No._____;
Book No._____;
Series of 2016.

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES }
_____ } S. S.

I, _____, a Notary Public duly authorized in the city named above to take acknowledgments, certify that on this _____ , personally appeared:

Name	Competent Evidence of Identity	Date and Place of Issuance

known to be the same person described in the foregoing instrument, who acknowledged before me that his signature on the instrument was voluntarily affixed by him for the purposes stated therein, and who declared to me that he executed the instrument as his free and voluntary act and deed as well as the free and voluntary act and deed of the corporation herein represented.

This RE Contract consisting of twenty seven (27) pages, including the page on which the acknowledgment is written, is signed on each and every page thereof by the Party and his instrumental witness and sealed with my notarial seal.

WITNESS MY HAND AND SEAL on _____ at _____.

NOTARY PUBLIC

Doc. No. _____;
Page No._____;
Book No._____;
Series of 2016.

DEPARTMENT ORDER NO. DO2013-08-0011

POLICIES IN RELATION TO THE PROCESSING OF RENEWABLE ENERGY SERVICE CONTRACTS AND MANDATING THE ADOPTION OF THE REVISED TEMPLATES FOR RENEWBLEE ENERGY SERVICE CONTRACT

WHEREAS, Article XII, Section 2 of the 1987 Philippine Constitution provides that all forces of potential energy and other natural resources within the Philippine territory belong to the State and their exploration, development and utilization shall be under the full control of the State;

WHEREAS, Republic Act No. (RA) 7638, otherwise known the "Department of Energy Act of 1992," as amended mandates the Department of Energy (DOE) to prepare, integrate, coordinate, supervise and control all plans, programs, rejects and activities of the Government relative to energy exploration, development, utilization, distribution and conservation, among others;

WHEREAS, RA 9513, otherwise known as the "Renewable Energy Act of 2008", provides that it is the policy of the State to encourage and accelerate the exploration, development and increase the utilization of renewable energy RE) resources such as, but not limited to, biomass, solar, wind, hydropower, geothermal, and ocean energy sources, and including hybrid systems;

WHEREAS, the DOE is continuously adopting new mechanisms and strategies to effectively carry out its plans and programs as mandated under the RA 9513 and its implementing rules and regulations;

WHEREAS, the RE Review Committee (REC) was ere ted under Department Circular No. DC2009-07-0011 to provide recommendations to the DOE Secretary for the award of RE Service Contracts;

WHEREAS, after careful review of the existing application processes and RE Service Contract templates, the REC has -recommended the adoption of a new set of templates for all RE Service Contracts, as well as the enhance Contract Applications.

NOW THEREFORE, for and in consideration of the foregoing premises, the DOE hereby orders the following:

Section 1. Enhanced Process Flow of RE Applications. For the enhanced monitoring of RE applications, all RE applications shall be first coursed through the Office of the Secretary for data-tracking purposes.

Section 2. Adoption of the Revised RE Service Contract templates. The revised templates are hereby adopted:

2.1 Hydropower Service Contract (HSC) Annex "A"

2.2 Ocean Power Service Contract (OSC) Annex "B"

2.3 Geothermal Service Contract (GSC) Annex "C"

2.4 Solar Energy Service Contract (SESC) Annex "D"

2.5 Wind Energy Service Contract (ESC) Annex "E"

2.6 Biomass RESC (Existing Facility Annex "F"

2.7 Biomass RESC (Non-Existing Facility) Annex "G"

Section 3. Applicability of the Revised Templates on Pending Applications. The revised templates shall be applicable to all pending applications or RE service contracts: Provided, That all RE service contracts already issued at the time of the effectivity of this Department Order shall remain valid.

Section 4. Advisory to RE Applicants. Acting as Chairman of REC, the Assistant Secretary in charge of the Renewable Energy Management Bureau (REMB) is hereby directed to inform all concerned RE Developers of the revised templates and the requirements thereof.

Section 5. DOE Witness to the RE Contracts. The witnesses of the Secretary in the RE service contracts may be any of the following:

a. Assistant Secretary in-charge of the REMB;

b. Director of the REMB;

c. Director of Legal Services; or

d. Any Official of the DOE available at the signing of the RE Contract.

Section 6. Repealing Clause. All circulars and all other issuances which are inconsistent with any of the provisions of this Department Order are hereby amended or repealed accordingly.

Section 7. Separability Clause. If for any reason, an Order is declared unconstitutional or invalid, such provision of this Department is which are not affected shall remain in full force and effect contracts.

Section 8. Effectivity. This Department Order shall take effect immediately.
Issued at the Energy Center, Bonifacio Global City, Taguig City.

26 July 2013

CARLOS JERICHO L. PETILLA

Secretary
(Signed)

DEPARTMENT ORDER NO. DO2015-06-0005

PRESCRIBING THE DUTIES AND FUNCTIONS OF THE FIELD OFFICES OF THE DEPARTMENT OF ENERGY PURSUANT TO SECTION 5 (3 & 4) OF DEPARTMENT ORDER NO. D02013-12-0019 ENTITLED, "STRENGTHENING THE MANAGEMENT AND OPERATIONS OF THE AFFILIATED RENEWABLE ENERGY (ARECS) IN THE PHILIPPINES"

WHEREAS, Department Order No. D02013-12-0019 was issued on December 21, 2013 which, among others, "institutionalizes accreditation process and strengthen the management and operations of the Affiliated Renewable Energy Centers (ARECs) in the Philippines in order to ensure sustainability of its operations, promote complementation of resources, accountability, and to implement programs and projects in a unified direction congruent with the DOE's mandates, mission and thrusts",

WHEREAS, the accredited ARECs are established and managed by virtue of the provisions of Department Order No. D02013-12-0019 and the conditions under the duly executed Memorandum of Agreement between the DOE and the ARECs;

WHEREAS, the ARECs are established and managed, among others, as extension arms or partners of the DOE in the implementation of RE programs, projects and activities and such other undertakings specifically authorized by the Department in their respective jurisdictions;

WHEREAS, the Luzon, Visayas and Mindanao Field Offices of the Department are established and managed, among others, to discharge the administrative supervision and control in the implementation, monitoring and evaluation of the various programs, projects and activities of the Department in accordance with its mandates and functions in so far expressly authorized, from time to time, by the Department Secretary and/or his authorized representative;

WHEREAS, there is a need to prescribe the duties and functions of the DOE Field Offices under Section 5 (3 and 4) of Department Order No. D02013-12-0019 which provides as follows:

> Section 5. Duties and Responsibilities of the DOE. The Department of Energy (DOE) shall perform the following duties and responsibilities:
>
> Xxxxxxxxxx
>
> 3. Perform technical inspection on any program, project or activity undertaken by the ARECs;
>
> 4. Provide necessary assistance to the AREC's relevant program, project or activity;

NOW, THEREFORE, premises considered and upon the recommendation by the duly constituted AREC-Advisory Committee during its meeting on June 1, 2015 and pursuant to Section 11 of Department Order No. D02013-12-0019, the following provisions are hereby promulgated and order for strict compliance of all concerned:

1. Coverage. This Department Order (Order) shall cover all Memorandum of Agreements, Contracts or Terms of References and such instruments governing the implementation, evaluation and monitoring of programs, projects and activities initiated and implemented by the Affiliated Renewable Energy Centers (ARECs) duly accredited

pursuant to Department Order No. D02013-12-0019.

