Chapter 1
Petroleum Operation

PRESIDENTIAL DECREE NO. 87

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Provide all necessary services and technology;

(b) Provide the requisite financing;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Exemption from all taxes except income tax.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 15. ***Arbitration.*** – The Petroleum Board may stipulate in a contract executed under this Act that disputes in the implementation thereof between the

Government and the contractor may be settled in accordance with generally accepted international arbitration practice.

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

IMPLEMENTING AGENCY

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

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

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

(b) Enter into contracts herein authorized with such terms and conditions as may be appropriate under the circumstances including the grant of special allowance: Provided, however, That no depletion allowance shall be granted:

Provided, further, That except as provided in Sections twenty-six and twenty-seven hereof, no contract in favor of one contractor and its affiliates shall cover less than fifty thousand nor more than seven hundred and fifty thousand hectares for on-sphere areas, or less than eighty thousand nor more than one million five hundred thousand hectares for off-shore areas: Provided, finally, That in no case shall the annual net revenue or share of the Government, including all taxes paid by or on behalf of the contractor, be less than sixty per cent of the difference between the gross income and the sum of operating expenses and Filipino participation incentive;

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

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

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

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

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

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

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

TAX PROVISIONS

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

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

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

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

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

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

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

(1) Filipino participation incentive; and

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

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

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

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

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

SPECIAL PROVISIONS

SECTION 26. ***Option of exploration concessionaires.*** – A holder of a valid and subsisting petroleum exploration concession under the Petroleum Act of 1949 may, at his option enter into a contract of service under the rules of the Petroleum Act of 1949, subject to constitutional restrictions, with any local or foreign oil company under such terms and conditions as may be agreed upon by the concessionaire and the service contractor. As an alternative the concessionaire may convert his concession into a service contract as provided in this Act through negotiations, with all the rights and privileges herein authorized: Provided, That the contract which may be concluded after said negotiation shall contain at least the minimum terms and conditions provided in this Act and shall take into account terms and conditions more favorable to the Government contained in contracts involving exploration pursuant to this Act: Provided, further, That the exploration period shall commence to run from the, effective date of the original concession, except when the concession has been effective for a period of seven years or more, in which case the contractor shall be required to commence exploratory drilling operations within a period of not exceeding eighteen months from the date of effectivity of the service contract. If the contractor is not in default in the drilling operations as hereunder required, an extension of the exploration period may be granted as provided in Section nine, paragraph (e) of this Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PRESIDENTIAL DECREE NO. 1459

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

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

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

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

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

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

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

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

SEC. 2. This Decree shall take effect immediately.

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

BED CIRCULAR NO. 80-06-03

TO: ALL SERVICE CONTRACTORS UNDER PRESIDENTIAL DECREE NO. 87

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

I. GENERAL

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

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

II. BIDDING

1. Scope

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

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

   b. Purchase and installation of marine and onshore pipelines.

   c. Purchase and installation of offshore mooring systems.

   d. Purchase or lease of storage and shuttle tankers.

   e. Purchase and installation of processing plant and facilities.

   f. Construction of marine terminals.

   g. Helicopters and fixed wing services.

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

2. Invitation to Bid

   The Service contractor is hereby required to secure from the Bureau of Energy Development prior approval of the scope and concept of the project. If such approval is not received in thirty (30) calendar days, the project shall be deemed approved and the service contractor may proceed. The Bureau of Energy Development will be furnished copies of bid solicitation letters and list of bidders at the time bids are solicited.

3. Award

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

III. EMERGENCY PURCHASES AND SERVICES

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

IV. EFFECTIVITY

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

June 5, 1980

W. R. DELA PAZ
Acting Director

Approved by:

GERONIMO Z. VELASCO
Minister of Energy

BED CIRCULAR NO. 80-07-05

TO: ALL SERVICE CONTRACTORS UNDER PRESIDENTIAL DECREE NO. 87

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

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

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

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

For your guidance and compliance.

July 18, 1980

W. R. DELA PAZ
Acting Director

PRESIDENTIAL DECREE NO. 1857

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

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

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

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

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

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

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

SECTION 1. Section three of Presidential Decree numbered Eighty-Seven, is hereby amended by adding, after subparagraph (u) thereof, three new subparagraphs to be

known as subparagraphs (v), (w), and (x) to read as follows:

"(v) 'Deepwater Contract' refers to a service contract at least eighty-five percent (85%) of the total contract area are in water depths beyond 200 meters.

"(w) 'Deepwater Contractor' means the contractor in a deepwater contract, whether acting alone or in consortium with others.

"(x) 'Deepwater well' refers to a well drilled on water depths beyond 200 meter, whether within or without a deepwater contract."

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

"(1) On behalf of the Government, reimburse the Contractor for all operating expenses not exceeding seventy percent (70%) of the gross proceeds from production in any year, *Provided*, that if in any year, the operating expenses exceed seventy percent (70%) of gross proceeds from production, then the unrecovered expenses shall be recovered from the operations of succeeding years.

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

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

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

SEC. 3. A new section to be known as Section 10-A, is hereby inserted between sections ten and eleven of the same decree, to read as follows:

"SEC. 10-A. *Deepwater Contract, Deepwater Contractor and Deepwater Well*. –

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

"(b) Cross Recovery Rules

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

"(2) Amount of Cross Recovery

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

recoverable;

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

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

"(c) Cross Recovery Defined – For purposes of this section, the term 'Cross recovery' means that the operating expenses incurred by a deepwater contractor or its affiliate in two or more areas under different deepwater contracts and the operating expenses it incurred in the drilling of deepwater wells may be recovered from the gross proceeds resulting from the sale of all petroleum produced within any one or more of the deepwater contracts (or contracts where the deepwater well is located), as if they are covered by a single contract.

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

"(e) Special Rules

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

"(2) Cross Recovery shall apply to any corporation authorized to engage in petroleum operations in the Philippines pursuant to a service contract entered into by said corporation and the Department for:

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

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

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

SEC. 4. Section 12 of the same decree is hereby amended by adding, after subparagraph (h) thereof, a new subparagraph to be known as subparagraph (i), to read as follows:

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

SEC. 5. The Department shall be vested with the authority to promulgate such rules and regulations as may be necessary to implement the provision of this decree, subject to the approval of the Secretary of Energy.

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

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

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

OEA CIRCULAR NO. 87-12-003

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

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

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

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

Filipino Participation Incentive Allowance

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

This Circular takes effect immediately.

W. R. DELA PAZ
Officer-in-Charge

1 December 1987

OEA CIRCULAR NO. 89-06-08

TO: ALL PETROLEUM SERVICE CONTRACTORS

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

GUIDELINES ON ABANDONMENT AND RELINQUISHMENT OF ONSHORE AND OFFSHORE PRODUCTION OPERATIONS

Article I
DEFINITION

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

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

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

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

Article II.
ABANDONMENT

Section 1. *Notice of Abandonment*.

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

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

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

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

Section 2. Inventory.

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

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

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

Section 3. Notice of OEA's Action.

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

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

Section 4. Disposition of Property.

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

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

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

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

Section 5. Trust Account.

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

Section 6. Approval/Execution of Abandonment.

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

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

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

Article III
RELINQUISHMENT

Twelve (12) months prior to the date of expiration, Contractor must give written notice to OEA that no further extension is sought by Contractor and that it will relinquish the production area upon expiration of the Contract. The reasons for such relinquishment

must likewise be expressly stated therein and attaching thereto the documents mentioned in Sec. 1, Art II.

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

Article IV
OBLIGATIONS OF CONTRACTOR

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

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

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

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

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

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

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

c. Plug some overall production boreholes and wells if required by OEA;

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

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

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

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

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

Article V
EFFECTIVITY

These guidelines shall become effective immediately.

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

W.R. DELA PAZ
Executive Director

OEA CIRCULAR NO. 91-08-03

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

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

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

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

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

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

For guidance and immediate compliance.

Makati, Metro Manila, 13 August 1991.

W.R. DE LA PAZ
Executive Director

OEA CIRCULAR NO. 92-10-05

TO: ALL PETROLEUM SERVICE CONTRACTORS

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

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

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

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

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

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

06 October 1992, Makati, Metro Manila

RUFINO B. BOMASANG
Acting Executive Director

OEA CIRCULAR NO. 92-11-06

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

SUBJECT: GIVING FILIPINO PREFERENCE FOR EMPLOYMENT IN PETROLEUM EXPLORATION

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

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

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

Makati, Metro Manila, November 24, 1992

RUFINO B. BOMASANG
Acting Executive Director

OEA CIRCULAR NO. 92-11-07

TO: ALL PETROLEUM SERVICE CONTRACTORS

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

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

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

For strict compliance.

Makati, Metro Manila, November 26, 1992.

RUFINO B. BOMASANG
Active Executive Director.

DEPARTMENT CIRCULAR NO. 93-11-09

TO: ALL PETROLEUM EXPLORATION COMPANIES

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

November 10, 1993

RUFINO B. BOMASANG
Undersecretary

DEPARTMENT CIRCULAR NO. 94-01-01

TO: ALL PETROLEUM SERVICE CONTRACTORS

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

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

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

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

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

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

This circular shall take effect immediately.

17 January 1994, Makati, MM.

DELFIN L. LAZARO
Secretary

DEPARTMENT CIRCULAR NO. 94-04-04

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

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

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

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

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

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

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

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

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

shall likewise be deemed to have elapsed.

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

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

14 April 1994, Makati, Metro Manila

DELFIN L. LAZARO
Secretary

DEPARTMENT CIRCULAR NO. 95-10-008

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

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

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

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

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

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

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

SECTION 2. In the accomplishment of the report, a truthful description of the incident shall be made stating time and place of occurrence, nature and volume of product, fluid spilled, leaked, discharged or disposed of, probable cause of the incident, visible impacts and immediate mitigation, remediation and compensation plans or actions implemented by concerned parties.

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

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

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

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

Fort Bonifacio, Metro Manila, October 30, 1995.

FRANCISCO L. VIRAY
Secretary

DEPARTMENT CIRCULAR NO. 96-01-004

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

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

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

WHEREAS, Section 9(e) of P.D. No. 87, which is formally incorporated in all the petroleum Service Contracts, specifically provides that: "If petroleum in commercial quantity has been discovered, the contractor may retain after the exploration period and during the

effectivity of the contract twelve and one-half percent (12.5%) of the initial area in addition to the delineated production area: Provided, however, that the contractor shall pay annual rentals on such retained area which shall not be less than ten pesos (P10.00) per hectare or fraction thereof for onshore areas and not less than twenty pesos (P20.00) as determined by the Petroleum Board (now, Department of Energy) per hectare or fraction thereof for offshore areas: *Provided, further*, that such rentals can be offset against exploration expenditures actually spent on such area;"

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

NOW, THEREFORE, the following guidelines are hereby promulgated:

SECTION 1. EXPLORATION EXPENDITURES ON 12.5% RETAINED AREA

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

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

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

SECTION 2. RENTAL DUE

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

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

SECTION 3. EFFECTIVITY

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

Fort Bonifacio, Metro Manila, l7 January 1996.

FRANCISCO L. VIRAY
Secretary

DEPARTMENT CIRCULAR NO. 98-02-003

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FRANCISCO L. VIRAY
Secretary

Fort Bonifacio, Taguig
Metro Manila
February 23, 1998

DEPARTMENT CIRCULAR NO. 2000-05-009

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Fort Bonifacio, Taguig Metro Manila, 22 May 2000

MARIO V. TIAOQUI
Secretary

PROCLAMATION NO. 72

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

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

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

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

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

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

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

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

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

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

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

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

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

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

POINT	LATITUDE (N)	LONGITUDE (E)
1	11 degrees 40' 54"	118 degrees 51' 33"
2	11 degrees 40'32"	118 degrees 57' 47"
3	11 degrees 34' 38"	119 degrees 04' 01"
4	11 degrees 32' 04"	119 degrees 08' 28"
5	11 degrees 31' 21"	119 degrees 08' 28"
6	11 degrees 30' 24"	119 degrees 08' 27"
7	11 degrees 29' 24"	119 degrees 08' 27"
8	11 degrees 33' 44"	118 degrees 51' 31"

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

(a) Entry of vessels into the Exclusion Zone;

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

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

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

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

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

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

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

(b) Anchoring;

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

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

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

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

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

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

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

Armed Forces of the Philippines:
Philippine Navy

Department of Agriculture:
Bureau of Fisheries and Aquatic Resources

Department of Environment
and Natural Resources

Department of Transportation
and Communications:

Air Transportation Office
Maritime Industry Authority
National Telecommunications Commission
Philippine Coast Guard
Philippine Ports Authority

Department of Interior and Local Government
Philippine National Police

6. This Proclamation shall take effect fifteen (5) days after publication in a newspaper of general circulation.

City of Manila, July 10, 2001.

DEPARTMENT CIRCULAR NO. 2003-05-006

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

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

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

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

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

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

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

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

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

"(a) Financial Qualification

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

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

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

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

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

SECTION 4. *Repealing Clause*. –

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

SECTION 5. *Effectivity*. –

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

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

VINCENT S. PEREZ
Secretary

EXECUTIVE ORDER NO. 473

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

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

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

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

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

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

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

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

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

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

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

In defining the terms of service thereof, the DOE and PNOC or its designated subsidiary may consult the SC 38 Contractor with the end in view of optimizing the joint operations of the concerned stakeholders in the production of natural gas and crude or black oil from the Camago-Malampaya Reservoir.

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

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

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

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

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

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

DEPARTMENT ORDER NO. 2006-03-0005

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

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

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

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

WHEREAS, the DOE and PNOC then immediately commenced discussions for the definition of the terms of service and conducted consultations with Shell

Exploration B.V., Shell Philippines LLC, Chevron Malampaya LLC and PNOC-Exploration Corporation, as the Contractor for Service Contract No. 38 ("SC 38"), particularly in relation to the parallel operations for the natural gas and crude oil reserves in the Camago-Malampaya Reservoir;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Members

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

One (1) representative from PNOC

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

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

the case may be) shall be issued notices and recognized in meetings.

SECTION 4. Standard of Operations. Each of the SC 38 Contractor and PNOC, including PNOC's Third Party Participant/s, as the case may be, shall adhere to the highest standards of efficiency and safety in conducting their respective operations in accordance with internationally accepted oil and gas field practices.

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

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

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

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

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

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

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

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

herein shall be deemed amended accordingly.
Fort Bonifacio, Taguig, Metro Manila, 20 March 2006

RAPHAEL M. LOTILLA
Secretary

EXECUTIVE ORDER NO. 556

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

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

WHEREAS, transparency is a government policy;

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

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

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

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

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

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

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

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

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

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

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

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

GLORIA MACAPAGAL-ARROYO
By the President:

EDUARDO R. ERMITA
Executive Secretary

DEPARTMENT CIRCULAR NO. 2007-04-0003

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

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

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

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

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

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

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

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

(a) History of Service Contract

i. Effective date of service contract;

ii. Original parties involved and extent of participating interest;

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

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

(b) Proposal for Transfer or Assignment

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

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

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

(c) Technical Justification of the Transfer or Assignment

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

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

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

(d) Duly executed Deed of Assignment or Transfer

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

(1) *Financial Qualification*

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

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

(2) *Legal Qualification*

i. Certified copy of Articles of Incorporation;

ii. Certified copy of the corporate by-laws;

iii. SEC Registration Certificate; and

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

(3) *Technical Documentation*

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

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

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

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

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

(a) Background of the Service Contract;

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

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

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

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

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

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

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

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

RAPHAEL LOTILLA
Secretary

Chapter 2
Coal Operation

PRESIDENTIAL DECREE NO. 972

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The extraction and utilization of coal deposits.

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

(a) Provide all the necessary service and technology;

(b) Provide the requisite financing;

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

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

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

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

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

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

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

On the other hand, the Energy Development Board shall:

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

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

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

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

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

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

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

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

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

(b) The exploration period under every coal operating contract shall be for two (2) years. If the operator has complied with its exploration work obligations, the exploration period may be extended for another two (2) years. The coal operating contract shall lapse unless coal of commercial quantity is measured during the exploration period or at the end thereof in any area covered by the coal operating contract. If coal of commercial quantity is measured, the coal operating contract shall remain in force for development and production during the balance of the exploration period and/or for an additional period ranging from ten (10) to twenty (20) years, thereafter

renewable for a series of three (3)-year periods not exceeding twelve (12) years under such terms and conditions as may be agreed upon by the parties.

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

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

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

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

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

Section 15. *Transfer and Assignment.* The rights and obligations under a coal operating contract executed under this Decree shall not be transferred or assigned without the prior approval of the Energy Development Board; Provided, that such transfer or assignment may be made only to a qualified person possessing the resources and capability to continue the mining operation of the coal operating contract and that the operator has complied with all the obligations of the coal operating contract.

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

(a) Exemption from all taxes except income tax;

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

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

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

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

4. that prior approval of the Energy Development Board was obtained by the operator before the importation

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

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

(b) for reasons of technical obsolescence; or

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

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

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

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

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

(e) Preference in Grant of Government Loans. Government financial institutions such as the Development Bank of the Philippines, the Philippine National Bank, the Government Service Insurance System, the Social Security System, the Land bank of the Philippines and other government institutions as are now engaged or may hereafter engage in financing on investment operations shall, in accordance with and to the extent allowed by the enabling provisions of their respective charters or applicable laws, accord high priority to applications for financial assistance submitted by operators in the performance of coal operating contracts, whether such financial assistance be in the form of equity participation in preferred, common or preferred convertible shares of stock, or in loans and guarantee, and shall facilitate the processing thereof and the release of the funds therefor. However, financial assistance under this paragraph shall be extended only to operators which are Philippine Nationals as the term is defined under Republic Act No. 5186, as amended.

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

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

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

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

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

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

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

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

   (b) For reasons of technical obsolescence; or

   (c) For replacement of equipment to improve and/or expand the operations of the enterprise. For replacement of modernization of existing facilities of subject enterprises/industries which will be utilized partly or entirely in the conversion of coal burning, in lieu of an exemption from payment of tariff duties and taxes, it shall be granted deferment in the payment of such taxes and duties for a period of not exceeding ten (10) years after posting the appropriate bond as may be required by the Secretary of Finance.

(b) Tax Credit on Domestic Capital Equipment. Within seven (7) years from the date of approval of the plan for conversion

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

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

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

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

    b) For reasons of technical obsolescence; or

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

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

(d) Capital Gains Tax Exemption. Exemption from income tax on the proceeds of the gains realized from the sale, disposition or transfer of capital assets which are sold or disposed of as a result of the conversion of facilities to a coal burning plant; Provided, that such sale, disposition or transfer are registered with the Bureau of Internal Revenue; Provided, however, that the gains realized from the subject sale, disposition or transfer of capital assets are invested in new issues of capital stock of an enterprise registered under the Investment Incentives Act, as amended, and other allied incentives laws; Provided, further, that the shares of stock representing the investment are not disposed of, transferred, assigned, or conveyed for a period of seven (7) years from the date the investment was made; and, Provided, finally, that if such shares of stock are disposed of within the said period of seven (7) years, all taxes due on the gains realized from the original transfer, sale, or disposition of the capital assets shall become immediately due and payable.

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

1. Depreciated to the extent of not more than twice as fast as normal rate of depreciation or depreciated at normal rate of depreciation if expected life is ten (10) years or less; or
2. Depreciated over any number of years between five (5) years and expected life if the latter is more than ten (10) years, and the depreciation thereon allowed as a deduction from taxable income; Provided, that the taxpayer notifies the Bureau of Internal Revenue at the beginning of the depreciation period which depreciation rate allowed by this section will be used by it.

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

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

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

Section 18. *Implementing Agency.* Except as otherwise provided in Section 17 hereof, the Energy Development Board, created pursuant to Presidential Decree No. 910, in addition to the powers, duties and functions under existing laws, shall be charged with carrying out the provisions of this Decree and shall be vested with the authority to promulgate rules and regulations implementing thereof.

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

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

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

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

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

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

I. Registration

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

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

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

(d) Place of Filing. The Information Sheet and all accompanying annexes and exhibits shall be filed with the offices

of the Energy Development Board at the Philippine National Petroleum Center, Merrit Road, Fort Bonifacio, Rizal or at the Energy Development Board Cebu Office situated at barrio Opao, Mandaue City.

II. Blocking System.

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

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

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

B. Guidelines on the Use of the COAL Blocking System

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

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

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

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

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

shall be included as one of the obligations of the operator in coal operating contract.

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

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

III. Survey of Coal Blocks

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

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

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

   (a) The names of the contracting parties.

   (b) The coal sought to be surveyed.

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

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

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

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

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

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

(F) Execution of Coal Block Survey. Corners of the coal block shall be defined by monuments placed at intervals of not more than four hundred (400) meters apart. When

the boundary lines of the coal block pass across mountains or rolling terrain, the intermediate monuments between corners shall be established or ridges, whenever practicable, on which case, all consecutive corner monuments shall be intervisible. The sizes of corner monument of a coal shall be as follows:

1. Corners (principal corners) that fall on points with exact two minutes and/or one and one-half minutes of latitude and longitude, 20 cm. x 20 cm x 60 cm. concrete monuments shall be set 50 cm. in the ground.
2. Other concerns of the coal block shall by cylindrical concrete monuments of 15 cm. in diameter x 60 cm. long set 50 cm. in the ground.

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

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

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

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

Spheroid Carke's Spheroid of 1865.

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

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

Scale factor of the Central Meridian 0.99995 zonification.

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

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

The tables in the DANR Technical Bulletin No. 26 and EDB Form No. 12 and EDB Form No. 13 hereto attached as Attachment "C" and "D", respectively, and made part of these Regulations shall be used for the transformation of geographic to plane coordinates, and from plane to geographic coordinates.

In all coal block surveys, the corresponding central meridian of the zone where the coal block is situated shall be used and the amount of convergency correction in seconds of arc from the central meridian to be applied to the observed astronomical azimuth of the line shall be, for all practice purposes, the product of the departure of the point of observation from the central meridian

in kilometers and the number of seconds of angular convergency per kilometer of departure corresponding to the latitude of the place of observation which are tabulated as follows:

Latitude in Seconds of Arc per Kilometer	Angular Convergency of Departure
5°	2.83
6°	3.4
7°	3.97
8°	4.55
9°	5.12
10°	5.7
11°	6.29
12°	6.87
13°	7.46
14°	8.06
15°	8.66
16°	9.27
17°	9.88
18°	10.5
19°	11.13
20°	11.76
21°	12.41

The angular convergency correction, expressed in seconds, shall be added to the observed astronomical azimuth for points west and subtracted for points east of the central meridian.

All bearing of lines and coordinates of corners not in accordance with the Philippine Plane Coordinate System as used in the area computations of surveyed coal block that are within 150 m. from the periphery of the coal block undergoing survey shall be transformed to the Philippine Plane Coordinate System.

The zone number and central meridian of the Philippine Plane Coordinate System shall, in all cases, be indicated on the fieldnotes, computations, plans, maps, and reports of the surveys.

For higher precision of surveys, convergency corrections, scale factors and azimuth correction (T-t) shall be referred from the formula used in the table of DANR Technical Bulletin No. 26, however, for tertiary precision of surveys, the scale factors and the azimuth correction (T-t) may be discarded.

Coal block surveys shall be definitely fixed in position on the earth's surface by monuments of prominent and permanent structure marking corner points of the coal block and by bearings and distances from the points of known geographic or Philippine Plane Coordinate System.

These tie points shall either be as follows:

1. Triangulation stations established by:

   (a) The Bureau of Coast and Geodetic Survey.

   (b) The United States Army Engineer Survey.

   (c) The 29th Engineer Topographic (Base) Battalion.

   (d) The Bureau of Lands.

   (e) The Bureau of Mines.

   (f) Other organizations, the survey of which is of acknowledged standard.

2. Bureau of Lands Location Monuments (BLM) and Bureau of Lands Barrio Monuments (BLBM) established by the Bureau of Lands.

3. Political Boundary Monuments such as Provincial Boundary Monuments (PBM), Municipal Boundary Monuments (MBM) and Barrio Boundary Monuments (BBM): Provided, That they were established by Cadastral Land Surveys, Group Settlement Surveys or Public Land Subdivision Surveys of the Bureau of Lands.

4. Bureau of Mines Reference Points (BMRP) monuments established by the Bureau of Mines.

5. Church cross, church spire, church dome, church tower, historical monument of known geographic or Philippine Plane Coordinate System acknowledged by the Bureau of Coast and Geodetic Survey, Bureau of Lands or Bureau of Mines.

6. Corners of approved coal block surveys with known geographic and/or Philippine Plane Coordinate Systems may be used as starting point of a coal block survey: Provided, however, That at least three (3) or more undisturbed corners of concrete monuments are surveyed for a good common point and the tie line is computed from the tie point of the aforesaid approved surveys.

Should any discrepancy of datum plane between or among tie points arise, proper investigation shall be conducted by the authorized geodetic engineer and a report thereon shall be submitted to the Energy Development Board to form part of the survey returns for further investigation and record purposes.

Plans of coal blocks recorded under the Act shall be correctly and neatly drawn to scale in drawing inks on the survey plan.

The latitudes and longitudes of the meridional block shall be drawn to scale on the plan whenever practicable, in light black inks.

In addition to the symbols used to designate various kinds of surveys, the survey symbol CBS shall be used to designate a coal block survey.

The manner of execution of coal land surveys shall be in accordance with these Regulations, as supplemented by the Manual of Regulations for Mineral Land Surveys in the Philippines promulgated on June 22, 1965 and the Philippine Land Surveyors Manual (Technical Bulletin No. 22, Bureau of Lands, July 1, 1955), as far as the provisions thereof are not inconsistent with the Decree.

(G) Submittal and Verification of Survey Returns. Survey returns coal block shall be submitted to the Energy Development Board within one (1) year from effective date of the coal operating contract and shall consist of the following:

1. Field notes completely filled in, paged and sealed (G.E.) and fieldnotes cover on EDB Form No. 14 hereto attached as Attachment "E", and made part of these regulations, duly accomplished, signed and sealed by the geodetic engineer and notary public.

2. Azimuth computations from astronomical observations, traverse computations, area computations, elevation and topographic survey computations and other reference computations all in original and in duplicate properly accomplished and signed by the computer and the geodetic engineer.

   Computerized (EDP) computations, however, may be submitted in place of the duplicate computations.

3. Tracing cloth plan/s duly accomplished with the corresponding working sheet thereof.

4. Descriptive and field investigation report on the coal block in quintuplicate duly signed by the geodetic engineer and authorized assistant, if any, and duly notarized.

5. A consolidated plan at scale at 1:4,000 showing the relative positions of the surveyed coal

blocks and other coal blocks with existing rights at the time of the survey, if any.

6. Other documents pertinent to the survey of coal blocks.

Survey returns without items (1) to (6) above, shall not be accepted for verification and approval purposes.

Concerns and/or location monuments of approved surveys of coal blocks inspite of the nullity, cancellation, rejection or abandonment of the coal operating contract over the surveyed area, shall be preserved as reference mark and the geographic position thereof shall be kept for use in future coal block surveys, unless otherwise said survey is found to be erroneous by later approved coal block surveys.

Surveys of subsisting coal blocks rights, permits and leases which are to be erroneous may be ordered by the Energy Development Board to be corrected motu proprio, when justified by existing circumstances.

IV. Procedure for Filing an Application for Negotiated Coal Operating Contract under Presidential Decree No. 972.

In addition to the documents required to be submitted in the preceding section, the following documents shall accompany all applications for a coal operating contract:

(a) Information Sheet for Coal Operators (EDB Form No. 11).

(b) Proposed Coal Operating Contract Patterned after the Model Contract (EDB Form No. 15).

(c) A Comparative Analysis in tabulated form of items in the Coal Operating Contract proposal which deviate from the Model Contract. Reasons for the proposed changes should likewise be presented.

(d) In cases of a corporation, a Certificate of Authority from the Board of Directors of applicant Operator authorizing a designated representatives/ representative/s to negotiate the Coal Operating Contract. The certification must be executed under oath by the Corporate Secretary and if executed abroad, must be properly authenticated. In cases of partnership or other forms of association, a duly authorized representative/s negotiate the Coal Operating Contract by the partners or members thereof.

(e) Copies of all technical reports or works done on the proposed coal contract areas, whenever available.

The applicant shall pay a processing fee of P1.00 per hectare but in no case less than P1,000.00 for the proposed coal contract area. Check should be made payable to the Energy Development Board. No negotiations can commence until the above requirements have been fully complied with.

V. Publication and Effectivity

These rules and regulations shall take effect immediately. Copies thereof shall be published in newspapers of general circulations in the Philippines.

Done in Makati, Metro Manila, on August 27, 1976.

CASE:

Republic of the Philippines
SUPREME COURT
Manila

SECOND DIVISION

G.R. No. 88550 April 18, 1990
INDUSTRIAL ENTERPRISES, INC., petitioner,

vs.

THE HON. COURT OF APPEALS, MARINDUQUE MINING & INDUSTRIAL CORPORATION, THE HON. GERONIMO VELASCO in his capacity as Minister of Energy and PHILIPPINE NATIONAL BANK, respondents.

Manuel M. Antonio and Dante Cortez for petitioner.

Pelaez, Adriano & Gregorio for respondent MMIC.

The Chief Legal Counsel for respondent PNB.

MELENCIO-HERRERA, J.:p

This petition seeks the review and reversal of the Decision of respondent Court of Appeals in CA-G.R. CV No. 12660, 1 which ruled adversely against petitioner herein.
Petitioner Industrial Enterprises Inc. (IEI) was granted a coal operating contract by the Government through the Bureau of Energy Development (BED) for the exploration of two coal blocks in Eastern Samar. Subsequently, IEI also applied with the then Ministry of Energy for another coal operating contract for the exploration of three additional coal blocks which, together with the original two blocks, comprised the so-called "Giporlos Area."

IEI was later on advised that in line with the objective of rationalizing the country's over-all coal supply-demand balance . . . the logical coal operator in the area should be the Marinduque Mining and Industrial Corporation (MMIC), which was already developing the coal deposit in another area (Bagacay Area) and that the Bagacay and Giporlos Areas should be awarded to MMIC (Rollo, p. 37). Thus, IEI and MMIC executed a Memorandum of Agreement whereby IEI assigned and transferred to MMIC all its rights and interests in the two coal blocks which are the subject of IEI's coal operating contract.

Subsequently, however, IEI filed an action for rescission of the Memorandum of Agreement with damages against MMIC and the then Minister of Energy Geronimo Velasco before the Regional Trial Court of Makati, Branch 150, 2 alleging that MMIC took possession of the subject coal blocks even before the Memorandum of Agreement was finalized and approved by the BED; that MMIC discontinued work thereon; that MMIC failed to apply for a coal operating contract for the adjacent coal blocks; and that MMIC failed and refused to pay the reimbursements agreed upon and to assume IEI's loan obligation as provided in the Memorandum of Agreement (Rollo, p. 38). IEI also prayed that the Energy Minister be ordered to approve the return of the coal operating contract from MMIC to petitioner, with a written confirmation that said contract is valid and effective, and, in due course, to convert said contract from an exploration agreement to a development/production or exploitation contract in IEI's favor.

Respondent, Philippine National Bank (PNB), was later impleaded as co-defendant in an Amended Complaint when the latter with the Development Bank of the Philippines effected extra-judicial foreclosures on certain

mortgages, particularly the Mortgage Trust Agreement, dated 13 July 1981, constituted in its favor by MMIC after the latter defaulted in its obligation totalling around P22 million as of 15 July 1984. The Court of Appeals eventually dismissed the case against the PNB (Resolution, 21 September 1989).

Strangely enough, Mr. Jesus S. Cabarrus is the President of both IEI and MMIC.

In a summary judgment, the Trial Court ordered the rescission of the Memorandum of Agreement, declared the continued efficacy of the coal operating contract in favor of IEI; ordered the reversion of the two coal blocks covered by the coal operating contract; ordered BED to issue its written affirmation of the coal operating contract and to expeditiously cause the conversion thereof from exploration to development in favor of IEI; directed BED to give due course to IEI's application for a coal operating contract; directed BED to give due course to IEI's application for three more coal blocks; and ordered the payment of damages and rehabilitation expenses (Rollo, pp. 9-10).

In reversing the Trial Court, the Court of Appeals held that the rendition of the summary judgment was not proper since there were genuine issues in controversy between the parties, and more importantly, that the Trial Court had no jurisdiction over the action considering that, under Presidential Decree No. 1206, it is the BED that has the power to decide controversies relative to the exploration, exploitation and development of coal blocks (Rollo, pp. 43-44).

Hence, this petition, to which we resolved to give due course and to decide.

Incidentally, the records disclose that during the pendency of the appeal before the Appellate Court, the suit against the then Minister of Energy was dismissed and that, in the meantime, IEI had applied with the BED for the development of certain coal blocks.

The decisive issue in this case is whether or not the civil court has jurisdiction to hear and decide the suit for rescission of the Memorandum of Agreement concerning a coal operating contract over coal blocks. A corollary question is whether or not respondent Court of Appeals erred in holding that it is the Bureau of Energy Development (BED) which has jurisdiction over said action and not the civil court.

While the action filed by IEI sought the rescission of what appears to be an ordinary civil contract cognizable by a civil court, the fact is that the Memorandum of Agreement sought to be rescinded is derived from a coal-operating contract and is inextricably tied up with the right to develop coal-bearing lands and the determination of whether or not the reversion of the coal operating contract over the subject coal blocks to IEI would be in line with the integrated national program for coal-development and with the objective of rationalizing the country's over-all coal-supply-demand balance, IEI's cause of action was not merely the rescission of a contract but the reversion or return to it of the operation of the coal blocks. Thus it was that in its Decision ordering the rescission of the Agreement, the Trial Court, inter alia, declared the continued efficacy of the coal-operating contract in IEI's favor and directed the BED to give due course to IEI's application for three (3) IEI more coal blocks. These are matters properly falling within the domain of the BED.

For the BED, as the successor to the Energy Development Board (abolished by Sec. 11, P.D. No. 1206, dated 6 October 1977) is tasked with the function of establishing a comprehensive and integrated national program for the exploration, exploitation, and development and extraction of fossil fuels, such as the country's coal resources; adopting a coal development program; regulating all activities relative thereto; and undertaking by itself or through service contracts such exploitation and development, all in the interest of an effective and coordinated

development of extracted resources.

Thus, the pertinent sections of P.D. No. 1206 provide:

Sec. 6. Bureau of Energy Development. There is created in the Department a Bureau of Energy Development, hereinafter referred to in this Section as the Bureau, which shall have the following powers and functions, among others:

a. Administer a national program for the encouragement, guidance, and whenever necessary, regulation of such business activity relative to the exploration, exploitation, development, and extraction of fossil fuels such as petroleum, coal, . . .

The decisions, orders, resolutions or actions of the Bureau may be appealed to the Secretary whose decisions are final and executory unless appealed to the President. (Emphasis supplied.)

That law further provides that the powers and functions of the defunct Energy Development Board relative to the implementation of P.D. No. 972 on coal exploration and development have been transferred to the BED, provided that coal operating contracts including the transfer or assignment of interest in said contracts, shall require the approval of the Secretary (Minister) of Energy (Sec. 12, P.D. No. 1206).

Sec. 12. . . . the powers and functions transferred to the Bureau of Energy Development are:

xxx xxx xxx

ii. The following powers and functions of the Energy Development Board under PD No. 910 . . .

(1) Undertake by itself or through other arrangements, such as service contracts, the active exploration, exploitation, development, and extraction of energy resources . . .

(2) Regulate all activities relative to the exploration, exploitation, development, and extraction of fossil and nuclear fuels . . .

(P.D. No. 1206) (Emphasis supplied.)
P.D. No. 972 also provides:

Sec. 8. Each coal operating contract herein authorized shall ... be executed by the Energy Development Board.

Considering the foregoing statutory provisions, the jurisdiction of the BED, in the first instance, to pass upon any question involving the Memorandum of Agreement between IEI and MMIC, revolving as its does around a coal operating contract, should be sustained.

In recent years, it has been the jurisprudential trend to apply the doctrine of primary jurisdiction in many cases involving matters that demand the special competence of administrative agencies. It may occur that the Court has jurisdiction to take cognizance of a particular case, which means that the matter involved is also judicial in character. However, if the case is such that its determination requires the expertise, specialized skills and knowledge of the proper administrative bodies because technical matters or intricate questions of facts are involved, then relief must first be obtained in an administrative proceeding before a remedy will be supplied by the courts even though the matter is within the proper jurisdiction of a court. This is the doctrine of primary jurisdiction. It applies "where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body, in such case the judicial process is

suspended pending referral of such issues to the administrative body for its view" (United States v. Western Pacific Railroad Co., 352 U.S. 59, Emphasis supplied).

Clearly, the doctrine of primary jurisdiction finds application in this case since the question of what coal areas should be exploited and developed and which entity should be granted coal operating contracts over said areas involves a technical determination by the BED as the administrative agency in possession of the specialized expertise to act on the matter. The Trial Court does not have the competence to decide matters concerning activities relative to the exploration, exploitation, development and extraction of mineral resources like coal. These issues preclude an initial judicial determination. It behooves the courts to stand aside even when apparently they have statutory power to proceed in recognition of the primary jurisdiction of an administrative agency.

One thrust of the multiplication of administrative agencies is that the interpretation of contracts and the determination of private rights thereunder is no longer a uniquely judicial function, exercisable only by our regular courts (Antipolo Realty Corp. vs. National Housing Authority, 153 SCRA 399, at 407).

The application of the doctrine of primary jurisdiction, however, does not call for the dismissal of the case below. It need only be suspended until after the matters within the competence of the BED are threshed out and determined. Thereby, the principal purpose behind the doctrine of primary jurisdiction is salutarily served.

Uniformity and consistency in the regulation of business entrusted to an administrative agency are secured, and the limited function of review by the judiciary are more rationally exercised, by preliminary resort, for ascertaining and interpreting the circumstances underlying legal issues, to agencies that are better equipped than courts by specialization, by insight gained through experience, and by more flexible procedure (Far East Conference v. United States, 342 U.S. 570).

With the foregoing conclusion arrived at, the question as to the propriety of the summary judgment rendered by the Trial Court becomes unnecessary to resolve.

WHEREFORE, the Court Resolved to DENY the petition. No costs.

SO ORDERED.

Paras, Padilla, Sarmiento and Regalado, JJ., concur.

EDB CIRCULAR NO. 13

TO: ALL APPLICANTS FOR COAL OPERATING CONTRACT UNDER THE "COAL DEVELOPMENT ACT OF 1976"

In line with the declared policy of the government to accelerate the exploration, development and exploitation of indigenous coal resources, attention is being focused on the development and promotion of the necessary technical and financial capability to undertake a meaningful work program provided under a coal operating contract. The guidelines herein enumerated were evolved after a series of working dialogues with the members of the Coal Miners Association of the Philippines and relate to the financial and technical capabilities of applicants for a coal operating contract.

The approved guidelines are as follows:

a) Financial Qualification

An applicant to be financially qualified to apply for a coal operating contract must have a minimum working capital of P1MM and a current ratio (current assets over current liabilities) of 1.5:1. "Working Capital" in the concept of these rules refers to the applicant's net current assets (current assets less current liabilities) consisting primarily of cash, temporary investments (marketable securities) short-term receivables, deposits and mining equipment.

It is understood that the above-stated minimum financial position would merely support the work program for the first exploration year of the coal operating contract. Therefore, the prospective operator should, in addition, be able to demonstrate its capability to raise additional working capital to fund the succeeding work program provided in the coal operating contract. For this purpose, applications for coal operating contracts shall be accompanied by a Statement of Sources and Uses of Funds covering the period of the contract.

b) Technical Qualifications

In order to have the necessary technical Personnel and supportive services to effectively carry out the coal exploration, at least one full-time geologist and one contracted geodetic engineer shall be in the employ of the applicant at the time of the filing of the application for a coal operating contract, provided, however, that in the event of the difficulty and unavailability of employing a full time geologist when satisfactory demonstrated to the Board, the applicant can employ a licensed mining engineer with at least two (2) years coal exploration experience. It is understood that this proviso can be availed only by existing permittees, leaseholders and holders of rights for the exploration and exploitation of coal lands or their duly authorized operators. In addition, the applicant must undertake to have complete coverage of services and technical expertise required during actual coal operations. In this connection, the Board should be informed of the company's consulting engineers who should not work for more than six (6) coal companies and the extent of the work being undertaken.

Coal operators are enjoined to observe strictly the guidelines of Republic Act No. 4274 entitled "An Act to regulate the practice of Mining Engineering, to Provide tor Licensing and Registration of Personnel of Mines and Quarries and for Other Purposes."

As a minimum requirement, the applicant must own or have contracted one drill rig for the exclusive use of the operation contemplated in the coal operating contract. It is understood that all supportive equipment and materials necessary for the efficient coal operation shall be made available by the applicant during the entire period of the contract.

Your Strict compliance with the provision of this Circular is hereby strictly enjoined.

August 31, 1976

(Sgd.) GERONIMO VELASCO
Chairman

PRESIDENTIAL DECREE NO. 1174

AMENDING PRESIDENTIAL DECREE NUMBERED NINE HUNDRED SEVENTY TWO, OTHERWISE KNOWN AS THE "COAL DEVELOPMENT ACT OF 1976"

WHEREAS, the coal development program envisioned in Presidential Decree No. 972, otherwise known as the "Coal Development Act of 1976" encourages the participation of the private sector with adequate and sufficient financial, technical and managerial resources to undertake a work program to effectively explore, develop and exploit indigenous coal resources calculated yield maximum benefit to the Filipino people and revenues to the Philippine Government and assure just and fair returns to the participating private enterprises;

WHEREAS, in line with the policy of the Government to encourage and accelerate exploration and development of indigenous resources and in the light of current conditions in the coal industry, it is imperative that Presidential Decree No. 972 be amended granting additional incentives to coal operators participating in the coal development program;

WHEREAS, in order that coal operations should not be unnecessarily hampered and snagged by the difficulties and delays in securing surface rights under existing laws and regulations for the entry into, access to or occupation of private lands, it is necessary to provide a just and equitable system of rights acquisition and use by coal operators which would also be given incentives and protection to private landowners and occupants;

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

SECTION 1. Section Seven (e) of Presidential Decree No. 972 is hereby amended to read as follows:

> "SEC. 7. *Existing Permittees/ Leaseholders*
>
> "(e) In order to give holders of valid and subsisting coal revocable permits, coal leases and other existing rights granted by the government for the exploration and exploitation of coal lands or the operators thereof duly approved by the appropriate government agency, sufficient time to upgrade their financial and technical capabilities to develop a viable work program to be embodied in a coal operating contract, the deadline for entering and concluding a duly executed coal operating contract is extended from July 27, 1977 to January 27, 1978: *Provided,* That the extension shall apply only to those who have complied with the requirements of unitization: *Provided, further* That those who have unitized may be granted by the Board during the extension period special operating permits in order not to disrupt existing coal operations: *Provided, finally,* That no further extension shall be allowed after the extension granted in this decree, and coal permits, leases and other rights not converted to coal operating contract for any cause by January 27, 1978 shall be deemed automatically canceled and the area thereby shall be open for coal operating contract in accordance with Section 6 thereof."

SEC. 2. Section Nine, Third Paragraph, Sub-Paragraph of the same Decree is hereby amended to read as follows:

"SEC. 9. *Obligations of Operator in a Coal Operating Contract.* –

xxx xxx xxx

"(a) On behalf of the Government, reimburse the operator for all operating expenses not exceeding ninety percent (90%) of the gross proceeds from production in any year: *Provided,* That if in any year, the operating expenses exceed ninety percent (90%) of the gross proceeds from production, then the unrecovered expenses shall be recovered from the operation of succeeding years. Operating expenses mean the total expenditures for coal operation incurred by the operator as provided in a coal operating contract;"

SEC. 3. Section Ten of the same Decree is hereby amended to read as follows:

"SEC. 10. *Additional Fee.* – All valid and subsisting holders of coal revocable permits, coal leases and other existing rights granted by the government for the exploration and exploitation of coal lands or the duly qualified operators thereof who have organized their area into a coal unit, subject to conditions imposed by the Energy Development Board, be granted in the coal operating contract, in addition to the operator's fee provided in Section 9, a special allowance, the amount of which shall not exceed forty percent (40%) of the balance of the gross income after deducting all operating expenses.

"Coal operating contracts entered into with Philippine citizens or corporations except those already covered under the proceeding paragraph, shall be granted a special allowance the amount of which shall not exceed thirty per cent (30%) of the balance of the gross income after deducting all operating expenses: *Provided,* That coal operating contracts in which Philippine citizens or corporations have a minimum participating interest of forty percent (40%) in the contract area may, subject to reasonable conditions imposed by the Energy Development Board, be granted a special allowance not exceeding twenty percent (20%) of the balance of the gross income after deducting all operating expenses.

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

SEC. 4. Section Eleven (a) of the same Decree is hereby amended to read as follows:

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

"(a) Every operator shall be obliged to spend in direct prosecution of exploration work not less than the amounts provided for in the coal operating contract and these amounts shall not be less than the total obtained by multiplying the number of coal blocks covered by the contract by One Million Pesos

(P 1,000,000.00) per block annually: *Provided,* That if the area or a portion thereof is suitable for open pit mining as determined jointly by the operator and the Energy Development Board, the minimum expenditure requirement herein provided may be reduced up to Two Hundred Thousand Pesos (P 200,000.00) per block annually. From the time coal reserves in commercial quantity have been determined jointly by the operator and the Energy Development Board, the operator shall undertake the development and production of the contract area within the period agreed upon in the contract and shall be obliged to spend in the development and production of the contract area an amount which shall be determined by negotiation between the operator and the Energy Development Board taking into account factors such as measured reserves, quality of coal, mining method and location and accessibility to market: *Provided, further,* That with the approval of the Board, the operator may concentrate all the annual work obligations on any one or more of several contiguous or geologically related blocks if it is shown that such concentration of work will be most advantageous and beneficial in the development and operation of the coal operating contract are: *Provided, further,* That if during any contract year, the operator shall spend more than the amount of money required to be spent, the excess may be credited against the money required to be spent by the operator during the succeeding years; *Provided, furthermore:* That should the operator fail to comply with the work obligations provided for in the coal operating contract, it shall pay to the Government the amount it should have spent but did not in direct prosecution of its work obligations: *Provided, finally,* That except in case of open pit mining, the operator shall drill at least thirty (30) holes per block and a minimum footage of exploratory holes before the end of the exploration period as may be specified in the coal operating contract. The Board may, however, taking into account the geological and technical factors involved; allow a lesser number of drill holes and footage giving due credit to other accepted exploration methods and practices."

SEC. 5. The same Decree is hereby further amended by adding the following sections immediately following Section Sixteen thereof.

"SEC. 16-A. *Entry and Use of Private Lands*. –

"(a) Coal exploration, development and exploitation is hereby declared of public use and benefit and for which the power of eminent domain may be invoked and exercised for the entry, acquisition and use of private lands: *Provided,* That any person or entity acquiring any option or right on such land after the execution of a coal operating contract covering such land not be entitled to the compensation herein provided.

"(b) The coal operator shall not be prevented from entry into private lands for the purpose of exploring, developing and exploiting coal contract area, upon prior written notification sent to, and duly received by, the surface owner of the land and occupant thereof. However, if the surface owner of the land and occupant thereof refuses to allow the coal operator's entry into the land despite his receipt of the written notification, or refuses

to receive said written notification, or cannot be found, then the coal operator shall notify the Energy Development Board of such fact, and shall be attached thereto a copy of the written notification.

"(c) In all cases mentioned in the preceding paragraph, the coal operator shall post a bond with the Energy Development Board in the amount to be fixed by said Energy Development Board based on type of the land and the value of the trees, plants and other existing improvements thereon which shall be the basis of compensation of the surface owner of the land and/or occupant thereof in the appropriated cases mentioned in the next succeeding paragraph.

"(d) In the absence of an agreement between the coal operator and the surface owner of the land and/or occupant, the surface owner of the land and occupant thereof shall be entitled to the following compensation;

"(1) *Titled Lands.* – For the conduct of exploration, development and exploitation within lands covered by Torrens Title or other government-recognized titles, the surface owner shall receive as compensation from the coal operator at least One Peso (P 1.00) for every ton of coal extracted on his hand. However, in the event that the surface owner suffers damage to his plants, trees, crops and other improvements on his land as a direct result of the coal operation conducted by the coal operator, the former shall be entitled to compensation for the value thereof that are damaged or destroyed.

"(2) *Untitled Lands or land with Incomplete Titles.* – For the conduct of exploration, development and exploitation of coal within untitled lands or lands with incomplete titles, the surface owner shall receive as compensation from the coal operator at least Fifty Centavos (P 0.50) for every ton of coal extracted on his land. However, in the event that the surface landowner suffers damage to his plants, trees, crops and other improvements on his land as a direct result of operation conducted by the coal operator, the former shall be entitled to compensation for the value thereof that are damaged or destroyed.

"Lands with incomplete titles referred to herein shall mean those possessory rights which can ripen into rights of ownership registerable under the Torrens System.

"(3) *Government Reserved Lands.* – Government reserved lands for purposes other than mining shall be open to a coal operating contract by filing an application therefore with the Energy Development Board, subject always to compliance with pertinent laws, rules and regulations covering such reserved lands; *Provided*, That the compensation due the surface owner shall accrue equally between the supervising agency and of the Energy Development Board, to be disbursed for conservation measures."

"SEC. 16-B. *Timber Rights.* – Any provision of law to the contrary notwithstanding, the operator may cut trees or timber within his coal contract area subject to applicable law and to the rules and regulations of the Bureau of Forest Development as may be necessary for the exploration,

development and exploitation of his coal contract area: *Provided,* That if the lands covered in the coal contract area are already covered by existing timber concessions, the amount of timber needed and manner of cutting and removal thereof shall be subject to the same rules and agreed upon by the operator and the timber concessionaire: *Provided, further,* That, in case no agreement can be reached between the operator and the timber concessionaire, the matter shall be submitted to the Energy Development Board whose decision shall be final. The operator granted a timber right shall be obligated to perform reforestation works within the coal contract area in accordance with the regulations of the Bureau of Forest Development."

"SEC. 16-C. *Water Rights.* – A coal operator shall also enjoy water rights necessary for the exploration, development and exploitation of his coal contract area upon application filed with the Director of the Bureau of Public Works in accordance with the existing laws of water and the rules and regulations promulgated thereunder: *Provided,* That water rights already granted or legally existing shall not thereby be impaired: *Provided, further,* That the government reserves the right to regulate water rights and the reasonable and equitable distribution of water supply so as to prevent the monopoly of the use thereof."

"SEC. 16-D. *Applicability of Certain Provisions of Presidential Decree No. 463*. – The provisions of Chapter XIV (Penal Provisions) of Presidential Decree No. 463, otherwise known as the "Mineral Resources Development Decree of 1974" shall be applicable to the coal operations: *Provided,* That any reference therein to the Decree and to the Bureau Director of Mines shall mean Presidential Decree No. 972 and the Energy Development Board, respectively."

SEC. 6. *Separability Clause.* – Should any provisions of this Decree be held unconstitutional, no other provision hereof shall be effected thereby.

SEC. 7. *Repealing Clause.* – All laws, decrees, executive orders, administrative orders, rules and regulations, or parts thereof in conflict or inconsistent with any provision of this Decree are hereby repealed, revoked, modified or amended accordingly.

SEC. 8. *Effectivity.* – This Decree shall take effect immediately.

27 July 1977
Manila

(B) BED CIRCULAR NO. 79-05-04

RULES AND REGULATIONS GOVERNING COMPLAINTS INVOLVING ILLEGAL COAL OPERATIONS

Pursuant to Section 18 of Presidential Decree No. 972, as amended, and Section 6(g) of Presidential Decree No. 1206, as amended, the following rules and regulations governing complaints involving illegal coal operations are hereby promulgated and immediately effective, for the guidance and compliance of all concerned.

RULE I
General Provisions

Section 1. Scope and Coverage

The provisions of these rules and regulations shall apply to all complaints involving illegal coal operations.

Coal operations shall include, a) the examination and investigation of lands, supposed to contain coal by detailed surface geologic mapping, core drilling, trenching, test pitting and other appropriate means, for the purpose of probing the presence of coal deposits and the extent thereof; b) steps necessary to reach coal deposit so that it can be mined, including but not limited to shaft sinking and tunneling; and c) the extraction and utilization of coal.

Illegal coal operations shall include the performance by any person of any or all activity (ies) mentioned in the foregoing definition of coal operation, which is not pursuant to a valid and subsisting coal operating contract awarded by the Bureau of Energy Development, Ministry of Energy, in accordance with the provisions of Presidential Decree No. 972, as amended otherwise known as the Coal Development Act of 1976.

Section 2. Definition of Terms

a) ":Ministry" shall mean the Ministry of Energy

b) "Bureau" shall mean the Bureau of Energy Development

c) "Minister" shall refer to the Minister of Energy

d) "Director" shall refer to the Director of the Bureau of Energy Development

e) "Contract" refers to a coal operating contract

f) "Contractor" means the holder of coal operating contract awarded by the Bureau.

g) "Person" shall mean any being, natural or juridical, that engages in coal operations

RULE II
Filing of Complaint

Section 1. No Complaint invoking illegal coal operation shall be accepted or entertained by the Bureau unless there is filed with the Bureau a verified complaint accompanied by a personal proof of service upon the respondent.

Section 2. Any modification, supplement, or amendment to such complaint may be made as a matter of right before hearing but in no case less than three (3) days before such hearing, and thereafter, only with the approval of the Bureau.

Section 3. Defect of Form. No defect in the form of any complaint allowed to be filed under these Rules will prejudiced the

complainant; however, the Bureau may direct amendments or require the submission of additional affidavits or other supporting documents as it may deem necessary.

RULE III
Substantial Requirements of Complaint

Section 1. No complaint involving illegal coal operations shall be entertained by the Bureau unless it contains the names and addresses of the complainant and the respondent, a detailed statement of the facts relied upon, discussion of the issues and arguments, together with all supporting plans, documents, data, documentary evidence and affidavits of all witnesses.

RULE IV
Filing of Answer

Section 1. If the complaint contains a cause of action and is sufficient in form and substance, the Bureau shall give due course thereto by requiring the respondent to file an answer with the Bureau, copy furnished the complainant, within five (5) days from receipt of the Order to Answer.

Section 2. The answer shall contain a detained statement of the facts relied upon by the respondents, an exhaustive rebuttal or refutation of the issues and arguments raised in the complaint and all affirmative defenses that he may like to raise, and may be accompanied by all supporting documentary evidence and affidavits of all witnesses.

Section 3. Failure to file an answer shall not prevent the respondent from refuting all the allegations in the complaint but shall, however, bar him from raising my any defense or counter-claim against the complainant.

RULE V
Hearing

Section 1. Upon receipt of the Answer, The Bureau shall fix a date of hearing and all the parties shall be notified;

Section 2. The hearing shall be conducted and completed as much as possible in one setting or in a number of sessions which in case shall last more than five (5) days and shall be presided by an investigator designated by the Director which shall submit his report and recommendation to the Director within five (5) days from the termination of the investigation.

Section 3. The Director may issue subpoena and summons witnesses to appear in any hearing before the Bureau.

RULE VI
Decision

Section 1. The Director shall decide the case within five (5) days from the submission of the report and recommendation of the investigator.

RULE VII
Execution, Finality and Appeal

Section 1. In all cases, the decision of the Director shall be immediately executor.

Section 2. The aggrieved party may appeal to the Minister within five (5) days from receipt of the decision. The Minister shall decide the appeal on the basis of the records transmitted by the Director within five (5) days from receipt of the appeal.

Section 3. The decision of the Minister in appealed cases is final and immediately executory.

RULE VIII
Penalties

Section 1. The Bureau shall impose and collect a fine not exceeding ONE THOUSAND PESOS (P1, 000.00) for every day of illegal coal operation.

In case illegal coal operation is committed by a corporation or association, the manager or the person who has charge of the management of the corporation or association and the officers or directors thereof who have ordered or authorized the commission of an illegal coal operation shall be solidarily liable for the payment of the fine.

The fine imposed shall be paid to the Bureau.

RULE IX
Writ of Execution/Injunction

Section 1. The Bureau may issue corresponding writs of execution directing the City Sheriff, Provincial Sheriff or other government peace officer, whom it may appoint, to enforce the fine or the order of closure, suspension or stoppage of illegal coal operations.

Secdon 2. Upon good cause shown and during the pendency of the complaint, the Bureau may issue an injunction ordering the respondent to stop the alleged illegal coal operations.

RULE X
General Provisions

Section 1. Nothing from the foregoing shall prevent the Bureau, on its own, to institute complaints and decide cases of illegal coal operations against any person.

Section 2. The remedy provided herein shall not be a bar to or affect any other remedy under existing laws, but shall be cumulative and additional to such remedies.

Done at Makati, Metro Manila, this 7th day of May, 1979.

W.R. DE LA PAZ
Acting Director

APPROVED:

GERONIMO Z. VELASCO
Minister

(C) BED CIRCULAR NO. 80-08-07

TO: ALL APPLICANTS FOR COAL OPERATING CONTRACT UNDER PRESIDENTIAL DECREE NO. 972, AS AMENDED

We reiterate and enjoin strict compliance on the Rules and Regulations governing the procedures in the filing of an application for a negotiated coal operating contract under Presidential Decree No. 972, which was amended by Presidential Decree No. 1174 embodied in Circular No. 12, Series of August 27, 1976, promulgated by the then Energy Development Board.

Under said Circular, the documents and payments required to be submitted and paid to accompany all applications for a coal operating contract are:

a) Information Sheet for Coal Operators (EDB Form No. 11).

b) Proposed Coal Operating Contract Patterned after the Model Contract (EDB Form No. 15)

c) A comparative Analysis in tabulated form of items in the Coal Operating Contract proposal which deviate from the Model Contract. Reasons for the proposed changes should likewise be presented.

d) In cases of a corporation, a Certificate of Authority from the Board of Directors of applicant Operator authorizing a designated representative/ representatives to negotiate the Coal Operating Contract. The certification must be executed under oath by the Corporate Secretary and if executed abroad, must be properly authenticated. In cases of partnership or other forms of association, a duly authorized representative/s to negotiate the Coal Operating Contract by the Partners or members thereof.

e) Copies of all technical reports or works done in the proposed coal contract area, whenever applicable.

f) Applicant shall pay a processing fee of P100 per hectare but in no case less than P1,000 for the proposed coal contract area. Check should be made payable to the Energy Development Board. No negotiations can commence until the above requirements have been fully complied with.

In addition, it is now required that at the time of application, financial statements evidencing financial qualifications should also be submitted in accordance with existing guidelines.

