



Republic of the Philippines  
**DEPARTMENT OF ENERGY**  
(Kagawaran ng Enerhiya)

DEPARTMENT CIRCULAR NO. DC2018-03-0005

**PRESCRIBING THE GUIDELINES RECOGNIZING THE RIGHTS OF  
INDIGENOUS CULTURAL COMMUNITIES (ICCs) / INDIGENOUS PEOPLES (IPs) IN  
THEIR ANCESTRAL DOMAINS AND ACCESS TO THE FINANCIAL BENEFITS AS  
HOST COMMUNITIES UNDER THE ER 1-94 PROGRAM AND RULE 29 (A) OF THE  
IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 9136,  
OTHERWISE KNOWN AS, "ELECTRIC POWER INDUSTRY REFORM ACT  
OF 2001"**

**WHEREAS**, it is 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**, Section 5(i) of Republic Act No. 7638 mandates the DOE to devise ways and means of giving direct benefits to the province, city, or municipality, especially the community and people affected, and equitable and preferential benefit to the region that hosts the energy resource and/or the energy-generating facility; Provided, however, That the other provinces, cities, municipalities, or regions shall not be deprived of their energy requirements;

**WHEREAS**, Energy Regulations ("E.R.") No. 1-94 issued by the Department of Energy (DOE) operationalize the implementation of Section 5(i) of Republic Act No. 7638;

**WHEREAS**, Section 66 of R. A. No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" and Rule 29(A) of its Implementing Rules and Regulations or EPIRA-IRR which requires all energy generation companies and/or energy resource developers to provide financial benefits equivalent to one centavo per kilowatt-hour (P0.01/kWh) of the total electricity sales of the generation facility to the region, province, city or municipality and barangay that host the generation facility as well as the establishment of corresponding trust accounts and the administration thereof by the DOE;

**WHEREAS**, on 29 October 1997, Republic Act No. 8371 was enacted, recognizing and promoting the rights of Indigenous Cultural Communities (ICCs)/Indigenous People (IPs), particularly their rights to their ancestral lands and domains to ensure their economic, social and cultural well-being;

**WHEREAS**, there is a need to recognize the rights of the ICCs/IPs to their ancestral domain and the natural resources therein, specifically the right for an equitable share of the benefits from generating facilities and/or energy resources by as defined under the ER No. 1-94 Program and corroborated on Rule 29 (A) of the EPIRA-IRR;

**WHEREAS**, there is a need to strengthen the cooperation among the energy resource developers and/or power producers and the host LGUs/Region/s to facilitate the

process of providing direct benefits to the ICCs/IPs through simplified implementation procedures;

**NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE FOREGOING PREMISES**, the DOE hereby adopts and promulgates the following guidelines in recognition of the rights of the ICCs/IPs in their ancestral domains and to access the financial benefits pursuant to Rule 29(A) of the EPIRA-IRR and Section 66 of Republic Act No. 9136.

### **Section 1. Scope and Coverage**

**1.1** All legitimate and bonafide ICCs/IPs, duly recognized and accredited by the National Commission on Indigenous People, and issued with Certificate of Ancestral Domain Title that host the generating facilities and/or energy resources shall be entitled to the financial benefits under the ER No. 1-94 Program; and

**1.2** The financial benefits shall cover the Development and Livelihood and Reforestation, Watershed Management, Health, and Environment Enhancement components of ER 1-94 Funds.

### **Section 2. Definition of Terms**

**2.1 Ancestral Domains** refer to all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas and natural resources therein, held under a claim of ownership, occupied or possessed by the ICCs/IPs by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individual/corporations and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forests, pasture, residential, agricultural and other lands individually owned whether alienable or disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral, and other natural resources, and lands which may no longer be exclusively occupied by the ICCs/IPs but which they traditionally had access to for their subsistence and traditional activities, particularly home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators.

**2.2 Ancestral Lands** refer to land occupied, possessed and utilized by individuals, families and clans who are members of the ICCs/IPs since time immemorial, by themselves or through predecessors-in-interest under claims of individual or traditional group ownership, continuously to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individual/corporations including but not limited to, residential lots, rice terraces or paddies, private forests, swidden farms and tree lot.

**2.3 Free and Prior Informed Consent** shall mean the consensus of all members of the ICCs/IPs to be determined in accordance with their respective customary laws and practices, free from any external manipulation, interference, coercion and obtained after fully disclosing the intent and scope of the activity, in a language and process understandable to the community.

**2.4 Indigenous Cultural Communities/Indigenous People** refer to a group of people or homogenous societies identified by self-ascription and ascription by others, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of territory since time immemorial occupied, possessed and utilized such territories, sharing common language, customs, traditions and other distinctive cultural traits, or who have through resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures, became historically differentiated from the majority of Filipinos. ICCs/IPs shall likewise include people who are regarded as indigenous on the account of their descent from the population which inhabited the country, at the time of conquest or colonization, or at the time of inroads of non-indigenous religions and cultures or the establishment of present state boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains.

**2.5 Watershed** is a land area drained by a stream or fixed body of water and its tributaries having common outlet for surface run-off. It encompasses the topographic and hydrological boundaries of the total land area that contributes to the flow of the water body, upstream of the water tapping point, such as the dam crest.

**Section 3. Coverage of Beneficiaries.** To recognize the rights of Indigenous ICCs/IPs on their rights to their ancestral lands and domains, Host Communities under Section 3 of Rule 29 (A) of the EPIRA IRR shall refer to local government units (barangays, municipality/city, province, or region) and Ancestral Domains/Lands of ICCs/IPs where the energy generating facility and/or energy resource is physically located.

