

1 **DEPARTMENT CIRCULAR NO. DC2018-_____**

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4 **PROMULGATING THE RULES AND GUIDELINES GOVERNING**
5 **THE ESTABLISHMENT OF THE RENEWABLE PORTFOLIO STANDARDS**
6 **FOR OFF-GRID AREAS PURSUANT TO SECTION 12, CHAPTER IV ON**
7 **OFF-GRID RENEWABLE ENERGY DEVELOPMENT AND**
8 **RELEVANT PROVISIONS OF REPUBLIC ACT NO. 9513, OTHERWISE**
9 **KNOWN AS "RENEWABLE ENERGY ACT OF 2008"**
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11
12 **WHEREAS**, Republic Act No. 7638, otherwise known as the "Department of
13 Energy (DOE) Act of 1992," declares as a policy of the State to, among others,
14 ensure a continuous, adequate and economic supply of energy through the
15 integrated and intensive exploration, production, management and development
16 of the country's indigenous energy resources;

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18 **WHEREAS**, Republic Act No. 9136, otherwise known as the "Electric Power
19 Industry Reform Act of 2001" or "EPIRA," declares as a policy of the State to,
20 among others: (a) assure socially and environmentally compatible energy sources
21 and infrastructure; and (b) promote the utilization of indigenous and new and
22 renewable energy resources in power generation in order to reduce dependence
23 on imported energy;

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25 **WHEREAS**, Section 37, Chapter III of EPIRA mandates the Department of
26 Energy (DOE) to encourage private sector investments in the electricity sector
27 and promote the development of indigenous and RE resources;

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29 **WHEREAS**, Republic Act No. 9513, otherwise known as the "Renewable Energy
30 Act of 2008" or the "RE Act," declares as a policy of the State to increase the
31 utilization of renewable energy (RE) by institutionalizing the development of
32 national and local capabilities in the use of RE systems, and promoting their
33 efficient and cost-effective commercial application by providing fiscal and non-
34 fiscal incentives;

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36 **WHEREAS**, the share of RE in the national power generation mix was 34% at the
37 time of the passage of RE Act;

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39 **WHEREAS**, the DOE launched the National Renewable Energy Program (NREP) on
40 15 June 2011 that institutionalizes a comprehensive approach to encourage greater
41 private sector investments in RE development;
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WHEREAS, consistent and pursuance to the objectives set forth under Section 6, Chapter III of the RE Act, all stakeholders in the electric power industry shall contribute to the growth of the RE industry in the country;

WHEREAS, Section 12, Chapter IV of the RE Act and Section 12, Rule 4, Part II of the RE Act IRR require that NPC-SPUG or its successor-in-interest and/or Qualified Third Parties in off-grid areas shall, in the performance of its mandate to provide missionary electrification, source a minimum percentage of its total annual generation upon recommendation of the NREB from available RE resources in the area concerned, as may be determined by the DOE;

WHEREAS, Section 12, Chapter IV of the RE Act further prescribes that eligible RE generation in off-grid and missionary areas shall be eligible for the provision of RE Certificates defined in Section 8 of the RE Act and that in the event there are no viable RE resources in the off-grid and missionary areas, the relevant electricity supplier in the off-grid and missionary areas shall still be obligated under Section of the RE Act;

WHEREAS, paragraph (h) of Section 15, Chapter VII of the RE Act, prescribes that an RE developer in missionary electrification shall be entitled to a cash generation-based incentive per kilowatt-hour generated equivalent to 50% of the Universal Charge for power needed to service missionary areas where it operates the same, to be chargeable against the Universal Charge for missionary electrification;

WHEREAS, the NREB conducted working group meetings and public consultations on the following dates and venues:

Date/s		Venue/s
1. 05 October 2017	-	Western Hotel, Puerto Princesa, Palawan
2. 12 October 2017	-	Pastorelli Hall, Pontefino Hotel, Pastor Village, Batangas City
3. 26 October 2017	-	Harold Hotel, Cebu City
4. 06 November 2017	-	Mallburry Suites Business Hotel, Cagayan De Oro City

WHEREAS, the NREB endorsed via electronic mail to the DOE on 01 December 2017 its draft RPS Off-Grid Rules, while hard copy was received on 04 December 2017;