Henceforth, no letter of intention or any communications indicating interest claim or application over a coal area although duly recorded by the Records Division of the Bureau of Energy Development shall be recognized as an application unless the procedures and requirements outlined in said Circular 12 dated August 27, 1976 and this Circular are complied with and the required complete documents submitted. Payment of processing fee alone although evidenced by official receipt and other documents which are not complete shall not be considered as a proper application.

This Circular shall take effect immediately.

August 22, 1980

W. R. DELA PAZ
Acting Director

(D) BED CIRCULAR NO. 81-07-07

TO: ALL HOLDERS OF COAL OPERATING CONTRACTS UNDER THE "COAL DEVELOPMENT ACT OF 1976", AS AMENDED

Pursuant to Section 9 of Presidential Decree No. 972, otherwise known as the "Coal Development Act of 1976", this states in part that the operator in a coal operating contract shall:

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

The Bureau of Energy Development prepared a set of safety rules and regulations (Circular No. 1, Series of 1978) to be complied with by holder of coal operating contracts.

For the last two years, however, it has been observed that most fatal accidents in coal mines have been due to mine gases. There is, therefore, a need to reiterate the provisions of said Circular and reinforce existing safety rules and regulations to prevent recurrence of accidents due to mine gases. Accordingly,

all holders of coal operating contracts are required to adhere strictly to the following specific rules and regulations:

1) Workers shall not be allowed to smoke, carry smoking materials, matches, or lighters underground. A system of inspection shall be instituted and strictly enforced to avoid bringing the above materials underground.

2) All active working places underground shall be ventilated by a current of air containing not less than 20% oxygen with sufficient volume and velocity to dilute, render harmless and to carry away flammable, explosive, noxious and harmful gases, dust, smoke and fumes.

3) Where natural ventilation is insufficient, coal mines shall be ventilated by mechanical ventilation equipment.

4) The allowable limits of gases in the active working places shall not be in excess of the concentrations listed below:

    a) Methane (CH4) - 1.00%
    b) Carbon Monoxide (CO) - 0.01%
    c) Carbon Dioxide (CO2) - 0.50%
    d) Hydrogen Sulfide (H2S) - 0.10%
    e) Nitrous Oxide (NO2) - 0.0005%

5) Before the start of every shift, examinations of all active mine workings shall be conducted by the safety engineers or inspectors:

    a) Presence of Methane gas;

    b) Oxygen deficiency;

    c) Conditions of mine faces, roofs and ribs;

    d) Approaches to abandoned areas; and

    e) Quantity and direction of air flow.

6) During each shift, the following shall be undertaken:

    a) Check all working sections of the mine for hazardous conditions;

    b) Before any electrical equipment underground is switched on, check methane gas concentration in the area. Subsequently, check for methane gas at intervals of not more than twenty (20) minutes when the electrical equipment is operating;

    c) Check that methane concentration is below 1% before blasting is initiated.

7) If the methane concentration is:

    a) Over 1.0% but less than 1.5%, the ventilation system shall be improved or changed until the concentration is less than 1.0%

    b) Over 1.5%, all workers in the affected areas shall be withdrawn and adjustments in the ventilation system shall be made until the concentration is less than 1.0%

8) The following examinations shall be conducted weekly;

    a) Check all working sections for hazardous conditions;

    b) Check conditions of idle workings and abandoned areas;

    c) Measure quantity and direction of air flowing in all underground sections of the mine.

9) Every month, tests for dangerous gases like carbon dioxide, carbon monoxide, hydrogen sulphide and nitrous oxide shall be made.

10) All pre-shift, on-shift, weekly and monthly and other examinations and tests shall be recorded in a permanent log book.

11) Air containing more than 0.25% methane shall not be used for ventilating any working place in the mine.

12) Methane detectors shall be used to test the presence of methane gas.

13) Permissible flame safety lamps or any approved oxygen detecting devices shall be used to test oxygen deficiency in coal mines.

14) Permissible multi-gas detectors shall be used to detect gases other than methane and oxygen.

15) Only permissible electrical equipment shall be used underground.

16) Electrical wires and cables shall be insulated adequately and properly protected.

17) All electrical connections or splices shall be re-insulated at least to the same degree as the remainder of the wire.

18) Only permissible cap lamps shall be used.

19) Only permissible explosives shall be used for blasting operations underground.

20) The entrance of any underground workings that is declared inactive, closed or abandoned shall be sealed by the operator. The seal shall be of strong materials and well constructed so that it is not easily broken into. A "DANGER" sign shall be posted in the said place.

21) No man shall be assigned to work in a place that has been stopped or abandoned unless accompanied by the shift boss or higher official directly ordered by the mine manager.

Compliance with this Circular is hereby strictly enjoined. Non-compliance with any of the above rules and regulations shall constitute sufficient ground for suspension or cancellation of a coal operating contract.

This Circular shall take effect immediately.

July 20, 1981

W. R. DELA PAZ
Acting Director

(E) BED CIRCULAR NO. 82-12-11

TO: ALL HOLDERS OF COAL OPERATING CONTRACTS UNDER PRESIDENTIAL DECREE NO. 972, AS AMENDED, COAL TRADERS, DEALERS, BROKERS, MIDDLEMEN, HAULERS, DELIVERY AGENTS AND END-USERS

A. Section 16-D of Presidential Decree No. 1174, amending Presidential decree No. 972, makes applicable the provisions of Chapter XIV (Penal Provisions) of Presidential Decree No. 463, otherwise known as the "Mineral Resources Development Decree of 1974" to Coal operations.

Pursuant to Section 18 of Presidential Decree No. 972, as amended, and reiterated under Section 12 a (*iii*) of Presidential Decree No. 1206, as amended, which provides that the Bureau of Energy Development is charged with carrying out the provisions of Presidential Decree No. 972 and that it is vested with the authority to promulgate rules and regulations implementing thereof, the following provisions of Presidential Decree No. 463, Presidential Decree No. 1612, Otherwise known as Anti-Fencing Law and the Revised Penal Code, so far as related to coal operations are hereby restated for the information and guidance of all coal operating

contractors or operators, traders, dealers, brokers, middlemen, haulers, delivery agents and end-users involved in coal operations except those government agencies or entities duly authorized by law to be such, to wit:

1. False Statements – Any person who, knowingly presents or causes to be presented any false application, declaration, or evidence to the Government or publishes or causes to be published any prospectus or other information containing any false statement relating to coal mines, mining operations, or mining claims, shall be guilty of perjury if such statement is made under oath, and shall be punished upon conviction in accordance with the provisions of the Revised Penal Code. If such false statement is not made under oath, he shall be punished, upon conviction, by a fine not exceeding One Thousand Pesos (P1, 000.00) Section 75, P.D. No. 463.

2. Theft of Minerals – Any person who, without a valid coal operating contract or authority to mine, shall extract, remove and/or dispose of minerals for commercial purposes belonging to the government or from the coal contract areas held or owned by other persons without the written permission of the government official concerned shall be deemed to have stolen the ores or the products thereof from the mines or mills. He shall, upon conviction, be imprisoned form six (6) months to six (6) years or pay a fine from one hundred pesos to ten thousand pesos, or both, in the discretion of the court, besides paying compensation for the minerals extracted and disposed of, the royalty and the damage caused thereby (Section 78, P.D. No. 463).

3. Salting of Mineral Lands and Minerals. - Any person, who knowingly places or deposits, or becomes accessory to the placing or depositing of, any mineral in any land for the purpose-of "salting" or misleading other persons as to the value of the mineral deposits in such land, or who, knowingly comingles or causes to be comingled samples of minerals with any other substances whatsoever which increases the value or in any way changes the nature of the said minerals for the purpose-of deceiving, cheating, or defrauding any person, shall be punished, upon conviction, by imprisonment not exceeding a period of five (5) years besides paying compensation for the damage which have been caused thereby (Section 80, P.D. No. 463).

4. Illegal Obstruction to Government officials. – Any person who willfully obstructs, harasses, and/or threatens the Director of the Bureau of Energy Development or any of his subordinates or representatives, in the performance of their duties shall be punished upon conviction, by a fine not exceeding one thousand Pesos (P1, 000.00), or by imprisonment of not more than one (1) year or both, at the discretion of the court (Section 86, P.D. No. 463).

5. Offenses of Corporation. - Whenever any of the offenses mentioned in Chapter XIV of P.D. No. 463 is committed by a corporation, partnership or association, the President and each of the Directors or managers or said corporation, partnership or association or its agent or representative in the Philippines in case of a foreign corporation or association who shall have directed, or induced the commission of the said offense shall be criminally liable as principal thereof (Section 89, P.D. No. 463).

6. "Fencing" is the act of any person who, with intent to gain for himself or for another, shall buy, receive, possess, keep, acquire, conceal, sell or dispose of, or shall buy and sell, or in any other manner deal in any article, item, object or anything of value which he knows, or should be known to him, to have been

derived from the proceeds of the crime of robbery or theft (Section 2 (a) of P.D. No. 1612')

"Fence" includes any person, firm, association, corporation or partnership or other organization who/which commits the act of fencing (Section 2 (b) of P.D. No. 1612).

Any person guilty of fencing shall be punished as indicated under Section 3 of P.D. No. 1612. If the fence is a partnership, firm, corporation or association, the president or the manager or any officer thereof who knows or should have known the commission of the offense shall be liable.

7. Every penalty imposed for the commission of the crimes enumerated above shall carry with it the forfeiture of the proceeds of the crime and the instruments or tools with which it was committed.

   Such proceeds and instruments shall be confiscated and forfeited in favor of the Government, unless they be the property of a third person not liable for the offense (Article 45 of the Revised Penal Code)

8. 1. Under Item A. 6 above, a person guilty of committing the act of fencing - is punishable under Presidential Decree No. l612. It is hereby reiterated that any unauthorized coal trader, dealer, broker, middleman, hauler, delivery agent, or end-user who, with intend to gain for himself or for another, shall buy, receive possess, keep, acquire, conceal, sell or dispose of, or shall buy and sell, or in any other manner deal in any coal produce which he knows, or should be known to him, to have been derived from the proceeds of the crime of robbery or theft is guilty of the crime of fencing.

Please be guided accordingly.

December 30, 1982

W. R. DELA PAZ
Acting Director

(F) BED CIRCULAR NO. 82-12-12

TO: ALL HOLDERS OF COAL OPERATING CONTRACTS UNDER PRESIDENTIAL DECREE NO. 972, AS AMENDED

The active exploration and exploitation of coal resources by the government has been declared as an urgent national policy under Presidential Decree No. 972, as amended by Presidential Decree No. 1174. "Work and financial commitments of the contractor are embodied in the work program which forms an integral part of each coal operating contract to be complied with within definite terms."

Exploration activities pursuant to the said work program may include tunneling, shaft sinking, aditing, diamond drilling, auger drilling, test pitting, trenching, etc. During the exploration over the coal operating contract areas by the operators, coal is removed or extracted as incident to such exploratory activities.

Investigations made by the BED technical staff, however, indicate that many coal operating contractors or operators for exploration have concentrated their activities on the extraction or removal of coal deposits rather than actively prosecuting exploration

works as embodied in their work program. Reports further show that the volume of coal extracted are considerably more than reasonably necessary to conduct exploration works and that although geological studies warrant the conversion of the contract from exploration to development/production, there is an intention to delay such conversion.

There are also reported instances of operators using their contracts to accommodate and sell coal produced by persons who have no operating contract and of operators selling their production through another operator.

Accordingly, pursuant to Section 18 of Presidential Decree No. 972, as amended, in relation to Section 6 (e) and 12 a (iii) of Presidential Decree No. 1206, as amended by Presidential Decree No. 1573, the following reminders and guidelines are hereby issued for the strict enforcement and compliance of holders of coal operating contracts or operators for exploration, to wit:

1) Holders of coal operating contracts for exploration are hereby reminded that they are allowed to extract coal from their coal operating contract areas only such amount or volume as are reasonably necessary and incidental to the exploration activities done on said areas, consistent with the work commitment embodied in their respective work programs.

   The volume of coal extracted should be included and reported to the Bureau of Energy Development on a monthly basis using BED-CD-Coal 4 (per Circular No. 81-11-10). The proceeds from the sale of such extracted coal should be included in the quarterly reports denominated as Coal Operations Return required under BED Circular No. 81-11-10.

2) Coal operators are not allowed to purchase or otherwise acquire by any other means coal produced by persons or corporations who are without a coal operating contract. Without prejudice to the applicable penal sanction elsewhere provided herein and penalties for violation of the A*nti-Fencing Law*, as re-stated in BED Circular No. 82-12-11 the coal thus acquired by the operator shall be treated as production, subject as aforementioned to accounting and payment of the government's share. The costs for acquiring such coal are non-recoverable under the operator's coal operating contract.

3) Unless otherwise duly authorized by BED, coal operators should sell their coal produce only to legitimate end users and to persons or entities which are duly authorized by law or existing rules and regulations to purchase coal. Without prejudice to the applicable penal sanction elsewhere provided, the coal operator shall be liable for the payment of any damages which the government may have suffered for violation of this provision.

4) Coal operators who sell coal produced by another coal operating contractor shall be responsible for the withholding and remittance of the government share to the Bureau of Energy Development. The government share shall be computed at 3% of gross sales without the benefit of any deduction and shall be remitted to BED within ten (10) days from date of sale. This does not exempt the producing contractor to render the quarterly report and remittance required under Circular No. 81-11-10.

5) Every violation of, or omission under this Circular shall be punishable by a fine of One Thousand Pesos (P 1,000.00), without prejudice to the suspension or cancellation of the coal operating contract of the coal contractor or operator concerned, in the discretion of the Bureau of Energy Development.

The guidelines (Item 2-5) contained in this Circular shall take effect upon approval by the Minister of Energy.

December 27, 1982

W. R. DE LA PAZ
Acting Director

Approved:

GERONIMO Z. VELASCO
Minister of Energy

(G) BED CIRCULAR NO. 83-08-09

TO: ALL COAL OPERATORS UNDER PRESIDENTAL DECREE 972

A review of the operations of coal operators showed among others, that most operators have failed to strictly observe the reporting and remittance requirements of the Bureau of Energy Development. The following unauthorized practices were likewise noted:

1) Non-submission of coal operations return to avoid immediate payment of the government share.

2) Non-reporting of certain revenue from sale of coal

In order to enforce the observance of the said reporting and remittance requirements, Chapter three, Section V (Penalties) of BED Circular 81-11-10 is hereby amended to read as follows:

"In general, penalties under this Section shall be imposed for the following:

1) Failure to submit the Production/Sales/ Inventory report on time as provided under Section II.

2) Failure to file the Coal Exploration, Development and Production Investment and Recoverable Cost Summary (BED-CD-Coal 6) on time as specified in Section IV.

3) Failure to file the Coal Operations Return on time as specified in Section III.

4) Failure to remit the government share on time.

5) Failure to report sales proceeds.

6) Filing of fraudulent return.

The penalties to be imposed shall be in accordance with the following:

A. For failure to file a return/report on time.

   1. lst 30 days P 10/day
      31 – 60- days P 20/day
      61 – 90 days P 30/day
      Over 90 days P 50/day

   2. After 90 days, cancellation proceedings of the coal operating contract shall be initiated. Cancellation proceedings shall likewise be initiated if the operator fails to submit the required return/ report for two consecutive quarters.

B. For failure to remit the government share on coal produced and sold.

   If the amount due the government or any part of such amount is not paid on time, there shall be collected as part thereof the following:

   1. 14% interest if the return is filed on time and the reason for non-

remittance is approved by BED. The interest shall be computed from the end of each of the related calendar quarter.

2. 15% surcharge plus interest if the return is not filed on time.

3. 25% surcharge plus interest for failure to report sales proceeds which have been recorded in the accounting records of the coal operator.

4. 50% surcharge plus interest for failure to record and report certain revenue from sale of coal. This act shall be presumed to have been intended to defraud the government of its lawful share of the sales proceeds. A repeated commission of this act shall conclusively establish the intent of the operator to defraud the government of its share of the proceeds and shall therefore result in the cancellation of the coal operating contract.

The above penalties are in addition to the ones prescribed under item A above and they are cumulative in nature. For instance, in addition to the daily fixed penalty, failure to file the return on time coupled by a failure to report recorded sales shall be assessed a 40% surcharge plus interest. On the other hand, 90% surcharge plus interest will be assessed on coal operator for failure: to file the return on time; to report recorded sales proceeds; and to record and report certain revenue from sale of coal.

The surcharge will be imposed on the total amount due BED for a particular period and not just on the government share from the unreported and/or unrecorded revenue. On the other hand, both the assessed government share and the surcharge will be assessed of interest.

In all of the above cases, the performance guarantee posted with the Bureau shall be held answerable for non-payment of the penalties."

The foregoing provisions shall take effect immediately.

July 21, 1983

W. R. DE LA PAZ
Acting Director

Approved:

GERONIMO Z. VELASCO
Minister of Energy

(H) BED CIRCULAR NO. 83-11-017

TO: ALL HOLDERS OF COAL OPERATING CONTRACTS UNDER PRESIDENTIAL DECREE NO. 972

An on-going review of the operations of the coal operators showed that certain operators are buying coal from non-coal operators. This act is viewed by the Bureau with grave concern as this contributes to the proliferation of illegal mining and trading of coal. By way of restatement of Item 6 of BED Circular No. 82-12-11 dated December 20, 1982, fencing is the act of any person who, with intent to gain for himself or for another, shall buy, receive, possess, keep, acquire and sell, or in any other manner deal in any article, item, object or anything of value which he knows, or should be known to him, to have been derived from the proceeds of the crime of robbery or theft (Section 2 (a) of PD 1612).

"Fence" includes any person, firm, association, corporation or partnership or other organization who/which commits the act of fencing (Section 2 (b) of PD No. 1612).

Any person guilty of fencing shall be punished as indicated under Section 3 of PD 1612. If the fence is a partnership, firm, corporation or association, the president or the manager or any officer thereof who knows pr should have known the commission of the offense shall be liable.

All coal operators are therefore hereby ordered to desist from buying coal from unauthorized traders and/or coal operators. Violation of this order shall result in the cancellation of the coal operating contract and the prosecution of the operator under the "Anti-Fencing Law of 1979" as embodied under Presidential Decree No. 1612.

For strict compliance.

November 22, 1983

W. R. DELA PAZ
Acting Director

(I) BED CIRCULAR NO. 85-10-03

TO: ALL COAL OPERATORS UNDER P.D. 972, AS AMENDED

In order to stop the coal mining undertaken by person and entities who do not possess a valid and subsisting coal operating contract executed under P.D. 972, as amended, and in order to protect legitimate coal operators from illegal coal mining activities which undermines government and private initiative to meet the objective of P.D. 972, as amended, the BED issued Circular No. 82-12-12 dated December 27, 1982.

Reports received by the BED to monitor compliance with the BED Circular No. 82-12-12 indicate the existence of a number of incidences involving the sale of coal by those who do not possess coal operating contracts. This malpractice definitely run-counter to the objectives of P.D. 972, as amended, especially so when committed with the intention to impede BED's exercise with its regulatory and supervisory power over coal operations.

Cognizant of the foregoing considerations and principally to promote the objectives of P.D.972, as amended, the following rules and regulations are promulgated in addition to BED Circular No. 82-12-12.

I. AUTHORIZATION FOR THE EXTRACTION AND SALE OF COAL

As provided under P.D .972, as amended, only holders of validly executed and subsisting coal operating contracts are authorized to undertake coal operations particularly exploring for, extracting and sale of coal resources. The unauthorized extraction and sale of coal constitute a crime of theft, while the purchase of illegally extracted coal constitutes the offense of fencing. Applicants for a coal operating contracts are not authorized to explore, extract and sell coal. Such exploration, extraction and/or sale shall be sufficient ground for disapproval of the application, without prejudice to criminal prosecution for theft.

II. LIMITATIONS OF COAL OPERATING CONTRACTS

Only holders of coal operating contracts for production are authorized to sell the coal so extracted. Holders of a coal operating contract for exploration are not as a rule authorized to sell the coal so extracted except the incidental production arising from exploration, and only upon prior approval by the Bureau of Energy Development as provided under BED Circular No. 82-12-12. This does not however authorized exploration contracts to extract coal more than is reasonably necessary to pursue exploration.

III. DIRECTORY OF COAL OPERATORS

In order to assure that only coal operators with valid and subsisting coal operating contracts shall engage in coal operations authorized by the respective coal operating contracts, the BED will periodically prepare a listing of coal operators duly accredited by the BED as authorized to extract, sell or market coal. The listing shall be disseminated to all known consumers or purchasers of coal for their information and observance. In this manner coal operators will be reminded of the extent and limitations of their authority to engage in coal operations and at the same time serve notice to consumers or purchasers from whom to buy coal.

IV. LIST OF AUTHORIZED AND SUBSISTING PRODUCTION COAL OPERATORS

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All consumers and purchasers of coal are enjoined to purchase their coal requirements exclusively from the above listed coal operators authorized to engage in production. Except as expressly authorized in writing by the BED, holders of exploration contract are not authorized to sell coal. Consumers therefore are required to inquire beforehand from the BED for the authorization of exploration coal operators to sell coal before purchasing coal from them. Consumers of coal who buy from unauthorized coal operators or from sources other than the above listed are liable for criminal prosecution, for theft.

Except for the above-listed production coal operating contracts, the Bureau of energy Development has not authorized, nor will it authorized, in any mode or manner whatsoever, persons or entities without a coal operating contract to extract, sell or market coal.

V. PENALTIES

Violation by the coal operators of any of the foregoing shall cause the cancellation of their coal operating contract, without prejudice to criminal prosecution.

Consumers purchasing coal from unauthorized sources will be prosecuted criminally in accordance with law.

This circular shall take effect upon its approval by the Minister of Energy.

Issued this 9th day of October, 1985, Makati, Metro Manila.

ARTHUR SALDIVAR-SALI, Ph.D.
Deputy Director

APPROVED:

GERONIMO Z. VELASCO
Minister of Energy

(J) DEPARTMENT CIRCULAR NO. 93-12-10

TO: ALL HOLDERS OF COAL OPERATING CONTRACTS UNDER PD 972, AS AMENDED BY PD 1174

SUBJECT: GUIDELINES ON POSTING OF PERFORMANCE GUARANTY

PURPOSE: THIS CIRCULAR IS BEING ISSUED TO ENABLE THE DEPARTMENT OF ENERGY (DOE) TO EFFECTIVELY ENFORCE THE STATUTORY AND CONTRACTUAL PROVISIONS ON THE POSTING OF PERFORMANCE GUARANTY AND TO PROVIDE THE CONTRACTOR THE NECESSARY GUIDELINES ON THE AMOUNT OF GUARANTY ACCEPTABLE TO THE DOE.

I. General Provisions

The performance guaranty shall be posted within thirty (30) days after the effectivity date of the contract. No copy of the contract shall be released to the contractor unless the required performance guaranty is timely and adequately posted in favor of the DOE.

II. Amount of Guaranty

A. Exploration Contracts

The initial amount of the guaranty shall be equal to the first-year, financial commitment based on the work program under the contract. Subsequent thereto, the amount of guaranty may be increased or decreased subject to the following conditions:

1. If the contractor's actual expenditures during the year exceed its commitment, the excess shall be credited to the succeeding year. The difference between the second-year expenditure commitment and the excess amount for the first year shall then become the basis of computing the second-year performance bond guarantee.

2. In the event that the contractor has fully complied with its financial commitments under the contract but has not fully performed its work obligations, the amount of guaranty shall be equal to the penalty it should pay the government as provided under the contract.

B. Development and Production Contracts

The amount of guaranty shall be equal to the government share based on yearly production commitment, computed based on the average

selling price of coal during the year as determined by the DOE.

If the contractor has fully complied with all its financial commitments but the contract is still in effect, a minimum guaranty of P100.000 shall be posted by the contractor to cover all other obligations under the contract.

III. Penalties

For failure to post or renew the performance bond on due dates, the penalties to be imposed shall be in accordance with the following:

1. 1st 30 days P10/day
   31 - 60 days P20/day
   61 - 90 days P30/day
   Over 90 days P50/day

2. After 90 days, cancellation proceedings of the coal operating contract shall be initiated by the DOE.

This circular shall take effect immediately.

December 29, 1993

RUFINO B. BOMASANG
Undersecretary

(K) DEPARTMENT CIRCULAR NO. 94-11-07

TO: ALL HOLDERS OF COAL OPERATING CONTRACT UNDER PRESIDENTIAL DECREE (PD) 972 AS AMENDED BY PD 1174

In order to effectively enforce collection of the assessed government share pursuant to Section 24 of RA 7638 in the exploration, development and production of coal by coal contractors under a Coal Operating Contract with the government through the Department of Energy (DOE), the following guidelines are hereby issued for the resolution of the audit exceptions and final assessment of government share:

A. Determination of the Final Assessment of Government Shares and Validation of Expenses as Recoverable Costs

   1. The contractor shall be given thirty (30) days from receipt of the audit report to contest the validity of the DOE audit assessments and exceptions, otherwise, the assessments and exceptions becomes final.

   2. Should the contractor seasonably contest the validity of the assessments and exceptions, it shall have sixty (60) days from the date of the contested assessments and exceptions within which to submit to the DOE all pertinent documents, records and/or data in support of its claims. In such an event the enforcement of the DOE assessments and exceptions shall temporarily be suspended.

   3. The DOE shall within sixty (60) days from the date of submission of the pertinent documents, records and/or data resolve the contested assessments and exceptions whose findings thereof shall become final and executory.

B. Remittance of the Assessed Government Share

1. The assessed government share shall be promptly remitted within thirty (30) days from the date of receipt by the contractor of the DOE's final assessment including the 14% interest per annum which shall be computed starting on the first day following the end of the calendar year covered by the audit.

2. In the event the contractor fails to remit the assessed government share within thirty (30) days from the date of receipt of the DOE's final assessments, the contractor's COC shall be suspended or cancelled as warranted and the unsettled account shall be referred to the Office of the Solicitor General for appropriate legal action.

This Circular shall take effect immediately.

24 November 1994, Fort Bonifacio, Metro Manila

FRANCISCO L. VIRAY
Secretary

(L) DEPARTMENT CIRCULAR NO. 95-05-004

WHEREAS, Section 2 of Republic Act No. 7638 declares the policy of the State, among others, to ensure a continuous, adequate, and economic supply of energy with the end in view of ultimately achieving self-reliance in the country's energy requirements through the integrated and intensive exploration, production, management, and development of the country's indigenous energy resources;

WHEREAS, Sections 5(b) and 5(c) of R.A. 7638 mandate the Department of Energy (Department) to establish and administer programs for the exploration, transportation, marketing, distribution, utilization, conservation, stockpiling, and storage of energy resources of all forms which include coal, in order to meet the country's increasing energy requirements and reduce its dependence on imported fuels;

WHEREAS, under Section 5(d) of R.A. 7638, the Department likewise exercises supervision and control over all government activities relative to energy projects in order to attain the goals embodied in Section 2 of said Act;

WHEREAS, the Department with the support of the Philippine coal mining industry has prepared a Coal Industry Action Plan, in consultation with other agencies, for the purpose of, among others, creating a guaranteed market for local coal;

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WHEREAS, to ameliorate and facilitate the marketing of coal by local coal producers thereby upgrading their financial viability, it is deemed necessary to issue this Circular.

ACCORDINGLY, the Department promulgates the following guidelines for the information, guidance and implementation of all concerned.

SECTION 1. The National Power Corporation (NPC) is hereby required to utilize local coal for at least ten percent (10%) of its total coal requirements.

SECTION 2. NPC shall submit to the Department, through the Energy Industry Administration Bureau, the necessary reports covering each semester within the month next following said semester, to establish compliance with this Circular.

SECTION 3. This Circular shall take effect immediately a day after its complete publication in a newspaper of general circulation.

May 25, 1995.

FRANCISCO L. VIRAY
Acting Secretary

Chapter 3
Philippine Energy Contracting Round (PECR) Issuances

DEPARTMENT ORDER NO. 2003-05-005

RECONSTITUTING THE DEPARTMENT OF ENERGY CONTRACTS NEGOTIATING PANEL

In the interest of the service and in order to institutionalize and provide procedural guidelines in the negotiations/approval of service contracts and coal operating agreements under PD 87 (Oil and Gas), PD 1442 (Geothermal), PD 972 (Coal) and EO 462 (Ocean, Solar and Wind), as amended, the pertinent constitutional provisions and existing circulars, rules and regulations thereon, the Department of Energy Contracts Negotiating Panel is hereby reconstituted as follows:

Department of Energy (DOE) Contracts Negotiating Panel

*Undersecretary** –	Chairman
*Assistant Secretary** –	Vice-Chairman
*Director, Energy Resource Development Bureau** –	Vice-Chairman for Petroleum, Geothermal and Coal Contracts
*Director, Energy Utilization and Management Bureau** –	Vice-Chairman for Ocean, Solar and Wind (OSW)
*Contracts Chief, Contracts Division** –	Vice-Chairman
Legal/Negotiations Chief, Petroleum Resource Development –	Member for Petroleum Resource Development
Petroleum Contracts Chief, Geothermal and Coal Division –	Member for Geothermal and Coal
Contracts Chief, Renewable Energy Division –	Member for OSW
Contracts Chief, Compliance Division –	Member
Designated Resource Economist –	Specialist Staff

**Regular Member*

The Contracts Division shall also be responsible for the flow of documents from receipt of application to processing by the various panel members for technical, financial and economic evaluation. It is hereby directed that henceforth, all applications under PD 87, PD 1442 and PD 972, and EO 462, as amended, shall be examined, evaluated and reviewed by the DOE Contracts Negotiating Panel which is hereby directed and authorized to negotiate with the applicants, the terms and conditions of contracts pursuant to existing constitutional provisions and applicable laws, circulars, rules and regulations.

Department Order No. 95-08-21 dated 17 August 1995, Department Order No. 2002-02-001 dated February 12, 2002 and any other orders or directives inconsistent herewith are hereby accordingly amended or superseded.

May 16, 2003

VICENTE S. PEREZ, JR.
Secretary

DEPARTMENT CIRCULAR NO. 2005-04-004

INVESTMENT PROMOTION AND CONTRACTING ROUNDS FOR GEOTHERMAL AND COAL PROSPECTIVE AREAS

WHEREAS, Section 1 of Presidential Decree No 1442, otherwise known as "An Act To Promote the Exploration and Development of Geothermal Resources", and Section 6 of Presidential Decree No. 972, as amended, otherwise known as "The Coal Development Act of 1976", allow the Government to promote and offer prospective geothermal and coal areas for competitive proposals for geothermal service contract and coal operating contract;

WHEREAS, the Department of Energy (DOE) desires to conduct geothermal and coal investment promotion and utilize the competitive mode as much as practicable for the granting of' geothermal service contract and coal operating contract over areas that were predefined by the Energy Resource Development Bureau (ERDB) of the DOE based on a blocking reference system to facilitate the identification of the most technically efficient and cost-effective exploration and production programs for each of the offered areas;

WHEREAS, in order to further increase the development and utilization of indigenous geothermal energy and coal resources, there is a need to attract both local and foreign investments for geothermal energy and coal exploration, development and production;

NOW, THEREFORE, in consideration of the aforementioned premises, the following procedure shall govern the competitive system of awarding geothermal service contracts and coal operating contracts:

1. Contracting Rounds

1.1. The Energy Resource Development Bureau (ERDB) shall determine prospective areas within the Philippine territory for competitive contracting rounds. The Secretary of Energy, upon the recommendation of the ERDB Director and the Undersecretary having supervision over ERDB, shall declare such areas open for Geothermal Service Contract (GSC) and or Coal Operating Contract (COC) proposals. The contracting round shall have a duration of three (3) months beginning from the date of announcement until the deadline of submission of proposals. During this period and three months immediately prior to the start of each contracting round, no geothermal and/or coal contract application on a first-come first-served basis shall be accepted by the DOE. For the year 2005, this moratorium period for geothermal, petroleum and/or coal contract application shall commence on May 15, 2005.

1.2. The ERDB shall prepare the contracting round documents, with a description of available data and the geothermal/coal prospectivity of each area. It shall then request the DOE Contract Negotiating Panel (CNP), as constituted under Department Order No. 2003-05-005, to disseminate information on the contracting round. The notices will include among others the following:

a. Map of the area being offered during the contracting round;

b. Schedules including the commencement of the contracting rounds; and

c. Other information as appropriate

1.3. Participants to the contracting rounds shall submit the following documents for evaluation by the DOE CNP:

a. Work Program

a.1. Draft of the proposed GSC/ COC, with comments, if any;

a.2. The proposals for work program and minimum expenditure in respect to the area or areas specified in the application.

b. Financial Documentation

b.1. Latest audited financial statement of the corporation and annual reports for the last three (3) years;

b.2. Duly filled-out information sheet of the corporation;

b.3. Resume/Profile of the corporation/incorporators/ officers;

b.4. Particulars of the kinds of financial resources available to the applicant including capital, credit facilities and guarantees so available.

b.5. Copy of latest income business tax returns duly stamped and receive by the Bureau of Internal Revenue, and duly validated with the tax payment made thereon, if applicable.

c. Legal Documentation

c.1. Articles of Incorporation;
c.2. By-laws of the Corporation;

c.3. SEC Registration Certificate.

d. Technical Documentation

d.1. Particulars of the technical and industrial qualifications of the applicant and his employees' working experience;

d.2. Particulars of the technical and industrial resources available to the applicant.

DOE may require additional information as it sees fit.

1.4. The DOE negotiating panel shall open the submitted proposals relative to the contracting round during the first working day after the announced deadline for submission of proposals. No proposals or contracting documents shall be accepted on the designated day of the opening of proposals.

1.5. The Panel shall evaluate the contracting round documents within four (4) weeks from the opening of the contracting round deadline. The following factors will be evaluated in judging the proposals:

1. Proposed work program;
2. Financial/Legal qualifications;
3. Technical qualifications.

The DOE CNP if it deems appropriate, may reject any or all proposals submitted.

1.6 The DOE CNP shall formally inform all the applicants of the results or the evaluations and shall commence

negotiation with the preferred proponent to finalize the contract details. The DOE CNP shall endeavor to complete negotiations with winning applicants within ninety (90) days. The DOE CNP shall then make a recommendation to the DOE Secretary for any award of GSC and/or COC based on the negotiations conducted.

1.7. Areas not awarded after each contracting round may be awarded to any qualified applicant under such terms and conditions as the DOE CNP may recommend to the DOE Secretary.

2. Effectivity

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

April 20, 2005

RAPHAEL PERPETUO M. LOTILLA
Secretary

DEPARTMENT CIRCULAR NO. DC2006-12-0014

REITERATING A TRANSPARENT AND COMPETITIVE SYSTEM OF AWARDING SERVICE/OPERATING CONTACTS FOR COAL, GEOTHERMAL AND PETROLEUM PROSPECTIVE AREAS, REPEALING FOR THIS PURPOSE DEPARTMENT CIRCULAR NO. 2003-05-005 AND DEPARTMENT CIRCULAR NO. 2005-04-004

WHEREAS, Section 1 of Presidential Decree No. 1442, otherwise known as *"An Act to Promote the Exploration and Development of Geothermal Resources,"* Section 4 of Presidential Decree No. 972, as amended, otherwise known as *"The Coal Development Act of 1976,"* and Section 4 of Presidential Decree No. 87, as amended, otherwise known as the *"Oil Exploration and Department Act of 1972,"* allow the Philippine Government to promote and undertake the exploration, development and production of the country's indigenous coal, geothermal and petroleum resources through service/operating contracts with contractors;

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

WHEREAS, on 19 May 2003 and 20 April 2005, the DOE issued Department Circular No. 2003-05-005 and 2005-04-004, respectively, both providing for investment promotion and public contracting rounds for awarding coal, geothermal and petroleum service/operating contracts;

WHEREAS, the DOE desires to adopt the most effective strategy for promoting and attracting local and foreign investment to further increase the exploration, development and production of prospective coal, geothermal and petroleum areas;

WHEREAS, the DOE reiterates and acknowledges the need to continue adopting a transparent and competitive system for awarding service/operating contracts for exploration, development and production of the country's coal, geothermal and petroleum resources;

WHEREAS, consistent with national interest, the DOE has, after consultation with stakeholders, resolved to enhance government participation, through the government corporate sector, in the exploration, development and production of indigenous oil and gas resources through the grant of option to PNOC to participate in petroleum service contracts;

NOW, THEREFORE, in consideration of the aforementioned premises, the following procedures shall govern the transparent and competitive system of awarding service/ operating contracts for coal, geothermal and petroleum exploration, development and production.

1. Contracting Rounds

1.1 The Energy Resource Development Bureau (ERDB) shall determine prospective coal, or geothermal, or petroleum areas found in the Philippine territory and its maritime zones including the continental shelf for inclusion in the competitive public contracting rounds. The DOE Secretary, upon the recommendation of the ERDB Director and the Undersecretary exercising supervision over ERDB, shall declare such areas open for competitive public contracting round. The DOE shall not accept any application or proposals for exploration, development and production service/operating contracts except during the competitive public contacting rounds. No applications for small-scale mining permit for coal operations shall likewise be entertained in the offered areas until after service/operating contracts have been awarded.

1.2 The ERDB shall prepare the contracting round documents with a description of available data and the prospect of geothermal/coal/ petroleum resources in each area. The DOE Contract Negotiating Panel (DOE-CNP per Department Order No. 2003-05-005) shall then disseminate information of the contracting round which shall include, among others, the following:

a. Location Map and Technical Description (TDs) of the area/s being offered during the contracting round;

b. Schedule of activities for the contracting round; and

c. Such other information as the DOE-CNP may deem appropriate

1.3 Interested parties for the contracting rounds on petroleum may access data available at DOE after payment of a Data Viewing Fee of Five Hundred United States Dollars (US$500.0) for a two (2)-day maximum visit. If the interested party decides to purchase the DOE data, the Data Viewing Fee will be credited to the total price of the purchased data.

1.4 Interested parties for the contracting rounds on petroleum, coal and geothermal areas shall submit complete set of documents for evaluation by the DOE-CNP. The DOE-CNP may require submission of additional information/documents, as may be necessary, during evaluation of the proposals for

clarification purposes only. A non-refundable application fee based on DOE's Schedule of Fees and Charges in compliance with EO 197 shall be paid by the applicant upon submission of the application/ proposal which should include the following documents:

a. Work Program

a.1 Proposed oil/gas service contract, geothermal service contract or coal operating contract based on existing DOE Model Contracts;

a.2 Proposed work program (discussion on the application of the different exploration strategies and methodologies to be employed in delineating energy resources at depth with subsequent manpower complement should be in detailed narrative format and the Schedule of Activities in Gantt Chart) and minimum expenditure on annual/sub-phase basis for each proposed activity with respect to the area or areas specified in the proposal; and

a.3 Narrative presentation of data and information (such as geology, stratigraphy, geochemistry, geophysics, water or coal quality, resource estimate, resource indicators, etc.) suggesting presence of energy resources at depth.

b. Financial Proposal and Documentation

b.1 Audited financial statements and annual reports for the last three (3) years;

b.2 Duly filled-out information sheet;

b.3 Resume/profile of the prospective contractor, its incorporators, stockholders or officers;

b.4 Particulars of the kind of financial resources available to the prospective contractor including capital, credit facilities and guarantees so available; and

b.5 Certified copy of latest income business tax returns filed with the Bureau of Internal Revenue, and duly validated with the tax payment made thereon, if applicable.

c. Legal Documentation

c.1 Certified copy of Articles of Incorporation;

c.2 Certified copy of the by-laws of the prospective contractor;

c.3 SEC Registration Certificate; and

c.4 Certified copy of latest general information sheet submitted to the Securities and Exchange Commission.

d. Technical Proposal and Documentation

d.1 Particulars of the technical and industrial qualifications,

eligibilities and work related experiences of the interested party and its employees;

d.2 Particulars of the technical and industrial resources available to the interested party for the exploration, development and production of geothermal, coal and petroleum resources;

d.3 Particular on the experiences, achievements and track records of the interested party and its employees related to technical and industrial undertaking; and

d.4 Particulars on organization and management structures relative to Administration, Financial and Technical aspect of the interested party.

For financial, legal and technical documentation, if the interested party is a joint venture, all entities forming part of the joint venture shall comply with the above requirements. In addition, the interested party shall submit a copy of the joint venture agreement. Furthermore, any interested party, acting singly or forming part of a joint venture, that is organized in a foreign country shall submit documents equivalent to the above, issued by the appropriate governing body and duly authenticated by the Philippine consulate in the country where it is registered or where it operates.

1.5 The DOE CNP shall open the submitted proposals relative to the contracting round during the first working day after the announced deadline for submission of proposals. No proposals or contracting documents shall be accepted on the designated day of the operating of proposals.

1.6 The DOE CNP shall then conduct evaluation of the submitted proposals based on the following criteria:

a. Proposed work program - 40%
b. Financial qualification - 20%
c. Legal qualification - 20%
d. Technical qualification - 20%

The DOE CNP, for sufficient and valid cause, may at any given time reject any or all proposals submitted.

1.7 The DOE shall discuss with the higher(s) - ranked proponent to finalize the contract details. No material deviation from the submitted proposal shall be allowed at any given time. The DOE CNP shall then make a recommendation to the DOE Secretary for any award of service/operating contract based on the negotiations conducted. The DOE shall formally inform all the interested parties of the results of the evaluation.

2. Contract Area. The definition and delineation of prospective coal, geothermal and petroleum contract areas shall be in accordance with the provision of applicable government laws, rules and existing procedures such as the National Integrated Protected Areas System (NIPAS) Law and the Indigenous People's Rights Act (IPRA), among others.

3. **Option for PNOC to participate in Petroleum Service Contracts**

   For petroleum service contracts proposed under this Circular, an option shall be reserved for the Philippine National Oil Company (PNOC) for a maximum of ten percent (10%) equity participation in an proposed service contract involving one (1) or more Filipino participant or a maximum of fifteen percent (15%) equity participation in an proposed service contract involving no Filipino participant. Within thirty (30) days after the winning proponent is determined, PNOC shall give proper notice to the winning proponent and the DOE whether or not it decides to exercise said option.

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

5. **Repealing Clause.** The provisions of Department Circular No. 2003-05-005 and Department Circular No. 2005-04-004 are hereby repealed. All other department circulars, which are inconsistent with the provisions of this Circular are hereby repealed, amended or modified accordingly.

6. Effectivity. This Circular shall take into effect immediately after publication in at least two (2) newspapers of general circulation and shall remain in effect until otherwise revoked.

Issued this 22nd day of December, 2006 in Fort Bonifacio, Taguig City, Metro Manila.

(Sgd.) **RAPHAEL P. M. LOTILLA**
Secretary

DEPARTMENT CIRCULAR NO. 2009-04-0004

REITERATING A TRANSPARENT AND COMPETITIVE SYSTEM OF AWARDING SERVICE/OPERATING CONTRACTS FOR COAL, GEOTHERMAL AND PETROLEUM PROSPECTIVE AREAS REPEALING FOR THE PURPOSE DEPARTMENT CIRCULAR NO. DC2006-12-0014

WHEREAS, Section 1of Presidential Decree No. 1442, otherwise known as "An Act to Promote the Exploration and Development of Geothermal Resources," Section 4 of Presidential Decree No. 972, as amended, otherwise known as "The Coal Development Act of 1976", and Section 4 of Presidential Decree No. 87, as amended, otherwise known as the "Oil Exploration and Development Act of 1972", allow the Philippine Government to promote and undertake the exploration, development and production of the country's indigenous coal, geothermal and petroleum resources through service/operating contracts with contractors;

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

WHEREAS, on 22 December 2006, the DOE issued Department Circular No. DC2006-12-0014 providing for a transparent and competitive system for investment and public contracting rounds for awarding coal,

geothermal and petroleum service/operating contracts;

WHEREAS, the DOE desires to adopt the most effective strategy for promoting and attracting local and foreign investment to further increase the exploration, development and production of prospective coal, geothermal and petroleum areas;

WHEREAS, the DOE reiterates and acknowledges the need to continue adopting a transparent and competitive system for awarding service/operating contracts for exploration, development and production of the country's coal, geothermal and petroleum resources;

WHEREAS, consistent with national interest, the DOE has, after consultation with stakeholders, resolved to enhance government participation, through the government corporate sector, in the exploration, development and production of indigenous oil and gas resources through the grant of option to PNOC to participate in petroleum service contracts;

NOW, THEREFORE, in consideration of the aforementioned premises, the following procedures shall govern the transparent and competitive system of awarding service/ operating contracts for coal, geothermal and petroleum exploration, development and production.

1. Contracting Rounds

1.1 The Energy Resource Development Bureau (ERDB) shall determine prospective coal, or geothermal, or petroleum areas found in the Philippine territory; and its maritime zones including the continental shelf for inclusion in the competitive public contracting rounds. The DOE Secretary, based on reports submitted by ERDB, and if he deems fit, shall declare such areas open for competitive public contractive round. The DOE shall not accept any application or proposals for exploration, development and production service/operating contract except during the competitive public contracting rounds. No applications for small-scale mining permit for coal operations shall likewise be entertained in the offered areas until after service/operating contracts have been awarded.

1.2 The ERDB shall prepare the contracting round documents with a description of available data and the prospect of geothermal/coal/ petroleum resources in each area. The DOE Contract Negotiating Panel (DOE-CNP per Department Order No. 2003-05-005) shall then disseminate information of the contracting round which shall include, among others, the following:

a. Location Map ant Technical Descriptions (TDs) of the area/s being offered during the contracting round;

b. Schedule of activities for the contracting round; and

c. Such other information as the DOE-CNP may deem appropriate

1.3 Interested parties for the contracting rounds on petroleum may access data available at DOE after payment of a Data Viewing Fee of Five Hundred United States Dollars (US$500.00) for a two (2) day-day maximum visit. If the interested party decides to purchase the DOE data, the Data Viewing Fee will be credited to the total price of the purchased data.

1.4 Interested parties for the contracting rounds on coal, geothermal and petroleum areas shall submit complete set of documents for evaluation by the DOE-CNP. The DOE-CNP may require submission of additional information/ documents, as may be necessary, during evaluation of the proposals for clarification purposes only. A non-refundable application fee of ONE HUNDRED THOUSAND PESOS (P100,000.00) per area for petroleum and geothermal, and FIFTY THOUSAND PESOS (P50,000.00) per area for coal shall be paid by the proponent upon submission of the proposal which shall include the following documents:

a. Work Program

a.1 Proposed oil/gas service contract, geothermal service contract or coal operating contract based on existing DOE Model Contracts;

a.2 Proposed work program (discussion on the application of the different exploration strategies and methodologies to be employed in delineating energy resources at depth with subsequent manpower complement should be in detailed narrative format and the Schedule of Activities in Gantt Chart) and minimum expenditure on annual/sub-phase basis for each proposed activity with respect to the area or areas specified in the proposal; and

a.3 Narrative presentation of data and information (such as geology, stratigraphy, geochemistry, geophysics, water or coal quality, resource estimate, resource indicators, etc.) suggesting presence of energy resources at depth.

b. Financial Proposal and Documentation

b.2 Audited financial statements and annual reports for the last three (3) years;

b.2 Duly filled-out information sheet;

b.3 Resume/profile of the prospective contractor, its incorporators, stockholders or officers;

b.4 Particulars of the kind of financial resources available to the prospective contractor including capital, credit facilities and guarantees so available; and

b.5 Certified copy of latest income business tax returns filed with the Bureau of Internal Revenue, and duly validated with the tax payment made thereon, if applicable.

c. Legal Documentation

c.1 Certified copy of Articles of Incorporation;

c.2 Certified copy of the by-laws of the prospective contractor;

c.3 SEC Registration Certificate; and

c.4 Certified copy of latest general information sheet submitted to the Securities and Exchange Commission.

d. Technical Proposal and Documentation

d.1 Particulars of the technical and industrial qualifications, eligibilities and work related experiences of the interested party and its employees;

d.2 Particulars of the technical and industrial resources available to the interested party for the exploration, development and production of geothermal, coal and petroleum resources;

d.3 Particulars on the experiences, achievements and tract records of the interested party and its employees related to technical and industrial undertakings; and

d.4 Particulars on organizational and management structures relative to Administration, Financial and Technical aspect of the interested party.

For financial, legal and technical documentation, if the interested party is a joint venture, all entities forming part of the joint venture shall comply with the above requirements. In addition, the interested party shall submit a copy of the joint venture agreement. Furthermore, any interested party, acting singly or forming part of a joint venture, that is organized in a foreign country shall submit documents equivalent to the above, issued by the appropriate governing body and duly authenticated by the Philippine consulate in the country where it is registered or where it operates.

1.5 The DOE CNP shall open the submitted proposals relative to the contracting round during the first working day after the announced deadline for submission of proposals. No proposals or contracting documents shall be accepted on the designated day of the opening of proposals.

1.6 The DOE CNP shall then conduct evaluation of the submitted proposals based on the following criteria:

a. Work Program - 30%
b. Financial qualification - 30%
c. Technical qualification - 30%
d. Legal qualification - 30%

1.7 The DOE CNP, for sufficient and valid cause, may at any given time reject any or all proposals submitted.

The DOE shall discuss with the highest-ranked proponent to finalize the contract details. No material deviation from the DOE model contract shall be allowed at any given time. The winning proponent shall be charged a processing fee of PhP 1.20/hectare for geothermal, Php 0.48/hectare for petroleum and Php 30,000.00 per block for coal based on DOE's Schedule of Fees and Charges in compliance with EO 197. The DOE CNP shall then make a recommendation to the DOE Secretary for any award of service/operating contracts based on the discussions. The DOE shall formally inform all the proponents of the results of the evaluation.

2. Contract Areas.

The definition and delineation of prospective coal, geothermal and petroleum contract

areas shall be in accordance with the provisions of applicable government laws, rules and existing procedures such as the National Integrated Protected Area System (NIPAS) Law and the Indigenous People's Right Act (IPRA), among others.

3. Frontier Areas.

Privately identified coal, geothermal and petroleum frontier areas with no available technical data may be allowed to be offered through negotiated contracts.

4. Separability Clause.

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

5. Repealing Clause.

The provisions of Department Circular No. DC2006-12-0014 is hereby repealed. All other department circulars, which are inconsistent with the provisions of this Circular are hereby repealed, amended or modified accordingly.

6. Effectivity.

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

Issued this 2nd day of April, 2009 in Fort Bonifacio, Taguig City, Metro Manila.

ANGELO T. REYES
Secretary

GUIDELINES FOR PECR 2009 – COAL

Requisites for documentation to be submitted by proponents in the contracting round for coal are outlined in Department Circular No. **DC2006-12-0014 as amended by DC-2009-04-0004.**

General Information

1. Proponents may be any local/foreign individual company or group of companies forming a joint venture or consortium.

2. If a proposal involves more than one company, the following shall be stated in the proposal:

   a. Name of Operator and co-venturers

   b. Participating interest of each co-venturer

   The Operator shall submit the proposal on behalf of the group. The Operator shall meet all legal, technical and financial requirements while each con-venturer must be legally and financially qualified.

3. The DOE shall award one Coal Operating Contract for each Predefined Contract Area (hereinafter called Contract Area) as given in the PECR 2009 Contract Area Map for Coal. The Contract Areas shall be annotated as on the said map (e.g. Contract Area 1).

4. Submitted proposals shall be in both paper and digital (CD-ROM in Microsoft Word, *.pdf, or a web-legible format) copies. Times New Roman 12 font and single line spacing is recommended. Figures shall be submitted in an appropriate format, no larger than A3 size. If necessary for legibility, figures and maps may be submitted at a larger scale as appendices.

5. Proponents shall submit a complete set of the following documents for evaluation by the DOE-CNP. The DOE-CNP may require submission of additional information/documents, as may be necessary, during evaluation of the proposals for clarification purposes only. A non-refundable application fee of Php 50,000.00 per area shall be paid by the proponent upon submission of the proposals. The winning proponent shall be charged a processing fee of Php 30,000.00 per block based on DOE's Schedule of Fees and Charges in compliance with EO 197.

6. Both the original paper copy and the digital copy of the proposal shall be sent by courier, registered mail or hand delivered to:

OIC-Undersecretary Ramon Allan V. Oca
Energy Resource Development Bureau
Department of Energy
Energy Center, Merritt Road
Fort Bonifacio, Taguig City
Metro Manila
Philippines
Telfax: (632) 840-2068
Email: rvoca@doe.gov.ph

All proposals shall be in at the time the contracting round closes on Date June 08, 2009 at 1500 hrs Philippine time.

The DOE CNP shall open the submitted documents on the next working day after the closing of the round at 1000 hrs Philippine time to check for their completeness. Proposals with incomplete documents shall be automatically disqualified from the contracting round.

7. The following documentation should be included in the proposals:

Documentation Requirements

A brief summary of the proposal should be given.

PROPONENT's NAME	:	
NATURE OF APPLICATION	:	PECR – Coal Operating Cotranct
LOCATION	:	Ex: Boljoon, Cebu
AREA NUMBER	:	Area 1 CBS No.: 35-I-17, -18, -57 & -58
NUMBER OF BLOCKS		Four Coal Blocks or 4,000 hectares
SALIENT FEATURES		
TERM	:	Two (2) years exploration period plus two (2) years extension. An additional 10 to 20 years for development and production period plus 3-years extensions not exceeding 12 years.
SIGNATURE BONUS	:	Please see brochure
COST RECOVERY	:	90% of gross income per annum: capital Expenditure depreciated over 5-10 years
TAXES	:	Exempted from all national taxes except income tax
PROFIT SHARE	:	Government : 30% of the Net Proceeds Contractor : 70% of the Net Proceeds
IMPORTATION	:	Tax – exemption for equipment, machinery, Spare parts and materials to be imported

A. Work Program Document

A.1 Work program (discussion on the application of the different exploration strategies and methodologies to be employed in delineating coal resources at depth with subsequent manpower complement should be in detailed

narrative format and the Schedule of Activities in Gantt Chart) and minimum expenditure on annual basis for each activity with respect to the areas specified in the proposal; and

A.2 Narrative presentation of data and information (such as geology, stratigraphy, geochemistry, geophysics, coal quality, resource estimate, resource indicators etc.) indicating presence of coal resources at depth.

B. Financial Documentation

B.1 Annual Report or comparative Financial Statements

- Audited financial statements and annual reports for the last three (3) years or comparative audited financial statements not more than six (6) months at the date filing;
- If latest audited financial statement are unavailable, unaudited financial statements not more than three (3) months at the date of filing may be submitted
- Particulars of the kind of financial resources available to the proponent including capital, credit facilities and guarantees so available;
- For newly-organized subsidiary corporations with insufficient funds to finance the proposed work program, a financial statement of the proponent's Parent Company shall be submitted together with the Parent Company is a foreign company, the guarantee shall be duly authenticated by the Philippine Consulate Office; and
- Certified true copy of latest income business tax returns filed with the Bureau of Internal Revenue, and duly validated with the tax payments made thereon, if applicable.

B.2 Projected Cash Flow

- Projected cash flow covering a three (3)-year period to include the sources of funds for future activities

  NOTE: Minimum working capital must be equivalent to one hundred fifty percent (150%) of the cost of the firm work obligation for the first year of the Exploration Period on the Contract Area being applied for.
- Working capital refers to the company's liquid assets [liquid assets consisting primarily of cash, temporary investment (marketable securities), short term receivables and deposits] less current liabilities. It should be net of the financial commitment from other existing service contracts (if applicable).
- In case of consortium, each member's working capital shall be pro-rata based on its participating interest in the service contract

C. Technical Documentation

C.1 Technical and industrial qualifications, eligibilities and work related experiences of the proponent and its employees;

C.2 Technical and industrial resources available to the proponent for the exploration, development and production of coal resources;

C.3 Experiences, achievements and track records of the proponent and its employees related to technical and industrial undertakings; and

C.4 Organizational and management structure of the proponent

D. Legal Documentation

D.1 Certified true copies of the following:

- Articles of incorporation;
- By-laws of the proponents;
- Securities and Exchange Commission (SEC) Registration; and
- Company Profile and/or latest general information sheet submitted to the SEC

D.2 Original Copy of the Certificate of Authority from the Board of Directors of the proponent authorizing a designated representative(s) to negotiate the Service Contract. The said Certificate of Authority must be executed under oath by the Corporate Secretary and, if executed abroad, must be properly authenticated by the Philippine Consulate Office.

For financial, legal and technical documentation, if the proponent is a joint venture, all entities forming part of the joint venture shall comply with the above requirements. In addition, the proponent shall submit a copy of the joint venture agreement. Furthermore, any proponent, acting singly or forming part of a joint venture, that is organized in a foreign country shall submit documents equivalent to the above, issued by the appropriate governing body and duly authenticated by the Philippine Consulate in the country where it is registered or where it operates.

Summary

The proposal must only include data, analyses, calculations, interpretations and studies that are relevant to the Contract Area applied for. All studies that are employed in the evaluation of the Contract Area shall be reviewed in a summary containing both conclusions and the arguments for the relevance of the study.

To facilitate the effective processing of the proposal, the heading in the Guidelines for PECR 2009 – Coal shall be used.

Bureau Circular No. 81-11-10 (GUIDELINES FOR COAL OPERATIONS IN THE PHILIPPINES) specifies the minimum legal, technical and financial requirements for a proponent applying under the Coal Operating Contract system.

