



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

DEPARTMENT CIRCULAR NO. DC 2020-04-0008

**RATIONALIZING THE UTILIZATION OF ER 1-94 FUNDS BY HOST LOCAL
GOVERNMENT UNITS IN RESPONSE TO COVID-19 PUBLIC HEALTH
EMERGENCY**

WHEREAS, Section 15 of Article II of the Philippine Constitution sets forth the policy of the State to protect and promote the right to health of the people;

WHEREAS, Section 7 of Republic Act (RA) No. 11332 mandates the President of the Republic of the Philippines to declare a State of Public Health Emergency in the event of any epidemic of national and/or international concern which threatens national security for the purpose of mobilizing governmental and non-governmental agencies to respond;

WHEREAS, in the light of the coronavirus disease 2019 (COVID-19) outbreak in the Philippines, President Rodrigo R. Duterte issued Proclamation No. 922, Declaring a State of Public Health Emergency throughout the Philippines and enjoining all Government agencies and Local Government Units (LGUs) to render full assistance and cooperation to mobilize the necessary resources to undertake critical, urgent, and appropriate response and measures in a timely manner to curtail and eliminate the COVID-19 threat;

WHEREAS, on 16 March 2020, the President issued Proclamation No. 929, Declaring a State of Calamity throughout the Philippines Due to the COVID-19 and placing the entire Luzon on an Enhanced Community Quarantine (ECQ);

WHEREAS, for the purpose of giving broader powers to the President to address the COVID-19 dilemma, including the authority to identify and allocate funds in relation thereto, Congress passed RA 11469 entitled "Bayanihan to Heal as One Act" which has already taken effect;

WHEREAS, Section 4(g) of RA 11469 directs "LGUs to act within the letter and spirit of all directives, rules and regulations of the National Government, exercise their autonomy on matters undefined by the National Government or within parameters that it has set";

WHEREAS, RA 11469 provides, among others, that the government shall undertake programs for recovery and rehabilitation, including a social amelioration program and

provision of safety nets to all affected sectors, and ensure that there is sufficient, adequate and readily available funding to undertake the said programs;

WHEREAS, RA 11469 likewise provided priority measures such as subsidies, food rations, cash transfers and other forms of emergency assistance to those sectors greatly affected by the COVID-19 pandemic;

WHEREAS, RA 7638 (otherwise known as the DOE Act of 1992), the DOE is mandated to devise ways and means of giving direct benefit to the province, city, or municipality, especially the community and people affected, and equitable preferential benefit to the region that hosts the energy resource and/or the energy-generating facility;

WHEREAS, to operationalize such mandate, the DOE issued Energy Regulation (ER) 1-94 which provides that host communities of energy generating facilities and/or energy resource developers are entitled to a share of one centavo per kilowatt-hour (Php 0.01 / kWh) of the total electricity sales as financial benefit of the host community to be allocated as follows:

- a) Electrification fund (EF), to be implemented by the concerned Distribution Utilities (DUs);
- b) Development and Livelihood Fund (DLF), to be implemented by the concerned Host LGUs; and
- c) Reforestation, Watershed Management, Health and/or Environment Enhancement Fund (RWMHEEF), to be implemented by the concerned Host LGUs;

The EF, DLF, RWMHEEF are collectively referred hereto to as the "ER 1-94 Funds";

WHEREAS, Sections 37 and 66 of the Electric Power Industry Reform Act (EPIRA) echoes the mandate of the DOE to devise ways and means to provide direct benefit to host communities and the corresponding obligation of generating facilities and/or energy resource developers to provide benefits communities hosting them;

WHEREAS, the EPIRA likewise mandates the DOE to formulate such rules and regulations as may be necessary to implement and exercise such other powers as may be necessary or incidental to attain the objectives of the law;

WHEREAS, Part V, Rule 29 of the EPIRA Implementing Rules and Regulations (IRR) adopted Energy Regulations 1-94 (ER 1-94), a pre-established guideline before EPIRA, which has set forth in detail the allocation of the aforesaid financial benefit and rationalized the process of implementing the aforesaid program;

WHEREAS, on 26 July 2018, the DOE issued Department Circular No. DC2018-08-0021, providing for amendments to Rule 29 Part A of the EPIRA IRR, with the following salient features:

- a) The EF shall be directly remitted to the concerned DUs;
- b) DLF and RWMHEEF shall be directly remitted to the Host LGUs and Indigenous Cultural Communities/Indigenous People (ICCs/IPs); and
- c) The following allocation of the ER 1-94 Funds shall be as follows:
 - i. Fifty percent (50%) of the of one centavo per kilowatt-hour (Php 0.01 / kWh) shall be set aside as an EF;
 - ii. Twenty five percent (25%) of the of one centavo per kilowatt-hour (Php 0.01 / kWh) shall be set aside as DLF; and
 - iii. Twenty five percent (25%) of the of one centavo per kilowatt-hour (Php 0.01 / kWh) shall be set aside as RWMHEEF;

WHEREAS, on 18 March 2020, the DOE issued advisories in line with the intents and purposes of Proclamation Nos. 922 and 929, respectively, which provided among others, the immediate remittance of the RWMHEEF to the Host LGUs and the extension of the submission of the Annual Work Plan (AWP) for a period of thirty-days (30) from 14 April 2020;

WHEREAS, the DOE conducted an on-line public consultation on 01 – 03 April 2020, by posting the draft circular in its website and solicited the comments and inputs from the stakeholders.

WHEREAS, various Host LGUs, Government Agencies, DUs and Generation Companies (GenCos) submitted their inputs and were incorporated and harmonized in the Circular.

WHEREAS, there is a need to provide immediate financial assistance to the Host LGUs to enhance their health services and at the same time temper the socio-economic impact of the crisis, and the ER 1-94 Funds are deemed to be viable, doable and readily available source of funding to empower Host LGUs to help the National Government to combat, before it is too late, COVID-19 which has continuously taken a heavy toll on lives, disrupting the way of life of the Filipino people;

NOW THEREFORE, the DOE hereby directs the utilization of the ER 1-94 Funds to help the Host LGUs combat the spread of COVID-19 pandemic and alleviate the deprivations of their constituents, as follows:

TITLE I. GENERAL PROVISION

Section 1. Purpose, Scope and Coverage.

This Department Circular is issued to provide the rules and guidelines for the effective administration, management, and immediate utilization and implementation of the ER 1-94 Funds to contain, mitigate and eliminate the transmission of COVID-19 and

manage and mitigate the effects thereof to the community and individuals by all Host LGUs only during this period State of Public Health Emergency.

Available ER 1-94 Funds shall refer to funds that have already been remitted to the Host LGUs and those funds that are still with the DOE and the concerned GenCos as of the last quarterly billing period of 2019.

Section 2. Objectives.

- 2.1. To provide impetus to Host LGUs to align with the National Government in providing ways to mitigate, if not contain, the transmission of COVID-19;
- 2.2. To help provide Host LGUs sufficient, adequate and readily available funding to undertake their duty to mitigate, if not contain, the COVID-19 in their respective areas;
- 2.3. To rationalize and give the Host LGUs a framework to utilize ER 1-94 Funds to bolster combat their efforts to the COVID-19 crisis in their respective areas; and
- 2.4. To provide a doable and efficient manner of disposition and utilization of the ER 1-94 Funds consistent with the purpose of this Circular in the light of the urgency and criticality of the current national situation.

TITLE II. ALLOCATION, APPLICATION & REMITTANCE OF ER 1-94 FUND

Section 3. Allocation and Application of the ER 1-94 Funds.

During the effectivity of this Circular, all ER 1-94 Funds of both the DOE and GenCos shall follow the allocation guidelines as provided under Section 6.2 of the DC2018-08-0021. However, the application and implementation of eligible projects as provided in Section 10.3 of DC2018-08-0021 thereto is hereby suspended.

Section 4. Remittance of ER 1-94 Fund.

- 4.1. DLF and RWMHEEF shall be remitted accordingly to the Host LGUs pursuant to Section 7.2 of the DC2018-08-0021 and its supplemental advisory issuance.
- 4.2. EF upon allocation and compliance of requirement, per Section 3 and 6.2 of this Circular, shall be remitted to the RWMHEEF Trust Account of the respective Host LGUs within the effectivity period provided in Section 10 of this Circular.

Only Host LGUs with submitted RWMHEEF Trust Account to the DOE and GenCos and have complied with the pertinent document required under Section 6.2 of this Circular shall be processed for the remittance of the EF.

Host LGUs shall issue an official receipt in acknowledgment thereof of the remitted/deposited ER 1-94 Funds to its RWMHEEF trust account.