WHEREAS, the DOE conducted public consultation on 20 February 2018 in Puerto Princesa, Palawan, and on 27 February 2018 in Zamboanga City;

NOW, THEREFORE, upon the recommendation of the NREB, the DOE hereby issues, adopts and promulgates the following rules and regulations:

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87 **RULE 1**
88 **GENERAL PROVISIONS**
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91 **Section 1. Short Title.** – This Circular shall be known as the “RPS Rules for Off-
92 Grid Areas” and shall hereinafter be referred to as the “**RPS Off-Grid Rules**” of
93 “Rules.”
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95 **Section 2. Purpose.** The RPS Off-Grid Rules are hereby adopted in order to
96 contribute to the growth of the RE industry in off-grid and missionary areas by
97 mandating electric power industry participants to source or produce a specified
98 portion of their electricity requirements from eligible RE resources.
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100 The RPS Off-Grid Rules shall also rationalize the efficient use of the Universal
101 Charge for Missionary Electrification (UC-ME) and improve self-efficiency in
102 power generation through integration of RE in the supply mix in off-grid areas.
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104 **Section 3. Scope.** This RPS Off-Grid Rules set out the policies and guidelines on
105 the following:
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- 107 (a) Optimal Supply Mix with operational efficiency improvement and RE
108 development;
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110 (b) Types of eligible RE resources;
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112 (c) Annual minimum RE requirements for each area upon the establishment
113 of this RPS Off-Grid Rules;
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115 (d) Annual minimum incremental percentage of electricity sold by NPC-
116 SPUG or its Successors-in-Interest, which are required to source from
117 eligible RE resources;
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119 (e) Minimum requirements for technical feasibility and stability of the small
120 grid where RE generation facilities shall be connected;
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122 (f) Dispatch of RE resources to meet the minimum requirements of an area;
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124 (g) Procurement of the minimum RE requirement for each area; and
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126 (h) Means of compliance by NPC-SPUG or its Successor-in-Interests to the
127 minimum percentage set herein to meet the minimum RE requirements.
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Section 4. Definition of Terms. - As used in this Rules, the following terms shall be defined as follows:

- (a) *"Cash Incentive"* refers to the subsidy that any eligible RE Developer are entitled under the RE Act;
- (b) *"Contingency Reserve"* refers to that portion of the plant capacity placed on reserve to cover for breakdown of the largest unit in the small grid or for regulation and intermittency of RE resources;
- (c) *"Embedded Generation"* refers to generating units that are directly connected to the distribution system of a Distribution Utility (DU) or indirectly connected to the transmission system;
- (d) *"Force Majeure"* refers to a typhoon, storm, tropical depression, flood, drought, volcanic eruption, earthquake, tidal wave or landslide or an act of public enemy, war (declared or undeclared), riot, insurrection, revolution, sabotage, blockade or any violent and threatening actions as well as uncontrollable conditions that may result or likely lead to extraordinary disruption of operations of the RE Developer, Generation Company or DU;
- (e) *"Generation Company"* refers to NPC-SPUG, its Successors-in-Interest or any entity supplying power to a DU or Directly-Connected Customer;
- (f) *"Minimum Renewable Energy Requirement"* refers to the RE off-grid development mechanism under RE Act that mandates NPC-SPUG or its Successors-in-Interest, DUs concerned and qualified third parties in off-grid areas, source a minimum percentage of their total annual generation from available RE resources.
- (g) *"Missionary Area"* refers to an island or area as defined under the EPIRA and its Implementing Rules and Regulations;
- (h) *"Missionary Electrification Development Plan"* or *"MEDP"* refers to the government's plan that will implement policies and programs to sustain the provision of adequate, reliable and efficient supply of electricity in missionary or Off-Grid Areas and enable the communities in these areas to receive the benefit of sustainable and least-cost electrification;
- (i) *"Missionary Electrification Plan"* or *"MEP"* refers to the 5-year plan of the National Power Corporation (NPC), updated annually, to implement its missionary electrification functions and forms part of the MEDP;
- (j) *"National Power Corporation"* or *"NPC"* refers to the government corporation created under Republic Act No. 6395, as amended;