Details of the contracting round are included in the promotional CD and posted at **www.doe.gov.ph/pecr2009.**

2009 PECR AREAS FOR OFFER

Area	Coal Block System (CBS)	Location
Area 1 *	35-I-17-18, 57 & 58	Boljoon, Cebu
Area 2 *	33-I-78, 79 & 80	Carmen, Cebu
Area 3 **	34-I-27 & 28	Naga, Cebu
Area 4 *	20-G-297, 299, 338, 339, 378 & 379	General Nakar, Quezon
Area 5 *	20-G-78, 118, 158, 198, 238 & 21-G-38	Polilo Island, Quezon
Area 6 *	22-H-377	Tagkawayan, Quezon
Area 7 *	28-I-358, 359, 398, 399, 360, 400 & 361	Cataingan, Masbate
Area 8 *	26-J-44, 45, 46 & 6	Gubat, Sorsogon
Area 9 *	25-J-119 & 120	Rapu – Rapu, Albay
Area 10 *	23-J-88, 128, 168, 169, 170, 171, 131, & 132	Caramoran, Panganiban, & Viga, Catanduanes
Area 11 *	41-H-34, 35, 74 & 75	Godod, Zamboanga del Norte
Area 12 *	41-H-280, 281, 320 & 241	Diplahan-Buug, Zamboanga Sibugay
Area 13 *	41-H-358 & 359	Diplahan, Zamboanga Sibugay
Area 14 *	41-H-314, 274 & 275	Siay, Zamboanga Sibugay
Area 15 *	42-H-154 & 155	Payao, Zamboanga Sibugay
Area 16 *	41-H-226 & 227	Naga, Zamboanga Sibugay
Area 17 *	43-L-177, 178, 217 & 218 43-L-136, 137 & 176	Manay, Davao Oriental
Area 18 *	43-L-256, 257 &258 43-L-296, 297 & 298 43-L-335, 336, 337 & 338	Tarragona, Davao Oriental
Area 19 *	40-L-44, 84, 85 & 86 40-L-164, 165 & 166	Bunawan, Agusan del Sur
Area 20 *	38-K-30, 31, 32, 33, 69, & 70	Sibagat, Agusan del Sur
Area 21 *	40-L-326, 327, 328 & 367	Trento, Agusan del Sur
Area 22 *	36-K-266, 267 & 268	Kitcharao, Surigao deo Norte
Area 23 *	36-K-186 & 187	Gigaquit, Surigao del Norte
Area 24 *	38-L-207	Cagwait-Marihatag, Surigao del Sur
Area 25 *	38-L-246, 247, 286 287, 326 & 327	San Agustin-Lianga, Surigao del Sur
Area 26 *	37-L-203, 204, 243 & 244	Tandag-Tago, Surigao del Sur
Area 27 *	46-J-17, 57, 97, 137, 138, 139, 140, 141, 180 & 181	Sarangani & South Cotabato
Area 28 *	45-J-180 and 261	Bagumbayan, Sultan Kudarat
Area 29 *	33-I-116	Asturias, Cebu
Area 30 *	45-J-252 & 292	Senator Ninoy Aquino, Sultan Kudarat

Note: * Areas of interest / Nominated areas
** DOE Nominated areas

DEPARTMENT CIRCULAR NO. DC 2010-03-0005

PROVIDING ADDITIONAL GUIDELINES FOR A TRANSPARENT AND COMPETITIVE SYSTEM OF AWARDING SERVICE/OPERATING CONTRACTS FOR COAL AND PETROLEUM PROSPECTIVE AREAS AMENDING FOR THIS PURPOSE DEPARTMENT CIRCULAR NO. DC 2006-12-0014

WHEREAS, on April 2, 2009, the DOE issued Department Circular No. DC2009- 04-0004 providing for investment promotion and public contracting rounds for awarding geothermal, petroleum and coal service/ operating contracts;

WHEREAS, under Republic Act No. 9513, otherwise known as the "Renewable Energy Act of 2008", geothermal energy has been considered as a renewable energy and shall be under the direct supervision and implementation by the Renewable Energy Management Bureau (REMB);

WHEREAS, the DOE issued Department Circular No. DC2009-07-0011 providing for the guidelines governing a transparent and competitive system of awarding Geothermal RE Contract, partially superseding Department Circular No. 2009-04 0004 with regard to provisions involving geothermal areas;

WHEREAS, Department Circular No. DC2009-04-0004 does not cover petroleum and coal areas not offered or offered but without qualified proponent in the previous public contracting rounds but are deemed potential areas for exploration and development by foreign and local investors who are willing to apply for a Service Contract or Coal Operating Contract on these areas;

WHEREAS, due to the increasing cost of imported crude oil and coal which imposes an unduly heavy burden on the country's international reserves, there is a need to actively pursue the exploration, development and utilization of indigenous petroleum and coal resources through public contracting rounds by nomination/publication for petroleum and coal areas not offered or offered without qualified proponents in the previous Philippine Energy Contracting Rounds (PECR) but are deemed by foreign and local investors to be worth exploring and developing.

NOW, THEREFORE, in consideration of the aforementioned premises, the following amendments and additional provisions to the Circular shall govern the contracting rounds by publication or direct negotiation for the purpose of awarding petroleum service contracts and coal operating contracts.

Section 1. Section 3 of the Circular is amended to read as follows:

"Section 3.a Public Contracting By Nomination/Publication.

a.1 Nomination Period – Official nomination by prospective applicants for petroleum or coal areas shall commence forty-five (45) calendar days from the opening of the proposals submitted for the regular PECR. The Department reserves the right to suspend the period for public contracting for nomination/ publication in preparation for the next regular PECR.

a.2. Nomination of Prospective Areas by the Applicants

a.2.1 Applicants for petroleum or coal service/operating

contract/s shall formally nominate the area/s of their interest for the DOE'S consideration. Before the application is accepted for the DOE consideration, the following shall be submitted:

a. Technical Description of the nominated area/s

b. Certification of Non-Overlap of nominated area/s with existing contract/nominated area/s from the Information Technology Management Services (ITMS) of the DOE.

c. Certification from the Department of Environment and Natural Resources (DENR) and/or Local Government Units (LGU) that the nominated area/s is/are not within a Protected Area/s.

a.2.2 The Energy Resource Development Bureau (ERDB) shall within fifteen (15) working days from receipt of the nomination with complete documents shall recommend for approval the opening of .the subject area for public contracting round by publication to the Secretary, through the concerned Undersecretary.

a.2.3 Upon approval by the Secretary of the nominated area/s for public contracting round by publication, the ERDB shall, within fifteen (15) working days from receipt of approval, prepare the contracting round documents with a description of available data and prospects on petroleum and coal resources in the area applied for.

The proponent, in coordination with the DOE, shall, at its own expense, cause the publication in two (2) newspapers of general circulation the nominated petroleum or coal area.

The items for publication shall include, among others, the following:

a. Timeline for the contracting round by publication:

   i. Publication Date - Day 1

   ii. Deadline for the Submission of Documents by Applicants - Day 1 plus 29 calendar days on or before 3pm (for coal) and Day 1 plus 89 calendar days on or before 3pm (for petroleum)

   iii. Opening of Documents - Day 1 plus 30 calendar days (for coal) and Day 1 plus 90 calendar days (for petroleum)

   iv. Evaluation of Documents - Thirty (30) to Sixty (60) working days for coal and Forty five (45) to Ninety (90) working days for petroleum

   v. Notice to Qualified Applicant - Five (5) working days from approval by the Department

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

*areas to be nominated for coal and petroleum shall conform to existing boa1 and petroleum blocking

systems:

Coal : Minimum area for nomination = 2 coal blocks
(1 coal block = 2 minutes of latitude by 1 *X* minutes of longitude with an area of approximately 1,000 hectares)

Petroleum:

Onshore : Minimum area for nomination = 50,000 has.; Maximum = 750,000 has.

Offshore : Minimum area for nomination = 80,000 has.; Maximum = 1,500,000 has. (1 petroleum block = 4 minutes of latitude by 3 minutes of longitude with an area of approximately 4,000 hectares)

c. List of documents that should accompany the application;

d. Other information that the DOE-CNP deems appropriate.

a.2.4. Interested parties for the contracting round by publication on petroleum and coal areas shall submit to the ERDB Director the complete set of documents for evaluation by the DOECNP as specified in Section 1.4 (a-d) in the Department Circular No. DC2009-04-0004 and the published guidelines referred to in 3a.2.3 of this Circular. The procedure in Section 1.5, 1.6 and 1.7 as indicated in Department Circular No. DC2009-04-0004 shall be followed.

Section 3.b Direct Negotiation.

Direct Negotiation shall be allowed only in the following instances, subject to confirmation by the ERDB:

b.1 Frontier Areas - Frontier areas as defined in the Department Circular No. DC2009-04-0004 and as determined by the DOE-ERDB.

b.2 When, during the conduct of PECR, any of the following circumstances exist:

i. No proposal is received by the ERDB;

ii. No one among the applicants was able to meet the minimum requirements after the CNP evaluation.

b.3 When no proposal other than the proposal by the qualified nominee under Section 3.a of this Circular is received by the ERDB. Proponents who nominated areas for inclusion under the regular PECR but failed to submit a proposal/application shall be disqualified for direct negotiation under Section 3 (b.2) of this Circular on the same nominated area/s."

Section 2. Disclaimer.

Proponents/applicants warrant that it shall not undertake proceedings of whatever kind against DOE, its officers, employees for any and all acts, resolutions or decisions of the CNP, except where such acts, resolutions or decisions violate applicable laws, or if any member of the CNP acted in evident bad faith, with willful misconduct, or gross negligence.

Section 3. Separability Clause.

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

Section 4. Amendatory Clause.

The provisions of Department Circular No. DC2009-04-0004 and all other department circulars, which are inconsistent with the provisions of this Circular are hereby amended or modified accordingly.

Section 5. Effectivity.

This Circular shall take effect immediately after publication in at least two (2) newspapers of general circulation and shall remain in effect until otherwise revoked.

Issued this 24th day of March 2010 in Fort Bonifacio, Taguig City, Metro Manila.

Chapter 4
Small-Scale Mining Operation

BED CIRCULAR NO. 87-03-001

PROVIDING FOR GUIDELINES AND PROCEDURE TO IMPLEMENT A PROGRAM THAT WILL ALLOW SMALL-SCALE COAL MINING

Section 1. Rationale:

Presidential Decree No. 972 introduced the service contract system for the exploration, development and exploitation of domestic coal resources, under the administration of the Bureau of Energy Development (BED). The service contract system, which is a departure from the coal permit and lease systems, envisioned large-scale, capital intensive coal operations over extensive coal blocks as requirements for applicants to quality for a coal operating contract.

There are, however, areas in the Philippines that have small deposits of coal whose exploitation will not quality under the requirements of P.D. No. 972, but which nonetheless contain enough coal deposits suitable for small mining. Many of these coal-bearing areas have been traditionally mined by local residents as a source of income and economic livelihood, long before the promulgation of P.D. No. 972 in 1976.

Given clear guidelines consistent with mining safety, systematic exploitation techniques and accountability to the BED, these small coal deposits could be exploited by local residents/small entrepreneurs under less stringent but more realistic regulations in these areas as socio-economic projects easily accessible to the people and calculated to uplift their quality of life.

Section 2. Definition of Terms

a) **Small-Scale Mining Operations.** Pertains to the exploitations of coal under a permit issued by the BED, subject to the terms and condition provided under this Circular.

b) **Applicant.** A qualified Filipino citizen, applying for a permit with the BED to engage in Small-Scale Mining Operations.

c) **Permittee.** A holder of permit issued by the BED to exploit coal resources.

d) **Coal Operating Contact**. A valid and subsisting coal operating contact issued under P.D. No. 972, as amended.

e) **Coal Operator**. The holder of a coal operating contract who is authorized by its terms to undertake coal operations.

f) **Supervising Coal Operator**. A coal operator who, under the terms of this Circular, is charged with the supervision of the Permittee for the BED.

Section 3. Who May Apply.

A Filipino citizen, of legal age, and resident of the place or area where the coal deposit is located, as certified to by its barangay captain and local mayor, may apply for a small scale coal mining permit with the BED.

Section 4. Areas Open to Small-Scale Mining.

Applications and permits may cover coal areas within a coal operating contract or free areas outside of a coal operating contact, as determined by the BED. A coal permit shall cover a compact and contiguous area of not exceeding five (5) hectares with a geological coal reserve not exceeding 50,000 metric tons.

Section 5. Contents of Applications.

All small-scale coal mining operations authorized under Permits issued under this Circular, whether conducted within an area covered by a coal contract or outside the same, small be undertaken by the Permittee under the administration and supervision of the BED through the supervision of the coal operator in whose coal contract area the small-scale coal operations are located, or in cases where the area is outside a coal operating contract area, through the coal operator nearest the small-scale coal area.

An applicant shall accomplish in triplicate the BED application form provided in Appendix A of this Circular. The duly accomplished application form must be accompanied by the following documents:

a) Written undertaking or agreement between the applicant and the supervising coal operator to the effect that the supervising coal operator shall supervise and assume responsibility to the BED for the small-scale operations of the applicant or Permittee including the implementation of safety measures in the area covered by the permit, as approved by the BED.

b) The survey plan and the corresponding technical description of the area applied for and prepared by a qualified geodetic engineer.

c) A one-year work program indicating the presence of deposits of coal not suitable for large or medium scale operations under a service contract but which deposits are suitable to small-scale, labor intensive operations.

d) Written endorsement or clearance from the local Barangay captain and Mayor attesting that applicant is a permanent resident of the province or city or municipality where the small-scale mining operations will be undertaken.

e) A contract of purchase and sale between the coal operator and the Permittee under which the coal operator shall purchase all the coal, production of the Permittee.

In addition to the above, the applicant must show proof that it has the minimum operating capital of Ten Thousand Pesos, whether in cash or in kind. The necessary proof include bank deposit, real property tax declaration, contract of lease of equipment and such other similar proof as would show that applicant has the requisite means and resources to pursue small-scale mining under a permit.

Applications will be accepted on a “first come, first served” basis. The mere filing of an application does not authorize the applicant to commence and exercise the rights of a Permittee.

Incomplete applications will not be accepted for processing and will not be deemed as filed even if delivered for filing. An application fee of One Hundred Pesos (P100.00) per hectare shall be paid upon the filing of the application.

Section 6. Obligations of the Permittee.

The Permittee shall have the following obligations:

a) In general, to undertake with due diligence the small-scale coal operations in accordance with the terms and conditions of the Permit.

b) To remain at all times accountable to the BED through its duly designated supervising coal operator.

c) To diligently pursue small-scale coal operations in accordance with its approved work program, observing safety measures required by the BED.

d) To submit as required periodic and other reports to the BED.

e) To sell all its coal production to its duly-designated supervising coal operator or only to such other coal operator or end-user upon approval by the BED.

Section 7. Obligations of the Supervising Coal Operator.

The supervising coal operator shall have the following obligations:

a) To exercise overall supervision over the conduct of the small-scale operation by the Permittee ensuring its observance of systematic and safe mining techniques and practices required by the BED.

b) To purchase the coal production of the Permitte to the maximum extent possible that will allow the coal operator to meet its own production commitment with the BED and the buyer.

c) To account to the BED its purchase from the Permittee through quarterly reports indicating payments to the Permittees.

d) To deduct 3% from the gross purchase price of coal sourced from the Permittee, and to remit to BED said amount within thirty (30) days from its deduction.

Section 8. Period of Term.

A permit shall have period or term of five (5) years from the date of issuance, renewable for additional five (5) year terms thereafter.

Section 9. Cancellation or Termination of Permit.

A Permit shall be cancelled or terminated for the following causes:

a) Expiration of its term or period;

b) Cancellation by the BED for causes provided in the Permit and/or this Circular;

c) Failure to comply with duly-issued Circulars of the BED;

d) Death of Permittee in which case the nearest qualified legal heir shall be given priority to apply for a new permit over the same permit area;

e) Exhaustion of coal reserves;

f) Voluntary relinquishment by Permittee.

Section 10. Disqualification.

The following are disqualified from applying for a permit:

a) A coal operator;

b) Those with pending cases in court for unauthorized coal mining;

c) Those facing administrative investigation in the BED for unauthorized coal mining;

d) Those individual convicted of a crime involving violation of P.D. 463, P.D. 972, as amended by P.D. 1174.

Section 11. Exclusivity of Permit.

The permits issued under the Circular may not be assigned, transferred, encumbered or otherwise disposed of in any manner without

the prior written consent of the supervising coal operator and the BED.

Section 12. Miscellaneous Provision.

a) Priority. The Landowner of the coal reserves has priority to a Permit if he or she shall personally reside and operate in the permit area. Otherwise, the actual resident has priority.

b) Settlement of Disputes. Conflicts between the Permittee and the Supervising Coal Operator with respect to rights and obligations that arise out of the Permit issued under the Circular shall be settled amicably between them. In case of failure after exhaustion of all efforts towards amicable settlement, the aggrieved party may file a written complaint in the BED.

c) Expeditious Processing or Application. Dispositive action on complete applications shall come not later than ninety (90) days after its filing as provided in Section 3 hereof. The running of the period is interrupted upon applicant's receipt of notice from the BED requiring the submission of further documents or the performance of any act pertinent to the application, and shall commence to run again upon receipt by the BED of applicant's compliance. Applications which are not diligently prosecuted by applicant shall be deemed automatically denied if applicant fails to comply with the requirements of the BED within thirty (30) days from receipt of notice to comply.

Section 13. Direct Supervision by the BED.

The BED may temporarily supervise directly the Permittee under the following circumstances:

a) In case of cancellation or expiration of the coal operating contract of the supervising coal operator.

b) In areas outside an existing coal contract area where there is no coal operator nearby or where the nearest coal operator cannot effectively operate under this Circular.

The temporary supervision of the BED shall continue until the appointment and qualification of a new supervising coal operator.

Section 14. The Circular shall take effect upon it approval of the Deputy Executive Secretary for Energy.

Issued this 4th day of March 1987 in Metropolitan, Manila.

W. R. DE LA PAZ
Acting Director

APPROVED:

VICENTER I. PETERNO
Deputy Executive Secretary For Energy

OEA CIRCULAR NO. 88-02-002

WHEREAS, the former Bureau of Energy Development now Office of Energy Affairs (OEA) issued BED Circular No. 87-03-001, providing for guidelines and procedure to implement a program that will allow small scale mining operation in areas covered by a Coal Operating Contract (COC).

WHEREAS, it is necessary to provide the OEA with sufficient means and remedies through which it can effectively exercise and enforce said Circular over said area.

WHEREAS, in view of the foregoing consideration, it becomes necessary to amend BED Circular No. 87-03-001.

NOW, THEREFORE, the said BED Circular is hereby amended as follows:

Section 1. Section 4 is hereby amended by adding a second paragraph to read as follows:

> Section 4. Areas Open to Small Scale Mining
>
> An area covered by a COC once declared by the OEA suitable for small scale coal mining operations and a permit formally issued is considered automatically relinquished by a COC holder in favor of the permittee."

Section 2. Section 5 (e) is hereby amended to read as follows:

> "(e) A contract of purchase and sale which shall be subject to the approval of the OEA"

Section 3. Section 9 (c) is likewise hereby amended to read as follows:

> "(c) Failure and/or refusal of the Permittee to comply with duly issued Circulars of the OEA, and/or approved work program."

Section 4. Additional ground for cancellation or termination of the permit is hereby provided by adding a new subsection (g) in Section 9 to read as follows."

> "(g) The area is later determined to be suitable for large scale operations."

Section 5. Section 13 is likewise hereby amended by adding a new subsection (c) which reads as follows:

> "(c) In case the COC holder refused to become the Supervising Coal Operator."

Section 6. This Circular shall take effect immediately.

Issued this February 10, 1988, in Makati, Metro Manila.

W. R. DE LA PAZ
Executive Director

OEA CIRCULAR NO. 88-03-006

WHEREAS, the former Bureau of Energy Development now Office of Energy Affairs (OEA) issued BED Circular No. 87-03-001 providing for guidelines and procedure to implement a program that will allow small scale coal mining operation in areas covered by a Coal Operating Contract (COC).

WHEREAS, it is necessary to provide the OEA with sufficient means and remedies through which it can effectively exercise and enforce said circular over said area.

WHEREAS, in view of the foregoing consideration, the aforesaid BED Circular No. 87-03-001 was amended on February 10, 1988 through OEA Circular No. 88-02-002.

WHEREAS, there is a need to further amend said Circular.

NOW, THEREFORE, the said BED Circular No. 87-03-001 as amended is hereby further amended as follows:

Section 1. Section 5(a) is hereby amended to read as follows:

a) Written undertaking or agreement between the applicant and the supervising coal operator to the effect that the supervising coal operator shall supervise and oversee the small scale operations of the applicant or Permittee including the implementation of safety measures in the area covered by the permit, as approved by the OEA.

Section 2. Section 7 (a) is hereby amended to read as follows:

a) To exercise overall supervision over the conduct of the small scale operation by the Permittee ensuring its observance of systematic and safe mining techniques and practices required by OEA as embodied in the written undertaking or agreement mentioned in Section 5(a), as amended.

Section 3. All other provision not inconsistent herewith shall remain in full force and effect.

Section 4. This Circular shall take effect immediately.

Issued this 22nd day of March 1988 in Makati, Metro Manila.

B. C. SALCEDO
Officer-in-Charge

OEA CIRCULAR NO. 89-11-11

Whereas, the Office of Energy Affairs issued OEA Circular No. 88-03-006 and 88-02-002, amending certain provisions of BED Circular No. 87-03-001 providing for guidelines and procedure to implement a program that will allow small-scale mining operation in areas covered by a Coal Operating Contract (COC).

Whereas, it is necessary to further amend BED Circular No. 87-03-001 to make it attuned to the conditions under which it is being implemented.

Now, therefore, the said BED Circular No. 87-03-001 as amended is hereby further amended as follows:

Section 1. Section 13 Direct supervision by the OEA (then BED) is hereby amended to contain the following additional provisions:

a.1. In cases where the OEA assumes the supervision over the activities and operations of the small-scale mining permittee, the permittee shall have, in addition to the provisions of Section 6 hereof, the following duties and obligations:

1. To submit all the required periodic and other reports directly to the OEA;

2. To submit to the OEA immediately, a list of its prospective buyers of coal;

3. Remit to the OEA, within a reasonable time, the 3% OEA share from coal sales.

Section 2. Section 12 of BED Circular No. 87-03-001 is hereby amended to include a new subsection (d) thereof to read as follows:

(d) In cases where the SSMP had been cancelled or terminated under the conditions enumerated in Section 4 of OEA Circular No. 88-02-002, the permitee shall be given a grace period of six (6) months from notice within which he can recoup his capital investment.

Section 3. This Circular shall take effect immediately.

Issued this 6th day of November, 1989 in Makati, Metro Manila.

W.R. DELA PAZ
Executive Director

By: **BEN-HUR C. SALCEDO**
Officer-In-Charge

Chapter 5
Subcontracting Guidelines (COC/SC)

PRESIDENTIAL DECREE NO. 1354

IMPOSING FINAL INCOME TAX ON SUBCONTRACTORS AND ALIEN EMPLOYEES OF SERVICE CONTRACTORS AND SUBCONTRACTORS ENGAGED IN PETROLEUM OPERATIONS IN THE PHILIPPINES UNDER PRESIDENTIAL DECREE NO. 87

WHEREAS, foreign subcontractors involved in petroleum operations in the Philippines are taxable as resident foreign corporations;

WHEREAS, the said foreign subcontractors perform transitory activities during the taxable year and neither maintain regular office or fixed place of business nor keep books of accounts in the Philippines;

WHEREAS, the aliens employed by the said service contractors and by their subcontractors are likewise taxable on their income from Philippine sources;

WHEREAS, it is also difficult to determine whether the said aliens are resident aliens or nonresident aliens engaged or not engaged in trade or business in the Philippines which in turn make it difficult to determine their income tax;

WHEREAS, it is therefore necessary to simplify the method of taxing the said foreign subcontractors and the aliens involved in petroleum operations in the Philippines so as to insure the collection of whatever tax that is due from them;

WHEREAS, in order to place local or domestic subcontractors on equal footing and to make them competitive with foreign subcontractors, they should similarly be taxed as foreign subcontractors;

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

SECTION 1. *Tax on subcontractors.* – Every subcontractor, whether domestic or foreign, entering into a contract with a service contractor engaged in petroleum operations in the Philippines shall be liable to a final income tax equivalent to eight percent (8%) of its gross income derived from such contract, such tax to be in lieu of any and all taxes, whether national or local: *Provided, however,* That any income received from all other sources within and without the Philippines in the case of domestic subcontractors and within the Philippines in the case of foreign subcontractors shall be subject to the regular income tax under the *National Internal Revenue Code*. The term "gross income" means all income earned or received as a result of the contract entered into by the subcontractor with a service contractor engaged in petroleum operations in the Philippines under Presidential Decree No. 87.

SEC. 2. *Taxation of aliens employed by petroleum service contractors and subcontractors.* – Aliens who are permanent

residents of a foreign country but who are employed and assigned in the Philippines by service contractors or by subcontractors engaged in petroleum operations in the Philippines, shall be liable to a final income tax equal to fifteen percent (15%) of the salaries, wages, annuities, compensations, remunerations and emoluments received from such contractors or subcontractors. Any income earned from all other sources within the Philippines by the said alien employees shall be subject to the income tax imposed under the National Internal Revenue Code.

SEC. 3. *Manner of collecting the tax.* –

(a) Every service contractor shall deduct, withhold, and pay the tax imposed in Section 1 of this Decree from the amounts paid by the service contractor to the subcontractor under the contract entered into by and between them in the same manner and subject to the same conditions as provided in Section 54 of the *National Internal Revenue Code*.

(b) Every service contractor shall also deduct, withhold and pay the tax imposed in Section 2 of this Decree from the salaries, wages, annuities, compensations, remunerations and emoluments paid to (1) its alien employees and (2) the aliens employed by its foreign subcontractors in the same manner and under the same conditions as provided in Section 54 of the *National Internal Revenue Code*.

(c) Every domestic subcontractor shall deduct, withhold and pay the tax imposed in Section 2 of this Decree from the salaries, wages, annuities, compensations, remunerations and emoluments paid to its alien employees in the same manner and under the same conditions as provided in Section 54 of the *National Internal Revenue Code*.

SEC. 4. *Registration of service contracts.* – All contracts relating to oil operations entered into between the service contractor and a subcontractor engaged in petroleum operations in the Philippines shall be registered with the Bureau of Energy Development.

SEC. 5. *Additional conditions for reimbursement of operating expense.* – The cost of subcontractors shall be considered as part of reimbursable operating expenses of the service contractor under Presidential Decree No. 87 only if it is shown that the contract has been properly registered with the Bureau of Energy Development and the taxes due under this Decree have been withheld and paid in accordance with the provisions of Section 53 and 54 of the *National Internal Revenue Code*.

SEC. 6. *Repealing Clause.* – Any provision of existing general and special laws inconsistent with the provisions of this Decree is hereby modified, amended or repealed accordingly.

SEC. 7. *Effectivity.* – This Decree shall take effect upon approval.

Done in the City of Manila, this 21st day of April, in the year of Our Lord, Nineteen Hundred and Seventy-Eight.

BED CIRCULAR NO. 78-10-20

TO: ALL SERVICE CONTRACTORS UNDER PRESIDENTIAL DECREE NO. 87

Please be advised that on October 10. 1978, Revenue Regulations No. 15-78, implementing Presidential Decree No. 1354 was promulgated, a copy of which is hereto attached for your reference.

Essentially Revenue Regulations No. 15-78 governs the taxation of subcontractors and alien individuals employed by service contractors and subcontractors engaged in the petroleum operations in the Philippines under Presidential Decree No. 87, as provided for under said Presidential Decree 1354.

It will be recalled that on July 12, 1978 the Bureau of Energy Development, pursuant to Section 4 of Presidential Decree No. 1354, issued Circular No. 78-07-04 requiring all service contractors under Presidential Decree No. 1354 to submit for registration purposes to this office, two (2) copies of its contract with subcontractors engaged in Petroleum operations. The documents submitted are considered registered upon issuance by the Bureau of Letter of Confirmation.

In cross-reference to our aforesaid Circular, we would like to highlight Section 6 of the Revenue Regulation 15-78 which is hereunder quoted in full.

> " Section 6 – Registration of contracts entered into with sub-contractors. – Every service contractor shall register with the Bureau of Energy Development –
>
> a. All existing contracts; and
>
> b. Any and all contracts to be entered into relating to oil operations between the service contractor and the subcontractor engaged in petroleum operations.

Administrative contracts as defined in Section 2(f) hereof need not be registered with the Bureau of Energy Development. However, a copy of each administrative contract shall nonetheless be furnished said office for records purposes.

Copy of such registered contract shall be kept in the place where the service contractor's main local office is located and where their books of accounts are kept to be made readily available for inspections.

Please be guided accordingly.

October 30, 1978

W. R. DELA PAZ
Acting Director

BED CIRCULAR NO. 82-09-09

TO: ALL HOLDERS OF COAL OPERATING CONTRACT UNDER PRESIDENTIAL DECREE NO. 972, AS AMENDED

Field reports submitted by the technical staff of the Bureau of Energy Development arising from their periodic and on-the-spot field inspection visits to the different coal mining areas indicate that it is a prevailing practice among coal operating contract holders to enter into sub-contracts with other persons or entities in the matter of coal exploration, exploitation, development, extraction or removal of coal mineral from their coal contract areas without the prior approval of the Bureau of Energy Development, pursuant to Section 12a (iii) of Presidential Decree No. 972, as amended, otherwise known as the "Coal Development Act of 1976", the following guidelines are hereby promulgated for your strict observance, compliance and guidance.

For purposes of the Circular, the term sub-contracting refers to the act of transferring, assignment, conveying, allowing another person(s) or entities to explore, develop, and exploit the area previously awarded by the Bureau of Energy Development to qualified coal mining operators.

Sub-contracting activities shall include the following, among others:

a. Tunneling
b. Hauling
c. Shaft Sinking
d. Raising
e. Timbering
f. Coal mining
g. Road construction
h. Road maintenance
i. Diamond Drilling
j. Auger drilling
k. Test pitting
l. Trenching
m. Stripping
n. Dam construction
o. Other infrastructures such as plants, buildings, bridges, etc.

1. Holders of coal operating contracts shall not transfer, assign, convey, cede, dispose, or subcontract the coal areas awarded to them without the prior approval of the Bureau of Energy Development (Section 15, PD 972). Sub-contracting, transfer or assignment of coal operating contract areas, to be valid and enforceable, aside from the prior approval of the Bureau of Energy Development may be made only to qualified persons, partnerships or corporations provided that they possess the necessary financial resources and technical capability to continue the mining operations in accordance with good coal mining practices appropriate to the geological conditions of the area to enable maximum economic production, avoiding hazards to life, health and property, minimizing pollution to air, land and water, and pursuant to an efficient and economic program of operation.

2. The coal operating contract holder shall be responsible for the safety and technical efficiency of the coal mining operations of the sub-contractor and the compliance of his work obligations and financial commitments under the coal operating contract with the Ministry of Energy thru the Bureau of Energy Development. In no case, the mining operations of the sub-contractor shall interfere in any way with the major mining plans of the contract holder, particularly in the fulfillment and compliance of his work and financial obligations under the coal operating contract.

3. All existing sub-contract arrangements shall be submitted to the Bureau of Energy development not later than October 31, 1982, for its approval. All existing sub-contracts not duly registered by this Office as of said date shall be deemed unauthorized and therefore not valid and enforceable. In addition to this, the coal operating contract holder who sub-contracts his leased area without the prior approval of the BED shall be held criminally liable under Chapter XIV of Presidential Decree No. 463.

This Circular shall take effect immediately.

For Strict Compliance.

September 9, 1982

W. R. DELA PAZ
Acting Director

BED CIRCULAR NO. 82-09-09A

TO: ALL HOLDERS OF COAL OPERATING CONTRACT UNDER PRESIDENTIAL DECREE NO. 972, AS AMENDED

Bureau Circular No. 82-09-09 requires submission of subcontracts, entered into by coal operators under P.D. 972, as amended, for registration with and approval by the Bureau of Energy Development (BED).

In connection thereof, the following clarifications and additional rules and regulations are hereby issued for strict compliance of the operators concerned, to wit:

1. All subcontracts or agreements relating to the activities listed in Circular No. 82-09-09 must be registered with BED not later than thirty (30) days from the execution thereof.

2. Existing subcontracts/agreements entered into prior to the issuance of this Circular, must be registered with BED not later than February 28, 1983. No further extension will be granted.

3. Subcontracts/agreements should be submitted in three (3) copies. Alternatively, the coal operator may just submit a comprehensive list (also in three (3) copies) of its subcontracts/ agreements showing the following information:

   a) name and address of contractor

   b) duration of the contract

   c) summary of contracted activities

   d) value of the contract and manner of payment

In case of a summary list of subcontracts/ agreements, the BED reserves the right to require the submission of a copy of any subcontracts/agreements and other supporting documents which would require further evaluation and/or approval by BED.

4. All subcontracts/agreements which provide payment to the subcontractor in coal are hereby deemed unauthorized. These contracts are beyond the authority given by the BED to the operators under their respective coal operating contract and therefore not valid and are unenforceable.

5. Failure to comply with any of the foregoing requirements shall result to the disallowance of the related expenditures as recoverable cost under the operator's coal operating contract. This is without prejudice to the administrative sanctions which the BED may impose or take against the coal operator.

This Circular shall take effect immediately.
For Strict Compliance.

December 14, 1982

W. R. DELA PAZ
Acting Director

BED CIRCULAR NO. 83-01-01

TO: ALLSERVICE CONTRACTORS UNDER PRESIDENTIAL DECREE NO. 87

In addition and subject to the guidelines of BED Circular No. 80-05-03 dated June 5, 1980, and in order to encourage and enhance the development of domestic transport services capability to support the logistical requirements of petroleum operations in the Philippines, all petroleum service contractors are hereby enjoined to give preference in awarding contracts, whether negotiated or bidded out, in favor of Philippine-registered tankers, vessels, bulk carriers, and other watercrafts, including supply boats, crew boats, tugs and barges, to service their transport, support, and other related operational requirements under their respective service contracts.

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

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

This Circular shall take effect upon its approval.

December 27, 1982

W. R. DELA PAZ
Acting Director

BED CIRCULAR NO. 83-04-06

TO: ALL SERVICE CONTRACTORS UNDER PRESIDENTIAL DECREE NO. 87

It has been the recent experience of this Bureau that several letters have been received contesting the award of bids made by some petroleum service contractors under the provision of BED Circular No. 80-06-03, 80-07-05, 80-08-06, and 83-01-01. It is therefore required that the following guidelines be likewise observed by petroleum service contractors in the award of bids for services. Materials and/or equipment acquisitions, to wit:

1. The bid solicitation letters to be submitted to the BED must show proof of service or receipt by the prospective bidder either by personal or registered mail as supported by registry receipt.

2. Said BED Circular No. 80-06-03 as restated in BED Memorandum Circular No. 80-08-06 requires the service contractors to submit to BED at least three (3) copies of bids, summary analysis and basis of awarding bids directly to the 0il and Gas Division of this Bureau. In addition to these requirements, it is hereby required that henceforth; the Bureau of Energy Development must be furnished a duplicate sealed bid of such persons, firms or entities who actually participated in the bidding conducted by the service contractor. For this purpose, the service contractor will require from the bidders a duplicate sealed bid (to which the service contractor may further affix its own seal). This duplicate shall be submitted by the service contractor as among the required submission under the aforementioned BED Circular, but will not be opened by the BED unless a complaint has been lodged by a bidder against the service contractor regarding the conduct of the bidding.

All the other provisions in said BED Circular Nos. 80-06-03 and 80-07-05 and BED Memorandum Circular Nos. 80-08-06 and 83-01-01 not inconsistent with this Circular shall remain in full force and effect.

This Circular shall take effect upon its approval.

April 21, 1983

W. R. DELA PAZ
Acting Director

OEA CIRCULAR NO. 89-01-02

TO: ALL SERVICE CONTRACTORS UNDER PD NO. 87 AND SUBCONTRACTORS UNDER PD 1354

WHEREAS, the then Bureau of Energy Development (BED) Circular No. 78-07-04 requires the submission of two (2) copies of sub-contracts, entered into by service contractors under PD 1354, for registration and approval of the Bureau of Energy Development, now Office of Energy Affairs (OEA);

WHEREAS, it has been observed that some service contractors submits the subcontracts for registration not within a reasonable period for execution, in one case more than two years from the execution thereof;

WHEREAS, it is of the best interest of the Government and the contractor in order to hasten and simplify the registration/approval of the subcontracts entered into by service contractors under PD 87;

WHEREFORE, pursuant to the provisions of Section 22 of Executive Order 193, the following clarification and additional rules and regulations are hereby issued for strict compliance of the service contractors concerned, to wit:

1. All contracts or agreements entered into by service contractors with the Subcontractors pursuant to the provisions PD 87 must be registered with the Office of Energy Affairs not later than 60 days from execution thereof;

2. Existing subcontracts/agreements entered into prior to the issuance of this Circular, must be submitted for registration with OEA not later than March 31, 1989. No further extension will be granted;

3. Subcontracts/agreements should be submitted in two (2) copies. Such contracts/agreements should contain a provision regarding the deductions withholding and remittance of taxes imposed in Section 1 of PD 1354 from gross income paid by service contractor to the subcontractor. In the absence of such provision, the service contractor shall submit related documents evidencing compliance with the deduction, withholding and remittance of taxes under PD 1354;

4. All subcontracts/agreements which provide payment to the subcontractor in oil are hereby deemed unauthorized. These contracts are beyond the authority granted by OEA to service contracts and therefore not valid and are unenforceable; and

5. Failure to comply with any of the foregoing requirements shall result to the disallowance of the related expenditures as recoverable cost under the service contracts. This is without prejudice to whatever administrative and legal sanctions which the OEA may impose or take against the service contractor.

This Circular shall take effect immediately.

January 10, 1989

W. R. DE LA PAZ
Executive Director

OEA CIRCULAR NO. 89-08-09

TO: ALL HOLDERS OF COAL OPERATING CONTRACTS UNDER PRESIDENTIAL DECREE NO. 972, AS AMENDED

It has been observed that it has become a prevailing practice among coal operating contract holders to enter into sub-contracts with other persons or entities with respect to their coal exploration, exploitation, development, extraction or removal of coal mineral from their coal contract areas without the prior approval of the Office of Energy Affairs (OEA). Pursuant to Section 12a (iii) of Presidential Decree No. 1206 in relation to Section 18 of Presidential Decree No. 972, as amended, otherwise known as the "Coal Development Act of 1976", the herein Circular is hereby promulgated by way of amendments to Bureau Circular No. 82-09-09 dated September 9, 1982 for the strict observance, compliance and guidance of all Coal Contractors.

For purposes of this Circular, the term sub-contracting refers to the act of transferring, assigning, conveying or allowing another person(s) or entity (ies) to explore and develop the area or any part thereof previously awarded by the OEA to qualified coal mining operators.

Sub-contracting shall exclude coal mining and other activities directly related to production, and shall include the following, among others:

(a) Tunneling
(b) Trucking
(c) Shaft sinking
(d) Road construction
(e) Diamond drilling
(f) Auger drilling
(g) Test pitting
(h) Trenching
(i) Stripping
(j) Dam construction
(k) Construction of infrastructure such as plants, buildings, etc.

(1) Holders of coal operating contracts shall not transfer, assign, convey, cede, dispose, or subcontract the coal areas awarded to them without the prior approval of the OEA (Section 15, PD 972). Sub-contracting, transfer or assignment of coal operating contract areas, to be valid and enforceable, aside from the prior approval of the OEA, may be made only to qualified persons, partnership or corporations provided that they possess the necessary financial resources and technical capability to continue the mining operations in accordance with good coal mining practices appropriate to the geological conditions of the area to enable maximum economic production, avoiding hazards to life, health and property, minimizing pollution to air, land and water, and pursuant to an efficient and economic program of operation, provided however, that the act of extracting coal from the area shall be the sole and exclusive obligation of a coal operating contract holder.

(2) The coal operating contract holder shall be responsible for the safety and technical efficiency of the coal mining operations of the sub-contractor and the compliance of his work obligations and financial commitments under the coal operating contract with the OEA. In no case, the mining operations of the sub-contractor shall interfere in any way with the major mining plans of the contract holder, particularly in the fulfillment of or compliance with his work and financial obligations under the coal operating contract.

(3) All existing sub-contract arrangements shall be submitted to the OEA not later than September 30, 1989, for its approval. All existing sub-contracts not duly registered by this Office as of said date shall be deemed unauthorized and therefore not valid and enforceable. In addition to this, the coal operating contract holder who sub-contracts his leased area without the prior approval of the BED shall be held criminally liable under Chapter XIV of Presidential Decree No. 463.

(4) All future sub-contracting shall be limited to those mentioned in this Circular and shall be registered with the OEA before any sub-contracting work is implemented, otherwise the cost incurred in the sub-contracting shall not be recoverable as part of its operating expenses.

This Circular shall take effect immediately.

For strict compliance.

W. R. DE LA PAZ
August 22, 1989
Makati, Metro Manila

DEPARTMENT CIRCULAR NO. 95-04-002

TO: ALL GEOTHERMAL SERVICE CONTRACTORS

WHEREAS, under Section 1 of PD 1442, the Government through the Department of Energy (DOE) is mandated to exercise at all times direct supervision over the activities and operations of Geothermal Service Contractors (GSC).

WHEREAS, in order to effectively supervise and monitor the activities and operations of GSC, there is a need for the registration of subcontracts/agreements entered into by and between the GSC and the subcontractor.

NOW THEREFORE, to effectively implement Section 1 of PD 1442, this Circular is hereby issued to read as follows:

Section1. All Geothermal Service Contractors are hereby required to register with the Department of Energy all existing subcontract agreements not later than May 31, 1995.

Section2. All future subcontracts/ agreements shall be registered with the DOE within one (1) month from its execution thereof'.

Section3. Failure on the part of the Geothermal Service Contractors to register subcontracting agreements to the DOE shall be sufficient cause to disallow any claim for recovery of expenses incurred from such subcontracting agreements.

Section4. This Circular shall take effect immediately.

April 10, 1995

FRANCISCO L. VIRAY
Acting Secretary

Chapter 6
Tax-Exemption Incentive (COC/SC)

BED CIRCULAR NO. 80-07-04

TO: ALL PETROLEUM SERVICE CONTRACT HOLDERS/COAL OPERATING CONTRACTORS

To ensure authenticity of Certificate of Tax Exemptions issued to service contractors who qualify in the importation of machinery, equipment, spare parts or materials directly and exclusively needed in their contract operations, free from the payment of customs duties and compensating tax, the Bureau of Energy Development will be using dry seal effective July 1, 1980 to be stamped on every Certificate of Tax Exemption.

The seal will be exclusively stamped at the Bureau of Energy Development and any Certificate of Tax Exemption not bearing the said seal will not be considered valid.

Please be guided accordingly.

July 1, 1980

W. R. DELA PAZ
Acting Director

BED CIRCULAR NO. 80-11-09

TO: ALL COAL OPERATING CONTRACTORS

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1. To show that the machinery or equipment was imported by the Coal Operating Contractor and that to ensure that it is being used directly, actually and exclusively by the operator in its coal operations as intended under Section 16 of Presidential Decree No. 972, as amended, and reiterated under the Coal Operating Contract awarded by the Ministry of Energy, thru the Bureau of Energy Development, it is required that the sticker of the seal of the Bureau of Energy Development and its accompanying descriptions "Tax Exempt and Entered under PD 972", hereto attached as Annex "A", shall be clearly sealed or pasted on a conspicuous spot on the front right side of every such machinery or equipment imported free from the payment of customs duty and compensating tax by said Coal Operating Contract.

2. The Coal Operating Contractor is required to implement the said directive within fifteen (15) days from actual release of such machinery or equipment from the custody of the Bureau of Energy Development on the accomplishment of this order. The Bureau of Energy Development shall monitor compliance to this Circular.

3. Machinery and equipment previously imported tax-free by the Coal Operating Contractor should be inventoried and the list prepared under oath should be submitted to this office. The Coal Operating Contractor is likewise required that every such machinery or equipment so imported should be sealed or posted with the seal and description in Annex "A" hereof not later than December 31, 1980.

4. The sticker bearing the BED seal and its descriptions will be issued by the Bureau of Energy Development at reasonable prices.

5. In case the attached specimen fades or becomes unclear, it must be replaced duly informing this Office of said replacement of resealing.

6. Any tampering, falsification, misrepresentation or fraud committed in connection with the sealing of the BED Seal and the accompanying description will be approximately dealt with under applicable laws and guidelines.

This Circular shall take effect immediately November 27, 1980

W. R. DELA PAZ
Acting Director

BED CIRCULAR NO. 81-04-03

TO: ALL PETROLEUM SERVICE CONTRACTORS
UNDER PRESIDENTIAL DECREE NO. 87, AS AMENDED

It has been observed that Service Contractors submit applications for tax exemption on the importation of exploration and development-related equipment when such equipment have already arrived in the country and bonded in the customs warehouse. Such practice results in delayed in their release due to occasional technicalities that arise regarding the validity of application for tax exemption of certain equipment and materials.

All service contractors are therefore reminded and rejoined to observed Paragraph 3 of Rule 2 of the Rules and Regulations Governing Tax-Exempt importations under Presidential Decree No. 87 dated December 17, 1974, which provides that:

EXCEPT IN CASES COVERED UNDER THE NEXT SUCCEEDING RULE, NO APPLICATION SHALL BE ACCEPTED UNLESS FILED AT LEAST TEN (10) DAYS PRIOR TO ACTUAL IMPORTATION, FOR THIS PURPOSE, IMPORTATIONS SHALL MEAN IN THE APPROPRIATE CASE, THE OPENING OF LETTERS OF CREDIT, THE PLACING OF PURCHASE ORDERS IN THE CASE OF OPEN ACCOUNT, OR THE EXECUTION OF THE LEASE CONTRACT IN THE CASE OF LEASE AGREEMENT FOR THE MACHINERY, EQUIPMENT, SPARE PARTS AND MATERIALS SOUGHT TO BE EXEMPTED.

The Bureau of Energy Development would like to solicit your cooperation by submitting to the BED a copy of the "Purchase Order" list for approval of tax exemption once the equipment have been ordered abroad. This way, any technical problem that may be arise involving the importation will be threshed out way in advance before the equipment arrive. The mechanics of the revised system will be as follows:

1. The Service Contractor submit to the BED Chief, Oil and Gas Division two (2) copies of the list of

equipment (Purchase Order) to be purchase abroad for approval for tax exemption. One copy remains with BED and the other with the Service Contractor.

2. BED approved tax exemption application and/or threshed out taxable equipment with Service Contractor.

    a) If equipment to be imported will be contained only one bulk crate, then the Service Contractor submits the usual forms for application for tax exemption together with the "Purchase Order" form and the paper will be processed upon approval for the application.

    b) If equipment is anticipated to arrive in separate bulks, BED nonetheless proceeds with the approval of tax exemption based on the "Purchase Order" list and will record the same. When the equipment arrive, the Service Contractor submits the usual Tax Exemption forms based on the number of bulk crates entered including the approved Purchase Order and a covering letter indicating when the application approved.

Henceforth, ALL EMERGENCY IMPORTATIONS shall comply with the procedures in Rule 3 of the subject regulations which provides that;

IN CASE OF IMPORTATION URGENTLY NEEDED IN EXPLORATION OPERATION WHERE THE SERVICE CONTRACTOR COULD NOT COMPLY WITH THE REQUIREMENTS PROVIDED IN RULE 2 WITHOUT INCLUDING DELAYS AND NEEDLESS EXPENSES, THE BED UPON WRITTEN REQUEST FOR GOOD CAUSE SHOWN, MAY AUTHORIZE THE IMPORTATION WITHOUT PAYMENT OF CUSTOMS DUTY AND COMPENSATION TAX UPON THE POSTING OF A GOOD AND SUFFICIENT BOND IN FAVOR OF THE BUREAU OF CUSTOMS IN AN AMOUNT NOT LESS THAN THE STATED AMOUNT OF DUTY AND TAX FROM WHICH THE IMPORTATION IS BEING EXEMPTED. IT SHALL BE THE PRINCIPAL CONDITION OF THE BOND THAT THE IMPORTER SHALL SUBMIT TO THE BUREAU OF CUSTOMS WITHIN THIRTY (30) DAYS FROM THE WITHDRAWAL OF THE IMPORTATION FROM THE CUSTOMS CUSTODY, THE APPROPRIATE CERTIFICATE ISSUED BY THE BED QUALIFYING THE IMPORTER TO UNDERTAKE THE IMPORTATION ON A TAX EXEMPT BASIS. FAILURE OF THE IMPORTER TO PRODUCE SAID CERTIFICATE WITHIN THE PRESCRIBED PERIOD SHALL CAUSE THE AUTOMATIC CANCELLATION OF THE BOND IN FAVOR OF THE GOVERNMENT WITHOUT RECOURSE TO A SUIT IN LAW.

Likewise, all Service Contractors; are again reminded to strictly comply with the requirements of specifying the specific end use and place of use of tax exempt importation embodied in rule 2 of the subject regulations and reiterated in circular No. 11, Series of 1977.

Your strict compliance is hereby enjoined on the foregoing rules which are thereto enforced since 1974 to ensure smooth and orderly processing and evaluation of application for tax-exemption.
April 1, 1981

W. R. DELA PAZ
Acting Director

BED CIRCULAR NO. 81-05-05

RULES AND REGULATIONS GOVERNING TAX-EXEMPT IMPORTATIONS UNDER PRESIDENTIAL DECREE NO. 1442

Pursuant to Section 6 of Presidential Decree No. 1442, the following rules and regulations are hereby promulgated to implement the intent and provisions of Section 4 (a) thereof.

Rule 1. EXEMPTION

In accordance with Section 4 (a) of Presidential Decree No. 1442, the geothermal service contractor may be authorized by the Bureau of Energy Development to import under certain conditions machinery and equipment, spare parts and materials required in their geothermal operations without payment of customs duty and compensating tax.

"Required in the geothermal operation" shall mean that the machinery, equipment, spare parts and/or materials sought to be exempted are directly an actually needed and will be used exclusively by the applicant in its operation or in operation for it by a contractor or subcontractor which the applicant or its contractor or subcontractor is currently engaged or is expected to engage within a reasonable period of time.

The exemption of spare parts shall be limited to spare parts imported within a particular one calendar year period, the aggregate cost of which shall not exceed ten percent (10%) of the cost of the specific machinery or equipment where they will be used. Spare parts in excess of the above amount allowed to be imported within the said one-year period shall be subject to the regular duty and taxes.

Rule 2. APPLICATION

All applications for tax-exempt importations shall be made upon BED Form No. 81-001 (Annex A) which shall be accomplished in triplicate and sworn by a responsible officer of the applicant before a notary public.

Applications shall be examined first as to completeness of the required data and information to facilitate proper processing and evaluation and those that are incomplete shall not be accepted.

Except in cases covered under the next succeeding rule, no application shall be accepted unless filed at least ten (10) days prior to actual importation. For this purpose, importation shall mean, in the appropriate case, the opening of letters of credit, the placing of purchase orders in case of open account, or the execution of the lease contract in case of lease arrangement, for the machinery, equipment, spare parts and materials sought to be exempted.

All applications for tax-exempt importation required in geothermal operations shall state clearly in the accompanying BED Form No. 81-001 the specific end use of the machinery, equipment, spare parts and/or materials to be imported, place and use or installation of the said machinery, equipment, spare parts and /or materials, and the designation given to the particular geothermal operations in accordance with the following:

1. Specific end use of the tax-exempt importation shall be clearly stated in the space specifically provided therefore in BED Form No. 81-001. "Specific end use" shall mean the very use, function, or purpose for which the machinery, equipment, spare parts and/or materials are imported. The imported machinery, equipment, spare parts and/or materials must be needed in the geothermal operations such that its/their absence hampers the normal pace of the said geothermal operations.

2. Specific place of use or installation of the machinery, equipment, spare parts and/or materials to be imported identifying the municipality and province. If practicable, shall be stated in the space provided therefore in BED Form No. 81-001.

Rule 3. EMERGENCY IMPORTATION

In case of importation urgently needed in the geothermal operations where the service contractor could not comply with the requirements provided in Rule 2 without incurring delays and needless expenses, the BED, upon written request for good cause shown, may authorize the importation without prepayment of customs duty and compensating tax upon the posting of a good and sufficient bond in favor of the Bureau of Customs in an amount not less than the stated amount of duty and tax from which the importation is being exempted. It shall be the principal condition of the bond that the importer shall submit to the Bureau of Customs within thirty (30) days from the withdrawal of the importation from customs custody, the appropriate certificate issued by the BED qualifying the importer to undertake the importation on a tax-exempt basis. Failure of the importer to produce said certificate within the prescribed period shall cause the automatic cancellation of the bond in favor of the government without recourse to a suit in law.

Rule 4. CONDITIONS FOR TAX-EXEMPT IMPORTATION

The tax-exempt importation of machinery, equipment, spare parts and/or materials shall be authorized under the following conditions:

a. The importation is directly and actually needed and will be used exclusively by the contractor in its operation or in operation for it by a contractor which it is currently engaged or is expected to engage within a reasonable period of time.

b. The machinery and equipment, spare parts and/or materials proposed to be imported are not manufactured domestically at comparable prices and quality.

   For this purpose, the BED may cause the publication, at the expenses of the service contractor, or a notice to purchase machinery, equipment, spare parts and/or materials known to be domestically manufactured in a newspaper of general circulation, with a list of the proposed importations for the information of all domestic companies concerned. Domestic manufacturers shall be advised to submit to the BED within five (5) days from the date of publication their respective firm names, addresses, locations of their plants, the names of their general managers and chief engineers, telephone numbers and the machinery, equipment, spare parts and/or materials proposed to be imported which they manufacture or could manufacture to adequately meet the needs of the contractor, the prices thereof and quantity and quality of their products.

   In determining the reasonableness of the prices quoted by the domestic manufacturers, the BED may be guided by the acquisition cost of similar machinery, equipment, spare parts and/or materials imported in the Philippines, if all applicable taxes and duties were paid thereon, plus fifteen percent (15%) mark-up.

c. The certificate shall be valid for a period of six (6) months from the date stated thereon.

d. The importation is covered by shipping documents in the name of the Contractor as consignee to whom the shipment will be delivered directly by the customs authorities.

e. All existing rules and regulations governing the bringing into the Philippines of foreign articles and the clearance thereof from customs custody are complied with.

Rule 5. BED ACTION

The action of the BED on the application, whether it be approval or disapproval, shall be communicated in writing to the contractor. If the action be that of approval, the Bureau shall forward to the Collector of Customs of the port where the importation is proposed to be entered a Certificate of Qualification for Tax-Exemption (BED Form No. 81-002, Annex "B") on the basis of which the operator can secure release of the imported machinery, equipment, spare parts and/or materials indicated therein without payment of customs duty and compensating tax. Copies of the certificate shall also be sent to the Minister of Finance, the Commissioner of Customs and the contractor.

Rule 6. POST IMPORTATION REQUIREMENTS

Within thirty (30) days following the release of the importation from Customs custody, the contractor shall submit to the BED copies of official documents required under the Revised Tariff and Customs Code of the Philippines, as amended, indicating the description, quantity and price of the machinery, equipment, spare parts and/or materials imported, the names of the supplier and carrying vessel and other particulars relating to said importation.

The Contractor shall, within the same period stated in the preceding paragraph, advise the BED in writing of the precise place to where the importation has been taken and the actual use thereof. In case installation is necessary, the same shall be made within one hundred twenty (120) days following the withdrawal of the importation from customs custody, unless said period is extended by the BED upon proper request for good cause shown. In the latter case, the thirty-day period for submitting the written advice to the BED shall be counted from the time the installation is completed.

In connection with the foregoing, the BED reserves the right to send its duly authorized representatives for the purpose of verifying whether or not the importation has actually been installed and is being used in the geothermal operations as represented by the contractor.

Rule 7. PRIOR APPROVAL OF SALE OR DISPOSITION

The Contractor shall not sell, transfer, export or dispose of the machinery, equipment, spare parts and/or materials which were allowed to be imported on a tax-exempt basis without prior approval of the BED and payment of duties and taxes to the government. In case of sale, transfer, export or other disposition without prior approval of the BED, the contractor shall be liable to pay twice the amount of taxes and duties which were originally waived in its favor. However, the Bureau of Energy Development may allow and approve the sale, transfer or disposition without tax if made to:

a. Another contractor under a geothermal service contract;

b. For reasons of technical obsolescence; or

c. For purposes of replacement to improve and/or expand operation under the geothermal service contract.

BED Form No. 81-003, attached as Annex "C", is the application form for sale, transfer, exportation or disposition of tax-exempt importations made under Presidential Decree No. 1442. The authority granted by the BED for the contractor to sell, transfer, export or dispose such tax-exempt importations appears in BED Form No. 81-004, attached as Annex "D".

Rule 8. FEE

A processing fee of fifty pesos (PhP50.00) shall be required for every application under these rules and regulations.

Rule 9. EFFECTIVITY

These rules and regulations shall take effect immediately. Copies thereof shall be furnished to the Ministry of Finance, the Bureau of Customs and the contractor under a geothermal service contract.

May 19, 1981

W. R. DE LA PAZ
Acting Director

APPROVED By:

GERONIMO Z. VELASCO
Minister of Energy

BED CIRCULAR NO. 81-11-09

TO: ALLSERVICE CONTRACTORS UNDER:

P. D. 87 (The Oil Exploration and Development Act of 1972)
P. D. 972 (The Coal Development Act of 1976)
P. D. 1442 (The Exploration and Development of Geothermal Resources)

It has been observed that Service Contractors submit application for the exemption on the importation of spare parts of exploration and development related equipment/machineries without submitting the BEDTEC No. of the principal equipment/machineries where the spare parts will be used. This practice results in delays in their release due to occasional technicalities that arise regarding the validity of application for tax exemption of certain spare parts.

All Service Contractors are therefore reminded and enjoined to observe the Rules and Regulations Covering Tax-Exemption Importations under P. D. Nos. 87, 972, 1442, which provide that:

> THE EXEMPTION OF SPARE PARTS SHALL BE LIMITED TO SPARE PARTS IMPORTED WITHIN A PARTICULAR ONE CALENDAR YEAR PERIOD, THE AGGREGATE COST OF WHICH SHALL NOT EXCEED TEN PERCENT (10%) OF THE SPECIFIC MACHINERY OR EQUIPMENT WHERE THEY WILL BE USED. SPARE PARTS IN EXCESS OF THE ABOVE AMOUNT ALLOWED TO BE IMPORTED WITHIN THE SAID ONE-YEAR PERIOD SHALL BE SUBJECT TO THE REGULAR DUTY AND TAXES.

To fully implement the above provision, it is hereby directed that all applications for tax-exemptions of spare parts shall indicate:

1. The BEDTEC No. of the principal machinery/equipment where all the spare parts are to be used when entered tax free under P. D. Nos. 87, 972 or 1442;

2. The total value of the spare parts on previous importations for a particular machinery or equipment;
3. The value of the principal equipment or machinery.

Likewise, all Service Contractors are again reminded to strictly comply with the requirement of specifying the specific end use and place of use of tax-exempt importations embodied in Bureau Circular No. 11, Series of 1977.

Your strict compliance is hereby enjoined on the foregoing rules and regulations.

DR. ARTHUR SALDIVAR-SALI
Deputy Director

November 18, 1981

BED CIRCULAR NO. 82-04-03

TO: ALL PETROLEUM SERVICE CONTRACTORS

It has been repeatedly observed that petroleum service contractors do not comply with fundamental and basic provisions of the Rules and Regulations Governing Tax-Exempt Importations. To assure orderly processing and evaluation of application for tax-exemption, the following reminders are emphatically reiterated for the strict compliance and observance by service contractors:

1. Applications for tax-exemptions shall be filed and the corresponding filing fee paid with the Cashier of the Bureau. Such applications shall be left with the Cashier who shall transmit it to the proper divisions for evaluation and approval.