**Section 4. Allocation of Shares.** To address the specific and unique development needs/requirement of ICCs/IPs, the allocation of shares under Section 4 of Rule 29(A) of the EPIRA IRR shall be distributed in the following manner:

4.1 The 25% share for development and livelihood fund (DLF) and 25% share of reforestation, watershed management, health and/or environment enhancement fund (RWMHEEF) from the one centavo per kilowatt-hour (P0.01/kWh) of the total electricity sales as financial benefit of the host communities, in non-highly urbanized cities, in non-highly urbanized cities, shall be applied in the following manner:

4.1.1 Designated resettlement area/s - 5%

4.1.2	Host barangay/s	-	20%
4.1.3	Host municipality/ies	-	35%
4.1.4	Host province/s	-	30%
4.1.5	Host region/s and	-	5%
4.1.6	Host organized ICCs/IPs	-	5%

In the absence of designated resettlement area/s, funds allocated for the resettlement shall form part of the host barangay/s.

In the absence of organized legitimate ICCs/IPs, funds allocated for the Host organized ICCs/IPs Community shall form part of the host region.

4.2 For highly urbanized cities, financial benefits of host communities, shall be applied in the following manner:

4.2.1	Designated resettlement area/s	-	10%
4.2.2	Host Barangay/s	-	30%
4.2.3	Host Cities	-	55%
4.2.4	Host organized ICCs/IPs	-	5%

In the absence of designated resettlement area/s, funds allocated for the resettlement shall form part of the host barangay/s.

In the absence of organized legitimate ICCs/IPs, funds allocated for the host organized ICCs/IPs Community shall form part of the host city.

**Section 5. Project Implementation and Approval.** The evaluation and approval of project proposals/work programs endorsed by the host community through the Generation Company and/or energy resource developer under Section 6 Rule 29(A) of the EPIRA IRR shall be guided by the following principles:

**5.1** The Generation Company and/or energy resource developer, through its designated COMREL shall assist the host Communities in the preparation of annual work program/project proposals qualified by the DOE to be implemented in a given year. With regard to the annual work program/project proposals of the host ICCs/IPs, it would require an endorsement by the National Commission of Indigenous People (NCIP) for submission to the DOE. The amount of financial benefits accruing to the pertinent funds in the immediate preceding year shall be used as a basis for the preparation of annual work program (AWP)/project proposals that shall be submitted by the Generation Company and/or energy resource developer to the DOE.

**5.2** Upon submission of complete documents of the AWP/project proposals, project implementation shall proceed in any of the following manner:

**5.3** For DLF and RWHEEF projects, a Memorandum of Agreement (MOA) shall be entered into by and among the DOE, generation company and/or energy

resource developer, the concerned Host Communities and NCIP, if needed, to effect funds commitment and project implementation.

**5.4** The DOE shall then make the necessary fund allocation and shall forthwith release the project funds directly to the concerned Host Communities, copied NCIP, if needed, within fifteen (15) days upon submission of complete supporting documents pursuant to the provisions in the MOA.

**Section 6. Amendment on Audit of Financial Benefits and Project Monitoring under Section 8 Rule 29(A) of the EPIRA IRR.**

6.1 The DOE shall review and audit the source of fund, particularly on the total electricity sales of the generation facility to determine the financial benefits due to the Host Communities.

6.2 In the event of unjustified disbursement of fund and non-completion or delay in the implementation of projects by the Host Communities and the project implementer, the DOE shall defer the releases of funds for subsequently approved projects and take appropriate reasonable measures in accordance with any existing and future government rules and regulations until such time that the Host Communities/project implementer would be able to justify disbursement of funds to the satisfaction of the DOE or deputized/resident auditor of the COA.

**Section 7. Settlement of Disputes.** All conflicts or disputes arising from the implementation of these rules and regulations shall be under the jurisdiction of the DOE.

Should any conflict of jurisdiction such as issue on the geographical location of the generation facilities and/or energy resource developer, and/or boundary dispute arise, the matter shall be resolved amicably among the stakeholders involved, otherwise, it shall be referred to the NCIP, DILG, and ERC, where the dispute resolution is applicable.

The DOE shall hold in abeyance the processing of project proposals submitted by the Host Communities involved or affected until said conflict/dispute has been resolved.

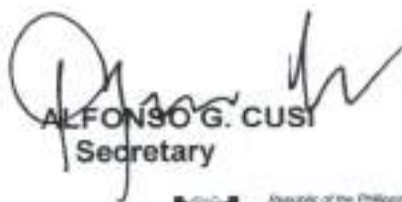
**Section 8. Administrative Operating Guidelines for the Inclusion of ICCs/IPs.** Within one hundred eighty (180) working days from the effectivity of this Circular, the DOE, through the Electric Power Industry Management Bureau, shall issue an Administrative Operating Guidelines for the availment and utilization of the financial benefits by the ICCs/IPs pursuant to the amendments hereof.

**Section 9. Repealing Clause.** Except insofar as that may be manifestly inconsistent herewith, nothing in this Circular shall be construed as to repeal any of the mechanisms already existing or responsibilities already provided for under existing rules.

**Section 10. Separability Clause.** If for any reason, any provision of this Circular is declared unconstitutional or invalid, the other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

**Section 11. Effectivity Clause.** These rules shall take effect on the fifteenth (15<sup>th</sup>) day from the date of its publication in two (2) newspapers of general circulation.

Issued this \_\_\_ day of January 2018 in Energy Center, Rizal Drive, BGC, Taguig City, Metro Manila.

  
ALFONSO G. CUSI  
Secretary



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