- (k) *"NPC Small Power Utilities Group"* or *"NPC-SPUG"* refers to the functional unit of NPC created to pursue missionary electrification function;
- (l) *"Off-Grid Area"* refers to a missionary area not connected to the national transmission networks and related facilities;
- (m) *"Optimal Supply Mix"* refers to the total generation mix derived from various fuel technologies that shall provide the supply of electricity in the least-cost and reliable manner with due consideration to the government policies on rational utilization of RE sources and the UC-ME as defined in the MEDP;
- (n) *"RE Developer"* 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 or 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;
- (o) *"Small Grid"* refers to the backbone system of the interconnected high-voltage lines or medium-voltage lines, substations, and other related facilities not connected to the national grid in Luzon, Visayas and Mindanao or in the absence of a transmission system, this could refer to the distribution system of the electric cooperative in which generators are directly connected;
- (p) *"Successor-in-Interest"* refers to the entity other than NPC-SPUG which has taken over in part or in full the generation functions of NPC-SPUG in a missionary area, such as a New Power Provider (NPP); and
- (q) *"True Cost Generation Rate-Renewable Energy"* or *"TCGR-RE"* shall refer to the rate as approved by the ERC, expressed in peso per kilowatt-hour, which will allow recovery of just and reasonable costs including a reasonable return on the RE investment to enable NPC-SPUG or its Successor-in-Interest to operate viably.

Furthermore, this Rules hereby adopts by reference the terms defined in the EPIRA and RE Act and their respective IRRs.

RULE 2 RPS POLICY, MINIMUM ANNUAL REQUIREMENT AND ANNUAL INCREMENT

Section 5. *The Off-Grid Renewable Energy Development Policy.* Consistent with Section 12 of the RE Act and Section 12, Rule 4, Part II of the RE Act IRR, it is hereby mandated that NPC-SPUG or its Successors-in-Interests shall source a percentage or all of their energy requirements or supply, as the case maybe, from eligible RE resources.

Section 6. *Optimal Supply Mix.* NPC-SPUG or its Successors-in-Interest shall incorporate RE resources to attain an Optimal Supply Mix in all areas it serves. The MEDP shall define the guidelines and parameters for setting the Optimal Supply Mix in Off-Grid and Missionary Areas.

Section 7. *Minimum Annual RPS Requirement.* NPC-SPUG or its Successors-in-Interest, shall be required to generate, procure and subsequently maintain a minimum percentage of RE share in its portfolio consistent with the Optimal Supply Mix prescribed in the MEDP.

The minimum percentage RE share shall consider the following:

- (a) Generation of all existing identified RE resources in the area;
- (b) Adoption of hybrid or distributed RE generation systems, whenever feasible;
- (c) Stable operation of existing generating units and reliability of the grid with entry of an RE generation facility consistent with existing and applicable performance standards; and
- (d) The capacity corresponding to the above minimum RE generation shall ensure highest penetration of RE generation while maintaining stable, reliable and adequate supply of electricity.
 - (i) In the case of a DU having any or all of the following: embedded RE generation facility; the RE generation facilities of its NPP/s, and/or RE generation facility of a QTP within its franchised areas, the actual RE generation shall be considered in the calculations of the Minimum RE Generation Requirement: *Provided, That* the same shall be included in its Distribution Development Plans (DPP);
 - (ii) In case there is no viable RE resources in the off-grid and missionary areas, the relevant supplier shall still be obligated to comply with the Renewable Portfolio Standards (RPS) requirements provided under Chapter III, Section 6 of the RE Act, Rule 2, Section 4 of the RE Act IRR, and as prescribed under RPS Rules for On-Grid Areas pursuant to Department Circular No. DC2017-12-0015 dated 22 December 2017;

- (iii) To ensure transparency and proper planning without sacrificing grid stability, the DOE through its Renewable Energy Management Bureau (REMB) shall consult the National Electrification Administration (NEA), NPC and DUs as part of its due diligence in awarding RE Service Contracts in Off-Grid Areas.

Section 8. *Minimum Annual Incremental RE Percentage.* The annual incremental RE generation for the succeeding year shall also be determined **based on the attached Simplified Tool or any internationally accepted** optimization software as approved by the DOE, the resulting difference of which from the preceding year's actual RE generation shall not be lower than one percent (1%). Entry of such additional RE capacity shall be made in phases to consider economic feasibility and standard size.

