



RA 9513, Renewable Energy Act of 2008, IRR

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May 25, 2009

DOE 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. ACT08

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. AM08

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; AM08
- (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; enact
- (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; enact
- (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; enact
- (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; enact
- (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; enact
- (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; enact
- (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; enact
- (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; enact

- (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; ¹⁰⁰⁰⁰
- (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 ¹⁰⁰⁰⁰
- (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. ¹⁰⁰⁰⁰
- (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; ¹⁰⁰⁰⁰
- (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; ¹⁰⁰⁰⁰
 - (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. ¹⁰⁰⁰⁰

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; encl.
- (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. encl.

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. encl.

"*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. encl.

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 encl.
 - (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 years 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.

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

RULE 6

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. ⁶⁰⁰⁰⁰

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 pricing 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. ⁶¹⁰⁰⁰
- (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. ⁶²⁰⁰⁰

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, ^{(b)(1)}
- (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 ^{(b)(2)}
- (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; ^{(a)(1)}
- (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, PNO 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. ^{(a)(1)}

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 (NRCIP), 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. CHES

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, Taguig City, Metro Manila.

(SGD.) ANGELO T. REYES

Secretary