2. Duties and Functions of the DOE-Field Offices. The DOE-Field Offices shall discharge the following duties and functions in their respective jurisdictions and in such areas as may be specifically authorized by the Department Secretary and/or the duly designated Assistant Secretary and/or Official supervising the ARECs, to wit:

    1. Provide personnel who shall assist the ARECs and the DOE and/or the constituted team thereof to conduct technical inspections and advisory services on any program, project and activity initiated and implemented by the ARECs in their respective jurisdictions as provided in the Memorandum of Agreements, Contracts or Terms of References or undertakings executed between the DOE and ARECs and other entities subject to proper instruction and coordination with the REMB and/or direction by the duly designated official supervising the ARECs;

    2. Submit periodic reports, data and measures as may be required by the REMB and/or by the duly designated Assistant Secretary and/or official supervising the ARECs;

    3. Issue periodic travel authorities to ARECs personnel in concurrent capacity with the duly the Assistant Secretary supervising the ARECS, whenever necessary and to facilitate the process of issuance thereof; and

    4. Discharge such other duties and responsibilities as may be requested by the ARECs or REMB and/or the official duly designated supervising the ARECs.

3. Expenses of the Personnel. All allowable expenses incurred by the personnel in the performance of their assignments and duties provided under this Order shall be charged from the appropriate fund/s of the DOE Field Office concerned.

    Provided, That this shall not preclude the ARECs to shoulder any allowable expenses of the personnel subject to the duly approved Work and Financial Plan of the ARECs concerned on programs, projects and activities arising from the partnerships and joint undertakings between the ARECs and RE contractors, private entities or other government agencies.

4. Dissemination, Implementation and Clarification. The designated Assistant Secretary and/or Official supervising the ARECs shall ensure proper dissemination to and implementation including the clarification of any provision of this Order.

5. Repealing Clause. All circulars, orders, issuances and the like which are inconsistent with any paws of this Order are hereby amended or repealed accordingly.

6. Effectivity. This Department Order shall take effect immediately upon its issuance.

Issued this 22nd day of June 2015 at the Department of Energy.

CARLOS JERICHO L. PETILLA
Secretary
(Signed)

_____

DEPARTMENT ORDER NO. DO2016-06-0010

PRESCRIBING THE REVISED GUIDELINES FOR THE PROCESSING OF APPLICATIONS, AMENDMENTS AND TERMINATION OF RENEWABLE ENERGY SERVICE/OPERATING CONTRACTS

WHEREAS, Republic Act No. (RA) 7638, as amended or the "Department of Energy Act of 1992" mandates the Department of Energy (DOE) to prepare, integrate, coordinate, supervise and control all plans, programs, projects and activities of the Government relative to energy exploration, development, utilization, distribution and conservation, among others;

WHEREAS, RA 9513 or the "Renewable Energy Act of 2008 (RE Act)" provides the policy of the State to encourage and accelerate the exploration, development and increase the utilization of Renewable Energy (RE) resources such as, but not limited to, biomass. solar, wind, hydropower, geothermal, and ocean energy resources, and including hybrid systems;

WHEREAS, Department Circular No. 2009-05-0008 prescribes the Implementing Rules and Regulations (IRR) of RE Act, as well as mandates the DOE, among others, to develop the necessary regulatory framework for the RE Industry;

WHEREAS, Department Circular No. DC2009-07-OOII establishes a Review Committee to evaluate the RE Proposals and Applications of RE Applicants and provide recommendations to the DOE Secretary for the award of RE Service/Operating Contracts (RE Contracts);

WHEREAS, the DOE continues to commit towards greater transparency and provision of competitive system of awarding RE Contracts; and

WHEREAS, Department Circular No. DC2016-02-OOOI provides for the reconstitution of the RE-Review and Evaluation Committee (RE-REC) and providing for its functions, duties and responsibilities to enhance the processing of RE Contracts.

NOW, THEREFORE, premises considered, the DOE hereby issues the revised guidelines for the processing of RE Applications for RE Contracts, including amendments and termination thereof.

Section 1. Receipt of RE Contract Applications.

1.1 All RE Applications for RE Contracts shall comply with all the requirements prescribed in RE Act, its IRR and pertinent guidelines issued by the DOE. Annex A of this Department Order (DO) provides the summary of the requirements for Immediate reference.

1.2 All RE Applications shall be received by the DOE through its Records Division, which Shall stamp on the Application Form the date and time of receipt.

1.3 All subsequent documents to support the completeness of the RE Application for evaluation and consideration by the RE-REC shall likewise be submitted to the Records Division.

1.4 The RE Applications and other documents related thereto shall be forwarded by the Records Division within one (1) working day upon receipt thereof to the RE-REC Secretariat for processing.

a. The RE-REC Secretariat shall manage and monitor the acknowledgment letter of the RE Applications and the issuance of the Order of Payment for the Application Fee.

b. The RE Applicant shall provide the RE-REC Secretariat a copy of the DOE official receipt of payment for the Application Fee in accordance with the DOE Schedule of Fees and Charges.

Section 2. RE Contract Area Clearance.

2.1 Upon receipt of a copy of the official receipt of payment made for the Application Fee, the RE-REC Secretariat shall endorse the RE Application to the Information Technology Management Services (ITMS) for the area clearance.

2.2 The ITMS shall complete its area evaluation and provide the RE-REC Secretariat the evaluation result within three (3) working days from receipt of the request.

2.3 If the area is not open for RE Application and/or if it is covered by service contract of Other energy/RE technologies or if it is within the protected area, the RE-REC Secretariat shall notify the RE Applicant of such findings.

2.4 If the area is already covered by an existing RE Contract for the development of the same RE technology being applied for, the RE Application shall be denied through a written notice to be Issued by the RE-REC within three (3) working days from the date of such result.

In case where an area is with pending RE Application for the same RE technology/ resource, the RE Applicant shall be notified in writing within three (3) working days that its application shall be placed in a queue. The written notice will indicate that the application will only be considered upon the disqualification of the prior pending application.

2.5 For Solar Energy Service Contract (SESC) Application covering rooftop areas located within the contract area of existing SESC, the exact coordinates for the proposed Solar PV rooftop installation may be carved out if any of the following exists:

a. The Solar Power plant under the existing SESC is under construction phase or already in commercial operation but will not or does not cover the proposed rooftop areas of the RE Applicant.

b. The RE Developer of the existing SESC has complied with its Milestone obligations and in its submitted Feasibility Study and the approved Work Program, there is no showing that it will include in its development the proposed rooftop areas.

2.6 In case of overlap with existing service/ operating contract other than that with the same RE technology being applied for, the RE Applicant may pursue his application by submitting a written acknowledgement of such fact, and the prior rights of existing RE Contract holder or a requirement to secure further area clearance Within a period of three (3) working days from receipt of such notice.

2.7 A written acknowledgment of the fact under Section 2.6 hereof shall be integrated in the list of requirements for the purpose of determining the completeness of the RE Application.

Section 3. Completeness of the RE Application. The RE-REC Secretariat shall determine the completeness of the RE Application and notify the RE Applicant of the result within one (1) working day upon receipt of a copy of official receipt of payment for the Application Fee:

3.1 To determine the timeliness of submission, only those marked/ stamped by the Records Division shall be

recognized and considered for evaluation by the RE-REC.

3.2 If the submission is complete, the RE-REC Secretariat shall notify the RE Applicant and issue Order of Payment for the Processing Fee which payment shall be made within three (3) working days from receipt of notice.

3.3 If the submission is incomplete, the RE-REC Secretariat shall require the RE Applicant in writing to complete the requirements within five (5) working days from receipt of such notice.

3.4 Failure of the RE Applicant to complete the documentary requirements or pay the Processing Fee in accordance with the DOE Schedule of Fees and Charges within the prescribed period shall mean withdrawal of the RE Application.

Section 4. RE Contract Evaluation Process Flow.

4.1 Only those RE Applications with due payment on the application and processing fees shall be evaluated/ processed.

4.2 Once the RE Application has been cleared by the ITMS and the completeness of documents has been determined, the RE-REC Secretariat shall endorse the RE Application to the Legal Services (LS) to determine the eligibility of the RE Applicant. The LS shall complete its review and evaluation within three (3) working days from date of receipt of the RE Application.