   In no case shall representatives of service contractors hand-carry such applications to the approving divisions or officials, make physical follow-ups and exert pressures for the approval of their applications.
   Approved applications and certificate of tax-exemption shall be released at the Records Office of the Bureau.

2. NO APPLICATION SHALL BE SUBMITTED TO THE BUREAU UNLESS FILED TEN (10) DAYS PRIOR TO ACTUAL IMPORTATION.

   To effectuate this policy, the Bureau issued an earlier Circular No. 81-04-03 where "purchase order lists" shall be submitted for approval by the service contractor to the Bureau of Energy Development once the equipment have been ordered abroad but in no case less than ten (10) days prior to the filing of the application for tax-exemption with the Bureau of Energy Development to give time for the Bureau of Energy Development to properly evaluate such intended importation and to thresh out way in advance any technical problem that may arise involving the importation.

   Circular No. 81-04-03 should be complied with by all service contractors.

3. In case of emergency or urgent importations, the BED, upon written request for good cause shown, may authorize the importations without payment of customs duty and compensating tax upon the posting of a good and sufficient bond in favor of the Bureau of Customs in an amount not less than the stated amount of duty and tax from which the importation is being exempted.

   It shall be the principal condition of the bond that the importer shall submit to the Bureau of Customs within thirty (30) days from the withdrawal of the importation from customs custody, the appropriate certificate issued by the BED qualifying the importer to undertake the importation on a tax-exempt basis.

Failure of the importer to produce said certificate within the prescribed period shall cause the automatic cancellation of the bond in favor of the Government without recourse to a suit of law.

4. In the importation of spare parts, the following rules set under BED Circular No. 81-11-09 are hereby stressed:

   a) The application shall indicate the Tax-Exemption Certificate of the principal machinery/equipment where all the spare parts are to be used when entered tax free;

   b) Declaration of the total value of the spare parts and the corresponding calendar year on previous importations for a particular machinery or equipment;

   c) The value of the principal equipment or machinery.

   Applications under this category shall be returned without action and/or disapproved in the event of non-compliance with Circular No. 81-11-09.

The non-observance of the rules may cause delays in the evaluation of the application for tax-exemption and even disapproval of application to the prejudice of service contractor.

For your strict compliance.

W. R. DE LA PAZ
Acting Director

April 22, 1982

MEMORANDUM CIRCULAR NO. 83-02-04

TO: ALL HOLDERS OF PETROLEUM, COAL AND GEOTHERMAL SERVICE CONTRACTS AND APPLICANTS FOR TAX-EXEMPTION CERTIFICATES UNDER PRESIDENTAL DECREE NO. 1068

Pursuant to Presidential Decree No. 1206, creating the Bureau of Energy Development, Ministry of Energy, in relation to P. D. 972, as amended (coal), P. D. 87 (oil and natural gas), P. D. 1442 (geothermal) and P. D. 1068 (non-conventional energy resources) and other laws, as implemented by pertinent BED Circulars and other rules and regulations, the BED processes and approves applications for tax-exemptions on the importation, sales, transfer, exportation or disposition of machinery, equipment, spare parts and/or materials used by the petroleum or geothermal service contractor, coal operating contractor or an applicant under P. D. 1068 in their exploration, development, production and exploitation operations or in the establishment and construction of non-conventional facilities or equipment as the case may be.

It is hereby re-stated that the action of the BED on said applications for tax-exemptions, whether it be approval or disapproval, shall be communicated in writing to the applicant. If the action be that of approval, the BED shall forward to the Collector of Customs of the port where the importation is proposed to be entered a Certificate of Qualification for Tax-Exemption, on the appropriate form, with the dry seal of the BED duly stamped on every Certificate of Tax-Exemption, on the basis of which the applicant can secure release of the imported machinery, equipment,, spare parts, and/or materials indicated therein without payment of customs duty and compensating tax. Copies of the certificate shall also be sent o the Minister of Finance,

the Commissioner of Customs, the Central Bank of the Philippines, and the applicant. In no event shall BED deliver, endorse or entrust the said Tax-Exemption Certificate to the importer, his agent or broker. For this purpose each application for Certificate of Qualification for Tax-Exemption and the certificate itself should be prepared in six (6) copies to be distributed as follows:

One (1) copy for the Collector of Customs

One (1) copy for the Commissioner of Customs

One (1) copy for the Minister of Finance

One (1) copy for Central Bank of the Philippines

One (1) copy for the Applicant

One (1) copy for the Bureau of Energy Development

Six (6) . . . . . Total

In this connection, to ensure official transmittal of said Certificates of Qualification for Tax-Exemption, it is required that henceforth, all such certificates and supporting documents in favor of any petroleum or geothermal service contractor, coal operating contractor or any person who qualifies under P.D. 1068 shall be compiled by the Legal and Negotiations Division of this office. Subsequently, representative or messenger of the BED, thru the Administrative Service Division shall personally hand-carry these certificates and other supporting documents for distribution to the Collector of Customs, Commissioner of the Bureau of Customs, Minister of Finance and Central Bank of the Philippines. However, in the event that the Collector of Customs concerned holds office outside of Manila, the Tax-exemption Certificate shall be sent to him by the fastest registered mail. The Legal and Negotiations Division and the Administrative Services of the BED shall coordinate their functions and see to it that such certificates are compiled and delivered every 3:00 o'clock P.M. of Mondays, Wednesdays and Fridays to the above-referenced offices.

In case the application for the sale, transfer, exportation or disposition of such tax-exempt importations are approved, an authority duly signed and sealed will be issued by the BED addressed to the service contractor/ applicant, on the basis of which said applicant can effectuate the sale, transfer, exportation or disposition of said items free from the payment of customs duty and compensating tax.

This Circular shall take effect immediately.

For strict compliance.

February 23, 1983

W. R. DE LA PAZ
Acting Director

BED CIRCULAR NO. 84-02-021

BOC & DOE JOINT MEMORANDUM CIRCULAR

Presidential Decree Nos. 87, 972, and 1442 allow the tax and duty free importation of machinery, equipment, spare parts and materials not manufactured domestically or not locally available, which are actually, directly and exclusively used in petroleum, coal, and geothermal operations. These importations are released from the custody of the Bureau of Customs through a covering Tax Exemption Certificate (BED TEC) issued by the Bureau of Energy Development.

As a control measure to check and monitor the actual use and whereabouts of these tax and duty free importations, the Bureau of Customs and the Bureau of Energy Development hereby adopt and Promulgate the following rules requiring the posting of BED stickers on certain types of importations and making the same posting requirements a pre-condition before the said importation. are released from the custody of the Bureau of Customs

I. **Requirement to Post Bureau of Energy Development Sticker on Certain Type of Importation Before Their Release From Custody of Bureau of Customs**

The following type of tax and duty free importations approved by the Bureau of Energy Development (BED) and covered by BED Tax Exemption Certificate (BED TEC) issued pursuant to Presidential Decree Nos. 87, 972, and 1442 shall not be released from the custody of the Bureau of Customs until the affixture or posting thereon of a BED sticker in a conspicuous spot on the front thereof by the importing service contractor or operator. The importations requiring BED sticker are as follows:

1. Motor vehicle
2. Bulldozers, dump trucks, fork lifter, and other heavy earth moving equipment
3. Airplanes, helicopters
4. Drilling rigs, transport vessels, supply/support ships
5. Other mobile items predetermined by the Bureau of Energy Development as requiring BED stickers

The BED TEC of importations falling under the above classification shall additionally provide as its last paragraph, as follows:

"Provided that in compliance with Joint memorandum Circular of the Bureau of Customs and the Bureau of Energy dated February 9, 1984 the foregoing importations shall be released from custody of the Bureau of Customs only upon the posting thereon by the importer of the appropriated BED sticker hereto enclosed."

Importation which are not mentioned above, and its BED TEC, do not its face require a BED sticker, may be released from Customs custody without a BED sticker.

II. Definition of Sticker

The BED Sticker shall have a measurement of at least 10 cm. X 27.5 cm. And shall display the emblem of the Bureau of Energy Development and shall provide the following notice:

"Tax exempt and entered under P.D. 87" (or P.D. 972, 529 and 1442 as the case maybe").

"BED TEC No._____"
Series _____
"Service Contractor/Operator_____

The BED sticker shall be required for every separate unit of importation mentioned in Article 1 hereof. Unless otherwise provided,

an importing service contractor/operator shall pay the BED an amount of fifty (P50.00) per sticker upon the filing with the BED of an application for tax exemption certificate. The BED sticker shall accompany the covering BED TEC forwarded by BED to the collectors of customs concerned.

The BED sticker shall remain at all times conspicuously posted at the imported machinery and equipment. In case of deterioration or damaged thereto, the service contractor/operator concerned shall immediately apply with BED for replacement sticker.

III. Implementing Circulars.

The Bureau of Customs and Bureau of Energy Development shall issue separate implementing circulars for the observance of this Joint Memorandum Circulars.

IV. **Effectivity**

LETTER OF INSTRUCTION NO. 563

TO : THE ENERGY DEVELOPMENT BOARD THE CENTRAL BANK OF THE PHILIPPINES THE PHILIPPINE NATIONAL OIL COMPANY THE BUREAU OF CUSTOMS THE COMMISSION ON IMMIGRATION AND DEPORTATION

SUBJECT : ESTABLISHMENT AND OPERATION OF BONDED WAREHOUSE(S) TO BE USED AND CONVERTED INTO AN INTERNATIONAL ACCEPTABLE EXPLORATION SUPPLY BASE(S) TO SERVICE PETROLEUM AND OTHER ENERGY-RELATED OPERATIONS IN THE PHILIPPINE

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(1) In line with the policy of the State of accelerating the exploration, development and production of indigenous energy resources to achieve self-reliance in the country's energy requirements, there is a need and demand for easy availability and accessibility of support and logistic facilities for onshore and offshore exploration activities in petroleum and other energy related fields through the establishment and operation of Exploration Supply Base(s) in the Philippines.

(2) In furtherance of this objective, the Philippine National Oil Company is hereby directed to establish and operate by itself, or through duly designated qualified operator/s, bonded warehouse(s) pursuant to the provisions of Sections 1901-1909 of the *Revised Tariff and Customs Code of the Philippines*, as amended, hereinafter referred to as the "Tariff Code" to be used and converted into an internationally acceptable Exploration Supply Base(s).

In the management and administration of the operation of the Exploration Supply Base(s), the Philippine National Oil Company is empowered to:

(a) Prescribe rules and regulations pertaining to the conduct of operations in the Exploration Supply Base(s);

(b) Fix the rates and charges for the use of and services or privileges accorded within the Exploration Supply Base(s);

(c) Provide all the necessary facilities, services and appurtenances for the promotion, marketing and development of the Exploration Supply Base(s);

(d) Upon application in due form, to

grant authority to persons, firms, corporations or associations, service companies, service contractors and/or subcontractors who are directly or indirectly/engaged in energy-related operations, to establish an office and do business in the Exploration Supply Base(s) including the privilege to erect such buildings and other structures within the Base(s) so as to meet their particular requirements: *Provided,* That such permission shall not constitute a vested right as against the government, nor preclude the right of the government to order the revocation of the grant: *Provided, however,* That such grant of authority shall not be in conflict with the public use of the Exploration Supply Base(s): *Provided, further,* That said authority shall be granted only upon prior licensing of said service or support companies to do business in the Philippines with the appropriate government agencies.

(e) To enter into any contract or agreement necessary for the proper, efficient and stable administration and management of the Exploration Supply Base(s);

(f) Generally, to exercise all the powers necessary or incidental hereto.

(3) The Bureau of Customs shall exercise technical supervision over the Exploration Supply Base(s). It shall see to it that the provisions of Sections 1901 to 1909 of the *Tariff and Customs Code*, as amended by Presidential Decree No. 34 and other pertinent rules and regulations governing the establishment and operation of bonded warehouses are complied with and the following procedures are observed:

(a) Every operator shall be required to post a performance bond for the establishment and operation of the bonded warehouse in the Base and shall submit a Letter of Guarantee from the Philippine National Oil Company to guarantee the payment of the ascertained duties, taxes and other charges due on the articles transferred into said warehouse or for their re-exportation.

(b) Under a special permit, the Collector of Customs concerned may allow the transfer of articles from the port of entry to the bonded warehouse in the Base subject to the filing of warehousing entry and submission of the covering bills of lading and commercial invoices within thirty (30) days from the date of such transfer. The presentation of the consular invoice and Certificate of Origin is hereby waived.

(c) Articles duly transferred to the Exploration Supply Base for warehousing shall be allowed to remain in the bonded warehouse for a period of two (2) years from the time of arrival to the port of entry. For reasons found satisfactory by the Commissioner of Customs, such period may be extended for a series of one (1) year extension: *Provided,* That the total warehousing period including the initial two (2) years shall not exceed five (5) years. Articles not withdrawn at the expiration of the prescribed period shall pay the corresponding duties, taxes and other charges and/or shall be forfeited and sold at public auction.

(d) Articles duly entered or transferred to the bonded warehouse in the Exploration Supply Base may be withdrawn for consumption in the Philippines upon filing of withdrawal entry papers and without the payment of the duties and taxes thereon if sold to tax-exempt entity with existing petroleum service contract, coal operating contracts and other

energy production sharing contracts with the Energy Development Board, upon presentation of the Board's Certificate of Tax Exemption.

(e) In cases of emergency withdrawal from the bonded warehouse, as requested by tax-exempt entities such as petroleum service contractors and coal contract operators, articles urgently needed may be withdrawn even without the prior submission of the requisite Board's Certificate of Tax Exemption, subject to the condition that the tax-exempt entities guarantee the submission of the corresponding Certificate of Tax Exemption or pay the applicable duties and taxes thereon, fifteen (15) days from the date of such withdrawal.

(f) Articles sold to non-tax exempt contractors, persons or firms shall be subject to seizure and forfeiture and sale at public auction pursuant to the applicable provisions of the *Tariff and Customs Code*, as amended, or to the payment of twice the amount of duties and taxes due on the articles.

(g) Articles duly withdrawn from the bonded warehouse in the Base for re-exportation may be allowed upon compliance with existing export laws, rules and regulations and submission of a Certificate from the Energy Development Board that such articles are no longer needed in the Philippines.

(h) Articles withdrawn from the bonded warehouse may be returned in the bonded warehouse upon submission of a Certificate of Authority from the Energy Development Board showing the list of such articles that are being returned in the bonded warehouse.

(i) Nothing in this Letter of Instruction shall diminish the tax exemption privilege under the provisions of existing laws of tax-exempt entities with existing petroleum service contracts, coal operating contracts and other energy production sharing contracts with the Energy Development Board.

(4) The Central Bank of the Philippines is hereby directed to see to it that:

(a) All applications for importation of machinery, equipment, spare parts and materials except those falling under the banned categories (unclassified, semi-unclassified and non-essential commodities in accordance with the Central Bank Commodity Classification Manual) are given due course by authorized agent banks: *Provided,* That such application are accompanied by a certification from the Energy Development Board attesting among others, that:

(i) The support or service companies are duly authorized by the Energy Development Board to do Business in the Exploration Supply Base(s); and

(ii) Such importations shall not entail any payment in foreign exchange to be drawn out of the local banking system.

(b) Likewise, applications for issuance of release certificates covering the above-described importations shall be given due course by agent bank: *Provided,* That copies of pertinent shipping documents are submitted to the Central Bank thru the Management of External Debt and Investment Account Department (MEDIAD) by the agent-banks concerned within five (5) working days from the date of issuance of covering release certificates.

(c) No foreign exchange shall be sold to service said importation, except when the foreign exchange required shall come from the foreign currency deposits of a non-resident under Central Bank Circular No. 343.

(5) The Commission on Immigration and Deportation shall facilitate and allow, upon favorable endorsement of the Energy Development Board, the entry of alien technical and specialized personnel (including the immediate members of their families) who will exercise their professions for the operations of the support or service companies in the Exploration Supply Base(s): *Provided, however,* That upon termination of the employment or connection of any such alien with the service or support companies, the applicable laws and regulations on immigration shall apply to him and his immediate family.

(6) In order to insure the smooth and speedy flow of activities in the Exploration Supply Base(s), other government agencies and offices, including government-owned or controlled corporations concerned or involved in any manner in the operations contemplated herein, more particularly the Bureau of Quarantine, the Philippine Coast Guard, the Philippine Constabulary, the Telecommunications Control Bureau, the Civil Aeronautics Administration, and the Philippine Ports Authority, are hereby directed to extend such assistance as may be needed or required by the Philippine National Oil Company for the efficient implementation and effective enforcement of the provisions of this Letter of Instruction.

(7) This Letter of Instruction shall take effect immediately.

Done in the City of Manila, this 24th day of June, in the year of Our Lord, nineteen hundred and seventy-seven.

OEA CIRCULAR NO. 87-12-007

TO: ALL SERVICE CONTRACTORS UNDER:
P.D. 87 *(The Oil Exploration and Development Act of 1972)*
P. D. 972 *(The Coal Development Act of 1976*)
P. D. 1442 *(The Exploration and Development Act of Geothermal Resources)*

Our attention has been called by the Bureau of Customs that numerous tax-exemption certificates covering imported materials issued by this Office were being utilized by the service contractors for their importations covering more than one (1) shipment.

This practice has brought about confusion and administrative inconvenience in the operational activity which resulted in ineffective control and monitoring of the tax-exempt imported materials.

In order to institute an effective system of monitoring and control, and in order to avoid confusion and administrative inconvenience, it is hereby directed that henceforth, all OEA tax-exemption certificates shall cover only one and complete shipment and thus, all service contractors are accordingly directed to reflect in their respective applications for certificate of tax-exemptions only imported items which shall be shipped once in its entirety.

For strict compliance.

Issued this 18th day of December 1987 in Makati, Metro Manila.

W. R. DE LA PAZ
Executive Director

OEA CIRCULAR NO. 88-09-13

TO: ALL PETROLEUM, COAL AND GEOTHERMAL CONTRACTTORS

This is to reiterate the policy laid down by the then Bureau of Energy Development, now Office of Energy Affairs regarding processing and evaluation of Certificates of Qualification for Tax-Exempt Importations (TEC), to wit:

1. All TEC applications must be filed with the Legal Counseling Division at least ten (10) days prior to actual importation to give time for the OEA o properly evaluate such intended importation and to thresh out way in advance any technical problem that may arise involving the importation.

2. "Purchase Order lists" shall be accepted by the OEA in lieu of shipping documents for purposes of processing and evaluation. However, the shipping documents (i.e. invoice and airway bill or bill of lading) must be submitted before approved TECs can be transmitted to the Bureau of Customs.

3. In case of an emergency importation, a letter-request must accompany said application explaining its urgency and the expected or actual date of arrival of the articles.

4. All duly approved applications and certificates of tax-exemption shall be transmitted by the Records Section of the OEA to the Bureau of Customs every Tuesdays and Thursdays unless otherwise requested in writing by the contractors and approved by the Director of Legal Affairs a Counseling Services or the Agency Head or his Deputy.

The non-observance of the above rules may cause delay in the valuation of the application for tax-exemption and even disapproval of application to the prejudice of service contractors.

For your strict compliance.

Fort Bonifacio, September 13, 1988

W. R. DE LA PAZ
Executive Director

OEA CIRCULAR NO. 88-11-15

WHEREAS, the former Bureau of Energy Development (BED) now Office of Energy Affairs (OEA) issued BED Circular No. 81-11-09 dated November 18, 1981 providing for the rules and regulations governing Tax-Exempt Importations.

WHEREAS, under said Circular, the exemption of spare parts was limited to spare parts imported within a particular one calendar year period, the aggregate cost of which shall not exceed ten percent (10%) of the specific machinery or equipment where they will be used.

WHEREAS, for the past five (5) years, the cost of imported spare parts, machineries or equipment had increased substantially, making the ten percent (10%) ceiling on tax-exempt importations unrealistic.

WHEREAS, in order to cushion the impact on the increasing cost of imported spare parts, machineries or equipment and considering the numerous request from service contractors and coal operators for the increase of the tax exemption privileges, it is thus necessary to amend the said Circular.

NOW THEREFORE, the said BED Circular is hereby amended to read as follows:

SECTION 1. THE EXEMPTION OF SPARE PARTS SHALL BE LIMITED TO SPARE PARTS IMPORTED WITHIN A PARTICULAR ONE CALENDAR YEAR PERIOD, THE AGGREGATE COST OF WHICH SHALL NOT EXCEED TWENTY PERCENT (20%) OF SPECIFIC MACHINERY OR EQUIPMENT WHERE THEY WILL BE USED. SPARE PARTS IN EXCESS OF THE ABOVE AMOUNT ALLOWED TO BE IMPORTED WITHIN THE SAID ONE-YEAR PERIOD SHALL BE SUBJECT TO THE REGULAR DUTY AND TAXES.

SECTION 2. This Circular shall take effect immediately.

October 28, 1988 at Makati, Metro Manila

W. R. DE LA PAZ
Executive Director

OEA MEMORANDUM CIRCULAR NO. 91-06-03

TO: ALL PETROLEUM, COAL AND GEOTHERMAL CONTRACTORS

In addition to the existing policies of the office of Energy Affairs on the Tax-exempt importation and in relation to the exemption of contractors importation from SGS Pre-shipment Inspection and to institute measures against possible abuses that may be committed by the contractor under their tax-exemption privileges under P. D. 87 (petroleum), P.D. 972 (coal), P.D. 1442 (geothermal), the following guidelines are hereby adopted for immediate implementation:

1. Importation of contractor covered by Certificate of Qualification for Tax exemption and Authority to Sell, transfer, export or dispose shall at anytime be subject to inspection by the duly authorize staff of the Office of Energy Affairs (0EA) at the contractors premises to confirm whether the imported materials, equipment, machinery, and spare parts are the same as what the contractor has declare in its application. The contractor shall allow the OEA staff to examine/ inspect the tax-exempt importations for purposes of confirmation.

2. The following sanction shall be imposed on the event of the violation of the Service of Contract, particularly violations of tax exemptions (a) suspensions of the contractors SGS Pre-Shipments exemption privilege and/ or (b) suspension of the tax exemption privileges of the contractor that commit abuses thereof or uses the same for smuggling and/or other illegal activities, without prejudice on the part of the Bureau of Customs to institute seizure proceedings on the illegal shipment and the filing of the proper criminal action against the service contractors and/or its representative under the tariff and Customs Code and other pertinent laws.

Please be guided accordingly.

Makati, Metro Manila, 21 June 1991.

W. R. DE LA PAZ
Executive Director

DEPARTMENT CIRCULAR NO. 96-03-006

TO: ALL PETROLEUM, COAL AND GEOTHERMAL CONTRACTORS
SUBJECT: Procedures in the routing and processing of importation covered by Certificate of qualification for Tax Exemption issued by the DOE implementing Section 12 (b) of P.D. 87 (Oil), Section 16 (b) of P.D. 972 (Coal), and Section 4 (a) of P. D. 1442 (Geothermal)

WHEREAS, it has been observe that quite a number of Certificate of Qualification o Tax Exemption(TEC) issued by the Department of Energy (DOE) for its Petroleum, Coal and Geothermal in the importation of machinery, equipment, materials and spare parts to be used in its petroleum and geothermal operation have Disallowed by the Bureau of Customs (BOC) or endorsed to the Department of Finance(DOF) by BOC for instruction or "en consulta" with the information that the importations were not within the ambit of PDs 87, 972 or 1442, as the case maybe;

WHEREAS, as a result, the release of the imported machinery, equipment, materials and spare parts under TECs have been unduly delayed causing serious disruptions in the constructor's operations;

WHEREAS, in order to expeditiously resolve the pending TECs referred by the BOC to the DOF, the DOE, DOF, BOC have agreed to change the routing and processing procedure for prompt and speedy processing of said TECs;

NOW, THEREFORE, the following procedures shall be observed in the routing and processing of TECs:

Section 1. The contractor shall, after payment of the processing fee, file an application with the DOE for the issuance of a Certificate of Qualification for Tax Exemption (TEC) for the importation of machinery, equipment, materials and spare parts.

Section 2. After the evaluation and formal issuance of the TEC, the DOE shall officially transmit the TEC to the DOF-Revenue Operations Group for processing through its Mabuhay Lane. Should there be any additional requirements, the DOF shall, accordingly, promptly inform the DOE.

Section 3. Upon completion of the processing the DOF shall endorse the TEC to the BOC for immediate release of the imported machinery, equipment, materials and spare parts.

Section 4. All circulars, rules and regulations governing the routing and processing of TECs previously issued by the then Bureau of Energy Development (BED) and Office of Energy Affairs (OEA), which are contrary and inconsistent with this circular are hereby repealed, amended or superseded.

Section 5. This Circular shall take effect immediately.

Fort Bonifacio, Metro Manila, March 27, 1996

FRANCISCO L. VIRAY
Secretary

EDB CIRCULAR NO. 11
SERIES OF 1997

TO: ALL SERVICE CONTRACTORS/ OPERATORS UNDER PRESIDENTIAL DECREE NO. 87
SUBJECT: MEANING OFSPECIFIC END USE IN APPLICATION FOR TAX EXEMPT IMPORTATIONS UNDER PRESIDENTIAL DECREE NO. 87

In processing applications for Certificate of Tax Exemptions, it has been noted that a Number of applications does not provide adequate information on the specific end use of articles or equipment sought to be covered by tax exemption certificates. This has sometimes resulted in delays which could have been avoided.

In connection with the above, the following guidelines are hereby issued to supplement Rule 2 of the Rules and Regulations concerning Tax Exempt Importations. Henceforth, all applications for tax exempt importation required in exploration operations shall state clearly in the accompanying PB Form No. 3 the specific end use of the machinery, equipment, spare parts and/or materials to be imported, place of use or installation of the said machinery, equipment, spare parts and/or materials, and the designation given to the particular petroleum operations in accordance with the following:

1. Specific end use of the tax exempt importation shall be clearly stated in the space specifically provided therefore in PB Form No 3, "Specific end use" shall mean the very use function or purpose for which the machinery, equipment , spare par t and /or materials are imported. The imported machinery, equipment, spare parts or materials must be needed in the petroleum operations such that its/their absence hampers the normal pace of the said Petroleum operations. Example of specific end use are "equipment are necessary in the well's casing program" "chemicals are for mixing drilling fluid to keep the well circulation going,'' "for electric logging and well perforating down hole," to be used to reface the sealing parts of drill pipe strings and "needed to install on the drive of the mud Pump. "Examples of non-specific end use are "for drilling operations under service Contract and to be used in the seismic operations.

2. Specific place of use or installation of the machinery, equipment, spare parts and/or materials to be imported identifying the municipality and province if practicable shall be stated in the space provided therefore in PB Form No. 3.

3. The specific phase of activity or designation given to the particular petroleum operations shall be indicated in the space provided therefore in FB Form No. 3.

No application shall be given due course unless it contains the foregoing particulars.

September 7, 1977

GERONIMO Z. VELASCO

DEPARTMENT CIRCULAR NO. 98-05-008

TO: ALL SERVICE CONTRACTORS AND OPERATORS UNDER REPUBLIC ACT 7156 REQUIRING ALL MINI-HYDROELECTRIC POWER DEVELOPMENT CONTRACTORS TO AFFIX DOE TAX-EXEMPT STICKERS ON MACHINERY AND EQUIPMENT, MATERIALS AND PARTS IMPORTED PURSUANT TO REPUBLIC ACT 7156

WHEREAS, Republic Act 7156, otherwise known as the 'Mini-Hydroelectric Power Incentives Act," and its Implementing Rules and Regulations (IRR), allow tax- and duty-free importation of machinery and equipment, materials and parts shipped with such machinery and equipment, provided that such machinery, equipment, materials and parts are: (1) not manufactured domestically in reasonable quantity and quality at reasonable prices; and (2) directly and actually needed and will be used exclusively in the construction and impounding of water, transformation into energy transmission of electric energy to the point of use;

WHEREAS, R.A. 7156 mandates the Department of Energy (DOE) to exercises such powers as are necessary or incidental to attain the purposes of the said Act;

NOW, TIIEREFORE, the following rules are hereby promulgated:

1. All holders of Mini-Hydroelectric Power Development Contracts are hereby required to paste or affix DOE tax-exempt stickers on machinery and equipment imported pursuant to R. A. 7156.

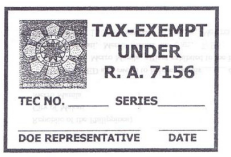
2. The mini-hydro contractor shall secure the DOE tax-exempt sticker for a particular machinery and equipment, materials and parts from the DOE, through the Mini-hydro Division, immediately prior to the release of the appropriate Tax-Exemption Certificate (TEC) for such machinery and equipment in the amount of fifty pesos(P 50.00) for a 10.16 centimeters (cm) x 13.97 centimeters (cm) sticker and one hundred pesos (100.00) for a 10.16 cm x 27.94 cm sticker. One sticker shall be required for one unit / piece of machinery and equipment, imported pursuant to R A 7156.

3. The DOE tax-exempt stickers shall be affixed or pasted on a conspicuous spot, Preferably on the front side of each machinery and equipment by the importingmini-hydropower contractor, immediately upon actual release of such machinery and equipment from the Bureau of Customs.

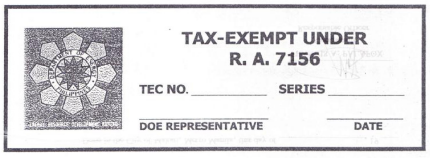
4. The 10.16 cm x 13.97 cm sticker shall be pasted on machinery and equipment that are not more than 30.48 cm in diameter (for rounded objects or equipment) and/ or 30.48 cm in width (for other shapes).

5. The DOE tax-exempt stickers shall be as follows:

   a. 10.16 cm 13.97 cm sticker (not to scale)



b. 10.16 cm x 27.94 cm sticker (not to scale)



6. The DOE sticker shall, at all times, remain conspicuously pasted on the imported machinery and equipment. In case of deterioration or damage thereto, the

mini-hydroelectric power contractor concerned shall immediately apply with the DOE for a replacement sticker.

7. Any tampering falsification, misrepresentation or fraud committed in Connection with the application or affixing of the DOE tax-exempt stickers shall be appropriately dealt with under applicable laws and guidelines.

8. The owners of machinery and equipment acquired under Mini-Hydroelectric Power Development Contracts before the effectivity of this Department Circular are hereby given thirty (30) days from the effectivity of the same within which to secure the appropriate stickers from the DOE and, thereafter, to paste or affix said stickers to the above-describe machinery and equipment.

9. The mini-hydro contractor shall not sell, transfer, export or dispose of the Machinery and equipment materials and parts which have been imported on a tax-Exempt basis, without the approval of the DOE.

   In case of sale, transfer or export or other disposition without approval of the DOE, the mini-hydro contractor shall be liable to pay the amount of taxes and Duties which have been originally waived in its favor. However, the DOE may allow and approve the sale, transfer or disposition without tax if made to:

   a) Another mini-hydro contractor and/ or mini-hydro project under a mini-hydro operating contract;

   b) For reasons of technical obsolescence and/ or due to wear and tear, or;

   c) For purposes of replacement to improve and/or expand the operations under the mini-hydro operating contract.

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

15 May 1998

FRANCISCO L VIRAY
Secretary

DEPARTMENT ORDER NO. 2005-12-022

AMENDING DEPARTMENT ORDER NO. DO2005-10-014 AND ADOPTING INTERIM PROCEDURES FOR THE FINAL APROVAL AND CLEARANCE FOR THE ISSUANCE OF TAX EXEMPTION CERTIFICATES

Further to DOE Department Order No, DO2005-10-O14 and pending the completion of the Department's internal guidelines for the issuance of Tax Exemption Certificates (TEC), the authority for. the issuance of TECs is hereby delegated to the Undersecretary supervising the specific the Bureau or Office issuing the said TEC, provided that clearance of the Secretary shall still be required for TECs covering the following items;

(i) transport vehicles and fuel; and,

(ii) those that, upon determination of the Bureau or Office accountable for such evaluations, do not clearly satisfy the condition of being for the actual, direct, and exclusive use for the activity/purpose allowed under applicable law.

The Undersecretary authorizing or endorsing the release of said TECS shall cause the Bureau and/or the Office responsible for evaluating and endorsing the application for tax exemptions to prepare quarterly reports to be submitted to the Office of the Secretary specifying, among others, the following:

(i) TEC Number

(ii) Date of application, as received by DOE

(iii) Description of the items/goods for import/export

(iv) Estimated value of the items/goods and tax waived

(v) Brief description of intended use and basis for endorsement/approval

(vi) An action taken, including conditions for approval, if applicable

(vii) Date of final action on application

(viii) Office / bureau / individuals which evaluated / endorsed the issuance of the TEC

This Department Order shall take effect immediately and shall remain in effect until otherwise amended or revoked by the Secretary. All previous issuances otherwise inconsistent with this Department Order are hereby modified or revoked accordingly.

Issued this 15th day of December 2005, in Fort Bonifacio, Taguig, Metro Manila.

RAPHAEL LOTILLA
Secretary

Chapter 7
Taxes and Finances

BED CIRCULAR NO. 82-01-01

TO: ALL SERVIC CONTRACTORS UNDER PRESIDENTIAL DECREE NOS. 87 (OIL), 972 (COAL) AND 1442 (GEOTHERMAL ENERGY)

Inquiries have been received by the Bureau of Energy Development concerning the scope or applicability of the privilege from "exemption from all taxes except income tax" of service contractors under Presidential Decree Nos. 87, 972 and 1442.

The Ministry of Finance holds that the subject exemption provision includes both national and local taxes, except permit and regulatory fees which a local government may impose under Sections 36 and 51, respectively, of the Local Tax Code, as amended, said impositions not in the nature of a tax and are imposed for services rendered.

The Ministry of Finance has ruled that permit and regulatory fees should be paid to the local government unit where the operation is actually being undertaken, provided there is an existing local tax ordinance duly acted in accordance with the Local Tax Code, as amended, imposing such fees.

For your information and guidance.

W. R. DE LA PAZ
Acting Director

February 1, 1982

BED CIRCULAR NO. 82-10-10

TO: ALL FOREIGN SERVICE CONTRACTORS/OPERATORS UNDER PRESIDENTAL DECREE NOS. 87, 972 and 1442

In line with the requirement of the Central Bank relative to foreign exchange transactions you are hereby required to submit to the Management of External Debt and Investment Accounts Department, Technical Staff Group of the Central Bank (copy furnished the Bureau of Energy Development) on or before the twenty fifth (25^{th}) of each month, a report of your advances for working capital from your head office for use in exploration and development projects in the Philippines using the attached TSC Form DEP-1.

The amount to be reported shall include direct transfer of funds and debits by your home offices but shall not include that portion of your expenditures which is to be shouldered by your Filipino partners.

The initial report covering the period January to September 30, 1982 should be submitted on or before November 15, 1982.

W. R. DE LA PAZ
Acting Director

For strict compliance.

October 27, 1982

OEA CIRCULAR NO. 98-01

TO: ALL LOCAL CHIEF EXECUTIVES, SANGGUNIANG BAYAN/PANGLUNGSOD/PANLALAWIGAN MEMBERS AND OTHER CONCERNED PARTIES

SUBJECT: GUIDELINES AND PROCEDURES ON THE UTILIZATION OF THE SHARE OF NATIONAL WEALTH TAXES, FEES, ROYALTIES AND CHARGES DERIVED FROM ENERGY RESOURCES

PURPOSE: This Circular is issued as additional guidelines and procedures to be followed by Local Government Units (LGUs) hosting energy projects to implement the provisions of Republic Act (R.A.) 7160, otherwise known as the Local Government Code (LGC) of 1991 and its implementing rules and regulations (IRR), specifically Sections 289-294 of the LGC and Articles 388-392 of its IRR. The Circular provides for the detailed criteria on the delineation of host LGUs for energy projects and options on the use of proceeds for electricity reduction and on the use of excess funds.

SECTION 1. *Definition of Terms.* –

The following terms are used in this Circular:

1.1. National wealth – all natural resources within the Philippine territorial jurisdiction including the lands of public domains, water, minerals, coal, petroleum, mineral oils, potential energy sources, gas and oil deposits, forest products, wildlife, flora and fauna, fishery and aquatic resources and all quarry products.

1.2. National wealth proceeds – levy or tax, royalty, fee or charge derived from the development and utilization of natural resources or national wealth.

1.3. Geothermal reservoir – subsurface geological environment where geothermal fluids accumulate and circulate (system is inclusive of the production and reinjection/recharge zones).

1.4. Hydro reservoir – natural or artificial lake, the latter created by the impounding of steam flow, run-off and subsurface water behind a dam.

1.5. Host LGU – refers to local government unit (provinces, city, municipality or barangay) where the energy resource is located.

1.6. Electrification/energization – provision of dependable and adequate electric service.

1.7. Subsidy scheme – plan to extend direct subsidy to the intended beneficiaries the amount of the LGU's share in the national wealth proceeds for the reduction in the cost of electricity.

1.8. Non-subsidy – plan with the end view of lowering the cost of electricity for the consumers of the host LGU.

The definition of terms in the Joint DILG-DEPARTMENT CIRCULAR 95-01 and the IRR

of the *Local Government Code* are hereby incorporated and adopted in this Circular.

SEC. 2. *Additional Guidelines and Procedures*.

2.1. DELINEATION OF HOST LGU

With respect to energy resources, the host LGUs shall be determined as follows:

(a) Coal

The host LGU is the area where the producing positive coal reserve is located, as delineated by detailed geophysical, geological, and exploration surveys.

(b) Geothermal

The host LGU is the area where the producing geothermal reservoir is located as delineated by detailed geochemical, geophysical, and exploration surveys.

(c) Hydro

The host LGU is the area where the hydro reservoir is located as delineated by detailed topographic, geological, and geotechnical investigations; reservoir and dam height optimization studies; and as delineated by a detailed ground survey.

(d) Petroleum/Natural Gas

The host LGU is the area where the producing petroleum/natural gas reservoir is located, as delineated by detailed geochemical, geophysical, and exploration surveys.

In addition to the energy reserve or reservoir, the host LGU for the above types of energy projects may include the developed energy resource field as delineated on the ground by the production facilities and other physical facilities related to the project except the transmission lines and sub-stations.

2.2. ALLOCATION OF LGU SHARES

In conjunction with Section 292 of the *Local Government Code*, which prescribes the LGU allocation of national wealth taxes, royalties, fees, and charges, the appointment of the shares shall be based on the areas located within the technically delineated energy resource area pursuant to Section 2.1 of this Circular.

When the natural resources are located in two (2) or more provinces, or in two (2) or more municipalities or in two (2) or more barangays, their respective shares shall be computed on the basis of:

(a) Population – seventy percent (70%); and

(b) Land area – thirty percent (30%)

where the land area is area of the host barangay/s found within the technically delineated energy resource area and where the population refers to the population of the host barangay/s found wholly within the technically delineated energy resource.

Arrangements between the host LGUs and the DOE/project proponent on the allocation of national wealth that are in place prior to this Circular shall be respected without precluding the parties from adopting the prescription in this Circular.

2.3. TECHNICAL ASSESSMENT OF ENERGY RESOURCE AREA

Pursuant to Sections 2.1 and 2.2 of this Circular, the allocation of national wealth taxes, royalties, fees and charges shall be based on the technical assessment of the energy resource. The assessment shall be conducted by the Department of Energy (DOE) in consultation with the project proponent. The technical report

shall be provided to the Department of Interior and Local Government (DILG) for implementation by the concerned LGUs.

2.4. UTILIZATION OF 80% OF NATIONAL WEALTH TAXES, ROYALTIES, FEES AND CHARGES

(a) As provided in Section 294 of the *Local Government Code*, at least 80% of the national wealth proceeds derived from the development and utilization of energy resources shall be applied solely to lower the cost of electricity in the LGU where the source of energy is located. Either one or a combination of two approaches can be adopted in the reduction of electricity, namely subsidy and non-subsidy schemes.

The non-subsidy benefits may take the form but not limited to electrification, the technical upgrading and rehabilitation of distribution lines to reduce electricity losses, the use of energy saving devices, and support of the electrical consumption of the infrastructure facilities servicing the public which can all redound to the reduction of electricity rates of the area.

(b) Areas that cannot be energized directly from the grid due to technical or economic constraint shall be provided alternative power sources (e.g., generator, solar panel, wind, etc.). The cost of the installation as well as the maintenance of the facility shall be taken from the LGU royalty share. The activity shall require the endorsement of the concerned LGU council.

(c) Any use of the national wealth proceeds outside the prescriptions in the DILG-DEPARTMENT CIRCULAR 95-01 of October 31, 1995 and this Circular shall require the approval of the DILG Secretary.

SEC. 3. *Boundary Disputes and Escrow of Funds*. –

In the event of a boundary dispute, the national wealth proceeds shall be deposited in a government bank under escrow. The DILG shall exert all efforts to resolve the conflict guided by Section 118 of the *Local Government Code*, with the assistance of the Land Management Bureau of the Department of Environment and Natural Resources.

SEC. 4. *Mechanics for the Utilization of National Wealth Proceeds*. –

The mechanics for the utilization of the national wealth proceeds for electricity rate reduction shall adhere to the provisions of the DILG-DEPARTMENT CIRCULAR No. 95-01 of October 31, 1995.

SEC. 5. *Monitoring.* –

(a) The DILG shall monitor the compliance of the LGUs with the provisions of this Circular and other relevant issuances. To assist in the monitoring of compliance, all host LGUs of energy projects are required to submit the following:

(i) The scheme of electricity rate reduction adopted by the host LGU (with proper documentation) based on the prescription in the DILG-DEPARTMENT CIRCULAR 95-01 of October 31, 1995 at the start of the use of the fund or upon the amendment of the scheme by the respective LGU councils; and

(ii) Summary of transactions thirty (3) days after the end of each quarter;

DILG shall furnish DOE with a copy of the above information within fifteen (15) days from the date of the reporting period.

(b) The DILG and DOE shall enter into a Memorandum of Agreement with the Commission on Audit (COA) for the yearly audit of the national wealth proceeds

consistent with the responsibility of COA to examine all accounts pertaining to uses of funds and property owned or held in trust by the Government or any of its agencies as mandated by Section 2 of P.D. 1445 of 1976.

SEC. 6. *Penal Provisions.* –

In the event of violation or non-compliance with the provisions of Joint DILG-DEPARTMENT CIRCULAR 95-01, this Circular and other relevant issuances, the DILG may, upon prior notice of said hearing, order the project proponent through DOE, the non-remittance of the royalty payment to the host LGU concerned pending the completion of the investigation of the concerned LGU. The unremitted funds shall be deposited in a government bank under escrow.

SEC. 7. *Dispute Resolution.* –

Prior to court action, all disputes or conflicts arising from the implementation of this Circular shall be adjudicated by an Arbitration Committee composed of representatives from the Presidential Management Staff, DILG, and DOE.

SEC. 8. *Repealing Clause.* –

All pertinent issuances, circulars and memoranda inconsistent with this Circular are hereby amended or repealed accordingly.

SEC. 9. *Effectivity.* –

This Circular shall take effect immediately.

MARIO V. TIAOQUI
Secretary
Department of Energy

JOSEPH EJERCITO ESTRADA
Secretary
Department of the Interior and Local Government

OEA CIRCULAR NO. 89-01-01

TO: ALL PETROLEUM CONTRACTORS AND SUB-CONTRACTORS

You are hereby informed that the Value-Added Tax (VAT) Committee of the Bureau of Internal Revenue (BIR) has issued a VAT Ruling No. 516-88 dated November 16, 1988, (copy attached) which ruled that Petroleum subcontractors are exempt from the payment of VAT from its gross receipts for services paid by the petroleum service contractors by virtue of the (Fiscal Incentives Review Board (FIRB) resolution under FIRB Resolution No. 19-87 Dated June 24, 1987, restoring the tax and duty exemption (including VAT) to subcontractors and petroleum service contractors subject however to the terms and condition of P.D. 1354 .

For your guidance and information.

December 22, 1988, Makati, Metro Manila

W.R DE LA PAZ
Executive Director

OEA CIRCULAR NO. 91-02-02

TO: ALL SERVICE AND OPERATING CONTRACTORS UNDER P.D. NOS. 87, 972 AND 1442

For the benefit and information of service and operating contractors under P. D. Nos. 87, 972 and 1442. Attached is a photocopy of the Department of Finance (DOF) Memorandum to the Commissioner of Customs dated 12 February 1991 clarifying the exemption from the payment of additional duties of five percent (5%) advalorem under Executive Order N. 438 and the nine percent (9%) under Executive Order No. 443, subject to pertinent custom rules and regulations of importations of all machinery, equipments and spare parts and all material actually and directly required for and to be used exclusively in petroleum/coal/geothermal operations by energy service contractors/ sub-contractors/operators with Service Operating Contract with the Government of the Republic of the Philippines through the Department of Energy/Office of Energy Affairs under the terms and provisions of P.D. 87, 972, both as amended and P.D. 1442.

Please be guided accordingly.

W.R. DE LA PAZ
Executive Director

15 February 1991

Republic of the Philippines
DEPARTMENT OF FINANCE
Manila

MEMORANDUM

TO: The Commissioner of Custom

FROM: The Department of Finance

SUBJECT: Clarifying further The implementation of EO 443 entitled, "IMPOSING AN ADDITIONAL DUTY OF NINE PERCENT (9%) ADVALOREM ON ALL IMPORTED ARTICLE SUBJECT TO CERTAIN EXEMPTIONS AND CONDITIONS.

The following clarifications are hereby made:

1. Section 3(c) of EO 413 shall mean to include those importations on consignment of machineries/equipments, spare parts and supplies by members of the Semi-Conductor Electronics Industry Foundation, INC., duly registered with the Board of Investment as of December 31, 1990, and at the same time operators of duly registered Bonded Manufacturing Warehouses in good standing under section 2002 of the Tariff and Customs Code, provided said articles are thru the said Bonded Manufacturing Warehouses subject to Customs rules and regulations thereto appertaining.

2. Importations of all machinery, equipments, spare parts and all materials actually and directly required for and to be used exclusively in petroleum/coal/ geothermal operations by energy service contractor/sub-contractor/operator

with service/operating contract with the Governement of the Republic of the Philippines through the Department of Energy/ Office of Energy Affairs under the terms and provisions of P.D. 87, P.D. 972, both as amended, and P.D. 1442, are exempt from the additional duty of five percent (5%) ad valorem under EO 438, and the nine percent (9%) under E O 443, subject to pertinent Customs rules and regulations.

Please be guided accordingly.

JESUS P. ESTANESLAO
Secretary

February 12, 1991

OEA CIRCULAR NO. 92-09-03

TO: All Holders of Coal Operating Contracts Under PD 972, Service Contracts Under P.D. 1442 and PD 87

Pursuant to Chapter 2, Section 290 of the Local Government Code of 1991 granting share to Local Government Units (LGUs) on the gross collection derived by the National Government from mining taxes, royalties, and such other taxes, fees or charges including related surcharges, interests or fines, and from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction, following are the guidelines on the computation, remittance and reporting procedures for the information of all concerned:

A. Share of the Local Government Units from any Government-Owned or Controlled Corporation (GOCC)

   1. The share of the LGUs from the proceeds derived by any GOCC engaged in the exploration and development of coal and geothermal shall be computed quarterly at one percent (1%) of the gross proceeds, or 40% of the Office of Energy Affairs (OEA) share including related surcharges, interests or fines.

   2. The aforestated share shall be directly remitted by such GOCC to the provincial city, municipal or barangay treasurer concerned within five (5) days after the end of each quarter. Within 3 days from the date of remittance, the GOCC concerned shall furnish the Treasurer of the Philippine with a copy of the remittance advice.

   3. The aforestated remittance to the LGUs shall be deducted from the total OEA share and the corresponding official receipts issued by the treasurer of the LGU shall be attached to the quarterly reports submitted by the GOCC to OEA with corresponding remittance of net OEA share.

   4. In case of assessment of additional OEA share resulting from our examination of the revenue and expenditures reported by the GOCC, the share of the LGU shall be computed based on the final assessmen. The OEA has the right to adjust any previous remittances made by the GOCC to the Local Government Units as a result of our audit.

B. Share of LGUs from Private Holders of Coal Operating Contracts, Geothermal and Petroleum Service Contracts.

The computation and remittances of the share of LGUs from private holders of coal operating contract, geothermal and petroleum contract shall be in accordance with Article 390 of the rules and regulations implementing the Local Government Code which is hereby quoted:

"a). The computation of 40% share of each LGU in the proceeds from the development and utilization of coal from the preceding year, indicating the corresponding share of each province, city, municipality, and barangay where the national wealth is being developed and/or utilized, shall be submitted by the revenue collecting agencies (OEA) to DBM not later than the fifteenth (15th) of March of each ensuing year.

b) The allotment representing the share of each LGU shall be released without need of any further action directly to the provincial, city, municipal, or barangay treasurer, as the case may be, on a quarterly basis within five (5) days after the end of each quarter, and which shall not be subject to any lien or holdback that may be imposed by the National Government."

Accordingly and in accordance with the above provisions, all claims of LGUs share from private holders of Coal Operating and Service Contracts shall be submitted directly to the Department of Budget and Management (DBM).

For your information and guidance.

RUFINO B. BOMASANG
Acting Executive Director

Chapter 8
Renewable Energy

REPUBLIC ACT NO. 9513

AN ACT PROMOTING THE DEVELOPMENT, UTILIZATION AND COMMERCIALIZATION OF RENEWABLE ENERGY RESOURCES AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

CHAPTER I

TITLE AND DECLARATION OF POLICIES

Section 1. *Short Title*. – This Act shall be known as the **"*Renewable Energy Act of 2008*"**. It shall hereinafter be referred to as the "Act".

Section 2. *Declaration of Policies*. - It is hereby declared the policy of the State to:

(a) Accelerate the exploration and development of renewable energy resources such as, but not limited to, biomass, solar, wind, hydro, geothermal and ocean energy sources, including hybrid systems, to achieve energy self-reliance, through the adoption of sustainable energy development strategies to reduce the country's dependence on fossil fuels and thereby minimize the country's exposure to price fluctuations in the international markets, the effects of which spiral down to almost all sectors of the economy;

(b) Increase the utilization of renewable energy by institutionalizing the development of national and local capabilities in the use of renewable energy systems, and promoting its efficient and cost-effective commercial application by providing fiscal and nonfiscal incentives;

(c) Encourage the development and utilization of renewable energy resources as tools to effectively prevent or reduce harmful emissions and thereby balance the goals of economic growth and development with the protection of health and the environment; and

(d) Establish the necessary infrastructure and mechanism to carry out the mandates specified in this Act and other existing laws.

Section 3. *Scope*. – This Act shall establish the framework for the accelerated development and advancement of renewable energy resources, and the development of a strategic program to increase its utilization.

Section 4. *Definition of Terms*. – As used in this Act, the following terms are herein defined:

(a) "Biomass energy systems" refer to energy systems which use biomass resources to produce heat, steam, mechanical power or electricity through either thermochemical, biochemical or physico-chemical processes, or through such

other technologies which shall comply with prescribed environmental standards pursuant to this Act;

(b) "Biomass resources" refer to non-fossilized, biodegradable organic material originating from naturally occurring or cultured plants, animals and micro-organisms, including agricultural products, by-products and residues such as, but not limited to, biofuels except corn, soya beans and rice but including sugarcane and coconut, rice hulls, rice straws, coconut husks and shells, corn cobs, corn stovers, bagasse, biodegradable organic fractions of industrial and municipal wastes that can be used in bioconversion process and other processes, as well as gases and liquids recovered from the decomposition and/or extraction of non-fossilized and biodegradable organic materials;

(c) "Board of Investments" (BOI) refers to an attached agency of the Department of Trade and Industry created under Republic Act No. 5186, as amended;

(d) "Co-generation systems" refer to facilities which produce electrical and/or mechanical energy and forms of useful thermal energy such as heat or steam which are used for industrial, commercial heating or cooling purposes through the sequential use of energy;

(e) "Department of Energy" (DOE) refers to the government agency created pursuant to Republic Act No. 7638 whose functions are expanded in Republic Act No. 9136 and further expanded in this Act;

(f) "Department of Environment and Natural Resources" (DENR) refers to the government agency created pursuant to Executive Order No. 192;

(g) "Department of Finance" (DOF) refers to the government agency created pursuant to Executive Order No. 127, as amended;

(h) "Department of Science and Technology" (DOST) refers to the government agency created pursuant to Executive Order No. 128;

(i) "Department of Trade and Industry" (DTI) refers to the government agency created pursuant to Executive Order No. 133;

(j) "Distributed generation" refers to a system of small generation entities supplying directly to the distribution grid, any one of which shall not exceed one hundred kilowatts (100 kW) in capacity;

(k) "Distribution of Electricity" refers to the conveyance of electricity by a Distribution Utility through its distribution system pursuant to the provision of Republic Act No. 9136;

(l) "Distribution Utility" (DU) refers to any electric cooperative, private corporation, government-owned utility or existing local government unit which has an exclusive franchise to operate a distribution system in accordance with its franchise and Republic Act No. 9136;

(m) "Electric Power Industry Reform Act of 2001" or Republic Act No. 9136 refers to the law mandating the restructuring of the electric power sector and the privatization of the National Power Corporation;

(n) "Energy Regulatory Commission" (ERC) refers to the independent quasi-judicial regulatory agency created pursuant to Republic Act No. 9136;

(o) "Generation Company" refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity;

(p) "Generation Facility" refers to a facility for the production of electricity and/or thermal energy such as, but not limited to, steam, hot or cold water;

(q) "Geothermal energy" as used herein and in the context of this Act, shall be considered renewable and the provisions of this Act is therefore applicable thereto if geothermal energy, as a mineral resource, is produced through: (1) natural recharge, where the water is replenished by rainfall and the heat is continuously produced inside the earth; and/or (2) enhanced recharge, where hot water used in the geothermal process is re-injected into the ground to produce more steam as well as to provide additional recharge to the convection system;

(r) "Geothermal Energy Systems" refer to machines or other equipment that converts geothermal energy into useful power;

(s) "Geothermal Resources" refer to mineral resources, classified as renewable energy resource, in the form of: (i) all products of geothermal processes, embracing indigenous steam, hot water, and hot brines; (ii) steam and other gases, hot water, and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations; (iii) heat or associated energy found in geothermal formations; and (iv) any by-product derived from them;

(t) "Government Share" refers to the amount due the National Government and Local Government Units from the exploitation, development, and utilization of naturally-occurring renewable energy resources such as geothermal, wind, solar, ocean and hydro excluding biomass;

(u) "Green Energy Option" refers to the mechanism to empower end-users to choose renewable energy in meeting their energy requirements;

(v) "Grid" refers to the high voltage backbone system of interconnected transmission lines, substations, and related facilities, located in each of Luzon, Visayas, and Mindanao, or as may otherwise be determined by the ERC in accordance with Republic Act No. 9136;

(w) "Hybrid Systems" refer to any power or energy generation facility which makes use of two or more types of technologies utilizing both conventional and/or renewable fuel sources, such as, but not limited to, integrated solar/wind systems, biomass/fossil fuel systems, hydro/fossil fuel systems, integrated solar/biomass systems, integrated wind/fossil fuel systems, with a minimum of ten (10) megawatts or ten percent (10%) of the annual energy output provided by the RE component;

(x) "Hydroelectric Power Systems" or "Hydropower Systems" refer to water-based energy systems which produce electricity by utilizing the kinetic energy of falling or running water to turn a turbine generator;

(y) "Hydroelectric Power Development" or "Hydropower Development" refers to the construction and installation of a hydroelectric power-generating plant and its auxiliary facilities, such as diversion structure, headrace, penstock, substation, transmission, and machine shop, among others;

(z) "Hydroelectric Power Resources" or "Hydropower Resources" refer to water resources found technically feasible for development of hydropower projects which include rivers, lakes, waterfalls, irrigation canals, springs, ponds, and other water bodies;

(aa) "Local government share" refers to the amount due the LGUs from the exploitation, development and utilization of naturally-occurring renewable energy resources;

(bb) "Micro-scale Project" refers to an RE project with capacity not exceeding one hundred (100) kilowatts;

(cc) "Missionary Electrification" refers to the provision of basic electricity service in unviable areas with the aim of bringing the operations in these areas to viability levels;

(dd) "National government share" refers to the amount due the national government from the exploitation, development and utilization of naturally-occurring renewable energy resources;

(ee) "National Power Corporation" (NPC) refers to the government corporation created under Republic Act No. 6395, as amended by Republic Act No. 9136;

(ff) "National Transmission Corporation" (TRANSCO) refers to the corporation created pursuant to Republic Act No. 9136 responsible for the planning, construction, and centralized operation and maintenance of high voltage transmission facilities, including grid interconnection and ancillary services;

(gg) "Net Metering" refers to a system, appropriate for distributed generation, in which a distribution grid user has a two-way connection to the grid and is only charged for his net electricity consumption and is credited for any overall contribution to the electricity grid;

(hh) "Non-power applications" refer to renewable energy systems or facilities that produce mechanical energy, combustible products such as methane gas, or forms of useful thermal energy such as heat or steam, that are not used for electricity generation, but for applications such as, but not limited to, industrial/commercial cooling, and fuel for cooking and transport;

(ii) "Ocean Energy Systems" refer to energy systems which convert ocean or tidal current, ocean thermal gradient or wave energy into electrical or mechanical energy;

(jj) "Off-Grid Systems" refer to electrical systems not connected to the wires and related facilities of the On-Grid Systems of the Philippines;

(kk) "On-Grid System" refers to electrical systems composed of interconnected transmission lines, distribution lines, substations, and related facilities for the purpose of conveyance of bulk power on the grid of the Philippines;

(ll) "Philippine Electricity Market Corporation" (PEMC) refers to the Corporation incorporated upon the initiative of the DOE composed of all Wholesale Electricity Spot Market (WESM) Members and whose Board of Directors will be the PEM Board;

(mm) "Philippine National Oil Company" (PNOC) refers to the government agency created pursuant to Presidential Decree No. 334, as amended;

(nn) "Power applications" refer to renewable energy systems or facilities that produce electricity;

(oo) "Registered RE Developer" refers to a RE Developer duly registered with the DOE;

(pp) "Renewable Energy (Systems) Developers" or "RE Developers" refer to individual/s or a group of individuals formed in accordance with existing Philippine Laws engaged in the exploration, development and utilization of RE resources and actual operation of RE systems/facilities;

(qq) "Renewable Energy Market" (REM) refers to the market where the trading of the RE certificates equivalent to an amount of power generated from RE resources is made;

(rr) "Renewable Energy Policy Framework" (REPF) refers to the long-term policy developed by the DOE which identifies among others, the goals and targets for the development and utilization of

renewable energy in the country;

(ss) "Renewable Portfolio Standards" refer to a market-based policy that requires electricity suppliers to source an agreed portion of their energy supply from eligible RE resources;

(tt) "Renewable Energy Service (Operating) Contract (RE Contract) " refers to the service agreement between the Government, through the DOE, and RE Developer over a period in which the RE Developer has the exclusive right to a particular RE area for exploration and development. The RE Contract shall be divided into two (2) stages: the pre-development stage and the development/commercial stage. The preliminary assessment and feasibility study up to financial closing shall refer to the pre-development stage. The construction and installation of facilities up to operation phase shall refer to the development stage;

(uu) "Renewable Energy Resources" (RE Resources) refer to energy resources that do not have an upper limit on the total quantity to be used. Such resources are renewable on a regular basis, and whose renewal rate is relatively rapid to consider availability over an indefinite period of time. These include, among others, biomass, solar, wind, geothermal, ocean energy, and hydropower conforming with internationally accepted norms and standards on dams, and other emerging renewable energy technologies;

(vv) "Renewable Energy Systems" (RE Systems) refer to energy systems which convert RE resources into useful energy forms, like electrical, mechanical, etc.;

(ww) "Rural Electrification" refers to the delivery of basic electricity services, consisting of power generation, sub-transmission, and/or extension of associated power delivery system that would bring about important social and economic benefits to the countryside;

(xx) "Solar Energy" refers to the energy derived from solar radiation that can be converted into useful thermal or electrical energy;

(yy) "Solar Energy Systems" refer to energy systems which convert solar energy into thermal or electrical energy;

(zz) "Small Power Utilities Group" (SPUG) refers to the functional unit of the NPC mandated under Republic Act No. 9136 to pursue missionary electrification function;

(aaa) "Supplier" refers to any person or entity authorized by the ERC to sell, broker, market or aggregate electricity to the end-users;

(bbb) "Transmission of Electricity" refers to the conveyance of electric power through transmission lines as defined under Republic Act No. 9136 by TRANSCO or its buyer/concessionaire in accordance with its franchise and Republic Act No. 9136;

(ccc) "Wind Energy" refers to the energy that can be derived from wind that is converted into useful electrical or mechanical energy;

(ddd) "Wind Energy Systems" refer to the machines or other related equipment that convert wind energy into useful electrical or mechanical energy;

(eee) "Wholesale Electricity Spot Market" (WESM) refers to the wholesale electricity spot market created pursuant to Republic Act No. 9136;

CHAPTER II

Organization

Section 5. *Lead Agency*. – The DOE shall be the lead agency mandated to implement the provisions of this Act.