- 4.3. Memorandum of Agreement (MOA) is not necessary for the release and remittance of ER 1-94 Funds to the concerned Host LGU, instead this Circular shall serve as the basis thereof. However, within one (1) month after the effectivity period of this Circular as provided under Section 10 of this Circular , the MOA between the Host LGUs and GenCos must be executed in accordance with DC2018-08-0021.
- 4.4. In the case of the Power Sector Assets and Liabilities Management Corporation (PSALM), it is authorized by this Circular to remit, for the duration of the effectivity of this Circular, the ER 1-94 Funds to the concerned Independent Power Producers (IPPs) and National Power Corporation (NPC) without the need of a signed agreement. The concerned IPPs and NPC shall then allocate and remit the ER 1-94 Funds to the Host LGUs as provided for in this Circular.

After the lifting of the State of Public Health Emergency, a MOA between PSALM and IPPs / NPC, as well as between IPPs / NPC and the Host LGUs must be executed in accordance with DC 2018-08-0021.

- 4.5. All GenCos shall be required to submit a report of the remitted ER 1-94 Funds to the Host LGUs containing the following information:
 - 4.5.1. Recipient Host LGUs;
 - 4.5.2. LGU's trust account;
 - 4.5.3. Type of ER 1-94 Funds; and
 - 4.5.4. Total Amount Remitted.

The report shall be submitted, via email at doe.er194forCOVID19@gmail.com, immediately upon GenCos remittance up until fifteen (15) calendar days upon lifting of the effectivity of this Circular.

TITLE III: PROJECT IMPLEMENTATION AND APPROVAL

Section 5. Eligible Projects.

All available ER 1-94 Funds shall be utilized and disbursed by the Host LGUs for the management of the effects of COVID-19 public health crisis in their respective jurisdictions. For this purpose, during the effectivity of this Circular, Section 3.1 of

DC2018-08-0021 requiring that the AWP be in accordance with the , Comprehensive Development Plan, Comprehensive Land Use Plan, Regional Development Plan, Regional Physical Framework Plan, DDP, Ancestral Domain Sustainable Development and Protection Plan, Indigenous People Development Plan shall not apply. Instead the AWP must be aligned with the "Bayanihan to Heal as One Act".

5.1. The ER 1-94 Funds shall be utilized, as follows:

- 5.1.1. To facilitate mass testing, by providing and constructing facilities and/or acquiring of proper medical testing kits to detect COVID-19, including payment of medical testing and analysis fees;
- 5.1.2. Provide an emergency subsidy in the form of non-food items when there is delay or insufficiency and to augment existing subsidy programs of the National Government to low income households while the State of Public Health Emergency is still in effect;
- 5.1.3. Provide ways to ensure the uninterrupted availability and access of essential commodities, particularly food and medicines, via a "mobile market" and adopt measures to minimize disruption in the supply chain;
- 5.1.4. Support feeding programs of National Government agencies and initiate own feeding programs including the provision of relief goods for low-income constituents during the State of Public Health Emergency;
- 5.1.5. Acquisition of Personal Protective Equipment (PPEs) for frontline medical workers, medical and other decontamination/disinfecting supplies and equipment, including but not limited to alcohol disinfectants, sanitizers, common medicines, thermo-scanners, and contactless thermometers, respirators and/or ventilators;
- 5.1.6. Provide, by constructing or leasing , additional provincial, city, municipal, or barangay medical facilities, tents, safe holding areas, including quarantine centers and distribution centers to accommodate the increasing number of patients and medical reliefs;
- 5.1.7. Electricity costs subsidies to newly constructed facilities of provincial, city, municipal, or barangay hospitals and health clinics, including increase in electricity demand as, calculated, metered and certified by concerned DUs, by reason of COVID-19;
- 5.1.8. Provision of cremation or burial services to families affected by COVID-19; and
- 5.1.9. Other reasonable tangible means and measures to contain, mitigate and eliminate the transmission of COVID-19 and manage and mitigate

the effects thereof to the community and individuals that will give effect to this circular.

- 5.2. The Host LGU must incorporate activities and projects stated above as part of their AWP. As such, the deadline for the submission of their respective AWPs shall be extended for a period of thirty (30) days from 14 April to provide the Host LGUs ample time to prepare.

Section 6. Streamlined Procedure.