Should there be a need to clarify the legal submission, LS shall require of the RE Applicant who shall respond within five (5) working days from receipt thereof; Otherwise, the RE Application shall be disqualified.

4.3 If the RE Application passed all legal requirements, LS shall endorse the RE Application to the Renewable Energy Management Bureau (REMB) for technical evaluation, to be completed within five (5) working days from receipt of the RE Application.

Should there be a need to clarify the technical submission, REMB shall require of the RE Applicant who shall respond within five (5) working days from receipt thereof; Otherwise, the RE Application shall be disqualified.

4.4 If the RE Application passed all technical requirements, REMB shall endorse the RE Application to the Financial Services (FS) for financial evaluation, to be completed within five (5) working days from receipt of the RE Application.

4.5 Should there be a need to clarify the financial submission, FS shall require of the RE Applicant to respond within five (5) working days from receipt thereof; Otherwise, the RE Application shall be disqualified.

4.6 If the RE Application passed all financial requirements, FS shall endorse it to the RE-REC Secretariat who shall prepare the RE-REC Resolution to recommend approval of RE Contract award by the Secretary.

4.7 If the RE Application failed to comply with any of the requirements, the concerned unit shall endorse it to the RE-REC for deliberation.

4.8 If the RE Application is withdrawn or failed to qualify, the RE-REC Chairperson shall issue the disqualification letter with the instruction to RE Applicant of an option to retrieve its application documents.

4.9 Upon determination that the RE Application is disqualified or deemed

withdrawn, the RE-REC shall immediately proceed to evaluate the next in line RE Application.

Section 5. The RE Contract Review and Evaluation Committee and Secretariat. Pursuant to Department Order No. D02016-02-0001, the reconstituted RE-REC and the RE-REC Secretariat shall continue, insofar as they are consistent with this Department Order, to discharge the functions, duties and responsibilities under Department Circular No. DC2009-07-0011, and Department Order Nos. DO2013-08-0011, DO2013-10-0018, DO2013-12-0020, DO2013-12-0023, and DO2014-06-0010.

5.1 The RE-REC shall convene at least once a month or in the event an important matter arises in the evaluation proceedings that need RE-REC deliberation and resolution of a particular RE Application.

5.2 The duly-designated representative of REMB Division handling the RE resource, shall serve as a resource person during the deliberation of the RE Application.

5.3 The Simple majority of the RE-REC Members shall constitute the presence of a quorum of the RE-REC. However, all members of the RE-REC shall be required to Sign respectively in the RE-REC resolution and endorsement to the Secretary. In the absence of the Chairperson, the Vice Chairperson shall preside the meeting.

5.4 The RE-REC Secretariat shall be headed by the Assistant Director of REMB, and shall likewise be supported by its Technical Service Management Division (TSMD).

Section 6. Approval and Signing of the RE Contract.

6.1 An RE Application that passed the legal, technical and financial evaluation shall be recommended for the award of the RE Contract. The RE-REC Secretariat shall then endorse to the RE-REC the RE Application for deliberation and appropriate action.

6.2 The RE-REC shall issue a Resolution that shall contain the highlights of the evaluation and a recommendation to the DOE Secretary to award the RE Contract, within three (3) working days from the date of the RE-REC deliberation. The RE-REC Resolution shall be signed by all RE-REC Members.

6.3 The RE-REC Resolution shall be submitted to the DOE Secretary who shall act on it within three (3) working days from its receipt.

6.4 Upon approval by the DOE Secretary, the RE-REC Chairperson Shall notify the RE Applicant in writing indicating therein the date of signing of the RE Contract which shall be within fifteen (15) working days from receipt of such notice.

6.5 If the RE Applicant failed to signify its interest to proceed to the signing of the RE Contract within the prescribed period, the RE Application Shall be deemed abandoned or withdrawn and the area shall remain open for application following the procedure in Sections 4.8 and 4.9 hereof.

6.6 The RE Contract templates under Department Order Nos. DO2013-08-0011 and D02014-06-0010 shall continue to be used. Attached hereto are comes of the template for immediate reference (Annex B).

6.7 The duly executed RE Contract shall be released only upon submission by the RE Developer of a copy of the official receipt for the payment of corresponding Signature Bonus.

6.8 The Certificate of Registration (COR) shall be issued on the date of the execution of the RE Contract and shall be released to the RE Developer upon submission to the Department of the original copy of its Performance Bond.

Section 7. Posting and Updating of RE Contract Awarded and Pending Application in the DOE Website.

7.1 The RE-REC Secretariat shall update the RE Contract Awarded and Pending Application once a month and every time a new RE Application commenced with the evaluation or was disqualified or was awarded.

7.2 The RE-REC Secretariat shall secure the approval of the RE-REC on the new updates before forwarding the same to ITMS for posting.

7.3 The RE-REC Secretariat shall also provide copies for posting in the Energy Virtual One Shared System (EVOSS) website.

Section 8. Amendment and Termination of RE Service/ Operating Contracts.

8.1 The concerned REMB Division shall evaluate requests for amendment of existing RESC and recommend amendments as prescribed under Department Order No. D02014-10-0018, including other grounds for amendments thereof to the RE-REC for deliberation.

In case the evaluation of the concerned REMB Division shows that there are additional costs to be incurred that should warrant another financial evaluation, the said Division shall endorse to FS for subsequent financial evaluation

8.2 Based on REMB's monitoring, the concerned REMB Division shall evaluate and recommend the termination to the RE-REC for deliberation.

8.3 In both cases as provided in Sections 8.1 and 8.2 hereof, the concerned REMB Division shall provide the RE-REC the complete basis of the recommendation prior to RE-REC deliberation.

8.4 The RE-REC shall issue a Resolution that shall contain the highlights of the evaluation and a recommendation to the DOE Secretary for approval. The RE-REC Resolution Shall be signed by all RE-REC Members.

Section 9. Transitory Provision. The application process under this Department Order Shall not apply to all pending RE Applications. All pending RE Applications Shall be collated and processed by the RE-REC in accordance with the existing guidelines prior to the effectivity of this Department Order.

Section 10. Separability Clause. Should any provision of this Department Order be declared invalid or unconstitutional, the other provisions, so far as they are separable, shall remain in force.