CHAPTER III

ON-GRID RENEWABLE ENERGY DEVELOPMENT

Section 6. ***Renewable Portfolio Standard (RPS)*****.** – All stakeholders in the electric power industry shall contribute to the growth of the renewable energy industry of the country. Towards this end, the National Renewable Energy Board (NREB), created under Section 27 of this Act, shall set the minimum percentage of generation from eligible renewable energy resources and determine to which sector RPS shall be imposed on a per grid basis within one (1) year from the effectivity of this Act.

Section 7. ***Feed-In Tariff System*****.** – To accelerate the development of emerging renewable energy resources, a feed-in tariff system for electricity produced from wind, solar, ocean, run-of-river hydropower and biomass is hereby mandated. Towards this end, the ERC in consultation with the National Renewable Energy Board (NREB) created under Section 27 of this Act shall formulate and promulgate feed-in tariff system rules within one (1) year upon the effectivity of this Act which shall include, but not limited to the following:

(a) Priority connections to the grid for electricity generated from emerging renewable energy resources such as wind, solar, ocean, run-of-river hydropower and biomass power plants within the territory of the Philippines;

(b) The priority purchase and transmission of, and payment for, such electricity by the grid system operators;

(c) Determine the fixed tariff to be paid to electricity produced from each type of emerging renewable energy and the mandated number of years for the application of these rates, which shall not be less than twelve (12) years;

(d) The feed-in tariff to be set shall be applied to the emerging renewable energy to be used in compliance with the renewable portfolio standard as provided for in this Act and in accordance with the RPS rules that will be established by the DOE.

Section 8. ***Renewable Energy Market (REM)*****.** – To facilitate compliance with Section 6 of this Act, the DOE shall establish the REM and shall direct PEMC to implement changes to the WESM Rules in order to incorporate the rules specific to the operation of the REM under the WESM.

The PEMC shall, under the supervision of the DOE, establish a Renewable Energy Registrar within one (1) year from the effectivity of this Act and shall issue, keep and verify RE Certificates corresponding to energy generated from eligible RE facilities. Such certificates will be used for compliance with the RPS. For this purpose, a transaction fee, equal to half of what PEMC currently charges regular WESM players, may be imposed by PEMC.

Section 9. ***Green Energy Option*****.** - The DOE shall establish a Green Energy Option program which provides end-users the option to choose RE resources as their sources of energy. In consultation with the NREB, the DOE shall promulgate the appropriate implementing rules and regulations which are necessary, incidental or convenient to achieve the objectives set forth herein.

Upon the determination of the DOE of its technical viability and consistent with the requirements of the green energy option program, end users may directly contract from RE facilities their energy requirements distributed through their respective distribution utilities.

Consistent herewith, TRANSCO or its successors-in-interest, DUs, PEMC and all relevant parties are hereby mandated to provide the mechanisms for the physical connection and commercial arrangements necessary to ensure the success of the Green

Energy Option. The end-user who will enroll under the energy option program should be informed by way of its monthly electric bill, how much of its monthly energy consumption and generation charge is provided by RE facilities.

Section 10. ***Net-metering for Renewable Energy*****.** – Subject to technical considerations and without discrimination and upon request by distribution end-users, the distribution utilities shall enter into net-metering agreements with qualified end-users who will be installing RE system.

The ERC, in consultation with the NREB and the electric power industry participants, shall establish net metering interconnection standards and pricing methodology and other commercial arrangements necessary to ensure success of the net-metering for renewable energy program within one (1) year upon the effectivity of this Act.

The distribution utility shall be entitled to any Renewable Energy Certificate resulting from net-metering arrangement with the qualified end-user who is using an RE resource to provide energy and the distribution utility shall be able to use this RE certificate in compliance with its obligations under RPS.

The DOE, ERC, TRANSCO or its successors-in-interest, DUs, PEMC and all relevant parties are hereby mandated to provide the mechanisms for the physical connection and commercial arrangements necessary to ensure the success of the Net-metering for Renewable Energy program, consistent with the Grid and Distribution Codes.

Section 11. ***Transmission and Distribution System Development*****.** – TRANSCO or its successors-in-interest or its buyer/ concessionaire and all DUs, shall include the required connection facilities for RE-based power facilities in the Transmission and Distribution Development Plans: *Provided*, That such facilities are approved by the DOE. The connection facilities of RE power plants, including the extension of transmission and distribution lines, shall be subject only to ancillary services covering such connections.

CHAPTER IV

OFF-GRID RENEWABLE ENERGY DEVELOPMENT

Section 12. ***Off-Grid Areas*****.** – Within one (1) year from the effectivity of this Act, NPC-SPUG or its successors-in-interest and/or qualified third parties in off-grid areas shall, in the performance of its mandate to provide missionary electrification, source a minimum percentage of its total annual generation upon recommendation of the NREB from available RE resources in the area concerned, as may be determined by the DOE.

As used in this Act, successors-in-interest refer to entities deemed technically and financially capable to serve/take over existing NPC-SPUG areas.

Eligible RE generation in off-grid and missionary areas shall be eligible for the provision of RE Certificates defined in Section 8 of this Act. In the event there are no viable RE resources in the off-grid and missionary areas, the relevant electricity supplier in the off-grid and missionary areas shall still be obligated under Section 6 of this Act.

CHAPTER V

GOVERNMENT SHARE

Section 13. ***Government Share*****.** – The government share on existing and new RE development projects shall be equal to one percent (1%) of the gross income of RE resource developers resulting from the sale of renewable energy produced and such other income incidental to and arising from the renewable energy generation, transmission, and sale of electric power except for indigenous geothermal energy, which shall be at one and a half percent (1.5%) of gross income.

To further promote the development of RE projects, the government hereby waives

its share from the proceeds of micro-scale projects for communal purposes and non-commercial operations, which are not greater than one hundred (100) kilowatts.

CHAPTER VI

ENVIRONMENTAL COMPLIANCE

Section 14. ***Compliance with Environmental Regulations*****.** – All RE explorations, development, utilization, and RE systems operations shall be conducted in accordance with existing environmental regulations as prescribed by the DENR and/or any other concerned government agency.

CHAPTER VII

GENERAL INCENTIVES

Section 15. ***Incentives for Renewable Energy Projects and Activities*****.** – RE developers of renewable energy facilities, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications, as duly certified by the DOE, in consultation with the BOI, shall be entitled to the following incentives:

(a) Income Tax Holiday (ITH) – For the first seven (7) years of its commercial operations, the duly registered RE developer shall be exempt from income taxes levied by the national government.

Additional investments in the project shall be entitled to additional income tax exemption on the income attributable to the investment: *Provided*, That the discovery and development of new RE resource shall be treated as a new investment and shall therefore be entitled to a fresh package of incentives: *Provided*, *further*, That the entitlement period for additional investments shall not be more than three (3) times the period of the initial availment of the ITH.

(b) Duty-free Importation of RE Machinery, Equipment and Materials – Within the first ten (10) years upon the issuance of a certification of an RE developer, the importation of machinery and equipment, and materials and parts thereof, including control and communication equipment, shall not be subject to tariff duties: *Provided*, *however*, That the said machinery, equipment, materials and parts are directly and actually needed and used exclusively in the RE facilities for transformation into energy and delivery of energy to the point of use and covered by shipping documents in the name of the duly registered operator to whom the shipment will be directly delivered by customs authorities: *Provided*, *further*, That endorsement of the DOE is obtained before the importation of such machinery, equipment, materials and parts are made.

Endorsement of the DOE must be secured before any sale, transfer or disposition of the imported capital equipment, machinery or spare parts is made: *Provided*, That if such sale, transfer or disposition is made within the ten (10)-year period from the date of importation, any of the following conditions must be present:

(i) If made to another RE developer enjoying tax and duty exemption on imported capital equipment;

(ii) If made to a non-RE developer, upon payment of any taxes and duties due on the net book value of the capital equipment to be sold;

(iii) Exportation of the used capital equipment, machinery, spare parts or source documents or those required for RE development; and

(iv) For reasons of proven technical obsolescence.

When the aforementioned sale, transfer or disposition is made under any of the conditions provided for in the foregoing paragraphs after ten (10) years from the

date of importation, the sale, transfer or disposition shall no longer be subject to the payment of taxes and duties;

(c) Special Realty Tax Rates on Equipment and Machinery. – Any law to the contrary notwithstanding, realty and other taxes on civil works, equipment, machinery, and other improvements of a Registered RE Developer actually and exclusively used for RE facilities shall not exceed one and a half percent (1.5%) of their original cost less accumulated normal depreciation or net book value: *Provided*, That in case of an integrated resource development and generation facility as provided under Republic Act No. 9136, the real property tax shall only be imposed on the power plant;

(d) Net Operating Loss Carry-Over (NOLCO). – The NOLCO of the RE Developer during the first three (3) years from the start of commercial operation which had not been previously offset as deduction from gross income shall be carried over as a deduction from gross income for the next seven (7) consecutive taxable years immediately following the year of such loss: *Provided*, *however*, That operating loss resulting from the availment of incentives provided for in this Act shall not be entitled to NOLCO;

(e) Corporate Tax Rate. – After seven (7) years of income tax holiday, all RE Developers shall pay a corporate tax of ten percent (10%) on its net taxable income as defined in the National Internal Revenue Act of 1997, as amended by Republic Act No. 9337. *Provided*, That the RE Developer shall pass on the savings to the end-users in the form of lower power rates.

(f) Accelerated Depreciation. – If, and only if, an RE project fails to receive an ITH before full operation, it may apply for Accelerated Depreciation in its tax books and be taxed based on such: *Provided*, That if it applies for Accelerated Depreciation, the project or its expansions shall no longer be eligible for an ITH. Accelerated depreciation of plant, machinery, and equipment that are reasonably needed and actually used for the exploration, development and utilization of RE resources may be depreciated using a rate not exceeding twice the rate which would have been used had the annual allowance been computed in accordance with the rules and regulations prescribed by the Secretary of the Department of Finance and the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended. Any of the following methods of accelerated depreciation may be adopted:

i) Declining balance method; and
ii) Sum-of-the years digit method

(g) Zero Percent Value-Added Tax Rate. – The sale of fuel or power generated from renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT), pursuant to the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337.

All RE Developers shall be entitled to zero-rated value added tax on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities.

This provision shall also apply to the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors.

(h) Cash Incentive of Renewable Energy Developers for Missionary Electrification. - A renewable energy developer, established after the effectivity of

this Act, shall be entitled to a cash generation-based incentive per kilowatt hour rate generated, equivalent to fifty percent (50%) of the universal charge for power needed to service missionary areas where it operates the same, to be chargeable against the universal charge for missionary electrification;

(i) Tax Exemption of Carbon Credits. - All proceeds from the sale of carbon emission credits shall be exempt from any and all taxes;

(j) Tax Credit on Domestic Capital Equipment and Services. - A tax credit equivalent to one hundred percent (100%) of the value of the value-added tax and custom duties that would have been paid on the RE machinery, equipment, materials and parts had these items been imported shall be given to an RE operating contract holder who purchases machinery, equipment, materials, and parts from a domestic manufacturer for purposes set forth in this Act: *Provided*, That prior approval by the DOE was obtained by the local manufacturer: *Provided*, *further*, That the acquisition of such machinery, equipment, materials, and parts shall be made within the validity of the RE operating contract.

Section 16. ***Environmental Compliance Certificate (ECC).*** – Notwithstanding Section 17 (b) (3) (iii) of Republic Act No. 7160, it would be sufficient for the renewable energy developer to secure the Environmental Compliance Certificate (ECC) from the corresponding regional office of the DENR.

Section 17. ***Exemption from the Universal Charge.*** – Power and electricity generated through the RES for the generator's own consumption and/or for free distribution in the off-grid areas shall be exempted from the payment of the universal charge provided for under Section 34 of Republic Act No. 9136.

Section 18. ***Payment of Transmission Charges.*** – A registered renewable energy developer producing power and electricity from an intermittent RE resource may opt to pay the transmission and wheeling charges of TRANSCO or its successors-in-interest on a per kilowatt-hour basis at a cost equivalent to the average per kilowatt-hour rate of all other electricity transmitted through the grid.

Section 19. ***Hybrid and Cogeneration Systems.*** – The tax exemptions and/or incentives provided for in Section 15 of this Act shall be availed of by registered RE Developer of hybrid and cogeneration systems utilizing both RE sources and conventional energy: *Provided*, *however*, That the tax exemptions and incentives shall apply only to the equipment, machinery and/or devices utilizing RE resources.

Section 20. ***Intermittent RE Resources.*** – TRANSCO or its successors-in-interest, in consultation with stakeholders, shall determine the maximum penetration limit of the Intermittent RE-based power plants to the Grid, through technical and economic analysis. Qualified and registered RE generating units with intermittent RE resources shall be considered "must dispatch" based on available energy and shall enjoy the benefit of priority dispatch. All provisions under the WESM Rules, Distribution and Grid Codes which do not allow "must dispatch" status for intermittent RE resources shall be deemed amended or modified. The PEMC and TRANSCO or its successors-in-interest shall implement technical mitigation and improvements in the system in order to ensure safety and reliability of electricity transmission.

As used in this Act, RE generating unit with intermittent RE resources refers to a RE generating unit or group of units connected to a common connection point whose RE energy resource is location-specific naturally difficult to precisely predict the availability of RE energy resource thereby making the energy generated variable, unpredictable and irregular and the availability of the resource inherently uncontrollable, which include

plants utilizing wind, solar, run-of-river hydro or ocean energy.

Section 21. *Incentives for RE Commercialization*. – All manufacturers, fabricators and suppliers of locally-produced RE equipment and components duly recognized and accredited by the DOE, in consultation with DOST, DOF and DTI, shall, upon registration with the BOI, be entitled to the privileges set forth under this section.

Consistent with Article 7, Item (20) of EO No. 226, the registration with the BOI, as provided for in Section 15 and Section 21 of this Act, shall be carried out through an agreement and an administrative arrangement between the BOI and the DOE, with the end-view of facilitating the registration of qualified RE facilities based on the implementing rules and regulations that will be developed by DOE. It is further mandated that the applications for registration will be positively acted upon by BOI on the basis of the accreditation issued by DOE.

The Renewable Energy Sector is hereby declared a priority investment sector that will regularly form part of the country's Investment Priority Plan, unless declared otherwise by law. As such, all entities duly accredited by the DOE under this Act shall be entitled to all the incentives provided herein.

(a) Tax and Duty-free Importation of Components, Parts and Materials. - All shipments necessary for the manufacture and/or fabrication of RE equipment and components shall be exempted from importation tariff and duties and value added tax: *Provided*, *however*, That the said components, parts and materials are: (i) not manufactured domestically in reasonable quantity and quality at competitive prices; (ii) directly and actually needed and shall be used exclusively in the manufacture/ fabrication of RE equipment; and (iii) covered by shipping documents in the name of the duly registered manufacturer/fabricator to whom the shipment will be directly delivered by customs authorities: *Provided*, *further*, That prior approval of the DOE was obtained before the importation of such components, parts and materials;

(b) Tax Credit on Domestic Capital Components, Parts and Materials. - A tax credit equivalent to one hundred percent (100%) of the amount of the value-added tax and customs duties that would have been paid on the components, parts and materials had these items been imported shall be given to an RE equipment manufacturer, fabricator, and supplier duly recognized and accredited by the DOE who purchases RE components, parts and materials from a domestic manufacturer: *Provided*, That such components, and parts are directly needed and shall be used exclusively by the RE manufacturer, fabricator and supplier for the manufacture, fabrication and sale of the RE equipment: *Provided*, *further*, That prior approval by the DOE was obtained by the local manufacturer;

(c) Income Tax Holiday and Exemption. – For seven (7) years starting from the date of recognition/accreditation, an RE manufacturer, fabricator and supplier of RE equipment shall be fully exempt from income taxes levied by the National Government on net income derived only from the sale of RE equipment, machinery, parts and services; and

(d) Zero-rated value added tax transactions – All manufacturers, fabricators and suppliers of locally produced renewable energy equipment shall be subject to zero-rated value added tax on its transactions with local suppliers of goods, properties and services.

Section 22. *Incentives for Farmers Engaged in the Plantation of Biomass Resources*. - For a period of ten (10) years after the effectivity of this Act, all individuals and entities engaged in the plantation of crops and trees used as biomass resources such as but not limited

to jatropha, coconut, and sugarcane, as certified by the Department of Energy, shall be entitled to duty-free importation and be exempted from Value-Added Tax (VAT) on all types of agricultural inputs, equipment and machinery such as, but not limited to, fertilizer, insecticide, pesticide, tractor, trailers, trucks, farm implements and machinery, harvesters, threshers, hybrid seeds, genetic materials, sprayers, packaging machinery and materials, bulk handling facilities, such as conveyors and mini-loaders, weighing scales, harvesting equipment, and spare parts of all agricultural equipment.

Section 23. ***Tax Rebate for Purchase of RE Components*****.** – To encourage the adoption of RE technologies, the DOF, in consultation with DOST, DOE, and DTI, shall provide rebates for all or part of the tax paid for the purchase of RE equipment for residential, industrial, or community use. The DOF shall also prescribe the appropriate period for granting the tax rebates.

Section 24. ***Period of Grant of Fiscal Incentives*****.** – The fiscal incentives granted under Section 15 of this Act shall apply to all RE capacities upon the effectivity of this Act. The National Renewable Energy Board, in coordination with the Department of Energy, shall submit a yearly report on the implementation of this Act to the Philippine Congress, through the Joint Congressional Power Commission, every January of each year following the period in review, indicating among others, the progress of RE development in the country and the benefits and impact generated by the development and utilization of its renewable energy resources in the context of its energy security and climate change imperatives. This shall serve as basis for the Joint Congressional Power Commission review of the incentives as provided for in this Act towards ensuring the full development of the country's RE capacities under a rationalized market and incentives scheme.

Section 25. ***Registration of RE Developers and local manufacturers, fabricators and suppliers of locally-produced renewable energy equipment*****.** - RE Developers and local manufacturers, fabricators and suppliers of locally-produced renewable energy equipment shall register with the Department of Energy, through the Renewable Energy Management Bureau. Upon registration, a certification shall be issued to each RE Developer and local manufacturer, fabricator and supplier of locally-produced renewable energy equipment to serve as the basis of their entitlement to incentives provided under Chapter VII of this Act.

Section 26. ***Certification from the Department of Energy*****.** - All certifications required to qualify RE developers to avail of the incentives provided for under this Act shall be issued by the DOE through the Renewable Energy Management Bureau.

The Department of Energy, through the Renewable Energy Management Bureau shall issue said certification fifteen (15) days upon request of the renewable energy developer or manufacturer, fabricator or supplier.

Provided, That the certification issued by the Department of Energy shall be without prejudice to any further requirements that may be imposed by the concerned agencies of the government charged with the administration of the fiscal incentives abovementioned.

CHAPTER VIII

GENERAL PROVISIONS

Section 27. ***Creation of the National Renewable Energy Board (NREB)*****.** – The NREB is hereby created. It shall be composed of a Chairman and one (1) representative each from the following agencies: DOE, DTI, DOF, DENR, NPC, TRANSCO or its successors-in-interest, PNOC and PEMC who shall be designated by their respective secretaries on a permanent basis; and one (1) representative each from the following sectors: RE Developers, Government Financial Institutions (GFIs), private distribution utilities, electric

cooperatives, electricity suppliers and non-governmental organizations, duly endorsed by their respective industry associations and all to be appointed by the President of the Republic of the Philippines.

The Chairman shall, within one (1) month from the effectivity of this Act, convene the NREB.

The NREB shall be assisted by a Technical Secretariat from the Renewable Energy Management Bureau of the DOE, created under Section 32 hereof, and shall directly report to the Office of the Secretary or the Undersecretary of the Department, as the case maybe, on matters pertaining to the activities of the NREB. The number of staff of the Technical Secretariat and the creation of corresponding positions necessary to complement and/or augment the existing plantilla of the REMB shall be determined by the Board, subject to approval by the Department of Budget and Management (DBM) and to existing civil service rules and regulations.

The NREB shall have the following powers and functions:

(a) Evaluate and recommend to the DOE the mandated RPS and minimum RE generation capacities in off-grid areas, as it deems appropriate;

(b) Recommend specific actions to facilitate the implementation of the National Renewable Energy Program (NREP) to be executed by the DOE and other appropriate agencies of government and to ensure that there shall be no overlapping and redundant functions within the national government departments and agencies concerned;

(c) Monitor and review the implementation of the NREP, including compliance with the RPS and minimum RE generation capacities in off-grid areas;

(d) Oversee and monitor the utilization of the Renewable Energy Trust Fund created pursuant to Section 28 of this Act and administered by the DOE; and

(e) Perform such other functions, as may be necessary, to attain the objectives of this Act.

Section 28. ***Renewable Energy Trust Fund (RETF).*** – A Renewable Energy Trust Fund is hereby established to enhance the development and greater utilization of renewable energy. It shall be administered by the DOE as a special account in any of the GFIs. The RETF shall be exclusively used to:

(a) Finance the research, development, demonstration, and promotion of the widespread and productive use of RE systems for power and non-power applications, as well as to provide funding for R & D institutions engaged in renewable energy studies undertaken jointly through public-private sector partnership, including provision for scholarship and fellowship for energy studies;

(b) Support the development and operation of new RE resources to improve their competitiveness in the market: *Provided*, That the grant thereof shall be done through a competitive and transparent manner;

(c) Conduct nationwide resource and market assessment studies for the power and non-power applications of renewable energy systems;

(d) Propagate RE knowledge by accrediting, tapping, training, and providing benefits to institutions, entities and organizations which can extend the promotion and dissemination of RE benefits to the national and local levels; and

(e) Fund such other activities necessary or incidental to the attainment of the objectives of this Act.

Use of the fund may be through grants, loans, equity investments, loan guarantees, insurance, counterpart fund or such other financial arrangements necessary for the attainment of the objectives of this Act: *Provided*, That the use or allocation thereof shall, as far as practicable, be done through a competitive and transparent manner.

The RETF shall be funded from:

(a) Proceeds from the emission fees collected from all generating facilities consistent with Republic Act No. 8749 or the Philippine Clean Air Act;

(b) One and 1/2 percent (1.5%) of the net annual income of the Philippine Charity Sweepstakes Office;

(c) One and 1/2 percent (1.5%) of the net annual income of the Philippine Amusement and Gaming Corporation;

(d) One and 1/2 percent (1.5%) of the net annual dividends remitted to the National Treasury of the Philippine National Oil Company and its subsidiaries;

(e) Contributions, grants and donations: *Provided*, That all contributions, grants and donations made to the RETF shall be tax deductible subject to the provisions of the National Internal Revenue Code. Towards this end, the BIR shall assist the DOE in formulating the Rules and Regulations to implement this provision;

(f) One and 1/2 percent (1.5%) of the proceeds of the Government share collected from the development and use of indigenous non-renewable energy resources;

(g) Any revenue generated from the utilization of the RETF; and

(h) Proceeds from the fines and penalties imposed under this Act.

Section 29. ***Financial Assistance Program*****.** – Government financial institutions such as the Development Bank of the Philippines (DBP), Land Bank of the Philippines (LBP), Phil-Exim Bank and other government financial institutions shall, in accordance with and to the extent allowed by the enabling provisions of their respective charters or applicable laws, provide preferential financial packages for the development, utilization and commercialization of RE projects as duly recommended and endorsed by the DOE.

Section 30. ***Adoption of Waste-To-Energy Technologies*****.** – The DOE shall, where practicable, encourage the adoption of waste-to-energy facilities such as, but not limited to, biogas systems. The DOE shall, in coordination with the DENR, ensure compliance with this provision.

As used in this Act, waste-to-energy technologies shall refer to systems which convert to biodegradable materials such as, but not limited to, animal manure or agricultural waste, into useful energy through processes such as anaerobic digestion, fermentation and gasification, among others, subject to the provisions and intent of Republic Act No. 8749 (Clean Air Act of 1999) and Republic Act No. 9003 (Ecological Solid Waste Management Act of 2000).

Section 31. ***Incentives for RE Host Communities/LGUs*****.** – Eighty percent (80%) of the share from royalty and/or government share of RE host communities/LGUs from RE projects and activities shall be used directly to subsidize the electricity consumption of end users in the RE host communities/LGUs whose monthly consumption do not exceed one hundred (100) kwh. The subsidy may be in the form of rebates, refunds and/or any other forms as may be determined by DOE, DOF and ERC, in coordination with NREB.

The DOE, DOF and ERC, in coordination with the NREB and in consultation with the distribution utilities shall promulgate the mechanisms to implement this provision within six months from the effectivity of this Act.

Section 32. ***Creation of the Renewable Energy Management Bureau*****.** – For the purpose of implementing the provisions of this Act, a Renewable Energy Management Bureau (REMB) under the DOE is hereby established, and the existing Renewable Energy Management Division of the Energy Utilization Management Bureau of the DOE, whose plantilla shall form the nucleus of REMB, is hereby dissolved. The organizational structure and staffing complement of the REMB shall be determined by the Secretary of the DOE, in consultation with the Department of Budget and Management, in accordance with existing civil service rules and regulations. The budgetary requirements necessary for the creation of the REMB shall be taken from the current appropriations of the DOE. Thereafter, the funding for the REMB shall be included in the annual General Appropriations Act.

The REMB shall have the following powers and functions:

(a) Implement policies, plans and programs related to the accelerated development, transformation, utilization and commercialization of renewable energy resources and technologies;

(b) Develop and maintain a centralized, comprehensive and unified data and information base on renewable energy resources to ensure the efficient evaluation, analysis, and dissemination of data and information on renewable energy resources, development, utilization, demand and technology application;

(c) Promote the commercialization/ application of renewable energy resources including new and emerging technologies for efficient and economical transformation, conversion, processing, marketing and distribution to end users;

(d) Conduct technical research, socio-economic and environmental impact studies of renewable energy projects for the development of sustainable renewable energy systems;

(e) Supervise and monitor activities of government and private companies and entities on renewable energy resources development and utilization to ensure compliance with existing rules, regulations, guidelines and standards;

(f) Provide information, consultation and technical training and advisory services to developers, practitioners and entities involved in renewable energy technology and develop renewable energy technology development strategies; and

(g) Perform other functions that may be necessary for the effective implementation of this Act and the accelerated development and utilization of the renewable energy resources in the country.

CHAPTER IX

FINAL PROVISIONS

Section 33. ***Implementing Rules and Regulations (IRR)*****.** – Within six (6) months from the effectivity of this Act, the DOE shall, in consultation with the Senate and House Committees on Energy, relevant government agencies and RE stakeholders, promulgate the IRR of this Act.

Section 34. ***Congressional Oversight*****.** – Upon the effectivity of this Act, the Joint Congressional Power Commission created under Section 62 of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" shall exercise oversight powers over the implementation of this Act.

Section 35. ***Prohibited Acts*****.** – The following acts shall be prohibited:

(a) Non-compliance or violation of the RPS rules;

(b) Willful refusal to undertake net metering arrangements with qualified distribution grid users;

(c) Falsification or tampering of public documents or official records to avail of the fiscal and non-fiscal incentives provided under this Act;

(d) Failure and willful refusal to issue the single certificate referred to in Section 26 of this Act; and

(e) Non-compliance with the established guidelines that DOE will adopt for the implementation of this Act.

Section 36. ***Penalty Clause*****.** - Any person who willfully commits any of the prohibited acts enumerated under this Act, shall be imposed with the penalties provided herein. Any person, who willfully aids or abets the commission of a crime prohibited herein or who causes the commission of any such act by another shall be liable in the same manner as the principal.

In the case of association, partnership or corporations, the penalty shall be imposed on the partner, president, chief operating officer, chief executive officer, directors or officers responsible for the violation.

The commission of any prohibited acts provided for under Section 35, upon conviction thereof, shall suffer the penalty of imprisonment of from one (1) year to five (5) years, or a fine ranging from a minimum of One Hundred Thousand Pesos (P100,000.00) to One Hundred Million Pesos (P100,000,000.00), or twice the amount of damages caused or costs avoided for non-compliance, whichever is higher, or both upon the discretion of the court.

The DOE is further empowered to impose administrative fines and penalties for any violation of the provisions of this Act, its IRR and other issuances relative to this Act.

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

Section 37. ***Appropriations*****.** – Such sums as may be necessary for the initial implementation of this Act shall be taken from the current appropriations of the DOE. Thereafter, the fund necessary to carry out the provisions of this Act shall be included in the annual General Appropriations Act.

Section 38. ***Separability Clause*****.** – If any provision of this Act is held invalid unconstitutional, the remainder of the Act or the provision not otherwise affected shall remain valid and subsisting.

Section 39. ***Repealing Clause*****.** – Any law, presidential decree or issuance, executive order, letter of instruction, administrative rule or regulation contrary to or inconsistent with the provisions of this Act is hereby repealed, modified or amended accordingly.

Consistent with the foregoing paragraph and Section 13 of this Act, Section 1 of Presidential Decree No. 1442 or the Geothermal Resources Exploration and Development Act, insofar as the exploration of geothermal resources by the government, and Section 10 (1) of Republic Act No. 7156 otherwise known as the "Mini-Hydro Electric Power Incentive Act", insofar as the special privilege tax rate of two percent (2%) are hereby repealed, modified or amended accordingly.

Section 40. ***Effectivity Clause*****.** – This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved

PROSPERO C. NOGRALES
Speaker of the House of Representative

MANNY VILLAR
President of the Senate

This Act which is a consolidation of Senate Bill No. 2046 and House Bill No. 41935 was

finally passed by the Senate and the House of Representative on October 8, 2008.

MARILYN B. BARUA-YAP
Secretary General
House of Representative

EMMA LIRIO-REYES
Secretary of the Senate

Approved: **DEC 16, 2008**

GLORIA MACAPAGAL-ARROYO
President of the Philippines

DEPARTMENT CIRCULAR NO. 2009-05-0008

RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 9513

Pursuant to Section 33 of Republic Act No. 9513, otherwise known as the "Renewable Energy Act of 2008," the Department of Energy, in consultation with the Senate and House of Representatives Committees on Energy, relevant government agencies, and all Renewable Energy (RE) stakeholders, hereby issues, adopts and promulgates the following implementing rules and regulations.

PART I. GENERAL PROVISIONS

RULE 1.

TITLE, DECLARATION OF POLICIES AND DEFINITION OF TERMS

SECTION 1. Title and Scope

This Department Circular shall be known as the "Implementing Rules and Regulations (IRR) of Republic Act No. 9513," otherwise known as the "Renewable Energy Act of 2008," and hereinafter referred to as the "Act" in this IRR.

The scope of this IRR is to provide rules, regulations, and guidelines for the:

(a) Exploration, development, utilization and commercialization of renewable energy resources such as biomass, solar, wind, hydropower, geothermal and ocean energy sources, including application of hybrid systems and other emerging renewable energy technologies in the Philippines for the generation, transmission, distribution, sale and use of electricity, and fuel generated from renewable energy resources;

(b) Establishment of the framework for the accelerated sustainable development and advancement of renewable energy resources, and the development of a strategic program to increase its utilization;

(c) Clarification of specific provisions of the Act and the responsibilities and functions of various government agencies, institutions, government-owned and controlled corporations and local government units, the private sector and other stakeholders, and their relationships with the National Renewable Energy Board (NREB); and

(d) Direction and support for existing and new renewable energy developers and manufacturers, fabricators and suppliers of locally-produced renewable energy equipment.

SECTION. 2. Declaration of Policies

It is hereby declared the policy of the State to:

(a) Accelerate the exploration and development of renewable energy resources such as, but not limited to, biomass, solar, wind, hydropower, geothermal, and ocean energy sources, and including hybrid systems, to achieve energy self-reliance, through the adoption of sustainable energy development strategies to reduce the country's dependence on fossil fuels and thereby minimize the country's exposure to price fluctuations in the international markets, the effects of which spiral down to almost all sectors of the economy;

(b) Increase the utilization of renewable energy by institutionalizing the development of national and local capabilities in the use of renewable energy systems, and promoting its efficient and cost-effective commercial application by providing fiscal and non-fiscal incentives;

(c) Encourage the sustainable development and utilization of renewable energy resources as tools to effectively prevent or reduce harmful emissions and thereby balance the goals of economic growth and development with the promotion of health and safety, and the protection of the environment;

(d) Promote the full development and use of renewable energy as a tool to address the cross-cutting issues of gender, poverty, and economic development; and

(e) Establish the necessary infrastructure and mechanisms to carry out the mandates specified in the Act and other existing laws.

SECTION. 3. Definition of Terms

As used in the Act and this IRR, the following terms shall be defined as follows:

(a) ***"Ancillary Services"*** refers to support services which are necessary to support the transmission capacity and transmission of energy from resources to loads towards maintaining power quality, reliability, and security of the grid through frequency regulating and contingency reserves, reactive power support, black start capability, and other services as may be determined by the Energy Regulatory Commission (ERC);

(b) ***"Biomass Energy Systems***" refers to energy systems which use biomass resources to produce heat, steam, mechanical power or electricity through either thermochemical, biochemical or physico-chemical processes, or through such other technologies which shall comply with prescribed environmental standards pursuant to the Act;

(c) ***"Biomass Resources"*** refers to non-fossilized, biodegradable organic materials originating from naturally-occurring or cultured plants or parts thereof, animals and micro-organisms, including agricultural products, by-products and residues such as, but not limited to, biofuels except corn, soya beans and rice but including sugarcane and coconut, rice hulls, rice straws, coconut husks and shells, wood chips/ residues, forest residues, corn cobs, corn stovers, bagasse, biodegradable organic fractions of industrial and municipal wastes that can be used in bioconversion process and other processes, as well as gases and liquids recovered from the decomposition and/or extraction of non-fossilized and biodegradable organic materials;

(d) ***"Board of Investments" (BOI)*** refers to an attached agency of the Department of Trade and Industry (DTI) created under Republic Act No. 5186, as amended;

(e) ***"Co-Generation Systems"*** refers to facilities which produce electrical and/

or mechanical energy and forms of useful thermal energy such as heat or steam which are used for industrial, commercial heating or cooling purposes through the sequential use of energy;

(f) ***"Department of Energy" (DOE)*** refers to the government agency created pursuant to Republic Act No. 7638 whose functions are expanded in Republic Act No. 9136 and further expanded in the Act;

(g) ***"Department of Environment and Natural Resources" (DENR)*** refers to the government agency created pursuant to Executive Order No. 192;

(h) ***"Department of Finance" (DOF)*** refers to the government agency created pursuant to Executive Order No. 127, as amended;

(i) ***"Department of Science and Technology" (DOST)*** refers to the government agency created pursuant to Executive Order No. 128;

(j) ***"Department of Trade and Industry" (DTI)*** refers to the government agency created pursuant to Executive Order No. 133;

(k) ***"Distributed Generation"*** refers to a system of small generation entities supplying directly to the distribution grid, any one of which shall not exceed 100 kilowatts in capacity;

(l) ***"Distribution of Electricity"*** refers to the conveyance of electricity by a distribution utility through its distribution system pursuant to the provisions of Republic Act No. 9136;

(m) ***"Distribution Utility" (DU)*** refers to any electric cooperative, private corporation, government-owned utility or existing local government unit which has an exclusive franchise to operate a distribution system in accordance with its franchise and Republic Act No. 9136;

(n) ***"Electric Power Industry Reform Act (EPIRA) of 2001***" or Republic Act No. 9136 refers to the law mandating the restructuring of the electric power sector and the privatization of the National Power Corporation (NPC);

(o) ***"Energy Regulatory Commission" (ERC)*** refers to the independent quasi-judicial regulatory agency created pursuant to Republic Act No. 9136;

(p) ***"Generation Company"*** refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity;

(q) ***"Generation Facility"*** refers to a facility for the production of electricity and/or thermal energy such as, but not limited to, steam, hot or cold water;

(r) ***"Geothermal Energy"*** as used herein and in the context of the Act, shall be considered renewable and the provisions of the Act is therefore applicable thereto if geothermal energy, as a mineral resource, is produced through: (1) natural recharge, where the water is replenished by rainfall and the heat is continuously produced inside the earth; and/or (2) enhanced recharge, where hot water used in the geothermal process is re-injected into the ground to produce more steam as well as to provide additional recharge to the convection system;

(s) ***"Geothermal Energy Systems"*** refers to machines or other equipment that converts Geothermal Energy into useful power;

(t) ***"Geothermal Resources"*** refers to mineral resources, classified as renewable energy resource, in the form of: (i) all products of geothermal processes, embracing indigenous steam, hot water, and hot brines; (ii) steam and other gases, hot water, and hot brines resulting from water, gas, or other fluids artificially

introduced into geothermal formations; (iii) heat or associated energy found in geothermal formations; and (iv) any by-product derived from them;

(u) ***"Government Share"*** refers to the amount due the national government and local government units (LGUs) from the exploitation, development, and utilization of naturally-occurring RE resources such as geothermal, wind, solar, ocean, and hydropower, excluding biomass;

(v) ***"Green Energy Option"*** refers to the mechanism to empower end-users to choose renewable energy in meeting their energy requirements;

(w) ***"Grid"*** refers to the high voltage backbone system of interconnected transmission lines, sub-stations, and related facilities, located in each of Luzon, Visayas, and Mindanao, or as may otherwise be determined by the ERC in accordance with Republic Act No. 9136;

(x) ***"Host LGU"*** refers to the local government unit where the energy resource and/or energy generating facility is located;

(y) ***"Hybrid Systems"*** refers to any power or energy generation facility which makes use of two or more types of technologies utilizing both conventional and/or renewable fuel sources, such as, but not limited to, integrated solar/wind systems, biomass/fossil fuel systems, hydropower/ fossil fuel systems, integrated solar/ biomass systems, integrated wind/fossil fuel systems, with a minimum of ten megawatts (10 MW) or ten percent (10%) of the annual energy output provided by the RE component;

(z) ***"Hydroelectric Power Development"*** or ***"Hydropower Development"*** refers to the construction and installation of a hydroelectric power-generating plant and its auxiliary facilities, such as diversion structure, headrace, penstock, substation, transmission, and machine shop, among others;

(aa) ***"Hydroelectric Power Resources"*** or ***"Hydropower Resources"*** refers to water resources found technically feasible for the development of hydropower projects which include rivers, lakes, waterfalls, irrigation canals, springs, ponds, and other water bodies;

(bb) ***"Hydroelectric Power Systems"*** or ***"Hydropower Systems"*** refers to water-based energy systems which produce electricity by utilizing the kinetic energy of falling or running water to turn a turbine generator;

(cc) ***"Local Government"*** refers to the political subdivisions established by or in accordance with the Philippine Constitution pursuant to Executive Order No. 292 or Republic Act No. 7160, which include the province, city, municipality and barangay;

(dd) ***"Local Government Share"*** refers to the amount due the local government units (LGUs) from the exploitation, development and utilization of naturally-occurring renewable energy resources;

(ee) ***"Micro-Scale Project"*** refers to an RE project with capacity not exceeding one hundred kilowatts (100kW);

(ff) ***"Missionary Electrification"*** refers to the provision of basic electricity service in unviable areas with the aim of bringing the operations in these areas to viability levels;

(gg) ***"National Government"*** refers to the entire machinery of the central government, as distinguished from the different forms of local governments pursuant to Executive Order No. 292 or the Administrative Code of 1987;

(hh) ***"National Government Share"*** refers to the amount due the national government from the exploitation, development and utilization of naturally-occurring RE resources;

(ii) ***"National Power Corporation" (NPC)*** refers to the government corporation created under Republic Act No. 6395, as amended by Republic Act No. 9136;

(jj) ***"National Transmission Corporation" (TRANSCO)*** refers to the corporation created pursuant to Republic Act No. 9136 responsible for the planning, construction, and centralized operation and maintenance of high-voltage transmission facilities, including grid interconnection and ancillary services;

(kk) ***"Net-Metering"*** refers to a system, appropriate for distributed generation, in which a distribution grid user has a two-way connection to the grid and is only charged for his net electricity consumption and is credited for any overall contribution to the electricity grid;

(ll) ***"Non-Power Applications"*** refers to renewable energy systems or facilities that produce mechanical energy, combustible products such as methane gas, or forms of useful thermal energy such as heat or steam, that are not used for electricity generation, but for other applications such as, but not limited to, industrial/commercial cooling, and fuel for cooking and transport;

(mm) ***"Ocean Energy Systems"*** refers to energy systems which convert ocean or tidal current, ocean thermal gradient or wave energy into electrical or mechanical energy;

(nn) ***"Off-Grid Systems"*** refers to electrical systems not connected to the wires and related facilities of the on-grid systems of the Philippines;

(oo) ***"On-Grid System"*** refers to the electrical system composed of interconnected transmission lines, distribution lines, sub-stations, and related facilities for the purpose of conveyance of bulk power on the grid of the Philippines;

(pp) ***"Philippine Electricity Market Corporation" (PEMC)*** refers to the corporation incorporated upon the initiative of the DOE composed of all Wholesale Electricity Spot Market (WESM) Members and whose Board of Directors will be the PEMC Board;

(qq) ***"Philippine National Oil Company" (PNOC)*** refers to the government agency created pursuant to Presidential Decree No. 334, as amended;

(rr) ***"Power Applications"*** refers to renewable energy systems or facilities that produce electricity;

(ss) ***"Registered RE Developer"*** refers to an RE developer duly registered with the DOE;

(tt) ***"Renewable Energy (RE) Certificate"*** refers to a certificate issued by the RE Registrar to electric power industry participants showing the energy sourced, produced, and sold or used. RE certificates may be traded in the RE Market in complying with the RPS;

(uu) ***"Renewable Energy (Systems) Developers"*** **or** ***"RE Developers***" refers to individual/s or juridical entity created, registered and/or authorized to operate in the Philippines in accordance with existing Philippine laws and engaged in the exploration, development and utilization of RE resources and actual operation of RE systems/facilities. It shall include existing entities engaged in the exploration, development and/or utilization of RE resources, or the generation of electricity from RE resources, or both;

(vv) ***"Renewable Energy Market" (REM)*** refers to the market where the trading of the RE certificates equivalent to an amount of power generated from RE resources is made;

(ww) ***"Renewable Energy Policy Framework" (REPF)*** refers to the long-term policy developed by the DOE which identifies, among others, the goals and targets for the development and utilization of renewable energy in the country;

(xx) ***"Renewable Energy (RE) Registrar"*** refers to an entity that issues, keeps and verifies RE certificates corresponding to energy generated from eligible RE facilities and sold to or used by end-users;

(yy) ***"Renewable Energy Service/Operating Contract (RE Contract)"*** refers to the service agreement between the Government, through the President or the DOE, and an RE Developer over an appropriate period as determined by the DOE in which the RE Developer has the exclusive right to explore and develop a particular RE area. The RE Contract shall be divided into two (2) stages: the pre-development stage and the development/commercial stage. The preliminary assessment and feasibility study up to financial closing shall refer to the pre-development stage. The construction and installation of facilities up to the operation phase shall refer to the development stage;

(zz) ***"Renewable Energy Resources" (RE Resources)*** refers to energy resources that do not have an upper limit on the total quantity to be used. Such resources are renewable on a regular basis, and whose renewal rate is relatively rapid to consider availability over an indefinite period of time. These include, among others, biomass, solar, wind, geothermal, ocean energy, and hydropower conforming with internationally accepted norms and standards on dams, and other emerging renewable energy technologies;

(aaa) ***"Renewable Energy Systems" (RE Systems)*** refers to energy systems which convert RE resources into useful energy forms, like electrical, mechanical, etc;

(bbb) ***"Renewable Portfolio Standards" (RPS)*** refers to a market-based policy that requires electric power industry participants, including suppliers, to source an agreed portion of their energy supply from eligible RE Resources;

(ccc) ***"Rural Electrification"*** refers to the delivery of basic electricity services, consisting of power generation, sub-transmission, and/or extension of associated power delivery system that would bring about important social and economic benefits to the countryside;

(ddd) ***"Solar Energy"*** refers to the energy derived from solar radiation that can be converted into useful thermal or electrical energy;

(eee) ***"Solar Energy Systems"*** refers to energy systems which convert solar energy into thermal or electrical energy;

(fff) ***"Small Power Utilities Group" (SPUG)*** refers to the functional unit of the NPC mandated under Republic Act No. 9136 to pursue missionary electrification function;

(ggg) ***"Supplier"*** refers to any person or entity authorized by the ERC to sell, broker, market or aggregate electricity to the end-users;

(hhh) ***"Transmission of Electricity"*** refers to the conveyance of electric power through transmission lines as defined under Republic Act No. 9136 by TRANSCO or its buyer/concessionaire in accordance with its franchise and Republic Act No. 9136;

(iii) ***"Wind Energy"*** refers to the energy that can be derived from wind that is converted into useful electrical or mechanical energy;

(jjj) ***"Wind Energy Systems"*** refers to the machines or other related equipment that convert wind energy into useful electrical or mechanical energy; and

(kkk) ***"Wholesale Electricity Spot Market" (WESM)*** refers to the wholesale electricity spot market established by the DOE pursuant to Republic Act No. 9136.

PART II

RENEWABLE ENERGY INDUSTRY DEVELOPMENT AND OPERATIONS

RULE 2. RENEWABLE ENERGY POLICY MECHANISMS

SECTION. 4. Renewable Portfolio Standards

The Renewable Portfolio Standards (RPS) is a policy which places an obligation on electric power industry participants such as generators, distribution utilities, or suppliers to source or produce a specified fraction of their electricity from eligible RE Resources, as may be determined by NREB.

(a) ***Purpose:*** The purpose of the RPS is to contribute to the growth of the renewable energy industry by diversifying energy supply and to help address environmental concerns of the country by reducing greenhouse gas emissions.

(b) ***Mandate***: RPS shall be imposed on the electric power industry participants, serving on-grid areas, on a per grid basis, as may be determined by the NREB.

(c) ***Formulation of RPS Rules***: The NREB shall, in consultation with appropriate government agencies and in accordance with the National Renewable Energy Program (NREP), set the minimum percentage of generation from eligible RE Resources based on the sustainability of the RE Resources, the available capacity of the relevant grids, the available RE Resources within the specific grid, and such other relevant parameters. The NREB shall, within one (1) year from the effectivity of the Act, determine to which sector the RPS shall be imposed on a per grid basis, in accordance with the NREP.

Upon the recommendation of the NREB, the DOE shall, within six (6) months from the effectivity of this IRR, formulate and promulgate the RPS Rules which shall include, but not be limited to, the following:

(1) Types of RE Resources, and identification and certification of generating facilities using said resources that shall be required to comply with the RPS obligations;

(2) Yearly minimum RPS requirements upon the establishment of the RPS Rules;

(3) Annual minimum incremental percentage of electricity sold by each RPS-mandated electricity industry participant which is required to be sourced from eligible RE Resources and which shall, in no case, be less than one percent (1%) of its annual energy demand over the next ten (10) years;

(4) Technical feasibility and stability of the transmission and/or distribution grid systems; and

(5) Means of compliance by RPS-mandated electricity industry participant of the minimum percentage set by the government to meet the RPS requirements including direct generation from eligible RE

Resources, contracting the energy sourced from eligible RE Resources, or trading in the REM.

SECTION 5. Feed-in Tariff (FiT) System

The Feed-in Tariff system is a scheme that involves the obligation on the part of electric power industry participants to source electricity from RE generation at a guaranteed fixed price applicable for a given period of time, which shall in no case be less than twelve (12) years, to be determined by the ERC.

(a) ***Purpose***: This system shall be adopted to accelerate the development of emerging RE Resources through a fixed tariff mechanism.

(b) ***Mandate:*** A FiT system shall be mandated for wind, solar, ocean, run-of-river hydropower, and biomass energy resources.

(c) ***Guidelines Governing the FiT System:***

(1) Priority connections to the grid for electricity generated from emerging RE Resources such as wind, solar, ocean, run-of-river, hydropower, and biomass power plants within the territory of the Philippines;

(2) The priority purchase, transmission of, and payment for such electricity by the grid system operators;

(3) Determination of the fixed tariff to be paid for electricity produced from each type of emerging RE Resources and the mandated number of years for the application of such tariff, which shall in no case be less than twelve (12) years;

(4) Application of the FiT to the emerging RE Resources to be used in compliance with the RPS. Only electricity generated from wind, solar, ocean, run-of-river hydropower, and biomass power plants covered under the RPS, shall enjoy the FiT; and

(5) Other rules and mechanisms that are deemed appropriate and necessary by the ERC, in consultation with the NREB, for the full implementation of the FiT system.

Within one (1) year from the effectivity of the Act, the ERC shall, in consultation with the NREB, formulate and promulgate the FiT system rules.

SECTION 6. Green Energy Option Program

The Green Energy Option program is a mechanism to be established by the DOE which shall provide end-users the option to choose RE Resources as their source of energy.

Within six (6) months from the effectivity of this IRR, the DOE shall, in consultation with the NREB, promulgate the appropriate implementing rules and regulations which are necessary, incidental, or convenient to achieve the objectives of the Green Energy Option program.

The ERC shall, within six (6) months from the effectivity of this IRR, issue the necessary regulatory framework to effect and achieve the objectives of the Green Energy Option program.

The TRANSCO, its concessionaire, or its successors-in-interest, distribution utilities (DUs), PEMC, and all relevant parties are hereby mandated to provide the mechanisms for the physical connection and commercial arrangements necessary to ensure the success of the Green Energy Option program.

Any end-user who shall enroll under the Green Energy Option program shall be informed, by way of its monthly electric bill, how much

of its monthly energy consumption and generation charge is provided by RE facilities.

SECTION 7. Net-Metering for Renewable Energy

Net-Metering is a consumer-based renewable energy incentive scheme wherein electric power generated by an end-user from an eligible on-site RE generating facility and delivered to the local distribution grid may be used to offset electric energy provided by the DU to the end-user during the applicable period.

(a) ***Purpose:*** The Net-Metering program shall be implemented to encourage end-users to participate in renewable electricity generation.

(b) ***Mandate:*** Upon request by distribution end-users, the DUs shall, without discrimination, enter into Net-Metering agreements with qualified end-users who will be installing an RE System, subject to technical and economic considerations, such as the DU's metering technical standards for the RE System.

As used in this IRR, "***Qualified End-users***" refers to entities that generate electric power from an eligible on-site RE generating facility, such as, but not limited to, house or office building with photovoltaic system that can be connected to the grid, for the purpose of entering into a Net-Metering agreement.

Within one (1) year from the effectivity of the Act, the ERC shall, in consultation with the NREB and the electric power industry participants, establish net-metering interconnection standards, pricing methodology, and other commercial arrangements necessary to ensure the success of the Net-Metering for the RE program.

The DU shall be entitled to any RE Certificate resulting from Net-Metering arrangements with the qualified end-user who is using an RE Resource to provide energy. Such RE Certificate shall be credited in compliance with the obligations of the DUs under the RPS.

The DOE, ERC, TRANSCO, its concessionaire or its successor-in-interest, DUs, PEMC and all relevant parties are hereby mandated to provide the necessary mechanisms for the physical connection, consistent with the Grid and Distribution Codes, and commercial arrangements, necessary to ensure the success of the Net-Metering for the RE program.

SECTION 8. Transmission and Distribution System Development

The TRANSCO, its concessionaire or its successor-in-interest, and all DUs, shall:

(a) Include the required connection facilities for RE-based power facilities in the Transmission and Distribution Development Plans, subject to the approval by the DOE; and

(b) Effect connection of RE-based power facilities with the transmission or distribution system upon receipt of a formal notice of the approval by the DOE and the start of the commercial operations of such RE-based power facilities.

The connection facilities of RE power plants, including any extension of transmission and distribution lines, shall be subject only to ancillary services covering such connections, pursuant to the ERC Rules and Guidelines on Open Access Transmission Services.

The ERC shall, in consultation with the NREB, TRANSCO, its concessionaire or its successors-in-interest, provide the mechanism for the recovery of the cost of these connection facilities.

SECTION 9. Adoption of Waste-to-Energy Technologies

The DOE shall, where practicable, encourage the adoption of waste-to-energy facilities such as, but not limited to, biogas systems.

The DOE shall, in coordination with the DENR, ensure compliance with this provision.

As used in this IRR, "***Waste-to-Energy Technologies***" shall refer to systems which convert biodegradable materials such as, but not limited to, animal manure or agricultural waste, into useful energy through processes such as anaerobic digestion, fermentation and gasification, among others, subject to the provisions and intent of Republic Act No. 8749 (Clean Air Act of 1999) and Republic Act No. 9003 (Ecological Solid Waste Management Act of 2000).

RULE 3. RENEWABLE ENERGY MARKET

SECTION 10. Creation of the Renewable Energy Market

To expedite compliance with the establishment of the RPS, the DOE shall establish the Renewable Energy Market (REM). The REM shall be a sub-market of the WESM where the trading of RE Certificates may be made.

The DOE shall, within six (6) months from the effectivity of this IRR, establish the framework that will govern the operation of the REM. The PEMC shall, within one (1) year from the effectivity of the Act, implement changes to incorporate the rules specific to the operation of the REM under the WESM.

SECTION 11. Establishment of the Renewable Energy Registrar

Under the supervision of the DOE, the PEMC shall, within one (1) year from the effectivity of the Act, establish and operate the Renewable Energy Registrar and shall issue, keep, and verify RE Certificates corresponding to energy generated from the eligible RE facilities.

Such RE Certificates shall be credited in compliance with any obligation under the RPS. For this purpose, the PEMC may impose a transaction fee equal to half of what the PEMC currently charges regular WESM players.

RULE 4. OFF-GRID DEVELOPMENT

SECTION 12. Off-Grid Renewable Energy Development

Within one (1) year from the effectivity of the Act, the NPC-SPUG or its successors-in-interest, DUs concerned, and/or qualified third parties in off-grid areas shall, in the performance of its mandate to provide missionary electrification, source a minimum percentage of its total annual generation from available RE Resources in the area concerned as may be determined by the DOE, upon recommendation of the NREB.

Eligible RE generation in off-grid and missionary areas shall be entitled to the issuance of RE Certificates pursuant to Chapter III, Section 8 of the Act and Rule 3, Section 11, of this IRR. In the event that there is no viable RE Resource in the off-grid and missionary areas, the relevant supplier in off-grid and missionary areas shall still be obligated to comply with the RPS requirements provided under Chapter III, Section 6 of the Act and Rule 2, Section 4, of this IRR.

PART III.

INCENTIVES FOR RENEWABLE ENERGY PROJECTS AND ACTIVITIES

RULE 5. GENERAL INCENTIVES AND PRIVILEGES FOR RENEWABLE ENERGY DEVELOPMENT

SECTION 13. Fiscal Incentives for Renewable Energy Projects and Activities

DOE-certified existing and new RE Developers of RE facilities, including Hybrid Systems, in proportion to and to the extent of the RE component, for both Power and Non-Power Applications, shall be entitled to the following incentives:

A. Income Tax Holiday (ITH)

(1) ***Period of Availment*** **–** The duly registered RE Developer shall be fully exempt from income taxes levied by the National Government for the period as follows:

(a) Existing RE Projects – seven (7) years from the start of commercial operations;

All RE Developers that acquire, operate and/or administer existing RE facilities that were or have been in commercial operation for more than seven (7) years, upon the effectivity of the Act, shall not be entitled to ITH, except for any additional investment.

(b) New investment in RE Resources – seven (7) years from the start of commercial operations resulting from new investments; and

(c) Additional investment in the RE Project – not more than three (3) times the period of the initial availment by the existing or new RE project or covering new or additional investments.

The maximum period within which an RE Developer may be entitled to an ITH shall be twenty-one (21) years, inclusive of the initial 7-year ITH for its new and additional investments in a specific RE facility.

(2) ***Entitlement for New and Additional Investments subject to prior approval by the DOE***

(a) **New Investment** – RE Developers undertaking discovery and development of new RE Resource distinct from their registered operations may qualify as new projects, subject to the setting up of separate books of accounts. In such cases, a fresh package of ITH from the start of commercial operations shall apply.

(b) *Additional Investment* – The ITH for additional investments in an existing RE project shall be applied only to the income attributable to the additional investment.

Additional investment may cover investments for improvements, modernization, or rehabilitation duly registered with the DOE, which may or may not result in increased capacity, subject to the conditions to be determined by the DOE, such as, but not limited to, the following:

(i) Identification of the phases/stages of production scheduled for modernization/ rehabilitation; and

(ii) Improvements such as reduced production/ operational costs, increased production/operational efficiency, and better product quality of the RE facilities.