RULE 3

ELIGIBLE RE FACILITIES AND UC-ME SUBSIDY ENTITLEMENT AND MANDATED PARTICIPANTS

Section 9. *Eligible RE Facilities.* For the purpose of this RPS Off-Grid Rules, the Eligible RE Facilities utilizing the following technologies and resources shall be

- (a) Biomass;
- (b) Waste-To-Energy Technology;
- (c) Wind Energy;
- (d) Solar Energy;
- (e) Run-of-River Hydroelectric Power Systems;
- (f) Impounding Hydroelectric Power Systems;
- (g) Ocean Energy;
- (h) Hybrid systems as defined in the RE Act with respect to the RE component;
- (i) Geothermal Energy; and
- (j) Other RE technologies that may be later identified by the DOE.

Provided, That, for the RE Facilities utilizing these technologies to be eligible under the RPS compliance and attribution of RECs, they shall have been in commercial operations after the effectivity of the RE Act.

Section 10. Generation from Eligible RE Facilities for RPS Compliance. In addition to the technologies defined in Section 9, Eligible RE Facilities shall have the following requirements for compliance with the RPS:

- (a) New RE installations included in the MEDP;
- (b) Incremental RE capacity resulting from any of the following:
 - (i) expansion of an existing RE generation facility;
 - (ii) upgrading of RE-based power generation facility;

Provided, That such incremental capacity has been in commercial operation after the effectivity of the RE Act;
- (c) New capacities resulting from a change in the technology, i.e., from a non-RE to RE Generation Facility, *Provided, That such change in technology has been in commercial operation after the effectivity of the RE Act;*
- (d) RE Generation Facilities installed in end-user's premises participating under the Net Metering program;
- (e) Mothballed RE generation facilities that are restored into operation, *Provided, That such restoration has been operational after the effectivity of the RE Act;; and*
- (f) Other types of RE generation facilities as may be later identified by the DOE.

To ensure grid stability and reliability at all times, a system impact study shall be conducted by the DU or transmission service provider, aside from compliance with applicable provisions of the Philippine Small Grid Guidelines (PSGG) and Philippine Distribution Code (PDC) for each proposed RE generation facility. This is to ascertain the compatibility of such RE generation facility with existing plants and transmission or distribution systems in the island or area as well as determine the associated support and protection requirements.

Section 11. RPS Mandated Participants. Unless otherwise provided, the following are mandated to comply with the RPS Off-Grid Rules:

- (a) Generation companies including NPC-SPUG and NPPs and QTPs;

- (b) DUs and local government-operated electric systems with respect to their owned generation facilities; and
- (c) Other entities that generate electricity and serve Off-Grid Areas as may be determined and approved by the DOE.

Furthermore, DUs, with or without embedded generation, are also considered Mandated Participants in so far as facilitating the timely conduct of the Competitive Selection Process (CSP) for Power Supply Agreements (PSA) to serve their Captive customers for the entry of RE Developers in their respective franchise areas.

When agreed upon, the DU may allocate equitably the RE generation produced under the pertinent power supply agreement with an RE generation facility among the Mandated Participants (generators) within the franchise area of the DU or EC.

Section 12. RPS Generation Targets. Each Mandated Participant shall be guided by the RE generation target established under Sections 2 and 3 above and subsequently identified by the DOE in the MEDP, and in the respective Distribution Development Plan of the DUs.

Section 13. Procurement of RE Requirements Required under the RPS Rules. RE Developers that are qualified to bid on the minimum RPS requirements and increments shall have the appropriate Renewable Energy Service Contracts (RESCs) with DOE, which shall qualify as NPPs under DOE Circular No. 2004-001-01.

In procuring the RE requirement, the most advantageous RE generation offer that will redound to a higher net reduction in the UC-ME requirement of the island or area, inclusive of the cash incentive if available, shall be awarded the pertinent PSA.

In the case of an island or area has only one RE Developer and in good standing with the DOE, the RE Developer may submit an offer to and may opt to negotiate with the Mandated Participant, provided that the resulting price shall redound to UCME reduction in the island or area, and shall have been approved by the ERC.

Moreover, DUs have the option to develop their own RE generation facility provided that the DU passes DOE's qualification requirements for an RESC, and shall conduct CSP for the RE Developer to build its RE project.