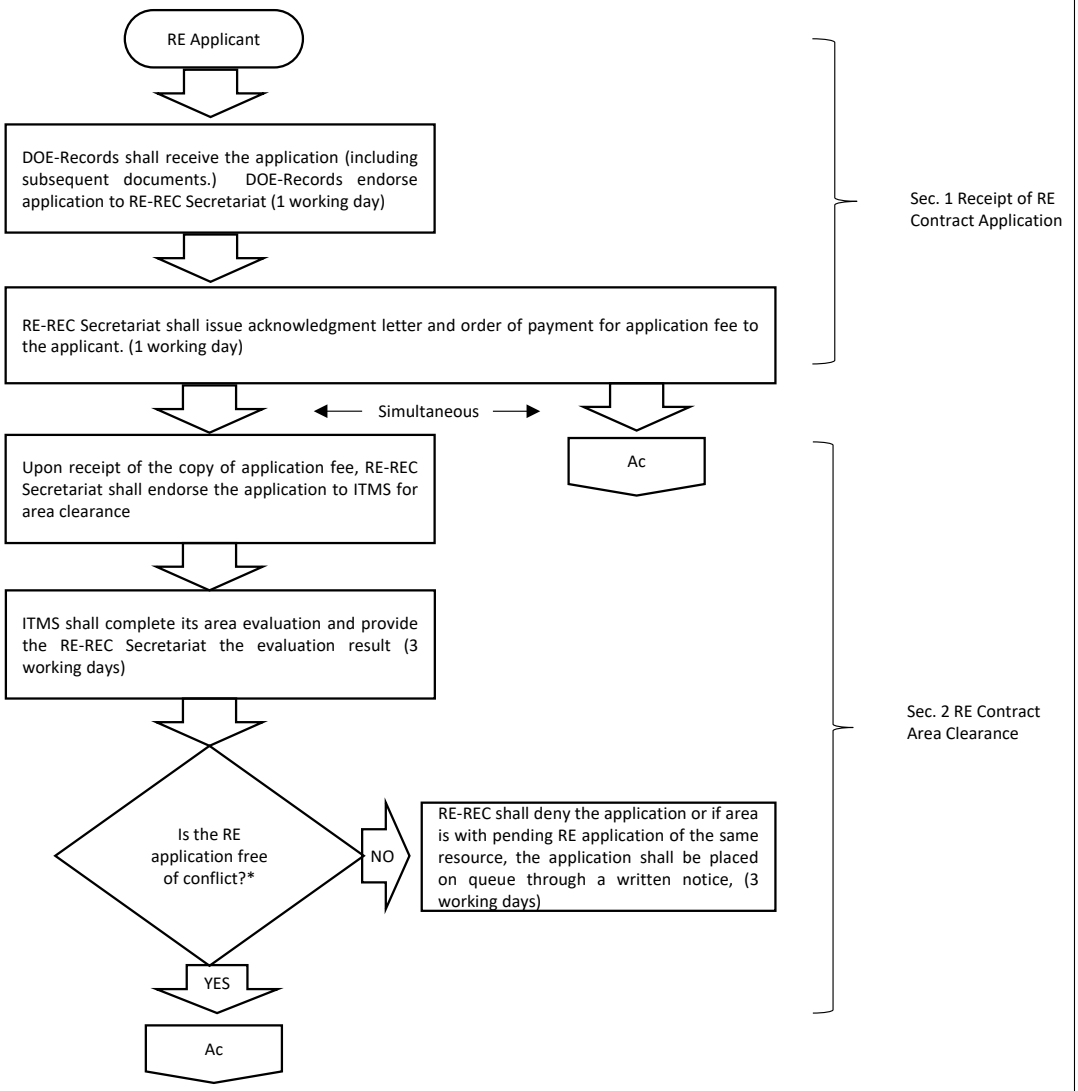
Section 11. Effectivity. This Department Order is effective immediately.

Signed at Energy Center, Rizal Drive, Fort Bonifacio Global City, Taguig City.

24 June 2016

ZENAIDA Y. MONSADA
Secretary
(Signed) guidelines prior to the effectivity of this Department Order.

PROPOSED REGISTRATION PROCESS OF RENEWABLE ENERGY DEVELOPER



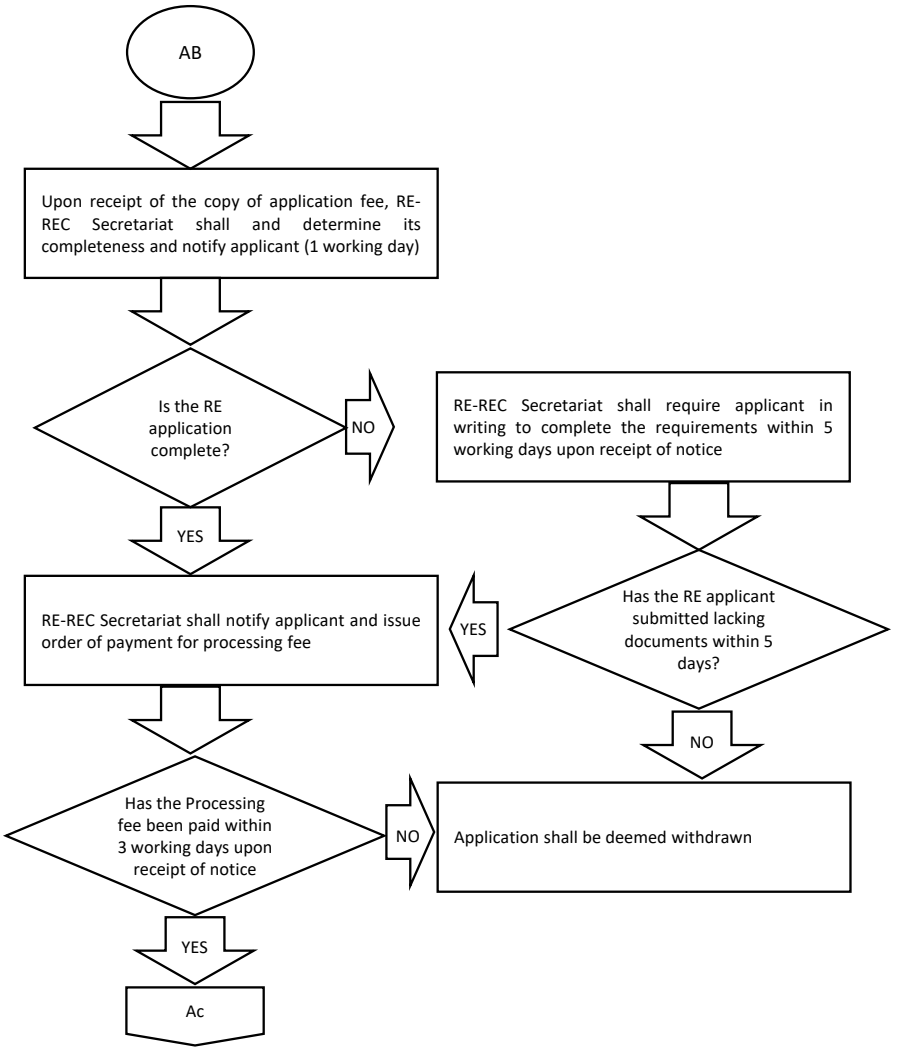
(*) Note:

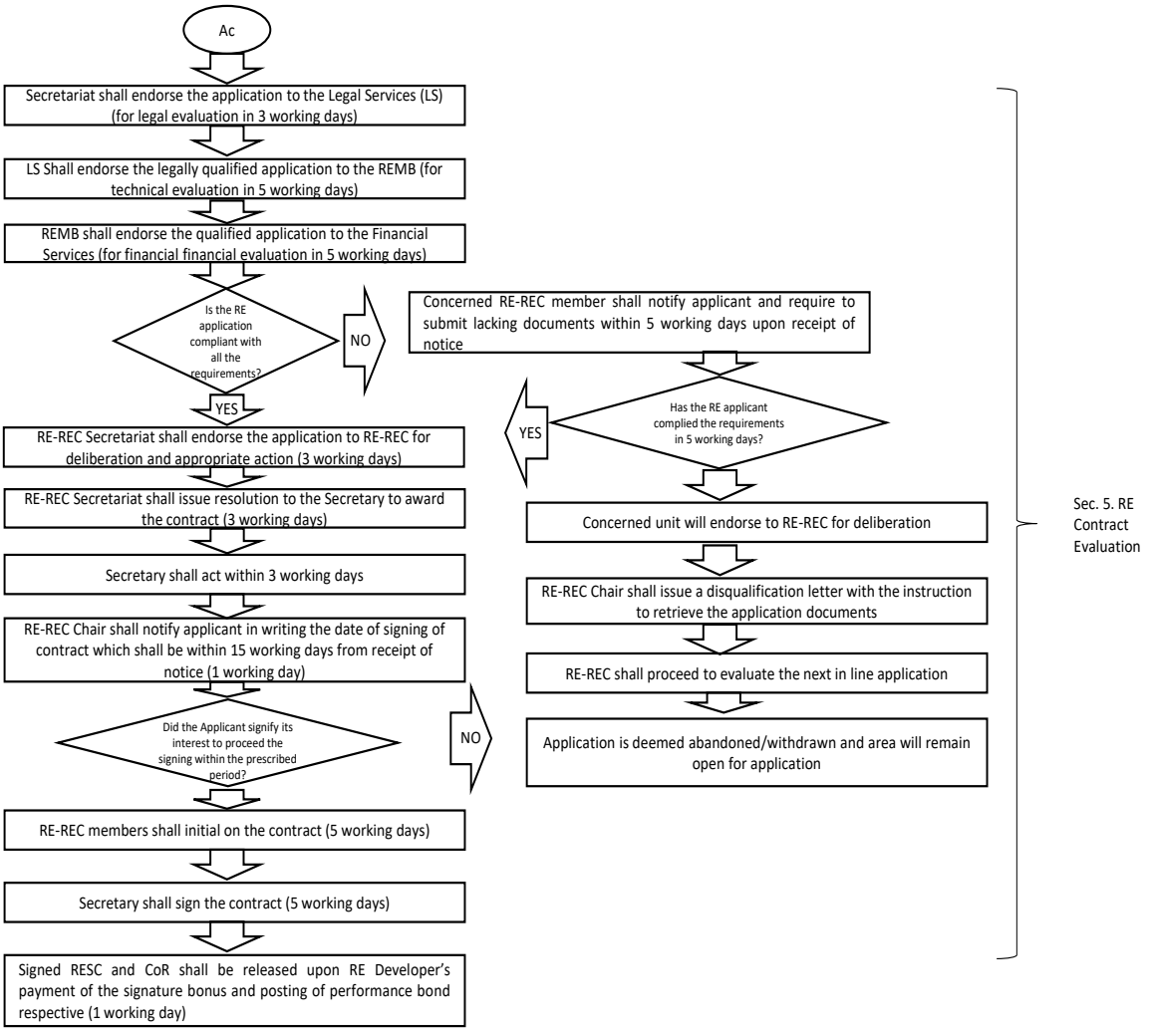
For SESC Rooftop Application within existing SESC. The exact coordinates of the former may be carved out if the following exists:

- *Existing SESC is under construction or in commercial operation and does not cover the proposed rooftop area*
- *Existing SESC is compliant with Milestone obligation and does not include the proposed rooftop area in its FS and WP.*

For RESC Application overlapping with existing RESC of other RE technologies, *the former may pursue by submitting a written acknowledgment of such fact and the prior rights of existing RE contract holder or a requirement to secure a clearance. (3 working days)*

For RESC Application within protected area, *RE-REC Secretariat shall notify the applicant*


AB
Upon receipt of the copy of application fee, RE-REC Secretariat shall and determine its completeness and notify applicant (1 working day)
Is the RE application complete?
NO
RE-REC Secretariat shall require applicant in writing to complete the requirements within 5 working days upon receipt of notice
YES
RE-REC Secretariat shall notify applicant and issue order of payment for processing fee
YES
Has the RE applicant submitted lacking documents within 5 days?
NO
Has the Processing fee been paid within 3 working days upon receipt of notice
NO
Application shall be deemed withdrawn
YES
Ac
Sec. 3. Completeness of RE Application


Ac
Secretariat shall endorse the application to the Legal Services (LS) (for legal evaluation in 3 working days)
LS Shall endorse the legally qualified application to the REMB (for technical evaluation in 5 working days)
REMB shall endorse the qualified application to the Financial Services (for financial financial evaluation in 5 working days)
Is the RE application compliant with all the requirements?
NO
Concerned RE-REC member shall notify applicant and require to submit lacking documents within 5 working days upon receipt of notice
YES
Has the RE applicant complied the requirements in 5 working days?
YES
RE-REC Secretariat shall endorse the application to RE-REC for deliberation and appropriate action (3 working days)
RE-REC Secretariat shall issue resolution to the Secretary to award the contract (3 working days)
Secretary shall act within 3 working days
RE-REC Chair shall notify applicant in writing the date of signing of contract which shall be within 15 working days from receipt of notice (1 working day)
Concerned unit will endorse to RE-REC for deliberation
RE-REC Chair shall issue a disqualification letter with the instruction to retrieve the application documents
RE-REC shall proceed to evaluate the next in line application
Did the Applicant signify its interest to proceed the signing within the prescribed period?
NO
Application is deemed abandoned/withdrawn and area will remain open for application
RE-REC members shall initial on the contract (5 working days)
Secretary shall sign the contract (5 working days)
Signed RESC and CoR shall be released upon RE Developer's payment of the signature bonus and posting of performance bond respective (1 working day)
Sec. 5. RE Contract Evaluation

DEPARTMENT ORDER NO. 2016-09-011

RECONSTITUTION OF THE RENEWABLE ENERGY - REVIEW AND EVALUATION COMMITTEE (RE-REC) AND PROVIDING FOR ITS FUNCTIONS, DUTIES AND RESPONSIBILITIES

The RE-REC created pursuant to Section 9 b of Department Circular No. DC2009-070011 is hereby reconstituted to be composed of the following:

Chair	Assistant Secretary supervising the Renewable Energy Management Bureau (REMB)
ViceChair	Director, REMB
Members	Director, Financial Services Director, Legal Services
Secretariat	Assistant Director, REMB

The Division Chief from REMB of the concerned renewable energy resource shall serve as resource person to the RE-REC in the evaluation of the said renewable energy resource.

The RE-REC shall discharge the functions, duties and responsibilities under Department Circular No. DC2009-07-0011 and Department Order Nos. D02013-080011, D02013-10-0018, D02013-12-0020, D02013-12-0023 and D02014-06-0010.

All other issuances which are inconsistent with this Department Order are hereby amended or repealed accordingly.

This Department Order shall take effect immediately upon approval and shall remain in full force and effect until revoked by the undersigned and/or competent authority.

ALFONSO G. CUSI
Secretary
(Signed)

Below are the following Department issuances with pertinent provisions on the RE-REC:

D02016-02-0001	Reconstitution of the Renewable Energy Review & Evaluation Committee (RE-REC)
D02014-06-0010	Adopting a Template for Large HSC, amending D02013-08-0011and other Pertinent Rules & Regulations and for other Purposes
D02013-12-0023	Further Amending D02013-12-0020 & D02013-12-0021 Section 1. Repeal of Sec. 4 (Term of Office) & Amendment of Sec.6 (Secretariat of RE-REC), 8. (Appropriation & Sources) and Sec. 10 (Transitory Provisions).
D02013-12-0020	Strengthening the RE-REC and for other Purposes
D02013-10-0018	Adopting the Revised Evaluation Process Flow & Timelines of RESC & Mandating the Adoption of the Milestone Approach Section 5. Advisory to RE Applicants
DO 2013-08-0011	Adopting Policies in Relation to the Processing of RESC & Mandating the Adoption of the Revised Templates for RESCs Section 4. Advisory to RE Applicants
DO 2009-07-0011	Section 9 b. Creation of a Review Committee

DEPARTMENT ORDER NO. D02017-04-0005

PRESCRIBING THE NEW GUIDELINES IN THEPROCESSING OF APPLICATIONS FOR RENEWABLE ENERGY SERVICE/OPERATING CONTRACTS

WHEREAS, Republic Act (R.A.) No. 7638, as amended, otherwise known as the "Department of Energy Act of 1992," mandates the Department of Energy (DOE) to prepare, integrate, coordinate, supervise and control alt plans, programs, projects and activities of the Government relative to energy exploration, development, utilization, distribution and conservation, among others;

WHEREAS, R.A. No. 9513, otherwise known as the "Renewable Energy Act of 2008 (RE Act)," declares as a policy of the State to encourage and accelerate the exploration, development and increase the utilization of Renewable Energy (RE) resources such as, but not limited to, biomass, solar, wind, hydropower, geothermal, and ocean energy resources, and including hybrid systems;

WHEREAS, Department Circular No. DC2009-05-0008 which prescribes the Implementing Rules and Regulations (IRR) of RE Act, also mandates the DOE to develop the necessary regulatory framework for the RE Industry, among others;

WHEREAS, Department Circular No. DC2009-07-0011 created a Review Committee to evaluate the RE Proposals and Applications of RE Applicants and provide recommendations to the DOE Secretary for the award of RE Service/Operating Contracts (RE Contracts);

WHEREAS, Department Order Nos. D02016-09-0011 and D02016-06-0010 reconstituted the membership of the RE-Review and Evaluation Committee (RE-REC) and providing for its functions, duties and responsibilities, as well as revised the existing guidelines for the processing of applications, amendments and terminations of RE service/operating contracts;

WHEREAS, it is the thrust of the government to further enhance the transparency and shorten the time frame in the processing and issuance of service contracts and permit;

NOW, THEREFORE, premises considered, the DOE hereby issues the following guidelines in the processing of RE Applications for RE Contracts;

Section 1. Filing of Letter of Interests ("LOI").