B. Exemption from Duties on RE Machinery, Equipment, and Materials

Within the first ten (10) years from the issuance of a Certificate of Registration to an RE Developer, the importation of machinery and equipment, and materials and parts thereof, including control and communication equipment, shall be exempt from tariff duties.

(1) ***Conditions for Duty-Free Importation*** – An RE Developer may import machinery and equipment, materials and parts thereof exempt from the payment of any and all tariff duties due thereon subject to the following conditions:

   (a) The machinery and equipment are directly and actually needed and will be used exclusively in the RE facilities for the transformation of and delivery of energy to the point of use;

   (b) The importation of materials and spare parts shall be restricted only to component materials and parts for the specific machinery and/or equipment authorized to be imported;

   (c) The kind of capital machinery and equipment to be imported must be in accordance with the approved work and financial program of the RE facilities; and

   (d) Such importation shall be covered by shipping documents in the name of the duly registered RE Developer/ operator to whom the shipment will be directly delivered by customs authorities.

(2) ***Sale or Disposition of Capital Equipment*** - Any sale, transfer, assignment, donation, or other modes of disposition of originally imported capital equipment/ machinery including materials and spare parts, brought into the RE facilities of the RE Developer which availed of duty-free importation within ten (10) years from date of importation shall require prior endorsement of the DOE. Such endorsement shall be granted only if any of the following conditions is present:

   (a) If made to another RE Developer enjoying tax and duty exemption on imported capital equipment;

   (b) If made to a non-RE Developer, upon payment of any taxes and duties due on the net book value of the capital equipment to be sold;

   (c) Exportation of the used capital equipment, machinery, spare parts or source documents or those required for RE development; and

   (d) For reasons of proven technical obsolescence as may be determined by the DOE.

When the aforementioned sale, transfer, or disposition is made under any of the conditions provided for in the foregoing paragraphs after ten (10) years from the date of importation, the sale, transfer, or disposition shall require prior endorsement by the DOE and shall no longer be subject to the payment of taxes and duties.

Within six (6) months from the issuance of this IRR, the DOF/Bureau of Customs (BOC) and the Bureau of Internal Revenue (BIR) shall, in consultation with the DOE, formulate the necessary mechanisms/guidelines to implement this provision.

C. Special Realty Tax Rates on Equipment and Machinery

Realty and other taxes on civil works, equipment, machinery, and other improvements by a registered RE Developer actually and exclusively used for RE facilities shall not exceed one and a half percent (1.5%) of their original cost less accumulated normal depreciation or net book value: Provided, That in the case of an integrated RE resource development and Generation Facility as provided under Republic Act No. 9136, the real property tax shall be imposed only on the power plant.

As used in this IRR, "***Original Cost***" shall refer to (1) the tangible cost of construction of the power plant component, or of any improvement thereon, regardless of any subsequent transfer of ownership of such power plant; or (2) the assessed value prevailing at the time the Act took into effect or at the time of the completion of the power plant project after the effectivity of the Act, as the case may be, and in any case assessed at a maximum level of eighty percent (80%), whichever is lower.

"Net Book Value" shall refer to the amount determined by applying normal depreciation on the original cost based on the estimated useful life.

D. Net Operating Loss Carry-Over (NOLCO)

The NOLCO of the RE Developer during the first three (3) years from the start of commercial operation shall be carried over as a deduction from gross income for the next seven (7) consecutive taxable years immediately following the year of such loss, subject to the following conditions:

(a) The NOLCO had not been previously offset as a deduction from gross income; and

(b) The loss should be a result from the operation and not from the availment of incentives provided for in the Act.

E. Corporate Tax Rate

After availment of the ITH, all Registered RE Developers shall pay a corporate tax of ten percent (10%) on their net taxable income as defined in the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act No. 9337: Provided, That the RE Developers shall pass on the savings to the end-users in the form of lower power rates.

All RE Developers that acquire, operate, and/or administer existing RE facilities that were or have been in commercial operation for more than seven (7) years, upon the effectivity of the Act, shall pay a corporate tax rate of 10% on their net taxable income, upon registration with the DOE.

Towards this end, the ERC shall, in coordination with the DOE, determine the appropriate mechanism to implement the power rate reduction.

(a) ***DOE Technical Study*** **-** Pursuant to Section 15(e) of the Act, the DOE shall conduct a technical study on the appropriate mechanisms to determine the savings actually realized directly on account of this incentive.

(b) ***Scope*** **-** The mechanisms shall be applied on RE development projects and bilateral supply agreements in commercial operation as of the effectivity of the Act.

(c) ***Guidelines*****.** **-** In developing the mechanisms to implement the power rate reduction under the preceding paragraphs, the DOE shall take into account the following:

(i) preservation of the purpose of Section 15(e) of the Act;

(ii) non-erosion of the competitive nature of the generation sector of the electric power industry under Section 6 of the EPIRA;

(iii) due consideration of the income tax regimes applicable to different RE Developers under existing or applicable laws, rules, and government undertakings or obligations under existing agreements; and

(iv) application of the various forms by which the savings may be implemented including, but not limited to, value-added services that reduce the DU's cost of service translating to lower retail rates and discounts that are required by regulations of the ERC to be passed through in the retail rate to end-users.

(a) ***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.

(d) The DOE, BIR and DOF shall, within six (6) months from issuance of this IRR, formulate the necessary mechanisms/ guidelines to implement this provision.

H. Tax Exemption of Carbon Credits

All proceeds from the sale of carbon emission credits shall be exempt from any and all taxes.

I. Tax Credit on Domestic Capital Equipment and Services Related to the Installation of Equipment and Machinery

A tax credit equivalent to one hundred percent (100%) of the value of the value-added tax (VAT) and customs duties that would have been paid on the RE machinery, equipment, materials and parts had these items been imported shall be given to a registered RE Developer who purchases machinery, equipment, materials, and parts from a domestic manufacturer, fabricator or supplier subject to the following conditions:

(a) That the said equipment, machinery, and spare parts are reasonably needed and shall be used exclusively by the Registered RE Developer in its registered activity;

(b) That the purchase of such equipment, machinery, and spare parts is made from an accredited or recognized domestic source, in which case, prior approval by the DOE should be obtained by the local manufacturer, fabricator, or supplier; and

(c) That the acquisition of such machinery, equipment, materials, and parts shall be made within the validity of the RE Service/Operating Contract.

Within six (6) months from the effectivity of this IRR, the BIR shall, in coordination with the DOE, promulgate a revenue regulation governing the granting of tax credit on domestic capital equipment.

Any sale, transfer, assignment, donation, or other mode of disposition of machinery, equipment, materials, and parts purchased from domestic source, if made within ten (10) years from the date of acquisition, shall require prior DOE approval.

SECTION 14. Hybrid and Co-generation Systems

The tax exemptions and/or incentives provided for in Section 13 and item D, Section 17 of this IRR shall be availed of by a registered RE Developer of hybrid and cogeneration systems utilizing both RE sources and conventional energy. However, the tax exemptions and incentives for hybrid and cogeneration systems shall apply only to the equipment, machinery, and/or devices utilizing RE Resources.

SECTION 15. Incentives for RE Commercialization

All manufacturers, fabricators, and suppliers of locally-produced RE equipment and components shall be entitled to the privileges set forth below:

A. Tax and Duty-free Importation of Components, Parts, and Materials

All shipments necessary for the manufacture and/or fabrication of RE equipment and components shall be exempted from importation tariff and duties and value-added tax (VAT): *Provided*, That the said components, parts, and materials are:

(1) Not manufactured domestically in reasonable quantity and quality at competitive prices;

(2) Directly and actually needed and shall be used exclusively in the manufacture/fabrication of RE equipment; and

(3) Covered by shipping documents in the name of the duly registered manufacturer/fabricator to whom the shipment will be directly delivered by customs authorities.

Prior approval of the DOE shall be required before the importation of such components, parts and materials.

B. Tax Credit on Domestic Capital Components, Parts, and Materials

A tax credit equivalent to one hundred percent (100%) of the amount of the value-added tax (VAT) and customs duties that would have been paid on the components, parts, and materials had these items been imported shall be given to an RE equipment manufacturer, fabricator, and supplier who purchases RE components, parts, and materials from a domestic manufacturer: *Provided*, That such components and parts are directly needed and shall be used exclusively by the RE manufacturer, fabricator, and supplier for the manufacture, fabrication and sale of the RE equipment.Provided, further, that prior approval by the DOE was obtained by the local manufacturer.

C. Income Tax Holiday and Exemption

For seven (7) years starting from the date of recognition/accreditation provided under Section 18 of this IRR, an RE manufacturer, fabricator, and supplier of RE equipment shall be fully exempt from income taxes levied by the National Government on net income derived only from the sale of RE equipment, machinery, parts, and services.

D. Zero-Rated Value-Added Tax Transactions

All manufacturers, fabricators, and suppliers of locally-produced RE equipment shall be subject to zero-rated value-added tax on their transactions with local suppliers of goods, properties, and services.

SECTION. 16. Incentives for Farmers Engaged in the Plantation of Biomass Resources

All individuals and entities engaged in the plantation of crops and trees used as Biomass Resources shall be entitled to duty-free importation and exemption from payment of value-added tax (VAT) on all types of agricultural inputs, equipment, and machinery within ten (10) years from the effectivity of the Act, subject to the certification by the DOE and the following conditions:

(a) That the crops and trees such as, but not limited to, jatropha, coconut, and sugarcane shall be actually utilized for the production of Biomass Resources; and

(b) That the agricultural inputs, equipment and machinery such as, but not limited to, fertilizers, insecticides, pesticides, tractors, trailers, trucks, farm implements and machinery, harvesters, threshers, hybrid seeds, genetic materials, sprayers, packaging machinery and materials, bulk handling facilities, such as conveyors and mini-loaders, weighing scales, harvesting equipment, and spare parts of all agricultural equipment shall be used actually and primarily for the production of said Biomass Resources.

SECTION 17. Other Incentives and Privileges

A. Tax Rebate for Purchase of RE Components

To encourage the adoption of RE technologies, the DOF shall, in consultation with DOST, DOE, and DTI, provide rebates for all or part of the tax paid for the purchase of RE equipment for residential, industrial, or community use. For this purpose, the DOF shall, within one (1) year from the effectivity of the Act, also prescribe the procedure, mechanism, and appropriate period for granting the tax rebates.

B. Financial Assistance Program

Government financial institutions (GFIs) such as the Development Bank of the Philippines (DBP), Land Bank of the Philippines (LBP), Philippine Exim Bank and others shall, in accordance with and to the extent allowed by the enabling provisions of their respective charters or applicable laws, provide preferential financial packages for the development, utilization, and commercialization of RE projects that are duly recommended and endorsed by the DOE.

The concerned GFIs shall, within six (6) months from the effectivity of this IRR, formulate programs to implement the provision on the grant of preferential financial packages for RE projects.

C. Exemption from the Universal Charge

As used in this IRR, "***Universal Charge***" refers to the charge, if any, imposed for the recovery of the stranded cost and other purposes pursuant to Section 34 of Republic Act No. 9136.

All consumers shall be exempted from paying the Universal Charge under the following circumstances:

(1) If the power or electricity generated through the RE System is consumed by the generators themselves; and/or

(2) If the power or electricity through the RE System is distributed free of charge in the off-grid areas.

D. Cash Incentive of Renewable Energy Developers for Missionary Electrification

An RE Developer registered pursuant to Section 15 of the Act and Section 18 of this IRR, shall be entitled to a cash generation-based incentive per kilowatt-hour rate generated, equivalent to fifty percent (50%) of the universal charge for the power needed to service missionary areas where it operates the same, to be chargeable against the universal charge for Missionary Electrification. This provision shall apply to RE capacities for Missionary Electrification undertaken upon effectivity of the Act.

Within six (6) months from the issuance of this IRR, the ERC shall, in coordination with the DOE, develop a mechanism to implement the provision granting cash incentive to RE Developers for Missionary Electrification.

E. Payment of Transmission Charges

A registered RE Developer producing power and electricity from an intermittent RE Resource may opt to pay the transmission and wheeling charges of TRANSCO, its concessionaire or its successor-in-interests on a per kilowatt-hour basis at a cost equivalent to the average per kilowatt-hour rate of all other electricity transmitted through the Grid.

F. Priority and Must Dispatch for Intermittent RE Resource

Qualified and registered RE generating units with intermittent RE Resources shall be considered "must dispatch" based on available energy and shall enjoy the benefit of priority dispatch.

TRANSCO or its successor-in-interest shall, in consultation with stakeholders, determine, through technical and economic analysis, the maximum penetration limit of the intermittent RE -based power plants to the Grid.

The PEMC and TRANSCO or its successor-in-interest shall implement technical mitigation and improvements in the system in order to ensure safety and reliability of electricity transmission.

"***RE generating units with intermittent RE Resources***" refers to an RE generating unit or group of units connected to a common connection point whose RE Resource is location-specific, naturally difficult to precisely predict the availability of the RE Resource thereby making the energy generated variable, unpredictable and irregular, and the availability of the resource inherently uncontrollable, which include plants utilizing wind, solar, run-of-river hydropower, or ocean energy.

All provisions under the WESM rules, Distribution and Grid Codes which do not allow "must dispatch" status for intermittent RE Resources shall be deemed amended or modified.

SECTION 18. Conditions for Availment of Incentives and Other Privileges

A. Registration/Accreditation with the DOE

For purposes of entitlement to the incentives and privileges under the Act, existing and new RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall register with the DOE, through the Renewable Energy Management Bureau (REMB). The following certifications shall be issued:

(1) ***DOE Certificate of Registration*** – issued to an RE Developer holding a valid RE Service/Operating Contract. For existing RE projects, the new RE Service/Operating Contract shall pre-terminate and replace the existing Service Contract that the RE Developer has executed with the DOE subject to the Transitory Provision in Rule 13, Section 39.

The DOE Certificate of Registration shall be issued immediately upon award of an RE Service/Operating Contract covering an existing or new RE project or upon approval of additional investment.

Any investment added to existing RE projects shall be subject to prior approval by the DOE.

(2) ***DOE Certificate of Accreditation*** – issued to RE manufacturers, fabricators, and suppliers of locally-produced RE equipment, upon submission of necessary requirements to be determined by the DOE, in coordination with the DTI.

B. Registration with the Board of Investments (BOI)

The RE sector is hereby declared a priority investment sector that will regularly form part of the country's Investment Priority Plan (IPP), unless declared otherwise by law.

To qualify for the availment of the incentives under Sections 13 and 15 of this IRR, RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment, shall register with the BOI.

The registration with the BOI shall be carried out through an agreement and an administrative arrangement between the BOI and the DOE, with the end-view of facilitating the registration of qualified RE facilities. The applications for registration shall be favorably acted upon immediately by the BOI, on the basis of the certification issued by the DOE.

C. Certificate of Endorsement by the DOE

RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall be qualified to avail of the incentives provided for in the Act only after securing a Certificate of Endorsement from the DOE, through the REMB, on a per transaction basis.

The DOE, through the REMB, shall issue said certification within fifteen (15) days upon request of the RE Developer or manufacturer, fabricator, and supplier; *Provided*, That the certification issued by the DOE shall be without prejudice to any further requirements that may be imposed by the government agencies tasked with the administration of the fiscal incentives mentioned under Rule 5 of this IRR.

For this purpose, the DOE shall, within six (6) months from the effectivity of this IRR, issue guidelines on the procedures and requirements for the availment of incentives based on specific criteria, such as, but not limited to:

(1) ***Compliance with Obligations*** - The RE Developer or manufacturers, fabricators, and suppliers of locally-produced RE equipment shall observe and abide by the provisions of the Act, this IRR, the applicable provisions of existing Philippine laws, and take adequate measures to ensure that its obligations thereunder as well as those of its officers are faithfully discharged;

(2) ***Compliance with Directives*** - The RE Developer or manufacturers, fabricators, and suppliers of locally-produced RE equipment shall comply with the directives and circulars which the DOE may issue from time to time in pursuance of its powers under the Act;

(3) ***Compliance with Pre-Registration/ Registration Conditions*** - The RE Developers or manufacturers, fabricators, and suppliers of locally-produced RE equipment shall comply with all the pre-registration and registration conditions as required by the DOE;

(4) ***Compliance with Reportorial Requirements*** - An RE Developer shall maintain distinct and separate books of accounts for its operations inside the RE facilities and shall submit technical, financial and other operational reports/documents to DOE on or before their respective due dates; and

(5) ***Remittance of Government Shares and Payment of Applicable Financial Obligations –*** An RE Developer shall observe timely remittance of Government Share, and payment of applicable fees and other financial obligations to the DOE.

RE Developers or manufacturers, fabricators, and suppliers of locally-produced RE equipment who comply with the above requirements shall be deemed in good standing and shall therefore be qualified to avail of the incentives as provided for in the Act and this IRR.

D. Revenue Regulations

Within six (6) months from the effectivity of this IRR, the BIR shall, in coordination with DOE, DOF, BOC, BOI and other

concerned government agencies, promulgate revenue regulations governing the grant of fiscal incentives.

PART IV.

REGULATORYFRAMEWORK 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.

C. Guidelines on Award of RE Service/ Operating Contract

In compliance with this Constitutional mandate, the DOE shall, within one (1) month from the issuance of this IRR, formulate and promulgate the regulatory framework containing the guidelines governing a transparent and competitive system of awarding RE Service/Operating Contracts from pre-development to development/commercial stage, among others.

RE sectors which are developing or utilizing non-naturally occurring resources such as, but not limited to, biomass, biogas, methane capture, and other waste-to-energy technologies, shall be covered by an RE Operating Contract which shall take into consideration the peculiar conditions and realities attendant to such sector; *Provided*, That the biomass sector shall be covered by an RE Operating Contract wherein the biomass developer commits to develop, construct, install, commission, and operate an RE generating facility subject to the terms and conditions as specified therein.

D. Compliance with Existing Laws

The regulatory framework for the award of an RE Service/Operating Contract will take into consideration existing related laws on the exploration, development and utilization of RE Resources such as:

(1) RA No. 7160, otherwise known as the "Local Government Code", on the necessity of prior and periodic consultations with the local government units before any RE exploration activity is conducted within their respective jurisdictions. Existing projects shall be considered compliant with this requirement;

(2) RA No. 8371, otherwise known as the "Indigenous Peoples Rights Act"; and

(3) Existing environmental laws and regulations as prescribed by the DENR and/or any other concerned government agency, including compliance with the Environmental Impact Assessment (EIA) System.

An Environmental Compliance Certificate (ECC) from the appropriate regional office of the DENR would be sufficient to comply with the Act and this IRR.

RULE 7. GOVERNMENT SHARE

SECTION 20. Government Share

A. Government Share in General

The Government Share on existing and new RE development projects shall be equal to one percent (1%) of the gross income of RE Developers except for indigenous geothermal energy, which shall be at one and a half percent (1.5%) of gross income of the preceding fiscal year.

For purposes of determining the government share, the gross income of RE Developers shall include the proceeds resulting from the sale of RE produced and such other income incidental to and arising from RE generation, transmission, and sale of electric power.

As used in this IRR, "***Gross Income***" derived from business shall be equivalent to gross sales less sales returns, discounts and allowances, and cost of goods sold, consistent with Section 27, Paragraph A(7) of the NIRC of 1997, as amended by Republic Act No. 9337.

"***Cost of Goods Sold***" shall include all business expenses directly incurred to produce the merchandise to bring them to their present location and use, consistent with Section 27, Paragraph A(7) of the NIRC of 1997, as amended by Republic Act No. 9337.

Except for government-owned and controlled corporations, the Government Share shall be distributed as follows:

(1) National Government – 60%
(2) Local Government – 40%

B. Share from Geothermal Energy Resources

(1) For an integrated geothermal operation, the Government Share of one and a half percent (1.5%) shall be based on the Gross Income from the sale of electricity generated from geothermal energy. The Cost of Goods Sold shall be the direct cost of the generation of electricity.

(2) For steamfield development and production only, the Government Share of one and a half percent (1.5%) shall be based on the Gross Income from the sale of the geothermal steam. The Cost of Goods Sold shall be the direct cost of the geothermal steam production.

(3) For geothermal power plant operation only, the Government Share of one and a half percent (1.5%) shall be based on the Gross Income from the sale of electricity generated from geothermal energy. The Cost of Goods Sold shall be the direct cost of electricity generated from geothermal energy and the direct cost of the geothermal steam.

C. Local Government Share

In accordance with Section 292 of Republic Act No. 7160, the allocation and distribution of the local government share shall be as follows:

(1) Where the natural resources are located in the province:

(i) Province - Twenty percent (20%);
(ii) Component city/municipality - Forty-five percent (45%); and
(iii) Barangay - Thirty-five percent (35%)

(2) Where the natural resources are located in two (2) or more provinces, or in two (2) or more component cities or municipalities or in two (2) or more Barangays, their respective shares shall be computed on the basis of:

(i) Population - Seventy percent (70%); and
(ii) Land area - Thirty percent (30%)

(3) Where the natural resources are located in a highly urbanized or independent component city:

(i) City - Sixty-five percent (65%); and
(ii) Barangay - Thirty-five percent (35%)

(4) Where the natural resources are located in such two (2) or more cities, the allocation of shares shall be based on the formula on population and land area as specified in paragraph (2) of this Section.

D. Remittance of the Share of Local Government Units

In accordance with Sections 286 and 293 of Republic Act No. 7160, as amended, the share of local government units from the utilization and development of national wealth shall be released, without need of any further action, directly to the provincial, city, municipal or barangay treasurer, as the case may be, on a quarterly basis within five (5) days after the end of each quarter, and which shall not be subject to any lien or holdback that may be imposed by the National Government for whatever purpose.

E. Exceptions on Government Share

No government share shall be collected from the following:

(1) Proceeds from the development of Biomass Resources; and

(2) Proceeds of micro-scale projects for communal purposes and non-commercial operations, such as community-based RE projects, which are not greater than one hundred kilowatts (100kW).

SECTION. 21. RE Host Communities/LGUs

A. Determination of RE Host Communities/ LGUs

The LGUs hosting the energy resource and/or energy generating facility shall have an equitable share in the proceeds derived from the development and utilization of energy resource and sale of electric power. For the purposes of this IRR, Host LGU shall refer to the following:

(1) With respect to integrated energy generating facilities, the host LGU is where the energy-generating facilities and energy resources are located. The LGU shall be entitled to a share based on the sale of electric power;

(2) With respect to energy resources, the host LGU is where the renewable energy resources are located as delineated by geophysical and exploration surveys. The LGU shall be entitled to a share based on the sale of renewable energy produced

by the RE Developer; and

(3) With respect to non-integrated generating facilities, the host LGU is where the energy generating facility is located. The LGU shall be entitled to a share based on the sale of electric power of the generating facility.

B. Incentives to RE Host Communities/LGUs

Based on Sections 289 to 294 of Republic Act No. 7160, the benefits/incentives provided herein, shall be allocated to the Host LGUs defined in the preceding paragraph as follows:

(1) Eighty percent (80%)of the local government share from RE projects and activities shall be used directly to subsidize the electricity consumption of end-users in the RE host communities/LGUs whose monthly consumption does not exceed one hundred kilowatt-hours (100kWh); *Provided*, That excess funds shall, after serving the end-users referred to in the preceding paragraph, be used to subsidize the electricity consumption of consumers of the same class in the host city, municipality or the province, as the case may be;

(2) The subsidy may be in the form of rebates, refunds, and/or any other form as may be determined by the DOE, DOF, and ERC, in coordination with the NREB Within six (6) months from the effectivity of the Act, the DOE, DOF, and ERC shall, in coordination with the NREB and in consultation with the DUs, promulgate the mechanisms to implement this provision; and

(3) Twenty percent (20%) of the local government share shall be utilized to finance local government and livelihood projects which shall be appropriated by their respective Sanggunian, pursuant to Section 294 of Republic Act No. 7160.

PART V

ORGANIZATION AND RENEWABLE ENERGY TRUST FUND

RULE 8. THE ROLE OF THE DEPARTMENT OF ENERGY

SECTION 22. Lead Agency

The DOE shall be the lead agency mandated to implement the provisions of the Act and this IRR. In pursuance thereof and in addition to its functions provided for under existing laws, the DOE shall:

(a) Promulgate the RPS Rules;

(b) Establish the REM and direct the PEMC to implement changes in order to incorporate the rules specific to the operation of the REM under the WESM;

(c) Supervise the establishment of the RE Registrar by the PEMC;

(d) Promulgate the appropriate implementing rules and regulations necessary to achieve the objectives of the Green Energy Option program;

(e) Determine the minimum percentage of generation which may be sourced from available RE Resources of the NPC-SPUG or its successors-in-interest and/or qualified third parties in off-grid areas;

(f) Issue certification to RE Developers, local manufacturers, fabricators, and suppliers of locally-produced RE equipment to serve as basis for

their entitlement to incentives, as provided for in the Act;

(g) Formulate and implement the NREP together with relevant government agencies;

(h) Administer the Renewable Energy Trust Fund (RETF) as a special account in any of the government financial institutions identified under Section 29 of the Act;

(i) Recommend and endorse RE projects applying for financial assistance with government financial institutions pursuant to Section 29 of the Act;

(j) Encourage the adoption of waste-to-energy technologies pursuant to Section 30 of the Act;

(k) Determine the mechanisms in the grant of subsidy to electric consumers of Host LGUs, together with DOF, ERC, and NREB; and

(l) Perform such other functions as may be necessary, to attain the objectives of the Act.

RULE 9. NATIONAL RENEWABLE ENERGY BOARD

SECTION 23. Creation of the NREB

Pursuant to Section 27 of the Act, the National Renewable Energy Board (NREB) is created and shall be composed of a Chairman, and one (1) representative each from the following agencies: DOE, DTI, DOF, DENR, NPC, TRANSCO or its successors-in-interest, PNOC and PEMC, who shall be designated by their respective secretaries on a permanent basis; and one (1) representative each from the following sectors: RE Developers, Government Financial Institutions (GFIs), private distribution utilities, electric cooperatives, electricity suppliers, and non-governmental organizations, duly endorsed by their respective industry associations and all to be appointed by the President of the Republic of the Philippines.

The members of the Board and their alternates must be of proven integrity and probity, with a working knowledge and understanding of the RE industry, and occupying the position of at least Director and Manager for government agencies and private entities, respectively.

The NREB shall act as a collegial body primarily tasked with recommending policies to the DOE and monitoring the implementation of the Act. As such, its private sector members shall not be required to divest. However, to avoid conflict of interest, the NREB shall adopt its own Code of Ethics that shall be observed by all its members.

SECTION 24. Meetings of the NREB

Regular meetings of the NREB shall be held at least once every quarter on a date and in a place fixed by the Board. Special meetings may also be called by the Chairman or by a majority vote of the Board, as necessary.

Representatives of other government agencies and private entities such as, but not limited to, the Department of Science and Technology (DOST), Department of Agriculture (DA), National Water Resources Board (NWRB), National Commission for Indigenous Peoples (NCIP), National Electrification Administration (NEA), National Research Council of the Philippines (NCRP), and the academe may be invited by the NREB as resource persons.

SECTION 25. Remuneration

The NREB shall determine the appropriate compensation/remuneration of its members in accordance with existing laws, rules and regulations, and shall make the necessary requests and representations with the

Department of Budget and Management (DBM) for the allocation and appropriation of funds necessary to effectively perform its duties and functions.

SECTION 26. Technical Secretariat

The NREB shall be assisted by a Technical Secretariat from the REMB. The Technical Secretariat shall report directly to the Office of the Secretary or the Undersecretary of the Department, as the case may be, on matters pertaining to the activities of the NREB. The number of staff of the Technical Secretariat and the creation of corresponding positions necessary to complement and/or augment the existing plantilla of the REMB shall be determined by the Board, subject to existing civil service rules and regulations and approval by the DBM for the allocation and appropriation of funds necessary to effectively perform its duties and functions.

SECTION 27. Powers and Functions

The NREB shall have the following powers and functions:

(a) Evaluate and recommend to the DOE the mandated RPS and minimum RE generation capacities in off-grid areas, as it deems appropriate;

(b) Recommend specific actions to facilitate the implementation of the NREP to be executed by the DOE and/or other appropriate agencies of government and to ensure that there shall be no overlapping and redundant functions within the national government departments and agencies concerned;

(c) Monitor and review the implementation of the NREP, including compliance with the RPS and minimum RE generation capacities in off-grid areas;

(d) Oversee and monitor the utilization of the Renewable Energy Trust Fund (RETF) established pursuant to Section 28 of the Act and administered by the DOE;

(e) Cause the establishment of a one-stop shop facilitation scheme to accelerate implementation of RE projects; and

(f) Perform such other functions, as may be necessary, to attain the objectives of the Act.

RULE 10. RENEWABLE ENERGY MANAGEMENT BUREAU

SECTION 28. Creation of the REMB

To effectively implement the provisions of the Act, a Renewable Energy Management Bureau (REMB) shall be established under the DOE pursuant to Section 32 of the Act.

To facilitate the application for registration/ accreditation of RE Developers, REMB Desks shall be created in the field offices of the DOE in Luzon, Visayas, and Mindanao, pursuant to Section 2 (a) and (b) of the Act.

The existing plantilla of the Renewable Energy Management Division (REMD) of the Energy Utilization Management Bureau (EUMB) of the DOE shall form the nucleus of REMB to perform the duties, functions, and responsibilities of the said bureau. For this purpose, the existing REMD is hereby dissolved.

SECTION. 29. Organizational Structure

Within six (6) months from effectivity of this IRR, the DOE through the Office of the Secretary shall determine the REMB organizational structure and staffing pattern/ staffing complement, in consultation with the DBM, and subject to existing civil service rules and regulations.

SECTION 30. Budget

The funds necessary for the creation of the REMB shall be taken from the current appropriations of the DOE. Thereafter, the budget for the REMB shall be included in the annual General Appropriations Act (GAA).

SECTION 31. Powers and Functions of the REMB

The REMB shall have the following powers and functions:

(a) Develop, formulate and implement policies, plans and programs such as the NREP, to accelerate the development, transformation, utilization, and commercialization of RE Resources and technologies;

(b) Develop and maintain a comprehensive, centralized and unified data and information base on RE Resources to ensure the efficient evaluation, analysis, and dissemination of data and information on RE Resources, development, utilization, demand, and technology application;

(c) Promote the commercialization/ application of RE Resources including new and emerging technologies for the efficient and economical transformation, conversion, processing, marketing and distribution to end-users;

(d) Conduct technical research, socio-economic, and environmental impact studies of RE projects for the development of sustainable RE Systems;

(e) Continue to strengthen the Affiliated Renewable Energy Centers (ARECs) nationwide;

(f) Create a unified database of RE projects for monitoring and planning purposes;

(g) Supervise and monitor activities of government and private companies and entities on RE Resources development and utilization to ensure compliance with existing rules, regulations, guidelines and standards;

(h) Provide information, consultation, technical training, and advisory services to RE Developers, practitioners, and entities involved in RE technology, and formulate RE technology development strategies including, but not limited to, standards and guidelines;

(i) Develop and implement an information, education, and communication (IEC) program to heighten awareness of and appreciation by all stakeholders of the RE industry;

(j) Evaluate, process, approve and issue RE Service/Operating Contracts, permits, certifications, and/or accreditations as provided for in the Act and this IRR;

(k) Monitor and evaluate the implementation of the NREP to determine the need to expand the same; and

(l) Perform other functions that may be necessary for the effective implementation of the Act and the accelerated development and utilization of the RE Resources in the country.

RULE 11. RENEWABLE ENERGY TRUST FUND

SECTION 32. Exclusive Fund Administration

Pursuant to Section 28 of the Act, the RETF is hereby established to enhance the development and greater utilization of renewable energy. It shall be administered by the DOE as a special account in any of the GFIs. The RETF shall be used exclusively to:

(a) Finance the research, development, demonstration, and promotion of the widespread and productive use of RE Systems for Power and Non-Power Applications;

(b) Provide funding to qualified research and development institutions engaged in renewable energy studies undertaken jointly through public-private sector partnership, including provision for scholarship and fellowship for energy studies;

(c) Support the development and operation of new RE Resources to improve their competitiveness in the market: *Provided*, That the grant thereof shall be done through a competitive and transparent manner;

(d) Conduct nationwide resource and market assessment studies for the Power and Non-Power Applications of RE Systems;

(e) Propagate RE knowledge by accrediting, tapping, training, and providing benefits to institutions, entities, and organizations which can help widen the promotion and reach of RE benefits at the national and local levels; and

(f) Fund such other activities necessary or incidental to the attainment of the objectives of the Act.

SECTION 33. Fund Utilization

The funds may be used through grants, loans, equity investments, loan guarantees, insurance, counterpart fund or such other financial arrangements necessary for the attainment of the objectives of the Act: *Provided*, That the use or allocation thereof shall be, as far as practicable, done through a competitive and transparent manner.

SECTION 34. Sources of Funds

The RETF shall be funded from:

(a) Proceeds from the emission fees collected from all generating facilities consistent with Republic Act No. 8749 or the Philippine Clean Air Act;

(b) One and a half percent (1.5%) of the net annual income of the Philippine Charity Sweepstakes Office (PCSO);

(c) One and a half percent (1.5%) of the net annual income of the Philippine Amusement and Gaming Corporation (PAGCOR);

(d) One and a half percent (1.5%) of the net annual dividends remitted to the National Treasury by the Philippine National Oil Company (PNOC) and its subsidiaries;

(e) Contributions, grants and donations: *Provided*, That all contributions, grants and donations made to the RETF shall be tax deductible subject to the provisions of the NIRC. To ensure this goal, the BIR shall assist the DOE in formulating the rules and regulations to implement this provision;

(f) One and a half percent (1.5%) of the proceeds of the Government Share collected from the development and use of indigenous non-RE Resources;

(g) Any revenue generated from the utilization of the RETF; and

(h) Proceeds from fines and penalties imposed under the Act.

For this purpose, the DOE, PCSO, PAGCOR, DENR, and DBM shall, within six (6) months from the approval of this IRR, formulate the necessary mechanism for the transmittal of the Fund to the DOE.
Furthermore, the DOE shall, within six (6) months from the approval of this IRR, formulate the guidelines to ensure the competitive and transparent utilization of the fund.

PART VI

PROHIBITED ACTS, PENAL, AND ADMINISTRATIVE PROVISIONS

RULE 12. PROHIBITED ACTS AND SANCTIONS

SECTION 35. Prohibited Acts

Pursuant to Section 35 of the Act, any person or entity found in violation of any of the following shall be subject to the appropriate criminal, civil, and/or administrative sanctions as provided in this IRR and other existing applicable laws, rules and regulations:

(a) Non-compliance with or violation of the RPS rules;

(b) Willful refusal to undertake Net-Metering arrangements with qualified distribution grid users;

(c) Falsification or tampering of public documents or official records to avail of the fiscal and non-fiscal incentives provided under the Act;

(d) Failure and willful refusal to issue the certificate referred to in Section 26 of the Act; and

(e) Non-compliance with the established guidelines that the DOE adopted for the implementation of the Act.

SECTION 36. Administrative Liability

Without prejudice to incurring criminal liability, any person who willfully commits any of the prohibited acts and violates other issuances relative to the implementation of the Act shall be subject to the following administrative fines and penalties:

(a) The DOE may impose a penalty ranging from Reprimand to Revocation of License with corresponding fine ranging from a minimum of One Hundred Thousand Pesos (P100,000.00) to Five Hundred Thousand Pesos (P500,000.00) depending on the gravity for the following offenses:

(1) Non-compliance or violation of the RPS rules;

(2) Willful refusal to undertake Net-Metering arrangements with qualified distribution grid users; and

(3) Non-compliance with the established guidelines that the DOE adopted for the implementation of the Act.

(b) The DOE may revoke the license, permit, certification, endorsement or accreditation, terminate RE Service/Operating Contract and/or impose a fine ranging from a minimum of One Hundred Thousand Pesos (P100,000.00) to Five Hundred Thousand Pesos (P500,000.00) on any person or entity found to have committed the falsification or tampering of public documents or official records to avail of the fiscal and non-fiscal incentives, pursuant to Section 35 (c) of the Act.

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

Any employee of the DOE who shall fail or willfully refuse to issue the certificate pursuant to Section 26 of the Act shall be given a warning for the first offense, and meted the penalty of reprimand for the second offense, and suspension for the third offense.

SECTION 37. Administrative Procedures

The DOE may initiate, *motu proprio* or upon filing of any complaint, an administrative proceeding against any person or entity who commits any of the prohibited acts under Section 35 of the Act, Section 35 of the IRR, or other related issuances. In the exercise thereof, the DOE may commence such hearing or inquiry by an order to show cause, setting forth the grounds for such order.

The administrative proceedings will be conducted to determine culpability of offenders and the applicable penalties in accordance with existing "Rules and Procedures Before the DOE."

Administrative actions initiated pursuant to this section shall be separate and independent from any criminal actions that may arise for violations of the Act.

SECTION 38. Criminal Liability

In accordance with Section 36 of the Act, any person who willfully aids or abets the commission of a crime prohibited herein or who causes the commission of any such act by another shall be liable in the same manner as the principal.

In the case of associations, partnerships, or corporations, the penalty shall be imposed on the partner, president, chief operating officer, chief executive officer, directors or officers responsible for the violation.

The perpetrators of any of the prohibited acts provided for under Section 35 of the Act, upon conviction thereof, shall suffer the penalty of imprisonment of from one (1) year to five (5) years, or a fine ranging from a minimum of One Hundred Thousand Pesos (P100,000.00) to One Hundred Million Pesos (P100,000,000.00), or twice the amount of damages caused or costs avoided for non-compliance, whichever is higher, or both upon the discretion of the court.

PART VII.

FINAL PROVISIONS

RULE 13. TRANSITORY AND OTHER PROVISIONS

SECTION 39. Transitory Provisions

Benefits or incentives extended to RE Developers, and manufacturers, fabricators, and suppliers of locally-produced RE equipment under existing laws not amended or withdrawn under this Act shall remain in full force and effect. No provision of the Act shall be taken as to diminish any right vested by virtue of existing laws, contracts, or agreements. However, in order to qualify for the availment of the incentives provided under Chapter VII of the Act and this IRR, the RE Developer, and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall be required to secure a certificate of registration or accreditation with the DOE.

The fiscal incentives granted under Section 15 of the Act shall apply to all RE capacities upon the effectivity of the Act.

Pending the issuance of other necessary guidelines, the grant of provisional certificates of registration by the DOE shall be valid and effective.

SECTION 40. Reportorial Requirements

The DOE shall, in coordination with the NREB, submit a yearly report on the implementation of the Act to the Philippine Congress, through the Joint Congressional Power Commission (JCPC), every January of each year following the period in review, indicating among others, the progress of RE development in the country and the benefits and impact generated by the development and utilization of renewable energy resources in the context of energy security and climate change imperatives.

This shall serve as basis for the JCPC's review of the incentives as provided for in the Act towards ensuring the full development of the country's RE capacities under a rationalized market and incentives scheme.

SECTION 41. Congressional Oversight

Upon the effectivity of the Act, the JCPC, created under Section 62 of Republic Act No. 9136, shall exercise oversight powers over the implementation of the Act.

SECTION 42. Appropriations

Funds necessary to finance the activities of concerned government agencies, as provided in the Act and this IRR, shall be included in the annual General Appropriations Act.

SECTION 43. Separability Clause

If any provision of this IRR is declared unconstitutional, the remainder of the Act or the provision not otherwise affected, shall remain valid and subsisting.

SECTION 44. Repealing Clause

Any law, presidential decree or issuance, executive order, letter of instruction, administrative rule or regulation contrary to or inconsistent with the provisions of the Act and this IRR is hereby repealed, modified, or amended accordingly.

Section 1 of Presidential Decree No. 1442 or the Geothermal Resources Exploration and Development Act, insofar as the exploration of geothermal resources by the government, and Section 10 (1) of Republic Act No. 7156, otherwise known as the "Mini-Hydro Electric Power Incentive Act", insofar as the special privilege tax rate of two percent (2%), are hereby repealed, modified or amended accordingly.

SECTION 45. Effectivity

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

ANGELO T. REYES
Secretary

DEPARTMENT CIRCULAR NO. 2009-07-0010

GUIDELINES FOR THE ACCREDITATION OF MANUFACTURERS, FABRICATORS AND SUPPLIERS OF LOCALLY-PRODUCED RENEWABLE ENERGY EQUIPMENT AND COMPONENTS

WHEREAS, Republic Act No. 9513, otherwise known as the "Renewable Energy Act of 2008" (Act) provides that it is the policy of the State to increase the utilization of renewable energy resources such as, but not limited to, biomass, solar, wind, hydropower, geothermal, and ocean energy sources, and including hybrid system by institutionalizing the development of national and local capabilities in the use of renewable energy systems, and promoting its efficient and cost-effective commercial application by providing fiscal incentives;

WHEREAS, the Implementing Rules and Regulations (IRR) of the Act mandates the Department of Energy (DOE) to provide the guidelines for the accreditation of manufacturers, fabricators and suppliers of locally-produced RE equipment and components for purposes of availment of fiscal incentives;

NOW, THEREFORE, in consideration of the foregoing premises, the DOE hereby issues the following guidelines:

SECTION 1. Title. – This Circular shall be known as the "Guidelines for the Accreditation of Manufacturers, Fabricators and Suppliers of Locally-Produced Renewable Energy Equipment and Components."

SECTION 2. Scope. – This Circular shall govern the registration of renewable energy (RE) manufacturers, fabricators and suppliers of locally-produced RE equipment and components and the issuance of Certificate of Accreditation for the availment of incentives under the Act.

SECTION 3. Incentives for Manufacturers, Fabricators and Suppliers. – Without prejudice to any other requirements as may be imposed by other agencies tasked with the administration of incentives under the Act, all existing and new manufacturers, fabricators and suppliers of locally-produced RE equipment, parts and components shall be required to obtain an accreditation with the DOE through Renewable Energy Management Bureau (REMB) in order to enjoy any of the incentives as provided for under Section 21 of the Act.

SECTION 4. Who May Apply. – Any person, natural or juridical, registered and/or authorized to operate in the Philippines under existing Philippine laws and engaged in the manufacture, fabrication and supply of locally-produced RE equipment and components may apply for accreditation with the REMB.

SECTION 5. Application Requirements. – All applications for DOE Certificate of Accreditation shall be made in writing and must be verified. The applicant must submit the following documents:

(a) Letter of Application addressed to REMB Director;

(b) Company Profile or Business Background – must show proof of good standing, i.e., demonstrate full compliance with the pertinent rules and regulations governing the applicant's business;

(c) A copy of Articles of Incorporation from the Securities and Exchange Commission (SEC) or a Certificate of Registration from Department of Trade and Industry (DTI) for single proprietorship;

(d) Nature and Scope of RE activities (RE manufacturing, fabricating, and/or supplying of locally-produced RE machineries, equipment, components and parts);

(e) Appropriate Business Permit in the name of the Company or proprietor – that it must be actively engaged in the business involving similar activities applied for accreditation, including certified copy of Bureau of Internal Revenue (BIR) Registration;

(f) Proof of technical, financial and physical or logistical capabilities to handle RE equipment, machinery, components and parts appropriate and commensurate to the scope of activity applied for accreditation;

(g) Track record, if applicable; and

(h) Such other documents as may be required by the REMB.

SECTION 6. Processing and Approval of Application. – The application for accreditation shall be granted by the DOE upon evaluation that the applicant has complied with all the requirements specified above. The processing period for any application for accreditation shall be within thirty (30) days from the date of submission of complete requirements to the REMB. No application for accreditation shall be accepted without due payment of application and processing fees.

In case of incomplete application requirements, the REMB shall, within fifteen (15) days from receipt of application, notify the applicant, in writing, to correct the deficiency. If the applicant fails to correct the deficiency within fifteen (15) days from receipt of the notice, the application shall be deemed to have been abandoned.

SECTION 7. Obligations of Accredited RE Manufacturers, Fabricators and Suppliers. –

The DOE-accredited manufacturers, fabricators and suppliers of locally-produced RE equipment, parts and components shall comply with the terms and conditions set forth in the Certificate of Accreditation, in addition to the following:

(a) Comply with pertinent government rules and regulations including, but not limited to, payment of taxes, environmental protection, safety, as a requisite for availment of and continuous enjoyment of incentives under the Act;

(b) Submit reports on the importation, local purchases, sales, and inventory, among others, in relation to accredited RE activities (manufacturing, fabrication, and supply of locally-produced RE machineries, equipment, components and parts);

(c) Adhere to standards, or in its absence, to industry-accepted norms and practices in the manufacture, fabrication or supply of RE machineries, equipment and components;

(d) Allow DOE personnel, at all reasonable time, full access to its facilities, books of accounts and other pertinent records relative to its business operation; and

(e) Shall not assign, transfer, dispose or otherwise convey its interest acquired under the DOE accreditation.

SECTION 8. Period of Validity. – The DOE Certificate of Accreditation for RE manufacturers, fabricators and suppliers of locally-produced RE machineries, equipment, components and parts, shall be valid for a period of three (3) years from date of its issuance unless earlier revoked or cancelled by the DOE through REMB on valid grounds. The Certificate of Accreditation shall be renewable every three (3) years, subject to compliance with the requirements.

SECTION 9. Revocation or Cancellation of Certificate of Accreditation. – The DOE may, *motu proprio* or upon filing of any complaint, revoke or cancel any Certificate of Accreditation following the provisions of Department Circular No. 2002-07-004 or the "Rules of Practice and Procedure of the Department of Energy" due to, among others, failure of any of the accredited manufacturer, fabricator and/or supplier to comply with its obligations as provided in Section 6 hereof and the terms and conditions under which the accreditation was issued.

SECTION 10. Separability Clause. – If for any reason, any provision of this Circular is declared unconstitutional or invalid, the other parts or provisions not affected thereby shall remain in full force and effect.

SECTION 11. Repealing Clause. – The provisions of other department circulars which are inconsistent with the provisions of this Circular are hereby repealed, amended or modified accordingly.

SECTION 12. Effectivity. – This Circular shall take into effect fifteen (15) days following its publication in at least two (2) newspapers of general circulation.

Issued this 12th day of July 2009 in Fort Bonifacio, Taguig City, Metro Manila.

ANGELO T. REYES
Secretary

DEPARTMENT CIRCULAR NO. DC2009–07–0011

GUIDELINES GOVERNING A TRANSPARENT AND COMPETITIVE SYSTEM OF AWARDING RENEWABLE ENERGY SERVICE/OPERATING CONTRACTS AND PROVIDING FOR THE REGISTRATION PROCESS OF RENEWABLE ENERGY DEVELOPERS

WHEREAS, pursuant to Article XII, Section 2, of the 1987 Philippine Constitution, all forces of potential energy and other natural resources within the Philippine territory belong to the State and their exploration, development and utilization shall be under the full control of the State;

WHEREAS, Republic Act (R.A.) No. 9513, otherwise known as the "Renewable Energy Act of 2008," provides that .it is the policy of the State to encourage and accelerate the exploration, development and increase the utilization of renewable energy resources such as, but not limited to, biomass, solar, wind, hydropower, geothermal, and ocean energy sources, and including hybrid systems;

WHEREAS, the Implementing Rules and Regulations (IRR) of R.A. No. 9513 mandates the Department of Energy (DOE) to issue a regulatory framework containing the guidelines governing a transparent and competitive system of awarding Renewable Energy Service/Operating Contracts from pre–development to development/commercial stage, among others;

WHEREAS, biofuels, which are defined as fuels made from biomass, are considered renewable energy resource under the scope of biomass energy;

WHEREAS, Joint Administrative Order (JAO) No. 2008–1, Series of 2008, otherwise known as the "Guidelines Governing the Biofuel Feedstocks Production, and Biofuels and

Biofuel Blends Production, Distribution and Sale," was issued for the accreditation of biofuel producers, among others, under R.A. No. 9367 otherwise known as the "Biofuels Act of 2006;"

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

NOW, THEREFORE, in consideration of the foregoing premises, the DOE hereby issues the following guidelines:

CHAPTER I.
GENERAL PROVISIONS

SECTION 1. Title. –This Circular shall be known as the "Guidelines Governing a Transparent and Competitive System of Awarding Renewable Energy Service/Operating Contracts and Providing for the Registration Process of Renewable Energy Developers."

SECTION 2. Scope. –This Circular shall provide the guidelines on the award of Renewable Energy Service/Operating Contracts (RE Contracts) covering both the pre–development and development stages either for power or non–power applications, including the transition of the existing service contracts and agreements on the exploration, development or utilization of Renewable Energy (RE) resources with the DOE/ Government to RE Contracts, subject to Rule 13, Section 39 of the IRR of the Act, and the issuance of DOE Certificate of Registration for RE Developers.

SECTION 3. Definition of Terms. – As used in this Circular, the following terms shall be understood to mean, as follows:

(a) "Act" shall refer to R.A. No. 9513, otherwise known as the "Renewable Energy Act of 2008;"

(b) "Blocking System" shall, for purposes of this Circular, refer to the subdivision of the Philippine territory by the DOE, into meridional blocks of half (112) minute of latitude and half (112) minute of longitude with Geographic Projection and Datum of the Philippine Reference System (PRS) of 1992. One (1) meridional block shall have an area of eighty one (81) Hectares. Each block shall be designated a block number which shall be used exclusively in identifying the coverage of a contract area;

(c) "Commercial Operation" shall refer to the phase of RE development when the RE Developer has completed its commissioning and test operations and is ready to sell or apply its produced energy, as duly confirmed by the DOE;

(d) "Declaration of Commerciality" shall refer to a written declaration by the RE Developer, duly confirmed by the DOE Secretary, stating that the project is commercially feasible;

(e) "Financial Closing" shall refer to the stage when the RE Developer has established, based on the DOE'S criteria and procedures, its financial capability to implement its RE project;

(f) "Frontier Areas" shall refer to areas with RE resource potentials but without sufficient available technical data as determined by the DOE and are not ready for immediate development and utilization;

(g) "RE Applicant" shall refer to any entity, whether individual or juridical, local or foreign, including joint venture or consortium of local, foreign, or local and foreign firms, subject to the limitations provided in Section 6 hereof, which applies for the assessment, exploration,

extraction, resources;

(h) "RE Application" shall refer to the legal, technical, financial and other pertinent documents submitted by the RE Applicant in accordance with the requirements for direct negotiation of RE Contracts under Section 10 of this Circular;

(i) "RE Developer" shall refer 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;

(j) "RE Proposal" shall refer to the legal, technical, financial and other pertinent documents submitted by the RE applicant in accordance with Section 9 on the open and competitive selection process of this Circular;

(k) "Work Program" shall refer to plans, programs, and activities, including the corresponding budgetary requirements, for the performance of obligations under the RE Contract, including, but not limited to, plans for exploration, development, production or utilization; and

(l) "Working Capital" shall refer to the RE Applicant's net liquid assets (quick assets less current liabilities) consisting primarily of cash, temporary investments, short term current receivables and deposits.

CHAPTER II.
RE SERVICE/OPERATING CONTRACTS

SECTION 4. Nature of RE Contract. – An RE Contract is a 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 shall have the exclusive right to explore, develop or utilize a particular RE area: Provided, That an agreement between the Government and the RE Developer for the exploration, development or utilization of biomass resources shall be covered by an RE Operating Contract only, subject to the provisions of Section 25 of this Circular: Provided, further, That JAO No. 2008–1, Series of 2008 under R.A. No. 9367 shall govern the registration and accreditation of biofuel producers, in lieu of an RE Contract.

a. Stages of RE Contract – The RE Contract shall be divided into two (2) stages, namely:

   i. Pre–Development Stage –involves the preliminary assessment and feasibility study up to financial closing of the RE project; and

   ii. Development/Commercial Stage – involves the development, production or utilization of RE resources, including the construction and installation of relevant facilities up to the operation phase of the RE facilities.

b. Conversion of RE Contract:

   i. From Pre–Development Stage to Development/Commercial Stage – Upon Declaration of Commerciality by an RE Developer and after due confirmation by the DOE, the RE Developer shall apply for the conversion of the RE Contract, prior to its expiration, from Pre–Development Stage to Development/Commercial Stage. The Declaration of Commerciality shall be based on the feasibility studies and/or exploration activities conducted by the RE Developer.

The RE Developer of an RE Contract shall secure permits, clearances or certificates such as, but not limited to, Environmental Compliance Certificate (ECC), Certificate of Non–Coverage (CNC), Water Rights Permit, Free and Prior Informed Consent (FPIC), Certificate of Non–Overlap, Local Government Unit (LGU) endorsement and all other regulatory requirements from other government agencies which are applicable to the RE activities/ operations.

ii. From Existing Service Contract/ Agreement on RE Resources to RE Contracts under the Act and this Circular–For an existing RE project, the contract holder may elect to convert its Service ContractIAgreement under applicable laws by applying for an RE Contract under the Act and this Circular. The approval of such application shall be carried out on the basis of its prior rights over the contract area.

Any individual or juridical entity with a valid and existing service or development contracts and agreements with the DOE/Government for the exploration, development or utilization of RE resource shall be deemed provisionally registered as an RE Developer under the Act, which registration shall subsist until the issuance of DOE Certificate of Registration provided for under Section 18 of the IRR. For this purpose, the DOE shall issue the corresponding provisional certificate of registration, pursuant to Section 39 of the IRR, upon receipt of the RE Developer's letter of intent for conversion to RE Contract.

SECTION 5. RE Contract Area. – The RE Contract area shall be defined through a Blocking System: Provided, That the Blocking System shall apply only to RE Contracts on ocean, solar, wind and geothermal resources.

PART 1.
APPLICATION REQUIREMENTS

SECTION 6. Application Requirements. – All applicants for the issuance of an RE Contract shall comply with the following requirements: subject to the limits herein set, apply for RE contracts.

a. Who may apply – Any person, natural or juridical, local or foreign, may, subject to the limits herein set, apply for RE contracts.

i. For RE Contract both during Pre–Development and Development/ Commercial Stages covering all RE resources and including hybrid systems, the RE Applicant must be a Filipino or, if a corporation, must be a Filipino corporation at least sixty percent (60%) of its capitalization must be owned by Filipinos and duly registered with the Securities and Exchange Commission (SEC), except in situations as provided for in sub–paragraphs ii and iii of this Section.

ii. In the case of the exploration, development or utilization of geothermal resources, the applicant may either be a Filipino, natural or juridical, or a foreign corporation.

iii. Consistent with Article XII, Section 2, of the 1987 Philippine Constitution and applicable existing laws, any foreign–owned corporation duly authorized to operate in the Philippines may apply for an RE Contract in the nature of a financial or technical assistance agreement for large–scale exploration, development or utilization of geothermal resources.

iv. In case the RE applicant is a joint venture or consortium, the partners

of the joint venture or the members of the consortium shall organize themselves as a corporation registered under the Corporation Code of the Philippines.

To signify its intention to enter into RE contractual arrangements with the DOE, the RE Applicant shall submit a letter of intent, together with the duly accomplished RE Contract Application Form (Annex "A").

b. Legal Requirements – For an individual or single proprietorship, the RE Applicant shall submit a National Statistics Office (NSO)–certified true copy of birth certificate, business permit and other applicable documents. For juridical entity, the RE Applicant shall submit an original copy of certification from its Board of Directors or officers authorizing its representative to negotiate and enter into an RE Contract with the DOE, duly certified Articles of Incorporation or other equivalent legal document creating the same and latest General Information Sheet or equivalent legal documents showing the names of its officials, ownership, control and affiliates. In the case of foreign corporations, the documents to be submitted shall be duly authenticated by the Philippine Consulate having consular jurisdiction over the entity.

c. Technical Requirements – The RE Applicant must possess the necessary technical capability to undertake the obligations under the RE Contract in terms of the following:

    i. Track Record or Experience – By himself, the corporation itself, through the member–firms, in case of a joint venture/consortium, or through employment of service providers, the RE Applicant shall include in its technical submission proof of its on–going or completed contracts/agreements similar to or congruent with the nature of project/ work being proposed to be covered by an RE Contract involving a specific RE resource. The individual firms may individually specialize on any or several stages of the RE Contract. A joint venture/consortium applicant shall be evaluated based on the individual or collective experience of the member–firms of the joint venture/consortium.

    ii. Work Program – This shall be evaluated based on its viability, minimum expenditure commitments, detailed program of activities inclusive of environmental protection/conservation and social acceptability plans, among others.

    iii. Key Personnel Experience –The key personnel of the RE Applicant must have sufficient and relevant work experience in connection with the project being applied for. For this purpose, the Curriculum Vitae of the management and technical personnel must be submitted.

    iv. List of Existing Company–owned Equipment (if any) for RE Operations and Any Lease Agreement of RE Equipment – This shall be evaluated based on the technical and environmental soundness, sufficiency, and appropriateness of company–owned and leased equipment that will be used for the project.

d. Financial Requirements –The RE Applicant must have adequate capability to provide the financial requirements to sustain the proposed Work Program for the exploration activities or conduct of feasibility studies during the Pre–Development Stage, and detailed engineering/geological/ industrial design

for the development and operation of facilities during Development/ Commercial Stage, as the case may be. This financial capability shall be measured in terms of:

i. Audited Financial Statements for the last two (2) years and unaudited Financial Statement if the filing date is three (3) months beyond the date of the submitted audited Financial Statement;

ii. Bank certification to substantiate the cash balance in the audited Financial Statement or updated Financial Statement;

iii. Projected cash flow statement for two (2) years;

iv. List of Company–owned equipment/ facilities available for the proposed RE projects;

v. If the RE applicant, on account of its infancy, is unable to produce the requirements in sub–paragraphs (i) to (iii) above, it shall submit an audited Financial Statement and duly certified and/or notarized guarantee or Letter of Undertaking/Support from its parent company or partners to fund the proposed Work Program. In the case of foreign parent–company, the audited Financial Statement and the guarantee or Letter of Undertaking/Support shall be duly authenticated by the parent company; and

vi. Proof of the ability of the RE Applicant to provide the required minimum amount of Working Capital which shall be equivalent to 100% of the cost of its work commitment for the first year of the proposed Work Program.

The legal, technical and financial requirements shall be as enumerated in the Checklist of Requirements (Annex "B").

SECTION 7. Payment of Application and Processing Fees. – The RE Applicant shall pay the prescribed application and processing fees for each RE Proposal or RE Application. No RE proposal/application shall be accepted without due payment of application and processing fees. Provided, That the payment shall be made only upon submission of complete documentary requirements and receipt of order of payment from REMB.

PART 2.
PROCEDURE FOR AWARDING OF RE CONTRACTS

SECTION 8. Modes of Awarding RE Contract. – RE Contracts shall be awarded through an open and competitive process of selection or by direct negotiation.