- 6.1. Within a period of fifteen (15) days from compliance by the Host LGUs of Section 6.2 below, the DOE and the GenCos shall ensure the allocation of the available ER 1-94 Funds to the identified Host LGUs pursuant to Section 3 of this Circular;
- 6.2. The DOE and/or GenCos shall remit the allocated ER 1-94 Funds to the concerned Host LGUs upon submission by the latter of a Letter of Intent (LOI) addressed to the DOE Secretary, copy furnished the concerned GenCos by the Local Chief Executive for the utilization of their administered ER 1-94 Fund to combat the spread of COVID-19 pandemic and to mitigate the socio-economic impact of this crisis;

For the DOE, said LOI of the Host LGUs may be submitted to DOE via email at doe.er194forCOVID19@gmail.com. The DOE shall then instruct the relevant GenCo to immediately remit the approved amount to the Host LGUs.

- 6.3. The Host LGUs shall identify the appropriate projects and programs as provided under Section 5.1 of this Circular and may use collectively the ER 1-94 Funds to fund the same;
- 6.4. The Host LGUs may immediately commence with the procurement process in accordance with Section 7 thereof;
- 6.5. For proper recording of released/remitted ER 1-94 Funds specially the EF, the sources and amount remitted shall be maintained by the recipient Host LGUs in ledgers, separate from DLF and RWMHEEF;
- 6.6. The Host LGUs shall include in its AWP, pursuant to Section 5.2 hereof, the projects as well as the specific amounts sourced from DLF, RWMHEEF and EF, as may be combined in the optimized utilization of the ER1-94 Funds;
- 6.7. The proper documentation on the utilization of the ER1-94 Funds for COVID-19 management shall be strictly observed by the Host LGUs. Liquidation shall be completed within three (3) months after the utilization of ER1-94 Funds in accordance with Government accounting and auditing rules, regulations, and other related issuances. The Host LGUs shall submit the same to DOE and the concerned GenCos from whom the ER 1-94 Funds were sourced.

- 6.8. Host LGUs shall revert within thirty (30) days after the termination of effectivity of this Circular, all unutilized EF to the DOE and/or GenCos for the latter to facilitate transfer of the same to the DU pursuant to DC2018-008-0021.

Section 7. Procurement Process

- 7.1 All procurement activity in connection with the utilization of ER 1-94 Funds pursuant to this Circular shall observe proper procurement process, documentation, and distribution list for liquidation purposes in accordance with applicable Government accounting and auditing rules and regulations.
- 7.2 Accordingly, the Host LGUs shall observe the following Government Procurement Policy Board issuances:
- 7.2.1 Resolution No. 03-2020, dated 9 March 2020, approving the Adoption of Efficient, Effective and Expedient Procurement Procedures During the State of Public Health Emergency; and

<https://gppb.gov.ph/issuances/Resolutions/GPPB%20Resolution%20No.%2003-2020.pdf> and

- 7.2.2 NPM No. 003-2020 dated 23 March 2020 regarding Negotiated Procurement under Emergency Cases:

[https://gppb.gov.ph/assets/pdfs/NPM%203-2020%20Negotiated%20Procurement%20\(Emergency%20Cases\).pdf](https://gppb.gov.ph/assets/pdfs/NPM%203-2020%20Negotiated%20Procurement%20(Emergency%20Cases).pdf)

TITLE IV. OTHER PROVISIONS

Section 8. Construction or Interpretation.

Nothing herein shall be construed as an impairment, restriction or modification of the provisions of the Constitution or existing laws. In the exercise of powers herein granted this Circular must remain (or must be applied) consistent with other existing laws, rules and regulations and shall prevail over other similar issuances.

Section 9. Separability Clause.

In case any provision in this Department Circular is declared invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected.

Section 10. Sunset Clause.

This Circular having been issued under a declared State of Emergency, shall be in force and in effect only for the entire duration of the State of Public Health Emergency, as provided in Proclamation No. 922, and may be extended subject to the DOE's determination of the aftermath of this COVID-19 crisis.

After the lifting of the State of Public Health Emergency and/or extension period provided by DOE, the utilization and application of the ER 1-94 Funds shall be that as provided under DC2018-08-0021.

However, pending and on-going projects and programs after the lifting of the State of Public Health Emergency shall be implemented and will be applied for residual measures, unless it is patently unnecessary to be determined by the DOE.

Section 11. Repealing Clause. Any department circular or issuance, contrary to or inconsistent with this Circular is hereby repealed, modified or amended accordingly.

Section 12. Effectivity.

This Circular shall take effect immediately after publication in one (1) newspaper of general circulation. Copies thereof shall be filed with the University of the Philippines Law Center - Office of National Administrative Register (UPLC-ONAR).

Signed at DOE Building, Energy Center, Rizal Drive, Fort Bonifacio Global City, Taguig City.


ALFONSO G. CUSI
Secretary



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