(a) All applicants for the processing and issuance of RE Contracts shall initiate its RE Application with the filing of an LOI addressed to the RE-REC, through the Records Division.

(b) Within one (1) working day from receipt of the LOI, the RE-REC shall issue an acknowledgment letter addressed to the RE Applicant. The said acknowledgment letter shall also direct the RE Applicant to secure an Area Clearance from the Information Technology Management Services (ITMS) of the DOE.

(c) In the same acknowledgment letter, the RE-REC shall inform the RE Applicant of the schedule of an orientation/briefing on the RE Application requirements and processes. During the orientation/ briefing for the RE Applicant, the request for area clearance stamped received by the I TMS shall be presented by the RE Applicant.

(d) Thereafter, the RE Applicant may file his RE Application with the DOE, subject to the result of the Area Clearance under Section 2 hereof.

Section 2. Area Clearance. The RE Applicant shall file a request for an Area Clearance from the ITMS within one (1) working day from receipt of the acknowledgment letter from the RE-REC. The request shall include the exact area of interest/location as shown by the RE Applicant's submission of the PRS '92 geographic coordinates, which shall conform to the RE Blocking System, except for biomass and hydropower which shall provide the exact coordinates of the power plant, weir and powerhouse, respectively.

The ITMS shall complete its evaluation and provide the RE-REC the evaluation result within a period of three (3) working days from receipt of the request.

a. If the proposed area is already covered by an existing RE Contract for the development of the same RE technology/ resource being applied for, the IT MS shall certify that the proposed area is not open for RE Application.

b. If the proposed area is not open for RE Application and/or if it is covered by service contract of other energy/RE technologies, or if it is within a protected area, the ITMS shall inform the RE-REC of such findings and stating the verification results and other necessary information.

c. In case the proposed area is with a pending RE Application for the same RE technology/resource, the ITMS shall recommend that the RE Application shall be placed in a queue.

d. For Solar Energy Service Contract (SESC) application covering rooftop areas located within an existing SESC, the exact coordinates for the proposed Solar PV rooftop installation may be carved out in case of the following conditions:

    1. The existing SESC is already under construction stage or already in commercial operation and the proposed area of the RE Application does not cover overlap with development area of the existing SESC; or

    2. The RE Developer of the existing SESC has complied with its Milestone obligations and in its submitted Feasibility Study ("FS") and the approved Work Program, there is no showing that it will include in its development the proposed rooftop areas.

e. In case of overlap with existing service/ operating energy contract other than that with the same RE technology/resource being applied for, the RE Applicant may pursue his RE Application by submitting a notarized acknowledgment and undertaking on the following:

    1. The recognition of the existence of the prior right of the existing contract holder;

    2. The RE Applicant shall secure the clearance and/or no opposition from the existing contract holder.

In cases under Section 2 (a) and (b) hereof, the RE-REC shall formally notify the RE Applicant. In case the result of the Area Clearance evaluation is covered by Section 2 (c), (d) and (e) hereof, the result shall be presented to the RE Applicant during the orientation/briefing.

Section 3. Receipt of RE Application. In case the RE Applicant complies with the procedures and requirements under Section 1 hereof, it may now submit its RE Application as follows:

(a) The RE Applicant shall prepare and submit five (5) copies of its RE Application. One (1) copy shall be submitted to the DOE Records Division for filing and reference. The other four (4) copies shall be stamped-received by the DOE Records Division.

(b) The RE Applicant shall then proceed to the RE-REC Secretariat for the issuance of an Order of Payment for its RE Application. The RE-REC Secretariat shall ensure that prior to the issuance of an Order of Payment, the RE Applicant shall show the four (4) copies of its RE Applications as stamped received by the DOE Records Division.

(c) After payment of the application fee, the RE Applicant shall then submit the four (4) copies to the RE-REC Secretariat. The RE-REC Secretariat shall keep one (1) copy of the RE Application for filing and reference.

At this stage, the RE Application is deemed filed and submitted so as to determine the order of formal filing by the RE Applicant.

Section 4. RE Contract Evaluation Process Flow. The RE-REC Secretariat shall, within one (1) working day from receipt thereof, distribute the three (3) copies of the RE Application to the following units: (1) Legal Services for legal evaluation, (2) REMB Division for technical evaluation and (3) Financial Services for financial evaluation. Thereafter, all RE-REC Technical Working Group member units shall evaluate the RE Application at the same time.

(a) The LS shall complete its review and evaluation within five (5) working days from date of receipt of the RE Application.

In case the RE Applicant is not legally qualified, the Legal Services shall inform the RE-REC Secretariat within the evaluation period. Otherwise, the RE Application shall be endorsed to the RE-REC Secretariat for further processing.

(b) The appropriate division of the Renewable Energy Management Bureau (REMB) shall complete its technical evaluation within five (5) working days from receipt of the RE Application.

In case the RE Applicant is not technically qualified, the REMB Division shall inform the RE-REC Secretariat within the evaluation period. Otherwise, the RE Application shall be endorsed to the RE-REC Secretariat for further processing.

(c) The Financial Services (FS) shall complete its financial evaluation within five (5) working days from receipt of the RE Application.

In case the RE Applicant is not financially qualified, the Financial Services shall inform the RE-REC Secretariat within the evaluation period. Otherwise, the RE Application shall be endorsed to the RE-REC Secretariat for further processing.

(d) If the RE Application passed the legal, technical and financial evaluations, the RE-REC Secretariat shall prepare, within three (3) working days from receipt of all the evaluations, an RE-REC Resolution to recommend approval of an RE Contract by the Secretary.

(e) In case the RE Application is not either legally, technically or financially qualified, or not qualified all together, the RE-REC Secretariat shall, within three (3) working days from receipt of all the evaluations, require the RE Applicant in writing to submit additional or lacking documents in order for it to qualify within a period of five (5) working days from receipt of such notice. Copy of the Memoranda of the legal, technical and financial evaluations shall be attached.

Failure of the RE Applicant to complete the documentary requirements within the prescribed period shall mean withdrawal of the RE Application. Thereafter, a notice shall be issued to the RE Applicant by the RE-REC that the RE Application is deemed withdrawn.

(f) In case the RE Applicant submits additional or lacking documents for it to qualify with the prescribed period under Section 4 (d) hereof, the RE-REC shall convene and evaluate the submitted documents. In this regard, the REREC shall then decide whether to qualify or disqualify the RE Application.

(g) In case the RE Applicant is disqualified, the RE-REC shall issue a formal notice to the RE Applicant stating the basis of the disqualification and immediately proceed to the next-in-line RE Application. Otherwise, the RE-REC shall recommend the award of an RE Service/Operating Contract.