SECTION 9. Open and Competitive Selection Process. – Unless as otherwise provided in Section 10 below, the DOE shall observe the following process:

a. Invitation for RE Project Proposals –All areas for open and competitive selection shall be posted by the DOE in its website. In the event that new areas have been identified, the DOE shall update its website and may include them in the areas to be published in preparation for the conduct of open and competitive selection of awarding RE Contracts. The publication of areas shall be made as often as practicable depending on the number of identified areas and type of RE resources, among others. Thereafter, invitations for open and competitive selection shall be published once every week for three (3) consecutive weeks in at least two (2) newspapers of general circulation. The DOE shall, likewise, post said invitation and the attachments in its website.

The invitation shall include information such as, but not limited to:

i. Map of the area being declared open for RE project proposals;

ii. Instructions to RE Applicants on the requirements for RE Contract proposal;

iii. Schedules, including the deadline to submit, the date of opening, and period of evaluation of RE project proposals; and

iv. Criteria for evaluation and the corresponding percentage/weight.

b. Creation of a Review Committee – A Review Committee shall be created to evaluate the RE Proposals and Applications of RE Applicants and provide recommendations to the DOE Secretary for the award of RE Contracts.

The said Committee shall be composed of the following: the Assistant Secretary in charge of the REMB as Chairperson, the representative from the Office of the Renewable Energy Management Bureau (REMB) Director as the Vice–Chairperson, and one (1) representative each from the concerned division of the REMB, Compliance Division of the Financial Services, and Contracts Division of the Legal Services, as members. The Review Committee shall be assisted by a Secretariat from the REMB.

In the event that a foreign corporation shall be the winning or qualified RE Applicant, the RE Contract shall be awarded in accordance with the provisions under Sections 11 and 23 hereof.

c. Criteria for Evaluation – The Review Committee shall set the rules for the evaluation of RE Proposals and Applications which shall be based mainly on legal, technical and financial criteria, taking into account the type of RE resource, RE Contract Stage being offered, and the size and location of the RE area, among others. Evaluation of the RE Proposal on technical and financial criteria shall proceed only after the Review Committee has found that all the legal requirements are complied with.

d. Period of Evaluation – Only complete submissions will be evaluated by the Review Committee. The review of the RE Proposal shall be conducted within a reasonable period, as indicated in the Instruction to RE Applicants, from the date of opening of the RE proposal. The RE Applicant shall be notified by the DOE of the results of its evaluation.

SECTION 10. Direct Negotiation. – Direct negotiation shall be allowed only in the following instances subject to confirmation by the REMB:

a. In case of Frontier Areas – The negotiation shall be subject to the following conditions:

i. In instances where there is only one applicant for an RE area and the submission is deemed to be incomplete, the said RE applicant shall be given thirty (30) days within which to complete its submission.

ii. In the event that there are two (2) or more interested applicants over the same RE area, the REMB shall prioritize and endorse to the Review Committee for evaluation the application of the RE Applicant whose submission was first received by the REMB. If the submission is deemed insufficient, the same shall be given thirty (30) days within which to complete its submission.

iii. Should the RE Applicant fail to complete its submission within the

prescribed period as stated above, it shall be automatically disqualified and, in the case of two or more applications, it shall lose its right as first proponent and the immediately succeeding application shall be considered.

iv. The RE Application over a specific Frontier Area shall, in the interest of transparency, be posted in the DOE website within five (5) working days from receipt of payment of application/processing fees until the award of the RE Contract.

v. Upon submission of the complete documentary requirements, the DOE and the RE Applicant shall negotiate the terms and conditions of the RE Contract within a maximum period of one hundred twenty (120) days.

b. When, during the conduct of open and competitive selection process, any of the following circumstances exist:

i. No RE Proposal was received by the REMB;

ii. No one among the applicants was able to meet the legal requirements, as determined by the Review Committee; or

iii. When one or more applicants met the legal requirements but after the evaluation of technical and financial proposals, no applicant was able to comply, as certified by the Review Committee.

the DOE may apply the mode of direct negotiation following the provisions under paragraph (a) above on Frontier Area.

PART 3.
AWARD OF RE CONTRACTS AND REGISTRATION PROCEDURE FOR RE DEVELOPERS

SECTION 11. Award of RE Contract. – The Review Committee shall, within one (1) week after the final evaluation of the RE project proposal and, in the case of RE Application, the negotiation of the terms and conditions of the RE Contract, recommend to the DOE Secretary the approval of the RE Contract. The DOE shall notify the winning or qualified RE Applicant of the award and the schedule of signing of the RE Contract.

Provided, That the RE Contract in the nature of a financial or technical assistance agreement shall be approved and executed by the President of the Philippines, upon the recommendation by the DOE Secretary.

SECTION 12. Effectivity of the RE Contract. – The RE Contract shall take effect on the effectivity date as stipulated in the signed RE Contract.

SECTION 13. Posting of Performance Bond. – Within sixty (60) days after the effectivity date of the contract and at the start of every contract year thereafter, the RE Developer shall post a bond or any other guarantee of sufficient amount, but not less than the minimum expenditures commitment for the corresponding year.

SECTION 14. Registration as an RE Developer. – The DOE shall issue the Certificate of Registration to the RE Developer immediately upon the effectivity of the RE Contract whether during Pre–Development or Development/Commercial Stage.

Holders of valid and existing contracts or agreements on renewable energy resources awarded prior to the effectivity of the Act shall be issued a DOE Certificate of Registration as RE Developers only upon conversion of these contracts or agreements to RE Contracts pursuant to Section 4 (b) hereof.

CHAPTER III.
SALIENT PROVISIONS OF THE RE CONTRACT

PART 1:
STANDARD PROVISIONS

SECTION 15. Term of RE Contract. –The RE Contract per RE resource type shall have a term of not exceeding twenty–five (25) years and renewable for not more than twenty–five (25) years: Provided, That the total period of the RE Contract from the Pre–Development to the Development/Commercial Stages shall not exceed fifty (50) years.

During Pre–Development Stage, the RE Contract shall have a term of two (2) years and may be extended for one (1) year subject to terms and conditions under the RE Contract: Provided, however, That in the case of a Geothermal RE Contract, the term may be extended for two (2) years and further extendible for one (1) year upon compliance by the RE Developer of the conditions stipulated in the RE Contract.

SECTION 16. Obligations of the RE Developer. – The RE Contract shall stipulate all the obligations of the RE Developer which shall include, among others, the following:

a. Comply with all its work and financial commitment in carrying out its RE operations and provide all necessary services, technology, and financing in connection therewith;

b. Observe applicable laws relating to labor, health, safety, environment, ecology and indigenous peoples rights, among others;

c. Pay the government share and taxes, as may be applicable;

d. Give priority in employment to qualified personnel in the area where the RE project is located and give preference to Filipinos in all types of employment for which they are qualified;

e. Give preference to local companies/ agencies in entering into subcontracts on RE activities or services which the RE Developer may not carry out, upon competitive required locally available;

f. Post a performance bond, if applicable, within the prescribed period;

g. Maintain complete and accurate technical data and reports, and accounting records of all the costs and expenditures for the RE operations;

h. Submit technical and financial reports in accordance with the format as prescribed by the DOE and in a timely manner;

i. Be responsible in the proper handling of data, samples, information, reports and other documents; and

j. Allow DOE personnel, at all reasonable times, full access to RE Contract area and to accounts, books, and other records relating to RE operations.

SECTION 17. Rights of the RE Developer. – Immediately upon effectivity of the RE Contract, the RE Developer shall be issued a DOE Certificate of Registration which shall qualify it to avail of the incentives and privileges under the Act.

SECTION 18. Benefits to Host Communities. – The RE Contract shall specifically include provisions on the benefits to host communities or local government units (LGUs) which comprise the allocation of such host Communities or LGUs from the Government Share in the exploration, development and utilization of the RE resources pursuant to Sections 20 and 21 of the IRR of the Act, among others. This may be stipulated as part of RE Developer's obligation to include in its Information, Education and Communication (IEC) Campaign information on benefits to host communities and LGUs where the RE project is located.

SECTION 19. Disputes and Arbitration. – In case of dispute between the DOE and the RE Developer relating to the RE Contract or the interpretation and performance of any of the clauses of the RE Contract, both parties shall seek to resolve such dispute or difference amicably or failing such amicable settlement, through referral to an expert, for technical disputes only.

All disputes which cannot be settled amicably within sixty (60) days, after the receipt by one party of a notice from the other party, of the existence of the dispute, shall be settled exclusively and finally by arbitration, upon written demand of either party.

SECTION 20. Suspension and Termination of the RE Contract. –The DOE shall have the power to suspend and terminate the RE Contract, after due notice to the RE Developer. The grounds for suspension and termination shall include, but not be limited to, the following:

a. Grounds for the Suspension/Termination of an RE Contract for the Pre–Development Stage:

    i. Non–compliance with the approved Work Program and any of the obligations;

    ii. Non-compliance with RE technical design standards adopted by the DOE;

    iii. Non-observance of environmental regulations imposed by the Department of Environment and Natural Resources (DENR) during the conduct of feasibility study;

    iv. Tampering or plagiarizing of technical design and feasibility study reports;

    v. Non-posting of performance bond or any other guarantee within the period provided for in the RE Contract; and

    vi. Non-payment of the financial obligations agreed upon under the contract.

b. Grounds for Suspension/Termination of an RE Contract for the Development/ Commercial Stage:

    i. Non–compliance with the terms and conditions of the RE Contract;

    ii. Violation of the RPS rules, as may be applicable;

    iii. Non–compliance with the approved Work Program and any of the obligations;

    iv. Non–compliance with RE technical design standards adopted by the DOE;

    v. Non–observance of environmental regulations imposed by the DENR during construction and operation;

    vi. Tampering or plagiarizing of technical design, feasibility study, generation and operation reports;

    vii. Non–remittance of government share;

    viii. Non-payment of the financial obligations agreed upon under the contract; and

    ix. Non–posting of performance bond or any other guarantee within the period provided for in the contract.

The termination shall not be effective if the failure of the RE Developer giving ground to the termination has been cured on or before the effective date of termination specified in the notice.

Provided, however, That RE Contract in the nature of a financial or technical assistance

agreement shall be suspended or terminated by the President, upon recommendation by the DOE Secretary.

SECTION 21. Confidentiality. – All documents, information, data and reports generated by the RE Developer during its RE operations under the RE Contract directly implementation Moreover, neither the DOE nor the RE Developer shall transfer, present, sell or publish confidential information in any manner without the consent of the other party: Provided, however, That the DOE shall have the right to use and make public data and information generated by the RE Developer with respect to the contract area after the expiration of the RE Contract.

SECTION 22. Assignability/Transfer. – All assignments of RE Contract shall be subject to prequalification and prior written approval of the DOE.

a. The RE Developer may assign part or all of its rights and/or obligations under the RE Contract to its affiliate or any third party with prior notice to and approval by the DOE and in accordance with the following provisions:

    i. The RE Developer shall submit to the DOE copies of a written agreement on the corresponding part of its rights and/or obligations to be assigned; and

    ii. The RE Developer shall guarantee in writing to the DOE the performance of the assigned obligations.

b. The RE Developer may authorize its subsidiaries, branches or regional corporations to implement the RE Contract, but the RE Developer shall remain responsible for the performance of this RE Contract.

Provided, however, That in the case of an RE Contract in the nature of a financial or technical assistance agreement, it shall be assigned or transferred, in whole or in part, to a qualified person subject to the prior approval by the President: Provided, further, That the President shall notify Congress of every financial or technical assistance agreement assigned within thirty (30) days from the approval thereof.

PART 2.
SPECIAL PROVISIONS

A. Geothermal Energy

SECTION 23. RE Contract in the Nature of an FTAA. – The RE Contract that shall govern the large–scale exploration, development or utilization of geothermal energy resources by foreign–owned entities shall be in the nature of a Financial or Technical Assistance Agreement (FTAA).

Geothermal RE projects shall be classified as large–scale based on capitalization and other similar criteria as may be determined by the DOE.

The mode of awarding RE Contract to a foreign company shall be in accordance with the procedures set forth under Sections 9 and 10 hereof.

In the event that a foreign corporation qualifies for an RE project, the following requirements and/or terms and conditions shall be present in the RE proposal/application, for evaluation, and in the award and implementation of the RE Contract, in addition to the requirements provided under Section 6 hereof:

a. A firm commitment in the form of a sworn statement, of an amount corresponding to the expenditure obligation that will be invested in the contract area as part of the RE Proposal/Application documents: Provided, That such amount shall be subject to changes as may be necessary to cover the cost of inflation and foreign exchange fluctuations;

b. Representations and warranties that, except for payments for dispositions for its equity, foreign investments in local enterprises which are qualified for repatriation, and local supplier's credits and such other generally accepted and permissible financial schemes for raising funds for valid business purposes, the RE Developer shall not raise any form of financing from domestic sources of funds, whether in Philippine or foreign currency, for conducting its geothermal operations for and in the contract area;

c. A stipulation in the RE Contract that the foreign RE Developers are obliged to give preference to Filipinos in all types of employment for which they are qualified and that technology shall be transferred to the same;

d. If the RE Application/Proposal is found to be sufficient and meritorious in form and substance after evaluation, the DOE shall give the foreign RE Applicant the prior right to the area covered by such proposal. Thereafter, the DOE shall recommend its approval to the President;

e. The President shall notify Congress of the RE Contract in the nature of financial or technical assistance agreements within thirty (30) days from approval and execution thereof; and

f. Such other terms and conditions consistent with the Constitution, applicable laws and with the Act as the President, upon recommendation by the DOE Secretary, may deem to be in the best interest of the State and the welfare of the Filipino people.

The RE Developer shall manifest, in writing, to the President through the DOE Secretary, its intention to withdraw from the RE Contract, if in its judgment the project is no longer economically feasible, even after it has exerted reasonable diligence to remedy the cause or the situation. The Secretary shall, after due evaluation, recommend to the President the acceptance of the withdrawal: Provided, That the RE Developer has complied with or satisfied all its financial, technical and legal obligations. Provided, further, That upon withdrawal, the performance bond paid for under the RE Contract shall be forfeited in favor of the Government.

B. Hydropower Energy

SECTION 24. Impounding and Pumped–Storage. – Applicants for the registration as Hydropower RE Developer, utilizing impounding and pumped–storage, shall be required to show proof of compliance with the internationally accepted norms and standards on hydropower development such as those of the World Commission on Dams, the International Energy Agency, among others.

C. Biomass Sector

SECTION 25. Biomass Operating Contract. – The RE Developers of biomass, biogas and methane–capture from organic wastes need not enter into a Pre–Development Service Contract due to the peculiar conditions and realities attendant to developing or utilizing such non–naturally occurring resources: Provided, however, That except in instances where the power to be generated is for own use, the Biomass RE Developers shall be required to obtain an Operating Contract to cover the project's Development/Commercial Stage wherein the developer shall commit to develop, construct, install, commission and operate an RE generating facility subject to the following:

a. All Biomass RE Contracts shall be exempt from the payment of government share.

b. In the event that there is excess capacity to be sold to any end–user, such biomass systems shall be covered by an RE Operating Contract with the DOE.

c. The Biomass RE Operating Contract shall not include exclusivity of areas for feedstock sources and thus not covered by the Blocking System.

CHAPTER IV.
RE PROJECTS FOR OWN – USE AND MICRO–SCALE RE

PROJECTS FOR NON–COMMERCIAL OPERATIONS

SECTION 26. RE Projects for Own–use. – RE Developers generating power for own–use shall register with the DOE to avail of any incentives under the Act. The DOE Certificate of Registration shall be issued upon complete submission of requirements which shall include, but not be limited to, the following:

a. Letter of Intent;
b. Project Description; and
c. Proof of ownership of the RE facilities

SECTION 27. RE Operating Contract for Micro–Scale Projects for Non–Commercial Operations. –The issuance of RE Contracts for Non–commercial Micro–Scale RE Project shall be governed by a simplified process of application and evaluation using the Checklist System. All interested applicants shall submit requirements to the REMB which shall include, among others, the following:

a. Letter of Intent;
b. Project Description;
c. Work Plan;
d. LGU endorsement/certification and any of the documents listed in the legal requirements provided in Section 6 (b) hereof, as may be applicable; and
e. Other proof of sustained operations of the project as may be defined by the DOE,

SECTION 28. Procedure and Requirements for Application. – The DOE shall follow a set of simplified procedure and requirements prescribed in Section 6 for granting RE Contracts covering both RE Projects for Own–Use and Micro–Scale RE Projects for Non–Commercial Operations.

SECTION 29. Registration as an RE Developer. – RE Developers of RE Contracts for Non–Commercial Micro–Scale Projects shall register with the DOE to avail of any incentives and privileges under the Act. All such RE Developers shall be exempt from payment of the Government Share.

CHAPTER V.
FINAL PROVISIONS

SECTION 30. Separability Clause. – If for any reason, any provision of this Circular is declared unconstitutional or invalid, the other parts or provisions not affected thereby shall remain in full force and effect.

SECTION 31. Repealing Clause. –The provisions of other department circulars which are inconsistent with the provisions of this Circular are hereby repealed, amended or modified accordingly.

SECTION 32. Effectivity. – This Circular shall take into effect fifteen (15) days following its publication in at least two (2) newspapers of general circulation.

Issued this 12th day of July 2009 in Fort Bonifacio, Taguig City, Metro Manila.

ANGELO T. REYES
Secretary

ANNEX "A"

Application No. _____
O.R. No. _____
Date _____
Amount _____

RE SERVICVOPERATING CONTRACT APPLICATION FORM
(Republic Act No. 9513)

RE SERVICE OPERATING CONTRACT APPLICATION FORM (Republic Act No. 9513)

I. GENERAL INFORMATION
   A. Name of Applicant:
   B. Authorized Representative:
   C. Business Address/Tel./Fax Nos./Email Address:

   D. RE Sector of interest:
   E. Area or Block/s No. and Location applied for:
   F. Approximate area covered (in has or sq. m):
   G. Brief description of primary and secondary purpose as authorized by its Articles of Incorporation (for juridical person only):

II. COMPANY/BUSINESS BACKGROUND

   A. Controlling Stockholders (for corporation only) (List names of majority stockholders and the percentage of their holdings)
      a) _____ - _____%
      b) _____ - _____%
      c) _____ - _____%
      d) _____ - _____%
      e) _____ - _____%

   B. Company Directors and Officers
      (List of Board Members and Company Officers)

   NAME / POSITION
   a) _____
   b) _____
   c) _____
   d) _____
   e) _____

C. Parent/Subsidiary/Affiliates
(List Names, Addresses and Nature of Business)
a) _____
b) _____

D. No. of Years in Operation:
E. Description/ History of the Company/ Business:

1. Organizational structure
2. Ownership structure
3. Field of specialization

III. TECHNICAL AND FINANCIAL CAPABILITIES

A. Key Personnel in the Organization
1. Corporate officers/ hierarchy/ expertise
2. Staff members/ experience

B. List of On–going or Completed RE or Energy–Related Contracts/ Agreement
1. Brief description
2. Type of energy resource
3. Location
4. Contract term/implementation period
5. Client

C. Latest Financial Statements
1. Income Statement
2. Balance Sheet

IV. CERTIFICATION:

It is certified that the foregoing information are true and correct. It is understood that any omission or misinterpretations of the required information shall be sufficient cause for the rejection of this application.

_____ _____
Date Duly Authorized Representative

_____
Name of Applicant

ANNEX "B"

CHECKLIST OF REQUIREMENTS
(Renewable Energy Service/Operating Contract under R.A. No. 9513)

I. RE Contract Application/Proposal

A. Legal Requirements

1. Individual or Single Proprietorship:

a. Birth Certificate –duly authenticated by National Statistics Office (NSO);
b. Business Permit –certified true copy; and
c. Department of Trade and Industry (DTI) Registration (if applicable).

2. Corporation/ Joint Venture/ Consortium

a. Securities and Exchange Commission (SEC) Registration –SEC–certified;
b. By–Laws and Articles of Incorporation –SEC–certified;
c. Certification authorizing its representative to negotiate and enter into RE Contract with the DOE;
d. Business Permit;
e. Controlling Stockholders and Percentage of their Holdings;
f. Organizational Chart of the Company;
g. Parent/Subsidiary/Affiliates (if applicable); and
h. Company Profile. +

B. Technical Requirements

1. Track Record or Experience;
2. Work Program with financial commitment per activities;
3. Curriculum Vitae of Management and Technical Personnel;
4. List of Technical Consultants with corresponding Contract between the Developer and Consultants showing their respective qualifications; and
5. List of existing company–owned and leased equipment appropriate for the RE project with corresponding description.

C. Financial Requirements

1. Audited Financial Statement for the last two (2) years and unaudited Financial Statement if the filing date is three (3) months beyond the date of the submitted Audited Financial Statement;
2. Bank certification to substantiate the cash balance (exact amount in words and numbers);
3. Projected cash flow statement for (2) years; and
4. For newly–organized or subsidiary corporation with insufficient funds to finance the proposed work program, it shall submit an Audited Financial Statement and duly certified and/or notarized guarantee or Letter of Undertaking/Support from its parent company or partners to fund the proposed Work Program. In the case of foreign parent– company, the Audited Financial Statement and the guarantee or Letter of Undertaking/Support shall be duly authenticated by the Philippine Consulate Office that has consular jurisdiction over the said parent company.

D. Other Requirements

1. Letter of Intent/ Application;
2. Duly accomplished RE Contract Application Form;
3. Map showing the applied area (RE area of application: in case of ocean, solar, wind, and geothermal, must conform with the DOE Blocking System);
4. Application/ Processing fees; and
5. Draft Pre–Development or Development/Commercial Service Contracts.

II. Requirements for Conversion from Pre–Development Stage to Development/Commercial Stage

1. Letter of Declaration of Comrnerciality declaring the RE project is commercially feasible and viable; and
2. Feasibility study and/or detailed engineering design of the RE project with the following corresponding documents:

   a. Resolution of Support from host communities and host municipality/ ies;
   b. Proof of Public Consultation;
   c. Any form of legal documents showing the consent of the landowner if the project falls under a private land;
   d. Department of Environment and Natural Resources (DENR Permits:

      i. Environmental Impact Study
      ii. Environmental Compliance Certificate (ECC) or Certificate of Non–Coverage (CNC)
      iii. Forest Land Use Agreement (FLAg)/Special Land Use Agreement (SLUP) for area applied in public domain

   e. National Commission on Indigenous Peoples (NCIP): Free and Prior Informed Consent (FPIC)/Certificate of Pre–Condition or Certificate of Non–Overlap;
   f. National Transmission Corporation (TRANSCO):

      i. Grid System Impact Study
      ii. Interconnection Agreement, if applicable

   g. Energy (Electricity) Sales Agreement;
   h. Other clearances from other concerned agencies (i.e., Maritime Industry Authority (MARINA), Bureau of Fisheries and Aquatic Resources (BFAR), Philippine Navy, Philippine Coast Guard, etc.);
   i. Proof of Financial Closing;
   j. Final area for development (geographical coordinates/PRS92);
   k. Payment of corresponding Application/ Processing Fee; and
   l. Draft Development/Commercial RE Contract.

III. Requirements for Conversion from Existing Contracts to RE Contracts

1. Letter of Intent from the Developer requesting for the conversion of the existing Contract/ Agreement to RE Contract;
2. Accomplishment report vis–a–vis work and financial program;
3. Updated Work Program; and
4. Such other documents that may be required by the DOE.

REPUBLIC ACT NO. 7156

AN ACT GRANTING INCENTIVES TO MINI-HYDROELECTRIC POWER DEVELOPERS AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Title. - This Act shall be known as the Mini- Hydroelectric Power Incentives Act".

SECTION 2. Declaration of Policy. - It is hereby declared the policy of the State to strengthen and enhance the development of the country's indigenous and self-reliant scientific and technological resources and capabilities and their adaptation to the country in order to attain energy self-sufficiency and thereby minimize dependence on outside source of energy supply. In pursuance thereof, it is further declared that mini-hydroelectric power developers shall be granted the necessary incentives and privileges to provide an environment conducive to the development of the country's hydroelectric power resources to their full potential.

SECTION 3. Declaration of Objectives. - The objectives of the framework being established for the development of minihydroelectric power generation are as follows;

(1) To encourage entreprenuers to develop potential sites for hydroelectric power existing in their respective localities;

(2) To encourage entreprenuers to develop potential sites for hydroelectric power existing in the country by granting the necessary incentives which will provide a reasonable rate of return;

(3) To facilitate hydroelectric power development by eliminating overlapping jurisdiction of the many government agencies whose permits, licenses, clearances and other similar authorizations issued by various government agencies as presently required for such development, and vesting in one agency the exclusive authority and responsibility for the development of mini-hydroelectric power;

(4) To apportion a part of the realty and special privilege taxes and other economic benefits of the hydroelectric power potential to the respective localities where they are established; and

(5) To provide a contractual framework wherein some stability of conditions can be relied upon for long-term financing purposes.

SECTION 4. Definition of Terms. - As used in this Act, the following terms shall be understood, applied and construed as follows:

(1) "Hydroelectric power" shall refer to electric power produced by utilizing the kinetic energy of falling or running water to turn a turbine generator;

(2) "Mini-hydroelectric power plant" shall refer to an electric-power-generating plant which: (a) utilizes the kinetic energy of falling or running water (run-of-river hydro plants) to turn the turbine generator producing electricity; and (b) has an installed capacity of not less than 101 kilowatts nor more than 10,000 kilowatts;

(3) "Mini-hydroelectric power development" shall refer to the construction and installation of a hydroelectric-power-

generating plant and its auxiliary facilities such as transmission, substation and machine shop with an installed capacity of not less than 101 kilowatts nor more than 10,000 kilowatts;

(4) "Mini-hydroelectric power developer" or "developer" shall refer to any individual, cooperative, corporation or association engaged in the construction and installation the of a hydroelectricpower-generating plant and with an installed capacity of not less than 101 kilowatts nor more than 10,000 kilowatts;

(5) "Domestic use" shall refer to the utilization of water for drinking, washing, bathing, cooking, or other household need, home gardens and watering of lawns or domestic animals;

(6) "Municipal use" shall refer to the utilization of water for supplying the water requirement of the community; and

(7) "Irrigation use" shall refer to the utilization of water for producing agricultural crops.

SECTION 5. Agency in Charge. - The Office of Energy Affairs, hereinafter referred to as the OEA, shall be the sole and exclusive authority responsible for the regulation, promotion and administration of mini-hydroelectric power development and the implementation of the provisions of this Act.

SECTION 6. Powers and Duties of the OEA. - The OEA shall exercise the following powers and duties:

(1) Within six (6) months from approval of this Act, promulgate, in consultation with the National Water Resources Board (NWRB), such rules and regulations as may be necessary for the proper implementation and administration of this Act;

(2) Process and approve applications for mini-hydroelectric power development, imposing such terms and conditions as it may deem necessary to promote the objectives of this Act, subject to the following standards, namely:

(a) The applicant must be a citizen of the Philippines or a corporation, partnership, association or joint stock company, constituted and organized under the laws of the Philippines, at least sixty percent (60%) of the stock or paid-up capital of which belongs to citizens of the Philippines;

(b) The applicant must prove that the operation of the proposed mini-hydroelectric project and the authorization to do business will promote the public interest in a proper and suitable manner and, for this purpose, within six (6) months from approval of this Act, formulate, in consultation with the National Economic and Development Authority (NEDA), the National Electrification Administration (NEA), and the Department of Trade and Industry (DTI), standards to measure the technical and financial capability of the developer; and

(c) The applicant must be financially capable of undertaking the proposed mini-hydroelectric project and meeting the responsibilities incident to its operations;

(3) Charge reasonable fees in connection with the filing, processing, evaluation, and approval of applications for minihydroelectric power development in all suitable sites in the country;

(4) Exclusive authority to issue permits and licenses relative to mini-hydroelectric power development;

(5) Require the developer to post a bond or other guarantee of sufficient amount in favor of the Government and with surety or sureties satisfactory to the OEA upon the faithful performance by the

contractor of any or all of the obligations under the pursuant to the contract within sixty (60) days after the effective date of the contract; and

(6) Generally, exercise all the powers necessary or incidental to attain the purposes of this Act and other laws vesting additional powers on the OEA.

SECTION 7. Sale of Power. – The mini-hydroelectric power developer must first offer to sell electric power to either the National Power Corporation (NPC), franchised private electric utilities or electric cooperatives at a price per kilowatt-hour based on the NPC's or the utility's avoided cost which shall refer to the costs of the affected grids had NPC generated the equivalent electric power itself before disposing the power to third parties. The NPC shall allow the mini-hydroelectric developer to deliver its generated electricity to the developer's customers through existing NPC line so as to serve such third parties under terms which are to be mutually agreed upon or, if no agreement can be reached, under terms set by the OEA.

SECTION 8. Non-exclusive Development. – Development of less than fifty percent (50%) of the hydroelectric power potential of the proposed site shall be non-exclusive. The OEA, after a thorough review and evaluation of its technical and economic viability, may grant the development of the site to its full power potential to any qualified developer: Provided, That first option shall be given to the original developer: Provided, further That, in case the original developer forfeits his option to pursue development of the hydroelectric power resource to its full potential, it shall be reimbursed by the successor-developer of the value of its investment based on the declared value of the development for real estate tax purposes over the immediately preceding three (3) years or, in case the declared value over said period differs, on the average value thereof.

SECTION 9. Mandatory Restoration Work. – In all cases where the proposed mini-hydroelectric power development entails the closure or stoppage of existing water outlets, passageways, connections, conduits, apertures or the like from the water source, it shall be mandatory for the developer to restore or reengineer such water outlets, passageways, connections, conduits, apertures or the like on its account or expense, and in such manner that existing users or appropriators shall not be permanently deprived of their use or appropriation.

SECTION 10. Tax Incentives. – Any person, natural or juridical, authorized to engage in mini-hydroelectric power development shall be granted the following tax incentives or privileges:

(1) Special Privilege Tax Rates. – The tax payable by all grantees to develop potential sites for hydroelectric power and to generate, transmit and sell electric power shall be two percent (2%) of their gross receipts from the sale of electric power and from transactions incident to the generation, transmission and sale of electric power. Such privilege tax shall be made payable to the Commissioner of Internal Revenue or his duly authorized representative on or before the 20th day of the month following the end of each calendar or fiscal quarter;

(2) Tax- and Duty-free Importation of Machinery, Equipment and Materials. – Within seven (7) years from the date of award importation of machinery and equipment, materials and parts shipped with such machinery and equipment including control and communication equipment shall not be subject to tariff duties and value added tax: Provided, That the said machinery, equipment, materials and parts: (a) are not manufactured domestically in reasonable quantity and quality at reasonable prices; (b) are directly and actually needed and will be used exclusively in the construction and impounding of

water transformation into energy, and transmission of electric energy to the point of use; and (c) are covered by shipping documents in the name of the duly registered developer to whom the shipment will be directly delivered by customs authorities: Provided, further, That prior approval of the OEA was obtained before the importation of such machinery, equipment, materials and parts was made:

(3) Tax Credit on Domestic Capital Equipment – A tax credit equivalent to one hundred percent (100%) of the value of the value-added tax and customs duties that would have been paid on the machinery, equipment, materials and parts had these items been imported shall be given to an awardee-developer who purchases machinery, equipment, materials and parts from a domestic manufacturer: Provided, That such machinery, equipment, materials and parts are directly needed and will be used exclusively by the awardee-developer: Provided, further, That prior approval by the OEA was obtained by the local manufacturer. Provided, finally, That the sale of such machinery, equipment, materials and parts shall be made within seven (7) years from the date of award;

(4) Special Realty Tax Rates on Equipment and Machinery. - Any provision of the Real Property Tax Code or any other law to the contrary notwithstanding, realty and other taxes on civil works, equipment, machinery and other improvements of a registered minihydroelectric power developer shall not exceed two and a half percent (2.5%) of their original cost;

(5) Value-added Tax Exemption. – Exemption from the ten percent (10%) value-added tax on the gross receipts derived from the sale of electric power whether wheeled through the NPC grid or through existing electric utility lines; and

(6) Income Tax Holiday. – For seven (7) years from the start of commercial operation, a registered mini-hydroelectric power developer shall be fully exempt from income taxes levied by the National Government.

SECTION 11. Disposition and Allotment of Special Privilege Taxes – If the mini-hydroelectric power development is located in city sixty percent (60%) of the special privilege taxes collected shall accrue to the city and forty percent (40%) to the National Government. If the mini-hydroelectric power development is located in a municipality, thirty percent (30%) of the special privilege taxes collected shall accrue to the municipality, thirty percent (30%) to the province and forty percent (40%) to the National Government.

SECTION 12 Term of Contract. – The term of contract shall be for a period of twenty-five (25) years extendible for another twenty five (25) years under the same original terms and conditions: Provided, That said awardee has complied faithfully with all terms and conditions of the award.

SECTION 13 Official Development Assistance. – The provision of Executive Order No. 230 of 1986, on the power of the NEDA Board, and the rules and regulations governing the evaluation and authorization for the availment of Official Development Assistance notwithstanding, the privatization of the mini-hydroelectric power plants as provided for in the Act shall be eligible for foreign loans and grants without further evaluation by the NEDA Board, subject to Section 21, Article XII of the Constitution.

SECTION 14. Reporting Requirements. – The OEA shall submit an annual report to the Congress of the Philippines with respect to the implementation of this Act.

SECTION 15. Repealing Clause. – All laws, decrees, executive orders, rules and regulations, or parts thereof inconsistent with this Act are hereby repealed, amended or modified accordingly.

SECTION 16. Effectivity. – This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved,

ORIGINAL SIGNED ORIGINAL SIGNED

JOVITO R. SALONGA RAMON V. MITRA
President of the Senate Speaker
of the House of Representatives

This Act which is a consolidation of House Bill No. 32061 and Senate Bill No. 901 was finally passed by the House of Representatives and the Senate on June 5, 1991 and June 6, 1991, respectively.

ORIGINAL SIGNED ORIGINAL SIGNED

EDWIN P. ACOBA CAMILO L. SABIO
Secretary of the Senate Secretary General
House of Representatives

Approved: September 12, 1991

IRR OF REPUBLIC ACT NO. 7156

RULES AND REGULATIONS GOVERNING THE FILING PROCESSING OF APPLICATIONS FOR AUTHORITY TO CONSTRUCT AND OPERATE MINI-HYDROELECTRIC POWER PLANTS AND PROVIDING FOR THE TERMS AND CONDITIONS OF THE OPERATING CONTRACTS CONCLUDED PURSUANT THERETO

Pursuant to the authority vested upon it by SECTION. 6 (1) and (4) of Republic Act No. 7156, otherwise known as the *Mini-Hydroelectric Power Incentives Act*, the Office of Energy Affairs hereby adopts and promulgates the following rules and regulations governing the filing and processing of applications for authority to construct and operate mini-hydroelectric power plants providing for the terms and conditions of the operating contacts concluded pursuant thereto for the contracts concluded pursuant thereto for the information and guidance of all concerned.

RULE I

GENERAL PROVISIONS

SECTION 1. ***Title.*** – These rules shall be known and cited as the rules and regulations governing the construction and operation of mini-hydroelectric (mini-hydro) power plants.

SECTION 2. ***Definition of Terms.*** – Unless the context otherwise indicates, the following terms as used in these rules shall have the following meanings:

(a) Avoided cost shall refer to the costs of the affected grids had NAPOCOR generated the equivalent electric power itself before disposing the power to third parties.

(b) Capacity shall refer to the electric load for which a generating unit or other electrical apparatus is rated by the manufacturer; its unit of measurement is usually kilowatts (kw).

(c) Electric cooperative shall refer to cooperatives duly authorized to supply electricity or empowered to supply electric service.

(d) Electric utility shall refer to an electric cooperative, local government-owned or privately owned, operating a grid within the NAPOCOR grids or other electric systems.

(e) End-use shall refer to a user of electricity generated by a mini-hydro power plant.

(f) Feasibility study shall refer to a study which is based on data specific to the site where the mini-hydro power plant will be erected.

(g) Franchised area shall refer to a geographical area franchised to an electric utility for electricity supply to end-users.

(h) Grid operator shall refer to any operator of electrical systems of interconnected transmission lines, substations and generating plants of the National Power Corporation or the concerned electric utility as the case may be.

(i) Hydroelectric power shall refer to electric power produced by utilizing the kinetic energy of falling or running water to turn a turbine generator.

(j) Mini-hydroelectric power developer or developer shall refer to any individual, cooperative, corporation or association that is engaged in or one who intends to engage in the construction, installation and operation of a hydroelectric-power-generating plant with an installed capacity of not less than 101 kilowatts nor more than 10,000 kilowatts. An end-user may also be a developer.

(k) Mini-hydroelectric power development shall refer to the construction and installation of a hydroelectric-power-generating plant and its auxiliary facilities such as transmission, substation and machine shop with an installed capacity of not less than 101 kilowatts nor more than 10,000 kilowatts.

(l) Mini-hydroelectric power plant shall refer to an electric-power-generating plant which (a) utilizes kinetic energy of falling or running water (run-of-river hydro plants) to turn a turbine generator producing electricity; and (b) has an installed capacity of not less than 101 kilowatts nor more than 10,000 kilowatts.

(m) NAPOCOR shall refer to the National Power Corporation created pursuant to R.A. 6395.

(n) OEA shall mean the Office of Energy Affairs.

(o) Rate shall refer to any price or tariffs with respect to sale or purchase of electric energy, usually measured in pesos per kilowatt-hour for energy payment and pesos per kilowatt for capacity payments.

(p) Person includes every individual not otherwise disqualified by law, or corporation, partnership, association or joint company, constituted and organized under the laws of the Philippines, at least sixty percent (60%) of the stock or paid-up capital of which belongs to the citizens of the Philippines.

(q) Water resource shall refer to a surface water course where the flow to be used by the turbines of the mini-hydro power plant is diverted form and restituted to after having passed the installations.

(r) Wheeling shall refer to the electric energy transmission services extended by NAPOCOR or an electric utility to enable the developer of a mini-hydro power plant to transmit power to another electric grid or end-user.

SECTION. 3. ***Who May Apply.*** – Any person defined in Section 2.p if these rules, not otherwise disqualified by law, any apply for authority to construct and operate a mini-hydroelectric power plant. In cases of holders of permits to operate mini-hydro power plants existing and operating at the time of the effectivity of these rules and who wish to avail of the incentive under R.A. 7156, registration and payment with the OEA of the application fee as provided in these rules shall be sufficient bases for the granting of their operating contracts, provided, that they register within six (6) months form the effectivity of these rules.

SECTION. 4. ***Content of the Application.*** – All applications shall be made in writing, verified, accomplished in two (2) copies, and must show, among other things, the jurisdictional facts, the name and address of the applicant, the brief description of the project stating, among others, how water will be used, amount of water needed, power to be generated, etc., and place where applicant proposes to construct a mini-hydro power plant.

SECTION. 5. ***Documents to Accompany Application.*** – All applications shall be accompanied by such documents as would reasonably establish prima facie the truth of the factual allegation thereof, including but not limited to the following:

(a) Certificate of Registration from the Securities and Exchange Commission together with a copy of Articles of Incorporation or Certification from the Department of Trade and Industry in case the applicant is a single proprietorship;

(b) Proposed Memorandum of Agreement between the applicant and either the NAPOCOR, the franchised electric utility, or other end-user as the case may be, on power purchase as well as on the use of existing lines and the associated wheeling fees, as applicable;

(c) Comprehensive feasibility study providing the technical, economic, financial, social, as well as the administrative viability of the project. It shall likewise include a feasibility reports particularly highlighting the activities for the proposed project, such as:

(1) Data collection and review of any available pre-feasibility study, other pertinent data and study reports relevant to the proposed project;

(2) Detailed program for all survey and investigation works required in the study, such as topographic survey which will enable utilization of maps of sufficient scale (1:500) for layout purposes, geologic mapping, drilling (if any), establishment of gauging station, and others which may be deemed necessary;

(3) Site inspection and field reconnaissance from time to time to confirm data obtained and design made;

(4) Necessary hydrologic and hydraulic studies;

(5) Plant operation and maintenance studies for optimization and determination of the power and energy capability of the project;

(6) Determination as to whether or not the power and energy from the proposed mini-hydro power facility is marketable as an isolated facility;

(7) Alternative layout of developments on the basis of topographic data available for optimization of selected parameters in the project;

(8) Detailed layout and preliminary design to establish configuration of each structure in the development;

(9) Establishment of unit prices and preparation of detailed quantity and cost estimates of the recommended schemes;

(10) Project Description shall be submitted according to the guidelines set by the Department of Environment and Natural Resources (DENR). which should incorporate the measures that a project proponent intends to take to ensure that the adverse effects of the proposed project on the environment will be avoided if not minimized. It should also include a watershed development plan and the endorsement from the Local Government Unit;

(11) Construction schedule for the proposed project;

(12) Economic and financial evaluation including sensitivity analysis on specific factors;

(13) Recommendation on additional investigation program to be carried out during the detailed design and implementation phase, if deemed necessary; and

(14) Manual for operations of the power plant which shall be prepared in respect of all requirements provided by law for the operation of a mini-hydro power plant. If power is old to the grid, the operation of the plant shall be governed by dispatch rules assigned by the grid operator.

(d) Processing fee of one (1) Peso (P 1.00) per kilowatt estimated installed capacity.

(e) Such other papers and documents as may be required by the OEA.

SECTION. 6. ***Financial Requirements.*** – In determining the financial capability of the applicant, the OEA shall be guided by the following financial indicators:

(a) The applicant has minimum working capital of at least Thirty-Five Thousand Pesos (P 35,000.00) per kilowatt to support the first two (2) years of the project's work program and must demonstrate that it has the capability to raise additional working capital of at least sixty percent (60%) of the estimated project cost to fund the remaining works and the plant's subsequent operations;

(b) Current ratio of 1.5:1;

(c) Debt equity ratio of 3:1; and

(d) Such other factors which would substantially establish the applicant's financial capability.

SECTION 7. The amounts specified in Section 6.a shall be adjusted accordingly in cases of extraordinary inflation of the Philippines Peso in accordance with the provisions of Article 1250 of the *Civil Code of the Philippines*.

SECTION. 8. ***Defective Application.*** –When an application is filed and it is found to be defective either in form or in substance or incomplete as to certain data, the OEA shall within two (2) days inform the applicant of such a fact in writing, with notice that the correction or deficiency must be supplied within fifteen (15) working days from receipt of the notice.

If the applicant fails to supply the required correction within the said period, the application shall be deemed to have been abandoned and forthwith, the same shall be returned to the applicant together with all the documents attached thereto. However, for good cause shown, the period may be extended by the OEA upon written request made before the expiration of the period sought to be extended.

RULE II

CRITERIA IN DETERMINING THE APPROVAL OR DISAPPROVAL OF THE APPLICATION

SECTION 1. The OEA, in processing an application, shall be guided, but not limited, the following:

(a) The operation of the proposed mini-hydro power projects will promote public interest in a proper and suitable manner.

(b) The applicant is financially and technically capable of undertaking the proposed mini-hydro power project and meeting the responsibilities incident to its operation.

(c) The construction and operation thereof will not result in the closure or stoppage of existing water outlets, passageways, conduits, or the like from the water source.

(d) The requirements of pubic safety and Environmental Compliance Certificate are complied with.

(e) Generally, the construction and operations thereof will promote and achieve the purposes of R.A. 7156.

SECTION. 2. ***Processing Period.*** – The OEA shall resolve the application within four (4) months from receipt thereof provided that all the documents and clearances contemplated in these rules are timely submitted and no objection have been raised by concerned parties.

RULE III

GRANTING OF LICENSE OR AUTHORITY AND EXECUTION OF OPERATING CONTRACT

SECTION 1. ***Issuance of Authority or License.*** – If the OEA approves an application, it shall issue a certificate of authority or license to construct and operate a mini-hydro power plant to the applicant or to the person in whose name the application was made and an operating contract detailing the rights and obligation between the OEA and the developer shall forthwith be executed.

SECTION. 2. ***Effectivity.*** – Unless sooner revoked for cause, the license shall be co-terminus with the term of the mini-hydro power operating contract which shall be for a period of 25 years, renewable for another 25 years.

SECTION. 3. ***Grounds for Revocation.*** – any of the following among other things, may constitute a ground for the revocation or cancellation of the license and the operating contract:

(a) Failure of the licensee/contractor to comply with the conditions and requirements under which the license was issued;

(b) Licensee's/contractor's violation of any of the provisions of the operating contract or R.A. 7156.

SECTION. 4. The mini-hydro power plant operating contract contemplated under these rules shall contain the following rights and privileges as well as the obligations of the developer:

RIGHTS AND PRIVILEGES OF THE DEVELOPER

(a) The developer shall be fully exempted from income taxes levied by the National Government for seven (7) years from the start of commercial operations.

(b) Within seven (7) years from the date of awarding the contract, it shall be exempted from payment of tariff duties and value-added tax on the importations into the Philippines of all machinery and equipment including control and

communication equipment: *Provided,* That said machinery, equipment, materials and parts: (a) are not manufactured domestically in reasonable quantity and quality at reasonable prices; (b) are directly and actually needed and will be used exclusively in the construction and impounding of water, transformation into energy, and transmission of electric energy to the point of use; and (c) are covered by shipping documents in the name of the duly registered developer to whom the shipment will be directly delivered by customs authorities: *Provided, further,* That prior approval of the OEA has been obtained before the importation of such machinery, equipment, materials and parts is made.

(c) The developer that purchases machinery, equipment, materials and parts from a domestic manufacturer shall be given a tax credit equivalent to one hundred percent (100%) of the value of the value-added tax and customs duties that would have been paid on the machinery, equipment, materials and parts had these items been imported. The tax credit on domestic capital equipment shall be given: *Provided,* That the sale of such machinery, equipment, materials and parts shall be made within seven (7) years from the date of issuance/awarding and if such machinery, equipment, materials and parts are directly needed and will be used exclusively by the developer. The approval by the OEA shall also by the developer. The approval by the OEA shall also be obtained by the local manufacturer.

(d) The developer shall enjoy special realty tax rates on equipment and machinery not exceeding two and a half percent (2.5%) of their original cost.

(e) The developer shall be exempted from the ten percent (10%) value-added tax on the gross receipts derived from the sale of electric power whether wheeled through the NAPOCOR grid or through existing electric utility lines.

OBLIGATIONS OF THE DEVELOPER

(a) The developer shall perform all mini-hydro power operations and provide all necessary services, technology and financing in connection therewith. It shall commence construction of the project within twelve (12) months from the awarding of the contract. An extension may be applied for another twelve (12) months for justifiable reasons, as determined by the OEA.

(b) The developer shall be responsible for securing and complying with all the legal requirements related to the construction of mini-hydro power plant facilities and shall be subject to the provisions of laws of general application relating to labor, health, safety and ecology.

(c) The developer shall develop and operate the field in accordance with accepted good mini-hydro power field practices using modern and scientific methods to enable maximum economic production of mini-hydro power and to avoid hazards to life, health and waters pursuant to an safeguard the watershed area of its mini-hydro power plant system against illegal logging and other forms of forest destruction and/or assist the DENR in the enforcement of forestry rules and regulations or rehabilitation of the watershed area.

(d) The developer shall furnish the OEA promptly with mini-hydro power information, data and reports relative to the operations, except for proprietary techniques use in developing such information, data and reports. It shall report to the OEA any socio-economic project/programs implemented in the mini-hydro power site/community.

(e) The developer shall maintain detailed financial and technical records and accounts of its operations.

(f) The developer shall conform to regulations regarding, among other, safety, demarcation of the contract area, noninterference with rights of other operations such as irrigation, geothermal, and coal mining, housing development, access roads, etc. It shall also undertake to negotiate for the acquisition, by whatever legal mode, of private properties affected by the project and the establishment of easement for the dam, access roads and the related structures/facilities. It shall be strictly required to observe its construction methods and techniques which could not hamper or disrupt the operations of other infrastructures at the upstream, downstream or near the vicinity of the projects site. In all cases where the proposed mini-hydro power development entails the closure or stoppage of existing water outlets, passageways, connections, conduits, apertures or the like from the water source, it shall be mandatory for the developer to restore or reengineer such water outlets, passageways, connections, conduits, apertures or the like on its account or expense, and in such a manner that existing users or appropriators shall not be permanently deprived of their use or appropriation.

(g) The developer shall maintain all meters and measuring equipment in good order and allow access to these as well as the development sites and operations to inspectors authorized by the OEA.

(h) The developer shall operate and maintain the mini-hydro power plant or system at maximum efficiency as possible and promote highest possible production of power and energy. It shall provide the OEA with a quarterly report on electricity generated by the power plant.

(i) The developer shall negotiate on the provision for interconnection with either NAPOCOR, the local electric cooperative grid or electric utilities and shall furnish the OEA with a copy of its sales contract with the buyer. It shall first offer to sell electric power to either NAPOCOR, franchised private electric utilities or electric cooperatives. It shall install adequate protective devices at the power plant which are required to ensure safe and unperturbed operation of the local electricity network to which the plant is interconnected.

(j) The developer shall allow the OEA to inspect the plant during and after its construction, and shall also provide the OEA documents required for proper monitoring and planning purposes.

(k) At all times, the developer shall observe and maintain proper hygiene and sanitation at the projects site. Garbage, waste, chemicals and the like shall be disposed off or dumped properly on garbage pits. Chemicals such as acids, oils and grease shall be stored properly and shall not be allowed to contaminate the environment.

(l) The developer shall seek the approval of the OEA for any major change in its work program.

(m) The developer shall allow appropriate officials of the Bureau of Internal Revenue and authorized representatives of the OEA at all reasonable times full access to accounts, books and records relating to the mini-hydro power operations for tax and other fiscal operations.

(n) The developer shall be subject to Philippine income tax after seven (7) years of commercial operation. The OEA shall be furnished a copy of the official receipt covering payment to the Bureau of Internal Revenue for privilege tax paid,

supported with pertinent documents required in the application for tax credits on domestic capital equipment procured in the Philippines.

(o) The developer shall give priority in employment to Philippine nationals. It shall agree to employ qualified Filipino personnel in the operations and, after commercial production commences, shall undertake, upon prior approval of the OEA, the schooling and training of Filipino personnel for labor and staff position, including administrative, technical and executive management positions. It shall undertake a program of training assistance for OEA. Costs and expenses of training Filipino personnel for the developer's own employment shall be included in the operating expenses. Costs and expenses of a program of training for the OEA's personnel shall be borne on a basis to be agreed upon by the OEA and the developer. The employment of alien technical and specialized personnel (including the immediate members of their families) who may exercise their professions solely for the mini-hydro power operations of the developer shall not be unreasonably withheld. However, the developer shall undertake a program of technology transfer by assigning at least one (1) understudy to work with each of the alien technical and specialized personnel. It shall be clear that upon the termination of the employment or connection of any such alien with developer, the pertinent laws and regulations on immigration shall immediately apply to him and his immediate family.

(p) The developer shall post a bond or other guarantee of sufficient amount in favor of the OEA and with surety or sureties satisfactory to the OEA conditioned upon the faithful performance by the developer of any or all of the obligations under and pursuant to the contract within sixty (60) days after the effective date of the contract.

SECTION 5. The OEA shall verify and monitor the standards applied by the developer of the mini-hydro power plant and ascertain whether or not the construction and operation of the mini-hydro power plant by the developer is in accordance with the approved design and standards of optimum safety/electricity generation.

SECTION 6. The OEA shall appoint the developer its attorney-in-fact and shall give and grant to the developer authority to act for and in its behalf in the negotiation and conclusions of agreements and payment for the use of surface rights, rights-of-way and similar rights for the account of the developer so as to enable the developer to have ingress into and egress from the contract area and to perform all mini-hydro power operations in accordance with this contract and otherwise for any and all purposes necessary or proper in connection with this contract.

SECTION 7. ***Suspension of Obligations.*** – Any failure or delay on the part of either party in the performance of its obligations or duties hereunder shall be excused to the extent attributable to Force Majeure. If operations are delayed, curtailed or prevented by such causes, the time for enjoying the rights and carrying out the obligations hereunder shall be extended for a period equal to the period thus involved: *Provided, however,* That if operations are delayed, curtailed or prevented by *force majeure* for a continuous period of three (3) months, the operating contract may thereafter be terminated by either party at anytime that the *force majeure* exists. *Force majeure* shall include Acts of God, unavoidable accidents, acts of war or conditions arising out of or attributable to war (declared or undeclared), riots, insurrections, strikes, lockouts, and other similar labor disturbances, floods and storms. The party whose ability to perform its obligation is so affected shall notify the other party thereof

in writing stating the cause, and both parties shall do all reasonably within their power to remove such cause.

RULE IV

NONEXCLUSIVE DEVELOPMENT

SECTION 1. The development of less than fifty percent (50%) of the mini-hydro power potential of the proposed site shall be non exclusive. The OEA, after a thorough review and evaluation of its technical and economic viability, may grant the development of the site to its full power potential to any qualified developer forfeits his option shall be given to the original developer: *Provided, further,* That in case the original developer forfeits his option to pursue development of the hydroelectric power resource to its fullest potential, it shall be reimbursed by the successor developer of the value of its investment based on the declared value of the development for real estate tax purposes over the immediately preceding three (3) years or, in case the declared value over said period differs, on the average value thereof.

SECTION 2. ***Nonexclusive Permit.*** – The OEA may issue, on a first-come-first-served basis, a nonexclusive permit, to conduct a three-month reconnaissance study on the mini-hydro power potential of an area.

RULE V

TERMS AND CONDITIONS FOR THE PURCHASE AND TRANSMISSION OF ELECTRICITY GENERATED

SECTION 1. The NAPOCOR shall purchase the maximum electricity generated by the mini-hydro power plant in case the mini-hydro power plant cannot be connected with any other electric utilities or end-users.

SECTION. 2. ***Use of Transmission Lines.*** – The NAPOCOR and other electric utilities shall allow the mini-hydro power developer to deliver its generated electricity to the developer's customers through their existing lines so as to serve such third parties under terms which are to be mutually agreed upon, or if no agreement can be reached, under terms set by the OEA.

SECTION. 3. ***Rates for the Purchase of Electricity.*** – The rates for the purchase of electricity that the developer may charge to NAPOCOR and other electric utilities shall be at a price agreed upon by the parties. Such price shall be based on NAPOCOR's or the utility's avoided cost which shall refer to the costs of the affected grids had NAPOCOR generated the electric power itself before disposing the power to third parties.

SECTION. 4. In cases where a developer needs new transmission facilities to bring the power from the mini-hydro power plant to such third parties, the developer shall negotiate with NAPOCOR or electric utility, as the case may be, for possible sharing of the cost of the facilities construction.

RULE VI

SETTLEMENT OF CONFLICTS

SECTION 1. All conflicts or disputes arising from the implementation of R.A. 7156 and the provisions of these rules, except those arising from debtor-creditor relations, shall be under the jurisdiction of the OEA.

RULE VII

SECTION 1. These rules and any amendments thereof shall take effect fifteen (15) days after publication in the *Official Gazette*.

Done this 10th day of March, nineteen hundred and ninety-two in Makati, Metro Manila.

RUFINO B. BOMASANG
Acting Executive Director
Office of Energy Affairs

Attested by:

GRISELDA J. G. BAUSA
Officer-in-Charge
Office of the Deputy Executive Director for
Energy Operations

PRESIDENTIAL DECREE NO. 1442

AN ACT TO PROMOTE THE EXPLORATION AND DEVELOPMENT OF GEOTHERMAL RESOURCES

WHEREAS, it is necessary for the domestic and industrial development of the country to reduce our dependence on imported energy supplies and accelerate the development of geothermal resources which have been identified as a viable and untapped economical source of energy;

WHEREAS, it is in the national interest to allow service contracts for financial, technical, management or other forms of assistance with qualified domestic and foreign entities, for the exploration, development, exploitation, or utilization of the country's geothermal resources;

NOW THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, do hereby order and decree as follows:

SECTION 1. ***Exploration of and Development of Geothermal Resources by the Government.*** – Subject to existing private rights, the Government may directly explore for, exploit and develop geothermal resources. It may also indirectly undertake the same under service contracts awarded through public bidding or concluded through negotiation, with a domestic foreign contractor who must be technically and financially capable of undertaking the operations required in the service contract: *Provided,* That if the service contractor shall furnish the necessary services, technology and financing, the service contractor may be paid a fine not exceeding forty percentum (40%) of the balance of the gross value of the geothermal operations after deducting the necessary expenses incurred in the operations: *Provided, further,* That the execution of the activities and operations subject of the service contract, including the implementation of the work program and accounting procedures agreed upon, shall at all times be subject to direct supervision of the Government, through the Bureau of Energy Development.

Service contracts as above authorized shall be subject to approval of the Department of Energy.

Geothermal resources mean (a) all products of geothermal processes, embracing indigenous steam, hot water and hot brines; (b) steam and other gases, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations; (c) heat or associated energy found in geothermal formations; and (d) any by-product derived from them.

SECTION 2. ***Geothermal Contract Areas.*** – Service contracts, as herein authorized, may cover public lands, government geothermal reservations, including those presently administered or unappropriated areas, as well as areas covered by exploration permits or leases granted under Republic Act No. 5092.

Service contracts for exploration and development of geothermal resources may also cover private lands, or other lands subject of agricultural, mining, petroleum or other rights devoted to purposes other than the exploration of geothermal energy: *Provided,* That the right to enter private lands, in the absence of a voluntary agreement with the private landowner, upon application of the contractor to the Court of First Instance of the province or the municipal court of the municipality where the land is situated, and upon posting of the necessary bond as may be fixed by said court, be allowed by the court subject to payment of reasonable compensation.

SECTION 3. ***Conversion of Geothermal Exploration Permits and Leases to Service Contract.*** – Holders of valid geothermal exploration permits and geothermal leases granted by the Government prior to January 17, 1973, pursuant to Republic Act No. 5092, shall enter into service contracts as herein provided relative to the areas owned by their respective permits or leases within six months from the effective date of this Decree; and, in default thereof, the geothermal exploration permits and geothermal leases shall be deemed automatically cancelled and the area covered thereby shall revert back to the State.

All geothermal exploration permit applications filed under Republic Act No. 5092 shall be deemed withdrawn and of no effect as of the effective date of this Decree.

SECTION 4. ***Privileges of Service Contractors.*** – The provisions of any law to the contrary notwithstanding, a service contract executed under this Decree may provide that the contractor shall have the following privileges:

(a) Exemption from payment of tariff duties and compensating tax on the importation of machinery and equipment, and spare parts and all materials required for geothermal operations subject to such conditions as may be imposed by the Director of Energy Development: *Provided,* That should the contractor or its sub-contractor sell, transfer, or dispose of these machinery, equipment, spare parts or materials without the prior consent of the Bureau of Energy Development, it shall pay twice the amount of the taxes and duties not paid because of the exemption granted;

(b) Entry, upon the sole approval of the Bureau of Energy Development which shall not be unreasonably withheld, and subject to such conditions as it may impose, of alien technical and specialized personnel (including the immediate members of their families), who may exercise their profession solely for the operations of the contractor as prescribed in its contract with the Government under this Act;

(c) Subject to the regulations of the Central Bank, repatriation of capital investment and remittance of earnings derived from its service contract operations, as well as such sums as may be necessary to cover principal and interest of foreign obligations incurred for the geothermal operations.