Section 14. Dispatch of RE Generation Required under the RPS Rules. RE generation facilities shall be given priority dispatch, whenever available, to displace more expensive generation and to the extent of the demand of the island or area could allow without affecting grid stability and reliability.

With exception to QTPs, the RE Developer shall submit its week-ahead daily capability nomination and day-ahead hourly capability nomination to the System Operator in order to effectively implement its priority dispatch. The RE Developer shall also inform the System Operator of any changes to the hourly capability of its RE generation facility.

The System Operator shall be guided by the following:

- (a) Dispatch of RE generation facility and other generation facilities shall follow economic merit order and the dispatch protocols as provided under ERC Resolution No. 15, Series of 2014 (Dispatch Protocol);
- (b) In the event that there are more than one RE generation facility in the area, priority dispatch shall be given to the RE generation facility with the least TCGR, inclusive of cash-based incentive, if availed by the RE Developer; and
- (c) Excess RE generation resulting from lower available demand may be taken by the Mandated Participant on a best effort basis only after considering the attendant risks and upon clearance from the system operator.

Section 15. UCME Subsidy and Cash Incentive Entitlement of RE Generation Required in Off-Grid Areas. Only actual energy sales resulting from the PSAs of RE Developers with Mandated Participants shall be entitled to UC-ME subsidy or cash incentive. However, the RE developer may opt not to avail of the cash incentive as part of its strategy to offer least cost generation that will redound to UCME reduction.

The TCGR from RE generation facilities obtained from the CSP and as agreed upon between the RE Developer and Mandated Participant under a PSA duly approved by the ERC, shall be the basis for payment of the actual energy sales of the RE Developer. In the event that the ERC-approved TCGR of the RE generation facility is higher than the Subsidized Approved Generation Rate (SAGR) of the area or island, such energy sales shall also be entitled to UCME subsidy, provided that an RE Settlement Agreement has been signed by RE Developer with NPC. The ERC-approved TCGR for RE generation facilities shall be used as determinant in computing the appropriate UCME subsidy of the energy sales of the RE Developer.

Section 16. Cash Incentive Subsidy Entitlement and Claim Procedures. Unless otherwise specifically disclosed by the RE Developer in its offer or bid with the Mandated Participant, the RE energy sales complying with the RPS Off-Grid Rules set forth herein shall be entitled to a cash incentive as determined in accordance with ERC Resolution No. 21, Series of 2011, provided that the RE Developer has an ERC-approved cash incentive rate and its claim is included in

the yearly UCME petition of NPC. To ensure inclusion of the appropriate cash incentive, RE Developers shall comply with the notification and submission requirements prescribed in Rule 6 of this RPS Off-Grid Rules.

An RE generation company entitled to cash incentive shall comply with requirements of ERC Resolution No. 07, Series of 2014, entitled "A Resolution Adopting the Rules to Govern the Availment and Disbursement of Cash Incentive to Renewable Energy (RE) Developers Operating in Missionary Areas." Disbursement of the cash incentive shall be made directly by PSALM to the RE Developer.

Section 17. Review of RPS. This Rules and other relevant requirements, shall be reviewed by the DOE in coordination with the NREB on or before September 30 of each year or as may be necessary, in consultation with the stakeholders, to ensure alignment with the National Renewable Energy Plan (NREP).

Such review shall consider, among others, prices of RE technologies, existence of RESCs and change in criteria of Eligible RE Facilities; Provided, *Further* That any change in the criteria for Eligible RE Facilities should not result in any additional obligation to the Mandated Participants.

The RPS generation targets as approved by the DOE shall form part of the NREP and the MEDP.

RULE 4

COMPLIANCE MECHANISMS AND RENEWABLE ENERGY CERTIFICATE

Section 18. Compliance Mechanisms. The Mandated Participants may use any of the following instruments in complying with this RPS Off-Grid Rules:

- (a) Generation supplied by NPC-SPUG from its own or contracted renewable energy resources covered by power supply agreement with an RE generation facility that has a Certificate of Compliance (COC) or Permit to Operate (PTO) issued by the ERC;
- (b) Generation supplied by NPP or QTP from its RE generation facilities covered by power supply agreement and with COC or PTO issued by ERC;
- (c) Generation from embedded RE generation facilities of the DU or EC with COC or PTO issued by the ERC;

- (d) RE generation exported from another island or area to be defined in separate rules and subject to the interconnection standards prescribed by the ERC; and
- (e) Purchased or acquired RE Certificates banked or traded in RE Market which shall be defined by the DOE in a separate issuance.