Section 5. The RE Contract Review and Evaluation Committee, Technical Working Group and Secretariat. The RE-REC, RE-REC Technical Working Group and RE-REC Secretariat are hereby constituted as follows:

RE-REC

Chairperson	:	Chief of Staff (COS)
Vice-Chairperson	:	Director, REMB
Members	:	Director, Legal Services (FS)
		Director, Financial Services (LS)
		Director, ITMS

RE-REC Technical Working Group (TWG)

Chairperson	:	Director III, Office of the Secretary
Vice-Chairperson	:	Assistant Director, REMB
Members	:	Chief, concerned REMB Division
		Chief, Renewable Energy Legal Services Division- LS
		Chief, Renewable Energy Resources Compliance Division-FS
		Chief, Information Services Division of ITMS

The RE-REC TWG shall be assisted and supported by the Technical Service Management Division-REMB, acting as Secretariat.

The RE-REC, RE-REC TWG and the RE-REC Secretariat shall continue, insofar as they are consistent with this DO, to discharge the functions, duties and responsibilities under Department Circular No. DC2009-07-0011, and Department Order Nos. D02013-12-0020, D02014-06-0010 and D02014-10-0018.

(a) The RE-REC shall convene at least once a month or in the event an important matter arises in the evaluation proceedings that need RE-REC deliberation and resolution of a particular RE Application.

(b) The simple majority of the RE-REC Members shall constitute a quorum. In the absence of the Chairperson, the Vice Chairperson shall preside the meeting.

Section 6. Approval and Signing of the RE Contract.

(a) Any RE Application that passed the legal, technical and financial evaluation under Section 4 (d) and (e) hereof shall be recommended for the award of an RE service/operating contract.

(b) The RE-REC shall issue a Resolution that shall contain the highlights of the evaluation and a recommendation to the DOE Secretary, through the Assistant Secretary and Undersecretary, to award the RE Contract, within three (3) working days from the date of the RE-REC deliberation. The RE-REC Resolution shall be signed by all RE-REC Members.

The RE-REC Secretariat shall prepare the RE Resolution, including the legal, technical and financial evaluations, the Certificate of Registration (COR) and endorsement letters, and coordinate the pre-signing by the RE Applicant within the same three (3)- working day period.

(c) The RE-REC Resolution, all attachments and the pre-signed RE service/operating contract shall be submitted to the DOE Secretary who shall act on it within seven (7) working days from receipt.

(d) The RE Contract that will be issued to the RE Applicant shall follow the RE Contract templates hereto attached as Annexes "A" to F

(e) The notarized copy of the RE Contract and the COR shall be furnished to the RE Applicant upon submission by the latter of a copy of the official receipt ("OR") as proof of payment of the corresponding Signature Bonus.

Section 7. Posting and Updating of RE Contract Awarded and Pending Application in the DOE Website.

(a) The RE-REC Secretariat shall update the RE Contract Awarded and Pending Application once a month and every time a new RE Application commenced with the evaluation or was disqualified or was awarded.

(b) The RE-REC Secretariat shall secure the approval of the RE-REC on the new updates before forwarding the same to IT MS for posting and database update. Thereafter, all applications in queue as provided under Section 2.c shall be deleted by ITMS and the RE applicant shall be informed by TSMD that its application is hereby disqualified.

(c) The RE-REC Secretariat shall also provide copies for posting in the Energy Virtual One Shared System (EVOSS) website.

Section 8. Amendment and Termination of RE Service/Operating Contracts.

(a) The concerned REMB Division shall evaluate and recommend amendments of RE Service/Operating Contracts as prescribed under Department Order No. D02014-10-0018, including other amendments to the RE-REC for approval.

In case the evaluation of the concerned REM Division shows that there are additional costs to be incurred that should warrant another financial evaluation, the said Division shall endorse to FS for subsequent financial evaluation.

(b) Based on REMB's monitoring, the concerned REMB Division shall evaluate and recommend the termination of RE Service/Operating Contracts to the REREC for approval.

(c) In both cases as provided in Sections 8 (a) and 8(b) hereof, the concerned REMB Division shall provide the RE-REC the complete basis of the recommendation prior to RE-REC deliberation.

(d) The RE-REC shall issue a Resolution that shall contain the highlights of the evaluation and a recommendation to the DOE Secretary for approval. The RE-REC Resolution shall be signed by all RE-REC Members.

(e) The RE-REC shall immediately provide to ITMS any RE Contract status for timely update of database.

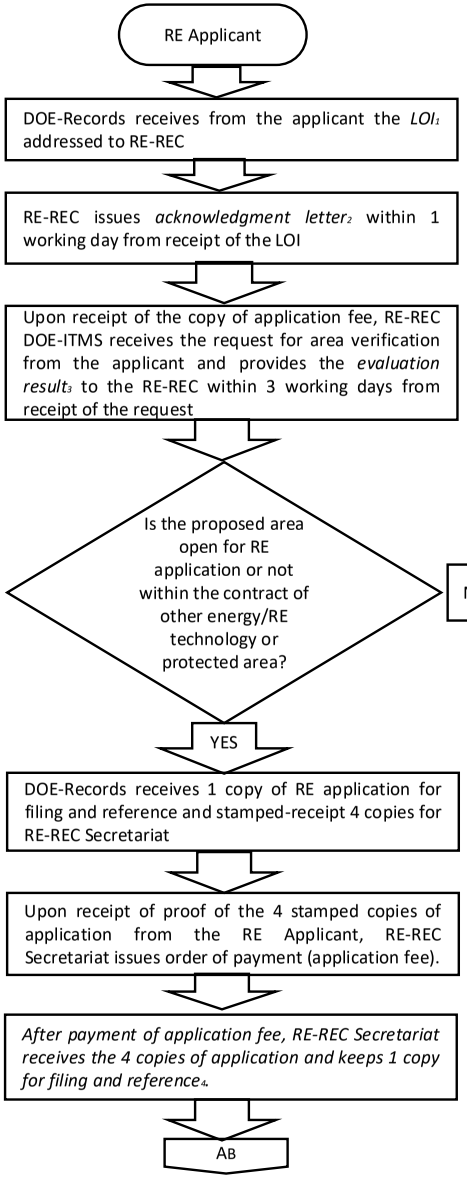
Section 9. Repealing Clause. Department Order Nos. D02016-02-0001, D02016-060010, D02016-09-0011, D02013-08-0011 and all other Department Circulars, Orders and issuances which are inconsistent with any of the provisions of this Department Order are hereby amended or repealed accordingly.

Section 10. Separability Clause. Should any provision of this Department Order be declared invalid or unconstitutional, the other provisions, so far as they are separable, shall remain in force.

Section 11. Effectivity. This Department Order shall take effect immediately.

07 April 2017

ALFONSO G. CUSI
Secretary
(Signed)



Sec. 1. Filing of Letter of Interest (LOI)

Note:

1. *All applicants shall initiate its application with the filing of an LOI.*
2. *Acknowledgment letters shall also direct the RE Applicant to secure an Area Clearance from the DOE-ITMS within 1 day upon receipt of the letter and inform of the schedule of orientation/briefing on the requirements and processes. A stamped receipt of the area clearance shall be presented during orientation/briefing.*