RULE 5 COMPOSITE TEAM

Section 19. *Creation of Composite Team.* For the purpose of implementing the provisions of this Rules, a Composite Team, chaired by DOE Undersecretary duly designated by the Secretary, is hereby created with the following members:

- (a) DOE Renewable Energy Management Bureau (REMB) Director or his designated representative;
- (b) DOE Electric Power Industry Management Bureau (EPIMB) Director or his designated representative;
- (c) NREB Chairman or his/her designated representative; and
- (d) Representative from the RE Registrar.

The DOE Legal Services shall provide legal assistance and support to the Composite Team in cases of disputes arising from compliance under this Rules or such other legal issues that may be referred to Legal Services in connection with the interpretation of this Rules.

The Technical Services Management Division of REMB shall provide technical and administrative support to the Composite Team.

Section 20. *Responsibilities of the Composite Team.* The Composite Team shall:

- (a) Compute the minimum annual RPS requirement per Mandated Participant;
- (b) Submit a Compliance Report of Mandated Participants after the review and validation of the information from the RE Registrar to the DOE Secretary, ERC and NREB;
- (c) Establish the procedure and criteria for evaluating compliance by Mandated Participants including any requests for suspension or carry-over of compliance by Mandated Participants;

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- 539 (d) Recommend the suspension of compliance or the carryover of compliance
- 540 to the RPS of any Mandated Participant;
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- 542 (e) Review annually the cost implication of the minimum annual RPS
- 543 requirement, nationally and per Mandated Participant annually; and
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- 545 (f) Perform such other responsibilities and roles as directed by the DOE
- 546 through a separate issuance.
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549 **RULE 6**

550 **PROHIBITED ACTS AND SANCTIONS**

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553 **Section 19. *Monitoring and Enforcement of Compliance with the RPS for Off-***

554 ***Grid Areas.*** The Mandated Participants shall submit compliance reports to the

555 DOE within fifteen (15) days after each month. Pursuant to Section 35 of the RE

556 Act, the DOE shall impose appropriate sanctions against any Mandated

557 Participant for non-compliance or violation of this RPS Off-Grid Rules.

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559 **Section 20. *Penalties for Non-Compliance.*** Consistent with RE Act, its IRR and

560 this Circular, the following administrative and criminal sanctions may be

561 imposed:

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- 563 (a) **Administrative Liability.** The DOE may impose a penalty ranging from a
- 564 minimum of One Hundred Thousand Pesos (P100,000.00) to Five Hundred
- 565 Thousand Pesos (P500,000.00) or, upon its discretion, may recommend to
- 566 the appropriate government agency for the revocation of the Mandated
- 567 Participant's license, franchise or authority to operate.
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- 569 (b) **Criminal Liability.** In accordance with Section 36 (Penalty Clause) and
- 570 Section 35 (Prohibited Acts) of the RE Act, any person who willfully fails
- 571 to comply with or violates the RPS On-Grid Rules shall be imposed with
- 572 the penalties provided under the RE Act. Any person who willfully aids
- 573 or abets the commission of such failure or violation or who causes the
- 574 commission of any such act by another shall be liable in the same manner
- 575 as the principal.
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577 In the case of association, partnership or corporations, the penalty shall be

578 imposed on the partner, president, chief operating officer, chief executive officer,

579 directors or officers responsible for the violation.

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581 The failure to comply with or violation of the RPS Off-Grid Rules, upon

582 conviction thereof, shall suffer the penalty of imprisonment of one (1) year to five

583 (5) years, or a fine ranging from a minimum of One Hundred Thousand Pesos

584 (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.

This is without prejudice to the penalties provided for under existing environmental regulations prescribed by the DENR or any other concerned government agency.

The DOE Rules of Practice and Procedure shall be applicable to cases for the imposition of the foregoing penalties.

In no case shall a fine or penalty imposed on a Mandated Participant be charged to any of its customers or be considered a substitute for compliance, unless such fines or penalties are provided as a future form of compliance and provide the least cost alternative to the Mandated Participants.

Section 21. *Suspension or Carry-Over of Compliance.* The DOE shall, in any given year, suspend or carry-over compliance of the Mandated Participant with the Annual RPS Requirement, as the case may be, under any of the following conditions:

- (a) Inadequate supply of the Eligible RE generation facilities to meet the annual requirement;
- (b) Inadequate supply of RE certificates to meet the annual requirement;
- (c) Unavailable capacity at both the transmission and relevant distribution network to transport the Eligible RE generation facilities to the grid;
- (d) Occurrence or existence of Force Majeure affecting or preventing the Mandated Participant from complying with the annual requirements, as the case may be; or
- (e) Such other consideration or condition, economic or otherwise, which is outside the control of the Mandated Participant as may be determined by the DOE.

In all cases, the Mandated Participant seeking suspension of compliance must demonstrate to the DOE that the condition was beyond its control and that it exerted all reasonable efforts to comply, notwithstanding the condition, including, but not limited to, a statement from the RE registrar of the actual conditions reflecting any of the above circumstances. Such a statement shall be sufficient to prove that the situation is beyond the control of the Mandated Participant.

The DOE may, in lieu of suspending compliance of the Mandated Participant, allow the Mandated Participant to carry over the compliance shortfall for a

period of three (3) years. The request for suspension of compliance of the Mandated Participant shall be deemed approved by the DOE after the lapse of sixty (60) days from date of its submission. Failure of the Mandated Participants to comply with the shortfall by the end of the carry-over period granted shall subject the Mandated Participant to the administrative liability under Section 20(a), Rule 6 of this Circular.

RULE 7

TRANSITORY AND OTHER PROVISIONS

Section 22. *Transition Period.* A Transition Period of one (1) year from the commencement of operations of the RE Market or the effectivity of this circular, whichever is earlier, is hereby provided to ensure an orderly, efficient and effective imposition of the RPS Off-Grid Rules. The period will allow the Mandated Participants to prepare all information and data required in the establishment of the baseline to be determined by the DOE, prepare their respective compliance mechanisms, as well as prepare the consumers for the impact of the RPS Off-Grid Rules. For such purposes, all Mandated Participants are hereby directed to commence planning for their respective RPS compliance requirements from effectivity of this circular.

Upon the lapse of the Transition Period, mandatory compliance with the RPS shall commence.

Section 23. *Reportorial Requirements.* The DOE shall establish a database required for the implementation of the RPS Off-Grid Rules and shall require the following Mandated Participants to submit these documents from the effectivity of this circular or their power supply agreement:

- (a) Each RPS Mandated Participant shall submit its Implementation plan to meet the minimum RPS requirement to the DOE prior to the start of each year;
- (b) All DUs shall submit the following information:
 - (i) Energy purchases from RE resources broken down by generation facility;
 - (ii) Energy purchases from NPC-SPUG segregated into RE and non-RE based resources; and
 - (iii) Energy output from its embedded RE generation facilities.
- (c) NPC-SPUG or Successor-in-Interests shall be required to submit data on their RE and non-RE energy sales to directly connected customers, if any, aside from their energy sales to ECs or DUs;

(d) NPC shall include and submit the following to the DOE as part of its Missionary Electrification Plan (MEP):

- (i) RE generation development plan for each island or area in the Off-Grid Areas; and
- (ii) List of Connection Agreements with RE Developers interconnected to NPC-SPUG's transmission system.

Section 24. *Information, Education and Communication (IEC) Activities.*

Pursuant to Section 31, Rule 10 of the IRR of the RE Act, the DOE shall develop a comprehensive IEC campaign that are designed to increase the public awareness and appreciation of the RPS Off-Grid Rules and the RE industry in general.

Section 25. *Regulatory Support.* The ERC shall provide regulatory support for the effective implementation of this Rules.

Section 26. *Separability Clause.* If any provision of this Rules is declared invalid or unconstitutional, the other provisions not affected thereby shall remain valid and subsisting.

Section 27. *Repealing Clause.* All previous issuances, rules and regulations inconsistent with this circular are hereby repealed, amended or modified accordingly.

Section 28. *Effectivity.* This Circular shall take effect after its publication in two (2) newspapers of general circulation.

ALFONSO G. CUSI
Secretary

Issued on _____, at Energy Center, Rizal Drive
Bonifacio Global City, Taguig City.