Sec. 2. Area Clearance

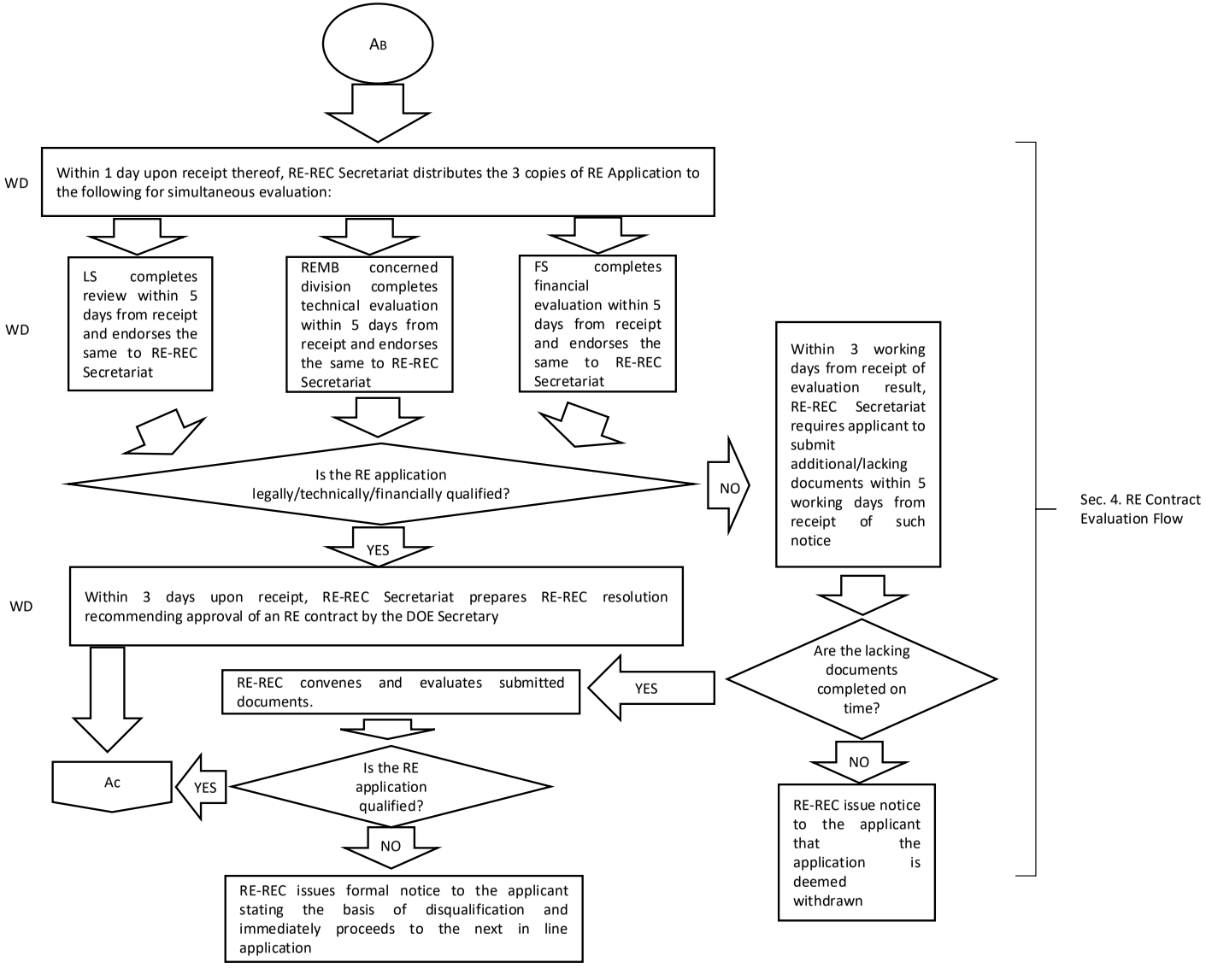
Note:

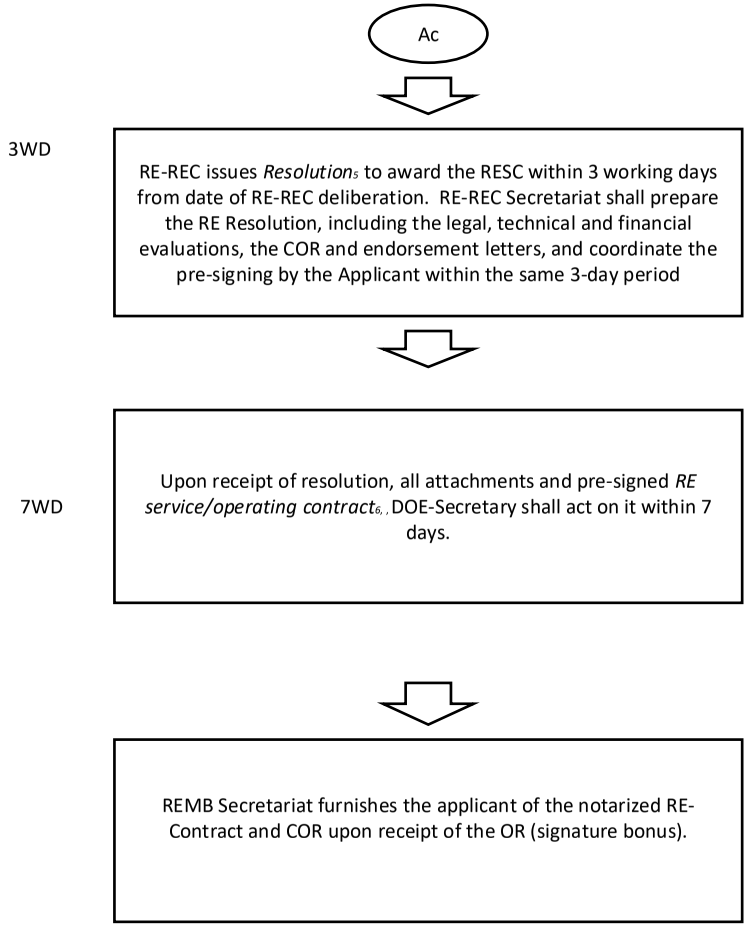
3. Sec. 2 (c), (d) & € results shall be presented to applicant during orientation/briefing:
   - (c) For proposed area with a pending RE application for the same technology:
     - ITMS recommends application to be placed in a queue.
   - (d) For SESC Rooftop Application within existing SESC, the exact coordinates of the former may be carved out in case the following:
     - Existing SESC is under construction or in commercial operation and does not cover the proposed rooftop area.
     - Existing SESC is compliant with Milestone obligation and does not include the proposed rooftop area in its FS and WP.
   - (e) For RES/OC Application overlapping with existing RES/OC of other RE technologies, the former may pursue by submitting a notarized acknowledgment and undertaking of the following:
     - The recognition of the existence of the prior right of existing contract holder.
     - The Applicant shall secure clearance from the existing contract holder.

Sec. 3. Receipt of RE Application

Note:

4. *At this stage, the RE application is deemed filed and submitted so as to determine the order of formal filing by the RE Applicant*


AB
WD
Within 1 day upon receipt thereof, RE-REC Secretariat distributes the 3 copies of RE Application to the following for simultaneous evaluation:
WD
LS completes review within 5 days from receipt and endorses the same to RE-REC Secretariat
REMB concerned division completes technical evaluation within 5 days from receipt and endorses the same to RE-REC Secretariat
FS completes financial evaluation within 5 days from receipt and endorses the same to RE-REC Secretariat
Is the RE application legally/technically/financially qualified?
NO
Within 3 working days from receipt of evaluation result, RE-REC Secretariat requires applicant to submit additional/lacking documents within 5 working days from receipt of such notice
YES
WD
Within 3 days upon receipt, RE-REC Secretariat prepares RE-REC resolution recommending approval of an RE contract by the DOE Secretary
Are the lacking documents completed on time?
YES
RE-REC convenes and evaluates submitted documents.
NO
RE-REC issue notice to the applicant that the application is deemed withdrawn
Ac
YES
Is the RE application qualified?
NO
RE-REC issues formal notice to the applicant stating the basis of disqualification and immediately proceeds to the next in line application
Sec. 4. RE Contract Evaluation Flow



Sec. 6. Approval and Signing of RE Contract

Note:

5. *This shall contain the highlights of the evaluation and a recommendation to the Secretary through Asec and Usec. The same shall be signed by all RE-REC Members.*
6. *Contract templates attaches as Annexes "A" to "F"*

Note:

- ***PROCESSING PERIOD – NOT MORE THAN @% WORKING DAYS. (19 Working Days** is doable as shown above).*

For further information, please contact:

DEPARTMENT OF ENERGY

LEGAL SERVICES

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