(d) Other privileges provided in Section 12 of Presidential Decree No. 87 as may be applied to the geothermal operation.

SECTION 5. ***Exploration Permits.*** – In cases where discovered geothermal resources are deemed inappropriate for service contract arrangements in view of economic and/or technical reasons, the Bureau of Energy Development may issue development and exploitation permits for such resources and formulate the applicable rules and regulations to govern the same.

SECTION 6. ***Rules and Regulations.*** – The Director of Energy Development shall be vested with the authority to promulgate such rules and regulations as may be necessary to

implement the provisions of this Act, subject to approval by the Secretary of Energy.

SECTION 7. ***Repealing Clause.*** – The provisions of Republic Act No. 5092 and other laws, rules and regulations inconsistent with this Decree are hereby repealed.

SECTION 8. ***Effectivity.*** – This Decree shall take effect immediately upon approval.

Done in the City of Manila, this 11th day of June, in the year of Our Lord, nineteen hundred and seventy eight.

REPUBLIC ACT NO. 9367

AN ACT TO DIRECT THE USE OF BIOFUELS, ESTABLISHING FOR THIS PURPOSE THE BIOFUEL PROGRAM, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

SECTION 1. ***Short Title*** – This act shall be known as the "*Biofuels Act of 2006*".

SECTION 2. ***Declaration Policy*** – It is hereby declared the policy of the State to reduce dependence on imported fuels with due regard to the protection of public health, the environment, and the natural ecosystems consistent with the country's sustainable economic growth that would expand opportunities for livelihood by mandating the use of biofuels as a measure to:

a) Develop and utilize indigenous renewable and sustainable-sources clean energy sources to reduce dependence on imported oil.

b) Mitigate toxic and greenhouse gas (GSG) emissions;

c) increase rural employment and income; and

d) Ensure the availability of alternative and renewable clean energy without any detriment to the natural ecosystem, biodiversity and food reserves of the country.

SECTION 3. ***Definition of terms*** – As used in this act, the following term shall be taken to means as follows:

a) *AFTA* – shall refer to the ASIAN free trade agreement initiated by the Association of South East Asian Nation;

b) *Alternative Fuel Vehicle/Engine* – shall refer to vehicle/engines that use alternative fuels such as biodiesel, bioethanel, natural gas, electricity, hydrogen and automotive LPG instead of gasoline and diesel;

c) *Bioethanol fuel* – shall refer to ethanol (C2H30H) produce from feedback and other biomass.

d) *Biodiesel* – shall refer to Fatty Acid Methyl Ester (FAME) or mono-alkyl ester delivered from vegetable oil, or animal fats and other biomass-derived oils that shall be technically proven and approved by the DOE for use in diesel engines, with quality specifications in accordance with the Philippine National Standards (PNS)

e) *Bioethanol fuels* – shall refer to the hydrous and anhydrous bioethanol suitably denatured for use as motor fuel with quality specifications in accordance with the PNS;

f) *Biofuel* – shall refer to the bioethanol and biodiesel and other fuels made from biomass and primary used for motive, thermal power generation, with quality specifications in accordance with PNS;

g) *Biomass* – shall refer to any organic matter, particularly cellulosic or ligno-cellulosic matter, which is available on a renewable or recurring basis, including trees, crops and associated residues, plant fiber, poultry litter and other animal wastes, industrial wastes and biodegradable component of solid waste;

h) *DA* – shall refer to the Department of Agriculture created under Executive Order No. 116, as amended;

i) *Diesel* – shall refer to the refined petroleum distillate, which may contain small amount of hydrocarbon or nonhydrocarbon additives to improve ignition quality or other characteristic, suitable for compression ignition engine and other suitable types of engines with quality specifications in accordance with PNS;

j) *DENR* – shall refer to the Department of Environment and Natural Resources created under Executive No. 192, as amended;

k) *DOE* – shall refer to the Department of Energy created under Republic Act No. 7638, as amended;

l) *DOLE* – shall refer to the Department of Labor and Employment created under Executive Order No. 126, as amended;

m) *DOF* – shall refer to the Department of Finance created under Administrative Orders No. 127 and 127-A;

n) *DOST* – shall refer to the Department of Science and Technology created under Republic Act no. 2067

o) *DOTC* – shall refer to the Department of Transportation and Communication created under Executive Order No. 125-A, as amended;

p) *DTI* – shall refer to the Department of Trade and Industry created under Executive Order No. 133;

q) *Feedstock* – shall refer to the organic sources such as molasses, sugarcane, cassava, coconut, jatropha, sweet sorghum or other biomass used in the production of biofuels;

r) *Gasoline* – shall refer to volatile mixture of liquid hydrocarbon, generally containing small amounts of additives suitable for use as fuel in spark-ignition internal combustion engines with quality specifications in accordance with the PNS;

s) *Motor fuel* – shall refer to all volatile and inflammable liquids and gas produced, blended or compounded for the purpose of, or which are suitable or practicable for, operating motor vehicle;

t) *MTBE* – shall refer to Methyl Tertiary Butyl Ether;

u) *NBB or Board* – shall refer to the National Biofuel Board created under Section 8 of this Act ;

v) *Oil Company* – shall refer to any entity that distributes and sells petroleum fuel products;

w) *Oxygenate* – shall refer to substances, which, when added to gasoline, increase the amount of oxygen in that gasoline blend;

x) *PNS* – shall refer to the Philippine National Standard; consistent with section 26 of R.A. No. 8749 otherwise known as the 'Philippine Clean Air Act of 1999;

y) *Renewable Energy Sources* – shall refer to energy sources that do not have an upper limit on the total quantity to be used. Such resources are renewable on a

regular basis; and

z) *WTO* – shall refer to the World Trade Organization.

SECTION 4. ***Phasing Out of the Use of Harmful Gasoline Additives and/or Oxygenates.*** – Within six months from affectivity of this Act, the DOE, according to duly accepted international standards, shall gradually phase out the use of harmful gasoline additives such as, but not limited to MTBE

SECTION 5. ***Mandatory Use of Biofuels.*** – Pursuant to the above policy, it is hereby mandated that all liquid fuels for motors and engines sold in the Philippines shall contain locally-sourced biofuels components as follows:

5.1 Within two years from the effectivity of this Act, at least five percent (5%) bioethanol shall comprise the annual total volume of gasoline fuel actually sold and distributed by each and every oil company in the country; subject to requirement that all bioethanol blended gasoline shall contain a minimum of five percent (5%) bioethanol fuel by volume *Provided*, that ethanol blend conforms to PNS.

5.2 Within four years from the effectivity of this Act, the NBB created under this Act is empowered to determine the feasibility thereafter recommend to DOE to mandate a minimum of ten percent(10%) blend of bioethanol by volume into all gasoline fuel distributed and sold by each and every oil company in the country.

In the event of supply shortage of locally-produced bioethanol during the four–year period, oil companies shall be allowed to import bioethanol but only to the extent of the shortage as may be determined by NBB.

5.3 Within three months from the effectivity of this Act, a minimum of one percent (1%) biodiesel by volume shall be blended into all diesel engine fuels sold in the country: *Provided* That the biodiesel blend conforms to PNS for biodiesel.

Within two years from the effectivity of this Act, the NBB created under this Act is empowered to determine the feasibility and thereafter recommend to DOE to mandate a minimum of two percent (2%) blend of biodiesel by volume which may be increased taking into account considerations including but not limited to domestic supply and availability of locally-sourced biodiesel component.

SECTION 6. ***Incentive Scheme*** – To encourage investments in the production, distribution and use of locally-produced biofuels at and above the minimum mandated blends, and without prejudice to enjoying applicable incentives and benefits under existing laws, rules and regulations, the following additional incentives are hereby provided under this Act.

a) Specific tax

The specific tax on local or imported biofuels component, per liter of volume shall be zero (0). The gasoline and diesel fuel component, shall remain subject to the prevailing specific tax rate.

b) Value Added Tax

The sale of raw material used in the production of biofuels such as, but not limited to, coconut, jatropha, sugarcane, cassava, corn, and sweet sorghum shall be exempt from the value added tax.

c) Water Effluents

All water effluents, such as but not limited to distillery slops from the production of biofuels used as liquid fertilizer and for other agricultural purposes are considered “reuse”, and are therefore, exempt from wastewater charges under the system provided under section 13 of R.A No. 9275, also known as the Philippine Clean Water Act: *Provided, however*, That such application shall be

in accordance with the guidelines issued pursuant to R.A. No. 9275, subject to the monitoring and evaluation by DENR and approved by DA.

d) Financial Assistance

Government financial institutions, such as the Development Bank of the Philippines, Land Bank of the Philippines, Quedancor and other government institutions providing financial services shall, in accordance with and to the extent by the enabling provisions of their respective charters or applicable laws, accord high priority to extend financing to Filipino citizens or entities, at least sixty percent (60%) of the capital stock of which belongs to citizens of the Philippines that shall engage in activities involving production storage, handling and transport of biofuel feedstock, including the blending of biofuels with petroleum, as certified by the DOE.

SECTION 7. ***Powers and Functions of the DOE.*** – In addition to its existing powers and functions, the DOE is hereby mandated to take appropriate and necessary actions to implement the provisions of this Act. In pursuance thereof, it shall within three months from effectivity of this Act:

a) Formulate the implementing rules and regulations under Section 15 of this Act;

b) Prepare the Philippines Biofuel program consistent with the Philippine Energy Plan and taking into consideration the DOE's existing biofuels program;

c) Establish technical fuel quality standards for biofuels and biofuel-blended gasoline and diesel which comply with the PNS.

d) Establish guidelines for the transport, storage and handling of biofuels;

e) Impose fines and penalties against persons or entities found to have committed any of the prohibited acts under Section 12 (b) to (e) of this Act;

f) Stop the sale of biofuels and biofuel-blended gasoline and diesel that are not in conformity with the specifications provided for under Section 5 of this Act, the PNS and corresponding issuances of the Department; and

g) Conduct an information campaign to promote the use of biofuels

SECTION 8. ***Creation of the National Biofuel Board (NBB)*** – The National Biofuel Board is hereby created. It shall be composed of the Secretary of the DOE as chairman and the Secretaries of the DTI, DOST, DA, DOF, DOLE, and the Administrators of the PCA, and the SRA, as members.

The DOE Secretary, in his capacity as Chairperson, shall, within one month from the effectivity of this Act, convene the NBB.

The Board shall by assisted by a Technical Secretariat attached to the Office of the Secretary of the DOE. It shall be headed by a Director to be appointed by the Board. The number of staff of the Technical Secretariat and the corresponding positions shall be determined by the Board, subject to approval by the Department of Budget and Management (DBM) and existing civil services rules and regulations.

SECTION 9. ***Powers and Functions of the NBB.*** – The NBB shall have the following powers and functions:

a) Monitor the implementation of, and evaluate for further expansion, the National Biofuel Program (NBP) prepares by the DOE pursuant to Section 7 (b) of this Act;

b) Monitor the supply and utilization of biofuels and biofuel-blends and recommend appropriate measures in cases of shortage of feedstock supply for approval of the Secretary of DOE. For this purpose:

1. The NBB is empowered to require all entities engaged in the production,

blending and distribution of biofuels to submit reports of their actual and projected sales and inventory of biofuels, in a format to be prescribed for this purpose; and

2. The NBB shall determine availability of locally-sourced biofuels and recommend to DOE the appropriate level or percentage of locally–sourced biofuels to the total annual volume of gasoline and diesel sold and distributed in the country.

c) Review and recommend to DOE the adjustment in the minimum mandated biofuel blends subject to the availability of locally–sourced biofuels: *Provided*, That the minimum blend may be decreased only within the first four years from the effectivity of this Act. Thereafter, the minimum blends of the five percent (5%) and two percent (2%) for bioethanol and biodiesel respectively, shall not be decreased;

d) Recommend to DOE a program that will ensure the availability of alternative fuel technology for vehicles, engine and parts in consonance with the mandated minimum biofuel-blends, and to maximize the utilization of biofuels including other biofuels;

e) Recommend to DOE the use of biofuel–blends in air transport taking into account safety and technical viability; and

f) Recommend specific actions to be executed by the DOE and other appropriate government agencies concerning the implementation of the NBP, including its economic, technical, environment, and social impact.

SECTION 10. ***Security of Domestic Sugar Supply.*** – Any provision of this Act to the contrary notwithstanding, the SRA, pursuant to its mandate, shall, at all times, ensures that the supply of sugar is sufficient to meet the domestic demand and that the price of sugar is stable.

To this end, the SRA shall recommend and the proper agencies shall undertake the importation of sugar whenever necessary and shall make appropriate adjustments to the minimum access volume parameters for sugar in the Tariff and Custom Code.

SECTION 11. ***Role of Government Agencies.*** – To ensure the effective implementation of the NBP, concerned agencies shall perform the following functions:

a) The DOF shall monitor the production and importation of biofuels through the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC);

b) The DOST and the DA shall coordinate in identifying and developing viable feedstock for the production of biofuels;

c) The DOST, through the Philippine Council for Industry and Energy Research and Development (PCIERD), shall develop and implement a research and development program supporting a sustainable improvement in biofuel production and utilization technology. It shall also publish and promote related technologies developed locally and abroad.

d) The DA through its relevant agencies shall:

   (1) Within three months from effectivity of this Act, develop a national program for the production of crops for use as feedstock supply. For this purpose, the Administrators of the SRA and the PCA, and other DA-attached agencies shall, within their authority develop and implement policies supporting the Philippine Biofuel Program and submit the same to the Secretary of the DA for consideration;

(2) Ensure increased productivity and sustainable supply of biofuel feedstocks. It shall institutes program that would guarantee that a sufficient and reliable supply of feedstocks is allocated for biofuel production; and

(3) Publish information on available and suitable areas for cultivation and production of such crops.

e) The DOLE shall:

(1) Promote gainful livelihood opportunities and facilitate productive employment through effective employment services and regulation;

(2) Ensure the access of workers to productive resources and social coverage; and

(3) Recommend plans, policies and programs that will enhance the social impact of the NBP.

f) The Tariff Commission, in coordination with the appropriate government agencies, shall create and classify a tariff line for biofuels and biofuel-blends in consideration of WTO and AFTA agreements; and

g) The local government units (LGU) shall assist the DOE in monitoring the distribution sale in use of biofuels and biofuel-blends

SECTION 12. ***Prohibited Acts.*** The following acts shall be prohibited:

a) Diversion of biofuels, whether locally produced or imported, to purposes other than those envisioned in this Act;

b) Sale of biofuel–blended gasoline or diesel that fails to comply with the minimum biofuel–blend by volume in violation of the requirement under Section 5 of this Act;

c) Distribution, sale and use of automotive fuel containing harmful additives such as, but not limited to, MTBE at such concentration exceeding the limits to be determined by the NBB.

d) Noncompliance with the established guidelines of the PNS and DOE adopted for the implementation of this Act; and

e) False labeling of gasoline, diesel, biofuels and biofuel-blended gasoline and diesel.

SECTION 13. ***Penal Provisions.*** – Any person, who willfully aids or abets in the commission of a crime prohibited herein or who causes the commission of any such act by another shall be liable in the same manner as the principal.

In the case of association, partnerships or corporations, the penalty shall be imposed on the partner, president, chief operating officer, chief executive officer, directors or officers, responsible for the violation.

The commission of an act enumerated in Section 12, upon conviction thereof, shall suffer the penalty of one year to five years imprisonment and a fine ranging from a minimum of One million pesos (₱ 1,000,000.00) to Five million pesos (₱ 5,000,000.00).

In addition, the DOE shall confiscate any amount of such products that fail to comply with the requirements of Sections 4 & 5 of this Act, and implementing issuance of the DOE. The DOE shall determine the appropriate process and the manner of disposal and utilization of the confiscated products. The DOE is also empowered to stop and suspend the operation of businesses for refusal to comply with any order or instruction of the DOE Secretary in the exercise of his functions under this Act.

Further, the DOE is empowered to impose administrative fines and penalties for any violation of the provisions of this Act, implementing rules and regulations and other issuance relative to this Act.

SECTION 14. ***Appropriations.*** – Such sums as may be necessary for the initial implementation of this Act shall be taken from the current appropriations of the DOE. Thereafter, the fund necessary to carry out provisions of this Act shall be included in the annual General Appropriation Act.

SECTION 15. ***Implementing Rules and Regulations (IRR).*** – The DOE, in consultation with the NBB, the stakeholders and the other agencies concerned, shall within three months from affectivity of this Act, promulgated the IRR of this Act: *Provided*, That prior to its effectively, the draft of the IRR shall be posted at the DOE web site for at least one month, and shall be published in at least two newspapers of general circulation.

SECTION 16. ***Congressional Oversight Committee.*** – Upon affectivity of this act, a Congressional Committee, hereinafter referred to as the Biofuels Oversight Committee, is hereby constituted. The biofuels oversight committee shall be compose of (14) members, with the Chairmen of the Committees on Energy of both House of Congress as co-chairmen. The Chairmen of the Committee on Agriculture and Trade and Industry shall be *ex officio* members. An additional four members from each House, to be designated by the Senate President and Speaker of the House of Representatives, respectively. The minority shall be entitled to pro-rata representation but shall have at least one representative in the Biofuel Oversight Committee.

SECTION 17. ***Benefits of Biofuel Workers.*** – This Act shall not in any way result in the forfeiture or diminution of existing benefits enjoyed by the sugar workers as prescribed under the R.A. No. 6982, or the Sugar Amelioration Act of 1991. In case sugarcane shall be used as feedstock.

The NBB shall establish a mechanism similar to that provided under the Sugar Amelioration Act of 1991 for the benefit of other biofuel workers.

SECTION 18. ***Special Clause.*** – This act shall not be interpreted as prejudicial to clean development mechanism (CDM) projects that cause carbon dioxide (CO2) and greenhouse gasses (GHG) emission reductions by means of biofuel use.

SECTION 19. ***Repealing Clause.*** – The provision of Section 148 (d) of R.A. No. 8424, otherwise known as Tax Reform Act. of 1997, and all other laws, presidential decrees or issuance, executive orders, presidential proclamations. rules and regulations or part thereof inconsistent with the provisions of this Act, are hereby repealed, modified or amended accordingly.

SECTION 20. ***Separability Clause.*** – If any provision of this Act is declared unconstitutional in the same shall not affect the validity and effectivity of the other provision hereof.

SECTION 21. ***Effectivity.*** – This act shall effect fifteen (15) day after publication in at least two newspapers of general circulation.

Approved: January 12, 2007

DEPARTMENT CIRCULAR NO. 2007-05-0006

RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 9367

Pursuant to Republic Act No. 9367, otherwise known as the *Biofuels Act of 2006*, the Department of Energy, in consultation with National Biofuels Board, appropriate government agencies, and other stakeholders, hereby issues, adopts and promulgates the following implementing rules and regulations.

Rule 1. General Provisions

Section 1. Title, Purpose, and Scope.

1.1 This Department Circular shall be known as the Implementing Rules and Regulations (IRR) of Republic Act No. 9367, otherwise known as the *Biofuels Act of 2006* and referred to as the "Act" in this IRR.

1.2 It shall cover the production, blending, storage, handling, transportation, distribution, use, and sale of biofuels, biofuel-blends, and biofuel feedstock in the Philippines.

1.3 Further, it clarifies specific provisions of the Act and the roles and functions of the different government agencies and their relationship with the National Biofuels Board.

Section 2. Declaration of Policy.

It is hereby declared the policy of the State to reduce dependence on imported fuels with due regard to the protection of public health, the environment, and natural ecosystems consistent with the country's sustainable economic growth that would expand opportunities for livelihood by mandating the use of biofuels as a measure to:

a) develop and utilize indigenous renewable and sustainably-sourced clean energy sources to reduce dependence on imported oil;

b) mitigate toxic and greenhouse gas (GHG) emissions;

c) increase rural employment and income; and

d) ensure the availability of alternative and renewable clean energy without any detriment to the natural ecosystem, biodiversity and food reserves of the country.

Section 3. Definition of Terms.

3.1 As used in the *Biofuels Act of 2006* and this Implementing Rules and Regulations (IRR), the following terms shall be defined as follows:

a) Act – shall refer to the *Biofuels Act of 2006*;

b) AFTA – shall refer to the ASEAN Free Trade Agreement initiated by the Association of Southeast Asian Nations;

c) Alternative Fuel Vehicles/Engines – shall refer to vehicles/engines that use alternative fuels such as biodiesel, bioethanol, natural gas, electricity, hydrogen, and automotive LPG, instead of gasoline and diesel;

d) Bioethanol – shall refer to ethanol (C_2H_5OH) produced from feedstock and other biomass;

e) Biodiesel – shall refer to Fatty Acid Methyl Ester (FAME) or mono-alkyl esters derived from vegetable oils or animal fats and other biomass-derived oils that shall be technically proven and approved by the DOE for use in diesel engines with quality

specifications in accordance with the Philippine National Standards (PNS);

f) Bioethanol Fuel – shall refer to hydrous or anhydrous bioethanol suitably denatured for use as motor fuel, with quality specifications in accordance with the PNS;

g) Biofuel – shall refer to bioethanol and biodiesel and other fuels made from biomass and primarily used for motive, thermal and power generation with quality specifications in accordance with the PNS;

h) Biofuel blends – shall refer to gasoline or diesel that has been blended with biofuels such as, but not limited to, bioethanol and biodiesel;

i) Biomass – shall refer to any organic matter, particularly cellulosic or ligno-cellulosic matter, which is available on a renewable or recurring basis, including trees, crops and associated residues, plant fiber, poultry litter and other animal wastes, industrial wastes, and the biodegradable component of solid waste;

j) DA – shall refer to the Department of Agriculture created under Executive Order No. 116, as amended;

k) DENR – shall refer to the Department of Environment and Natural Resources created under Executive Order No. 192, as amended;

l) Diesel – shall refer to refined petroleum distillate, which may contain small amounts of hydrocarbon or nonhydrocarbon additives to improve ignition quality or other characteristics, suitable for compression ignition engine and other suitable types of engines with quality specifications in compliance with the PNS;

m) DOE – shall refer to the Department of Energy created under Republic Act No. 7638, as amended;

n) DOF – shall refer to the Department of Finance created under Administrative Order Nos. 127 and 127-A;

o) DOLE – shall refer to the Department of Labor and Employment created under Executive Order No. 126, as amended;

p) DOST – shall refer to the Department of Science and Technology created under Republic Act No. 2067;

q) DOTC – shall refer to the Department of Transportation and Communications created under Executive Order No. 125-A, as amended;

r) DTI – shall refer to the Department of Trade and Industry created under Executive Order No. 133;

s) Feedstock – shall refer to organic sources such as molasses, sugarcane, cassava, coconut, jatropha, sweet sorghum or other biomass used in the production of biofuels;

t) Gasoline – shall refer to volatile mixture of hydrocarbon, generally containing small amounts of additives, suitable for use as a fuel in spark-combustion engine with quality specifications in compliance with the PNS;

u) Locally-sourced biofuels – shall refer to biofuels derived from feedstocks grown/planted harvested and processed in the Philippines;

v) Motor Fuel – shall refer to all volatile and inflammable liquids and gas produced, blended or compounded for the purpose of, or which are

suitable or practicable for, operating motor vehicles;

w) MTBE – shall refer to Methyl Tertiary Butyl Ether;

x) National Biofuels Program/Philippine Biofuel Program – shall refer to the program which the DOE is mandated to formulate under Section 7 of the Act;

y) NBB or Board – shall refer to the National Biofuels Board, created under Section 8 of the Act;

z) Oil Company – shall refer to any entity that distributes and sells petroleum fuel products;

aa) Oxygenate – shall refer to substances which, when added to gasoline, increases the amount of oxygen in that gasoline blend;

bb) PCA – shall refer to the Philippine Coconut Authority created under P.D. 232 as amended by Presidential Decrees 961 and 1468;

cc) Petroleum Depot or Terminal – shall refer to the supply point of petroleum products (or bulk storage facilities) operated by oil companies;

dd) PNS – shall refer to the Philippine National Standards consistent with Section 26 of R.A. No. 8749 otherwise known as the "Philippine Clean Air Act of 1999";

ee) Renewable Energy Sources – shall refer to energy sources that do not have an upper limit on the total quantity to be used. Such resources are renewable on a regular basis, and whose renewal rate is relatively rapid to consider availability over an indefinite period of time;

ff) SRA – shall refer to Sugar Regulatory Administration created under Executive Order No. 18, s. 1986;

gg) Sugarcane industry – shall refer to the industry that integrates the agricultural production systems of growing sugarcane into the processing of the same into sugar, ethanol and other products with the consequent production of by-products including but not limited to bagasse, filter cake, and molasses. The sugarcane industry also covers the processing and manufacture of any of the by-products (bagasse, filter cake, molasses and others) into other value-added products or commodities; and

hh) WTO – shall refer to the World Trade Organization.

3.2 All other terms not covered in the Act or in this IRR shall be defined by concerned government agencies in the exercise of their respective regulatory and/or policy formulating functions.

Rule 2. Operation of the Mandate

Section 4. Phasing Out of the Use of Harmful Gasoline Additives and/or Oxygenates

4.1 Pursuant to Section 4 of the Act, the DOE shall gradually phase out the use of harmful gasoline additives and/or oxygenates, such as, but not limited to MTBE, according to duly accepted international standards.

4.2 The DOE, in consultation with the concerned government agencies and stakeholders, shall issue the appropriate department circular for the purpose within six (6) months from the effectivity of the Act.

Section 5. Mandatory Use of Biofuels.

Pursuant to Section 5 of the Act, all liquid fuels for motor vehicles shall contain locally-sourced biofuels components as follows:

5.1 Bioethanol

a) Within two (2) years from the effectivity of the Act, at least five percent (5%) bioethanol shall comprise the annual total volume of gasoline fuel actually sold and distributed by each and every oil company in the country, subject to the requirement that all bioethanol blended gasoline shall contain a minimum five percent (5%) bioethanol fuel by volume: *Provided,* That the bioethanol blend conforms to the PNS.

b) Within four (4) years from the effectivity of the Act, the NBB created under Section 8 of the Act is empowered to determine the feasibility and thereafter recommend to the DOE to mandate a minimum of ten percent (10%) blend of bioethanol by volume into all gasoline fuel distributed and sold by each and every oil company in the country: *Provided,* That the same conforms to the PNS.

5.2 Biodiesel

a) Within three (3) months from the effectivity of the Act, a minimum of one percent (1%) biodiesel by volume shall be blended into all diesel fuels sold in the country: *Provided,* That the biodiesel blend conforms to the PNS.

b) Within two (2) years from the effectivity of the Act, the NBB is empowered to determine the feasibility and thereafter recommend to DOE to mandate a minimum of two percent (2%) blend of biodiesel by volume which may be increased after taking into account considerations including, but not limited to, domestic supply and availability of locally-sourced biodiesel component.

5.3 Other Biofuels

In the event that fuels derived from biomass other than bioethanol and biodiesel are developed pursuant to the Act as technically validated by the DOST, the DOE shall issue, upon consultation with the entities concerned and upon the recommendation of the NBB, the appropriate department circular to promote the utilization of such fuels and provide the appropriate initiatives consistent with the provisions of the Act: *Provided,* That the appropriate PNS for such fuel is established and complied with.

5.4 The DOE shall issue, in consultation with the concerned government agencies and entities, further guidelines relative to the above provisions which shall include among others, the standards and reportorial requirements to be complied with. The issuance of these further guidelines shall not be a condition precedent to the implementation of the above provisions.

Section 6. Importation in case of supply shortage of locally-produced bioethanol.

6.1 Pursuant to Section 5.2 of the Act, in the event of a supply shortage of locally-produced bioethanol during the first four-year period of implementation of the Act, as may be confirmed by the NBB, oil companies shall be allowed to import bioethanol to the extent of the shortage as may be determined by the NBB.

6.2 Prior to the importation of bioethanol due to a supply shortage, the importing oil company may apply for the issuance of a DOE Certification to the effect that the bioethanol to be imported shall be used for the National Biofuels Program.

6.3 The DOE Certification may be used by the oil company to avail itself of reduced tariff on bioethanol pursuant to Executive Order No. 449.

6.4 The issuance of the DOE Certification shall be made in accordance with existing DOE guidelines.

Section 7. Incentives under the Act.

7.1 To encourage investments in the production, distribution, and use of locally-produced biofuels at and above the minimum mandated blends, and without prejudice to enjoying applicable incentives and benefits under existing laws, rules, regulations, the following additional incentives are hereby provided:

a) **Specific Tax.** The specific tax on local or imported biofuels component of the blend per liter of volume shall be zero. For the purpose of availing of a zero specific tax, local or imported bioethanol shall be suitably denatured into bioethanol fuel in accordance with existing revenue regulations. The gasoline and diesel fuel component shall remain subject to the prevailing specific tax rates.

b) **Value Added Tax.** The sale of raw material used in the production of biofuels such as but not limited to, coconut, jathropha, sugarcane, cassava, corn, and sweet sorghum shall be exempt from the value added tax.

The tax incentive provided under Items (a) and (b) of this Section shall be subject to rules and regulations promulgated by the DOF.

c) **Water Effluents.** All water effluents, such as but not limited to distillery slops from the production of biofuels used as liquid fertilizer and other agricultural purposes are considered "reuse" and are therefore, exempt from wastewater charges under the system provided under Section 13 of R.A. 9275, otherwise known as the *Philippine Clean Water Act*: *Provided, however,* That such application shall be in accordance with the guidelines issued pursuant to R.A. 9275, subject to the monitoring and evaluation by the DENR and approved by the DA; and

d) **Financial Assistance.** Government financial institutions, such as the Development Bank of the Philippines, Land Bank of the Philippines, Quedancor, and other government institutions providing financial services shall, in accordance with and to the extent allowed by the enabling provisions of their respective charters or applicable laws, accord high priority to extend financing to Filipino citizens or entities, at least sixty per cent (60%) of the capital stock of which belongs to citizens of the Philippines that shall engage in activities involving production, storage, handling, and transport of biofuel and biofuel feedstock, including blending of biofuels with petroleum, as certified by the DOE.

7.2 The appropriate government agencies shall issue the necessary guidelines for the availment of such incentives.

Rule 3. The National Biofuels Board

Section 8. Creation and Organizational Structure of the National Biofuels Board.

8.1 Pursuant to Section 8 of the Act, the National Biofuels Board (NBB) is created and shall be composed of the Secretary of the DOE, as Chairman, and the Secretaries of the DTI, DOST, DA, DOF, DOLE, and the Administrators of the PCA and SRA, as members.

a) The Secretary of the DOE, as the Chairman, shall be assisted by a duly designated Undersecretary who shall as act as his alternate; and

b) The member Secretaries and Administrators may assign alternate representatives who must be occupying at least the level of Assistant Secretary: *Provided*, That only the Department Secretaries/ Administrators shall sign official documents and issuances of the NBB.

8.2 The NBB shall create a Technical Secretariat which shall provide for the administrative, policy, and technical services of the Board.

8.3 The NBB shall determine the appropriate compensation/remuneration of the members and the Technical Secretariat staff and personnel in accordance with existing laws, rules and regulations, and shall make appropriate requests and representations with the Office of the President and the DBM for the allocation and appropriation of funds necessary to effectively perform its duties and functions.

Section 9. Meetings of the NBB.

Regular meetings of the NBB shall be held at least once every quarter on a date and in a place fixed by the Board.

Section 10. Powers and Functions of the NBB.

Pursuant to Section 9 of the Act, the NBB shall have the following powers and functions:

a) Monitor the implementation of, and evaluate for further expansion, the National Biofuels Program prepared by the DOE pursuant to Section 7 (b) of the Act;

b) Monitor the supply and utilization of biofuels and biofuel-blends and recommend appropriate measures in cases of shortage of feedstock supply for approval by the Secretary of DOE. For this purpose:

i. The NBB is empowered to require all entities engaged in the production, blending and distribution of biofuels to submit reports of their actual and projected sales and inventory of biofuels in a format to be prescribed for this purpose;

ii. The NBB shall determine the availability of locally sourced biofuels and recommend to the DOE the appropriate level or percentage of locally sourced biofuels to the annual volume of gasoline and diesel sold and distributed in the country.

iii. To ensure an adequate supply of bioethanol, the NBB shall recommend to the DOE the amount of bioethanol that may be imported at any given time by DOE-certified oil companies in the event of shortage of supply of locally-sourced ethanol during the first four years from the effectivity of the Act.

c) Review and recommend to the DOE the adjustment in the minimum mandated biofuel blends subject to the availability of locally-sourced biofuels: *Provided,* That the minimum blend may be decreased only within the first four (4) years from the effectivity of the Act. Thereafter, the minimum blends of five percent (5%) and two percent (2%) for bioethanol and biodiesel, respectively, shall not be decreased.

In determining the availability of locally-produced biofuels, the NBB may take into account the factors such as, but not limited to, shortage in the supply of biofuels and feedstock and constraints or difficulties in the distribution of biofuel blends.

d) Recommend to the DOE a program that will ensure that availability of alternative fuel technology for vehicles, engines and parts in consonance with the mandated minimum biofuel-blends, and

to maximize the utilization of biofuels, including other biofuels;

e) Recommend to the DOE the use of biofuel-blends in air transport taking into account safety and technical viability;

f) Recommend specific activity to be executed by the DOE and other appropriate government agencies concerning the implementation of the NBP, including its economic, technical, environment and social impact; and

g) Exercise such other powers and functions as may be necessary or incidental to attain the objectives of the Act.

Section 11. The Technical Secretariat.

Pursuant to Section 8 of the Act, the NBB shall be assisted by a Technical Secretariat attached to the Office of the Secretary of the DOE.

a) **Composition.** The Technical Secretariat shall be headed by a Director to be appointed by the NBB. The number of staff of the Technical Secretariat and corresponding positions shall be determined by the NBB subject to existing civil service rules and regulations and the approval of the Department of Budget and Management.

b) **Functions and responsibilities.** The Technical Secretariat shall have the following functions and responsibilities:

   i. Provide administrative and general support service to the NBB in collecting, securing, and processing pertinent information/data from all entities engaged in the production, blending and distribution of biofuels and biofuel blends, including, but not limited to, actual and projected sales and inventory and data on the availability of locally-sourced biofuels;

   ii. Provide all members of the NBB appropriate information/data on appropriate vehicle technologies, including air transportation, in consonance with the mandated minimum biofuel blends;

   iii. Monitor and coordinate with all government entities in the performance of their respective functions and responsibilities in the implementation of the National Biofuels Program;

   iv. Identify issues, concerns and/or barriers on the implementation of the National Biofuels Program, including the mandated minimum biofuel blends, and propose measures/ solutions to address the same, in coordination with all stakeholders of the biofuel industry; and

   v. Perform such other functions as may be directed by the NBB.

c) **Creation of an Interim Technical Secretariat.** Within one (1) month from the effectivity of this IRR, the NBB shall designate an interim technical secretariat to be known as the NBB-Project Management Office (NBB-PMO) to hold office for a period of one (1) year or until such time that the organization of the Technical Secretariat is completed, subject to existing rules and regulations of the Department of Budget and Management and the Civil Service Commission. Prior to the organization of the NBB-PMO, the Energy Utilization Management Bureau of the DOE shall serve as the Technical Secretariat to the NBB; and

   The NBB-PMO staff and personnel shall be provided with appropriate compensation and remuneration in accordance with existing rules and regulations of the Department of Budget and Management and the Civil Service Commission.

Rule 4
Role of the Department of Energy and Other Government Agencies

Section 12. The Department of Energy.

Pursuant to Section 7 of the Act, the DOE is mandated to take appropriate and necessary actions to implement the provisions of the Act, in addition to its existing powers and functions. In pursuance hereof, it shall, within three (3) months from the effectivity of the Act:

a) Prepare the National Biofuels Program consistent with the Philippine Energy Plan and taking into consideration the DOE's existing biofuels program and the programs of other government agencies, such as, but not limited to, the feedstock supply program of the DA, PCA and SRA technology research and development program of the DOST, and the vehicle development program of the DTI;

b) Establish technical and fuel quality standards for biofuels and biofuel-blended gasoline and diesel which comply with the PNS;

c) Establish the guidelines for the transport, storage and handling of biofuels and biofuel-blends;

d) Accredit producers and distributors of biofuels and developers/owners of biofuel production facilities following DOE's accreditation guidelines;

e) Endorse qualified biofuel producers to the Board of Investments for the availment of appropriate fiscal incentives;

f) Conduct regular monitoring, announced or unannounced inspections sampling and laboratory testing of biofuels in all biofuel production facilities and feedstock production areas, and biofuel-blended gasoline and diesel in all blending/ storage/distribution facilities and retail stations;

g) Stop the sale of biofuels and biofuel-blended gasoline and diesel that are not in conformity with the specifications provided for under Section 5 of the Act, the PNS and corresponding issuances of the Department;

h) Impose fines and penalties against persons or entities found to have committed any of the acts under Section 12 (b) to (e) of the Act;

i) Conduct various research and development activities and studies on biofuels, biofuel-blended gasoline and diesel, and/or other biomass-derived fuels for use in motors and engines, including air transport, and other vehicle technologies;

j) Provide laboratory support services to other government entities and the private sector in the conduct of research and development activities on biofuels, biofuel-blends, and other biomass-derived fuels;

k) Formulate guidelines for the importation of biofuels, taking into consideration relevant existing rules and regulations issued by the DOE and other government agencies; and

l) Conduct, in coordination with biofuel stakeholders, information campaign to promote the use of biofuels.

Section 13. The Department of Finance.

The DOF shall monitor, in coordination with other concerned government agencies, the production and importation of biofuels through the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC).

The DOF shall promulgate the rules and regulations necessary to implement its mandate under the Act.

Section 14. The Department of Science and Technology.

The DOST shall:

a) Coordinate with the DA in identifying and developing viable feedstock for the production of biofuels;

b) Develop and implement, through the Philippine Council for Industry and Energy Research and Development (PCIERD), a research and development program supporting a sustainable improvement in biofuel production and utilization technology. For this purpose, the DOST shall establish a network of academic and research institutions; and

c) Publish and promote related technologies developed locally and abroad.

Section 15. The Department of Agriculture.

The DA, through its relevant agencies, shall have the following functions and responsibilities:

a) Coordinate with the DOST in identifying and developing viable and quality feedstock, including production and primary postharvest processing technologies for biofuels;

b) Within three (3) months from the effectivity of the Act, develop a national program for the production of crops for use as feedstock supply. For this purpose, the administrators of the SRA and the PCA, and other related DA agencies, within their authority, shall develop and implement policies in support of the National Biofuels Program and submit the same for consideration and approval by the Secretary of the DA;

c) Ensure increased productivity and sustainable supply of biofuel feedstocks. The DA shall institute a program that would guarantee that a sufficient and reliable supply of feedstocks is allocated for biofuel production;

d) Publish information on available and suitable areas for cultivation and production of biofuel crops, available and accessible technologies, sources of planting materials, and financial assistance;

e) In cooperation with SRA, PCA, other attached agencies, and bureaus, shall undertake the identification and publication of potential areas suitable for the expansion and production of raw materials as feedstocks for biofuels;

f) Undertake biofuel feedstock research and development which may include identifying new feedstock, developing high yielding varieties, and developing new processing technologies in cooperation with public and private research agencies, and international research institutes; and

g) Promulgate such necessary rules and regulations necessary to implement its mandate under the Act.

Section 16. The Sugar Regulatory Administration.

Pursuant to its mandate under Executive Order No. 18 and the Act, the SRA shall:

a) at all times ensure that the supply of sugar is sufficient to meet the domestic demand and that the price of sugar is stable; and

b) together with the DA, PCA, and other DA-attached agencies, develop and implement policies supporting the National Biofuels Program and submit the same to the Secretary of the DA for consideration.

Section 17. The Philippine Coconut Authority.

Pursuant to its mandate to formulate and adopt a general program of development for the coconut and other palm oil industry in its all aspects, under PD 1468, Article II, Section (3) (a), the PCA shall develop, implement

policies within the coconut industry in support of the National Biofuels Program.

To this end, the PCA shall:

a) Review and assess the policies, projects and activities of all other government agencies related to the National Biofuels Program and integrate/adopt them into the National Coconut Industry Development Program;

b) Develop, formulate, and implement a massive nationwide rehabilitation, planting, and replanting program using high-yielding coconut varieties including the strengthening of its organization, manpower and capabilities to fully support the National Biofuels Program;

c) Formulate and implement the necessary regulatory measures to ensure the availability, sufficiency, quality, and sustainability of the supply of coconut raw materials for the National Biofuels Program;

d) Require the accreditation/registration of reputable and credible oil mills who shall supply the coconut oil (CNO) requirements of coco biodiesel producers;

e) Formulate industry policies and regulations which shall include the retention of CNO volume to support the required minimum of one percent (1%), and later on two percent (2%), coconut methyl ester (CME) of the biodiesel blends which may be increased later upon the recommendation of the NBB;

f) Explore and expand the domestic and foreign markets of coconut biofuel products and by-products; and

g) Seek funds for its sustainable operation and continuous support for the National Biodiesel component program.

Section 18. The Department of Labor and Employment.

The DOLE shall:

a) Promote gainful livelihood opportunities and facilitate productive employment through effective employment services and regulation;

b) Ensure the access of workers to productive resources and social protection coverage;

c) Recommend policies, plans, and programs that will enhance the social impact of the National Biofuels Program; and

d) Promulgate such necessary rules and regulations necessary to implement its mandate under the Act.

Section 19. The Department of Trade and Industry.

19.1 Pursuant to the State's policy of protecting public health through, among others, the reduction of toxic and greenhouse gas emissions, the DTI shall formulate and implement, in coordination with the DOTC and the DENR, a national motor vehicle inspection and maintenance program as a measure to substantially reduce emissions from motor vehicles pursuant to Art. 4, Section 21 (d) of R.A. 8749, otherwise known as the *Philippine Clean Air Act of 1999*.

19.2 Pursuant to its program under existing laws, the DTI shall promote the development of an alternative fuel technology for vehicles, engines and parts in consonance with the requirements of the mandated minimum biofuel-blends.

Section 20. The Tariff Commission.

The Tariff Commission, in coordination with the appropriate government agencies, shall create and classify a tariff line for biofuels and biofuel-blends in consideration of WTO and AFTA agreements.

Section 21. The Local Government Units.

The Local Government Units shall assist the DOE in monitoring the distribution, sale and use of biofuels and biofuel-blends by:

a) Ensuring strict implementation of local permitting requirements applicable to businesses engaged in the distribution and sale of biofuel and biofuel blends;

b) Ordering the closure of any business engaged in the distribution and sale of biofuel and biofuel blends found to be operating without the necessary permits and licenses;

c) Reporting to the DOE violations of the Act being committed by any person involved in the distribution, sale, and use of biofuels and biofuel blends;

d) Revoking local permits previously issued to business entities found to have violated pertinent rules and regulations of the DOE and other concerned government agencies, upon the recommendation of the DOE or other concerned agency, as the case may be.

Rule 5
Role of the Players in the Biofuels Industry

Section 22. Oil Companies.

22.1 **Blending of Biofuels.** Blending of biodiesel shall and bioethanol with diesel and gasoline fuels, respectively, shall be undertaken by the oil companies using appropriate blending methodologies at their respective refineries, depots or blending facilities prior to the sale of biofuel-blends to consumers/end-users: *Provided,* That blending methodologies shall be in accordance with duly accepted international standards as well as the guidelines issued by the DOE for this purpose: *Provided, further,* That oil companies shall ensure compliance of the biofuel blends with the PNS.

22.2 **Supply and Distribution.** To ensure compliance of the minimum mandated biofuel blends with the PNS, oil companies shall observe the following guidelines, in addition to what may be prescribed by the DOE under subsequent issuances:

a) Supply of biofuels shall be sourced only from biofuel producers accredited by the DOE. The procurement of biofuels may be covered by biofuels supply contracts or agreements;

b) Ensure proper logistics and application of appropriate technologies in blending, handling, transporting, and distributing biofuel blends; and

c) Observe proper diligence in the supervision of company-operated, dealer-owned, or dealer-operated retail service stations carrying their brand in order to ensure that the quality and integrity of PNS-compliant biofuels shall be maintained.

22.3 **Supply Shortage.** In the event of supply shortage of locally-produced bioethanol during the first four-year period from the effectivity of the Act, oil companies may apply for the issuance of a certification to import bioethanol from the DOE in accordance with existing guidelines.

22.4 **Reportorial Requirements.** For proper monitoring of the compliance by oil companies with this IRR, each oil company shall submit to the DOE the following reports:

a) Performance Compliance Report. Every oil company shall submit on an annual basis a Performance Compliance Report containing its compliance plan with the mandated biofuel blends as well as other information that may be required by the DOE. Such report shall be duly certified and signed under oath by an authorized responsible officer of the oil company who shall attest to the

veracity and accuracy of its contents.

b) Periodic Reports. The oil companies shall likewise submit periodic reports as may be required by the DOE.

Section 23. Biofuel Producers.

23.1Accreditation of Biofuels Producers.

a) Any individual or entity intending to engage in the production of biofuels shall apply for accreditation as a biofuel producer with the DOE. The DOE, in consultation with the stakeholders, shall issue the appropriate guidelines for this purpose, which shall indicate the requirements for quality assurance, quality management system, and analogous quality production standards.

b) Pending the issuance of these guidelines, only those biofuel producers who have existing accreditation or have been issued a permanent Certificate of Fuel Additive Registration (CFAR) and who have pending applications for accreditation pursuant to Memorandum Circular No. 55 shall be allowed to produce and sell biofuels.

23.2All biofuels producers, in addition to what may be required by the DOE under subsequent guidelines shall:

a) Register their distributors with the DOE;

b) Ensure proper logistics and application or appropriate technologies in handling biofuels;

c) Submit to the DOE the following data and information:

i. Monthly production, sales and inventory of biofuels;

ii. Monthly report on projected production, sales and inventory of biofuels;

iii. Report on the application of technologies in the production, handling, storage and distribution of biofuels; and

iv. Such other data and information as may be required by the DOE and/or the NBB.

d) Maintain a minimum inventory of biofuels equivalent to its average monthly sales to meet the minimum mandate;

e) Conduct and/or support local research and development to improve biofuels feedstock productivity; and

f) Report to DOE the weekly price of biofuels.

Section 24. Importer End-Users. End-users who are direct importers of diesel or gasoline shall also be subject to the required use of the mandated biofuel blend. To determine their compliance, such entities shall submit the following reports, in addition to what may be required by the DOE under subsequent guidelines:

a) Monthly report to the DOE of its importation and consumption of gasoline/diesel; and

b) Monthly report on the purchase and consumption of biofuels and biofuel blends.

Rule 6
Standards for Biofuel and Biofuel Blends

Section 25. Quality Standards. All biofuels and biofuel blends that qualify under the Act shall be limited to those compliant with the PNS.

Facilities for the production, handling, distribution and storage of biofuels and biofuel blends shall likewise conform to standards and guidelines set by the DOE.

Section 26. Quality Assurance. All biofuels producers shall assure compliance with quality standards in accordance with the following guidelines, in addition to what may be required by the DOE under subsequent issuances:

a) All biofuel deliveries must be accompanied by a Certificate of Quality to be issued by the distributor/supplier indicating the properties of the delivered biofuels, which must be in compliance with the PNS;

b) Biofuels packaged in individual containers shall be appropriately labeled and shall contain information such as DOE CFAR number, batch manufacturing date, and expiry date in accordance with the guidelines that will be issued by the DOE; and

c) Biofuel producers shall establish management systems covering quality assurance, environmental management and occupational health and safety standards in accordance with the accreditation guidelines to be issued by the DOE.

Rule 7
Security of Domestic Sugar and Feedstock Supply

Section 27. Security of Domestic Sugar Supply.

27.1 The SRA shall develop and implement policies within the sugarcane industry in support of the National Biofuels Program. It shall form a consultative body within the sugarcane industry to undertake the initiatives stated herein.

27.2 Towards this end, the SRA shall formulate the necessary guidelines in ensuring the supply of sugar is sufficient to meet the domestic demand and that the price of sugar is stable.

a) The SRA shall ensure full utilization of sugarcane and adequate supply of sugar in the domestic market and for other requirements. To this end, it shall conduct a periodic assessment of the domestic sugar supply and demand situation, and report the same to the NBB on a regular basis: *Provided,* That in case of shortage of locally produced bioethanol, the SRA in consultation with stakeholders, shall initiate appropriate action to increase local production and propose measures to the NBB to address the supply shortage.

b) The SRA shall develop appropriate schemes to facilitate orderly allocation of sugarcane for both sugar and ethanol. For this purpose, it shall report to the NBB the supply and demand situation of sugarcane and shall require regular submission of prescribed reports from bioethanol producers.

The SRA, pursuant to its existing mandate, shall formulate the issuances consistent with its existing sugar classification functions, to effect an appropriate system of classification and allocation in terms of sugar and sugar equivalent.

Section 28. Security of Domestic Biofuels Feedstock Supply.

Pursuant to Section 11, paragraph (d) (2) of the Act, the DA shall ensure increased productivity and sustainable supply of biofuels feedstocks. Towards this end, the DA in consultation with PCA, SRA, and other entities concerned, shall develop and implement appropriate programs and guidelines in order to ensure a reliable supply of biofuel feedstocks.

Rule 8
Development of Social Amelioration and Welfare Program for Workers in the Production of Biofuels

Section 29. Objectives of the Program. A Social Amelioration and Welfare Program ("Program") similar to that of the *Sugar Administration Act of 1991* or R.A. 6982, shall be developed for the following objectives:

a) Promote gainful livelihood opportunities;

b) Facilitate productive employment through effective employment services and regulation; and

c) Ensure the access of workers to productive resources and social protection coverage.

Section 30. Coverage. The program shall cover all rank and file employees of biofuel plants, workers and farmers engaged in the production of crops used as feedstocks in biofuels.

Section 31. Components of the Program. The program shall provide basic benefits and assistance that will augment the income and improve the standard of living of workers engaged in the production of biofuels. It may consist of, among others:

a) training and education assistance;
b) livelihood assistance;
c) social protection and welfare benefits; and
d) distribution of financial benefits.

Section 32. Establishment of Guidelines and Mechanisms.

Pursuant to Section 17 of the Act, the NBB shall formulate and issue, through the appropriate NBB member agency/ies, the guidelines covering or governing the mechanisms, management and monitoring of the Program, similar to that prescribed under R.A. 6982 or the *Sugar Amelioration Act of 1991*.

However, the Act and this IRR shall not in any way result in the forfeiture or diminution of existing benefits enjoyed by the sugar workers as prescribed in the *Sugar Amelioration Act*, in case sugarcane shall be used as feedstock.

Rule 9
Prohibited Acts, Penal and Administrative Provisions

Section 33. Prohibited Acts. Any person or entity found in violation of any provision of the Act and this IRR shall be subject to appropriate criminal, civil, and /or administrative sanctions as provided herein and other existing applicable laws, rules and regulations.

Under Section 12 of the Act, the following shall be prohibited:

a) Diversion of biofuels, whether locally produced or imported, to purposes other than those envisioned in the Act;

b) Sale of biofuel-blended gasoline or diesel that fails to comply with the minimum biofuel-blend by volume in violation of the requirement under Section 5 of the Act;

c) Distribution, sale, and use of automotive fuel containing harmful additives such as, but not limited to, MTBE at such concentration exceeding the limits to be determined by the NBB;

d) Non-compliance with the established guidelines of the PNS and DOE adopted for the implementation of the Act; and

e) False labeling of gasoline, diesel, biofuels, and biofuel-blended gasoline and diesel.

Section 34. Penal Provisions.

34.1 In accordance with Section 13 of the Act, any person, who willfully aids or abets in the commission of a crime prohibited in the Act, or who causes the commission of any such act by another shall be liable in the same manner as the principal;

34.2 In the case of association, partnership or corporations, the penalty shall be

imposed on the partner, president, chief operating officer, chief executive officer, directors or officers, responsible for the violation; and

34.3 The commission of an act enumerated in Section 12 of the Act, upon conviction thereof, shall suffer the penalty of one year to five years imprisonment and a fine ranging from One Million (P 1,000,000) to Five Million pesos (P 5,000,000).

Section 35. Administrative Liability.

35.1 Without prejudice to incurring criminal liability, any person who commits any of the prohibited acts under Section 12 (b) to (e) of the Act, this IRR and other issuances relative to the implementation of the Act shall likewise be subject to administrative fines and penalties, in accordance with a schedule of administrative fines and penalties to be issued by the DOE.

For avoidance of doubt, administrative actions initiated pursuant to this Section shall be separate and independent from any criminal actions that may arise for violations of Section 12 of the Act.

35.2 In addition to imposing fines and penalties, the DOE shall be authorized to:

a) Confiscate any amount of such products that shall comply with the requirements of Sections 4 and 5 of the Act and implementing issuances of the DOE;

b) Determine the appropriate process and the manner of disposal of the confiscated products; and

c) Stop and suspend the operation of businesses for refusal to comply with any order or instruction of the DOE Secretary in the exercise of his functions under the Act.

Section 36. Administrative Procedures.

36.1 The DOE may initiate, *motu propio*, or upon the filing of any complaint for the violation of any prohibited act under Section 12 (b) to (e) of the Act, the IRR or related issuances, an administrative proceeding against any such person or entity. In the exercise thereof, the DOE may commence such hearing or inquiry by an order to show cause, setting forth the grounds for such order.

36.2 The administrative proceeding shall be conducted before the DOE to determine the culpability of alleged offenders and to determine the applicable penalties. The administrative proceedings under this IRR shall be governed by the existing rules of practice and procedure before the DOE.

Rule 10
Other Provisions

Section 37. Congressional Oversight Committee.

37.1 Pursuant to Section 16 of the Act, a Congressional Oversight Committee, called the Biofuel Oversight Committee, is hereby constituted with fourteen (14) members, with the Chairpersons of the Committees on Energy of both Houses of Congress as co-chairpersons.

37.2 The Chairpersons of the Committees on Agriculture and on Trade and Industry in each chamber shall be *ex-officio* members of the Biofuels Oversight Committee.

37.3 The Senate President and the Speaker of the House of Representatives shall each designate four members from their respective chambers to sit in the Biofuels Oversight Committee. In designating such four members, the minority in each chamber shall be entitled to pro-rata representation provided that at the very least, they shall have one representative in the Biofuels Oversight Committee.

Section 38. Appropriations. Funds necessary to finance the activities of concerned government agencies as provided in the Act

and in this IRR shall be included in the annual *General Appropriations Act*.

Section 39. Special Clause. The Act and the IRR shall not be interpreted as prejudicial to clean development mechanism (CDM) projects that cause carbon dioxide (CO2) and greenhouse gases (GHG) emission reductions of biofuels use.

Section 40. Village Level and/or Community-Based Facilities. The promotion and utilization of biofuels for household and community equipment for lighting, cooking, farming, post-harvest processing, off-road operations, and other analogous uses shall be included as part of the National Biofuels Program in accordance with the government policy under the Act.

Section 41. Separability Clause. If any provision of this IRR is declared unconstitutional, the same shall not affect the validity and effectivity of the other provisions thereof.

Section 42. Effectivity. This IRR shall take effect fifteen (15) days after its publication in two newspapers of general circulation.

Signed this 17th day of May 2007 at the DOE, Energy Center, Merritt Road, Fort Bonifacio, Taguig City, Metro Manila.

RAPHAEL P.M. LOTILLA
Secretary of Energy

PROCLAMATION NO. 1763

CONFIRMING THE ADMINISTRATIVE AUTHORITY AND JURISDICTION OF THE DEPARTMENT OF ENERGY (DOE) TO EXPLORE, DEVELOP, AND/OR UTILIZE THE GEOTHERMAL RESERVES OVER THE AREAS COVERED BY PROCLAMATION NOS. 739 AND 1111 AND WITH FULL AUTHORITY TO ENTER INTO SERVICE CONTRACTS OR ANY LAWFUL AGREEMENT IN RELATION THERETO

WHEREAS, Proclamation No. 739 established as reservation under the administration of the National Power Corporation (NPC) for the purposes of the exploration, development, exploitation, development and utilization of geothermal energy, natural gas and methane gas, a parcel of land in the Municipalities of Malinao and Tiwi, Province of Albay;

WHEREAS, Proclamation No. 1111 established as reservation under the administration of the NPC for the purpose of the exploration, development, exploitation and utilization of geothermal energy, natural gas and methane gas, a parcel of land in the Provinces of Laguna, Quezon and Batangas;

WHEREAS, these reservations covered by both Proclamations No. 739 and 1111 are collectively and commonly referred to as the "Tiwi-MakBan Geothermal Reservation Areas";

WHEREAS, NPC, through its service contractor, has developed the Tiwi-MakBan Geothermal Power Complex supplying electric power to the Luzon Grid;

WHEREAS, on July 11, 1978, Presidential Decree No. 1442 was issued, which, under Section 1 thereof, accordingly placed under the direct supervision of the Government, through the Department of Energy (DOE), the exploration, exploitation and development of geothermal resources, including those in areas situated in geothermal reservations, subject to existing private right;

WHEREAS, under Executive Order No. 224 dated 16 July 1987, NPC shall exercise complete jurisdiction, control and regulation over certain watershed areas, including among others, the Makiling-Banahaw Geothermal Reservation as covered by Proclamation No. 1111 and the Tiwi Geothermal Reservation as covered by Proclamation No. 739;

WHEREAS, pursuant to Section 47 (g) of Republic Act No. 9136, "the steamfield assets and generating plants of each geothermal complex [of NPC] shall not be sold separately. They shall be sold as one package through public bidding. The geothermal complexes covered by this requirement include, but are not limited to, Tiwi-MakBan, Leyte A and B (Tongonan), Palimpinon and Mt. Apo";

WHEREAS, the Power Sector Assets and Liabilities Management Corporation (PSALM), pursuant to its mandate under Republic Act No. 9136, took ownership of all existing generation assets, real estate and other disposable assets of NPC with the principal purpose of managing the orderly sale, disposition and privatization thereof;

WHEREAS, on 30 July 2008, PSALM concluded the conduct of a public bidding for the Tiwi-MakBan Geothermal Complex and selected the highest qualified bid for the purchase of the said assets;

WHEREAS, as the DOE proceeds to implement a program for the continued exploration, development and utilization of the Tiwi-MakBan Geothermal Areas in accordance with law, there is a need for close coordination among the various agencies and affected parties to ensure the continued operation of the Tiwi-MakBan Geothermal Complex and the supply of electric power to the Luzon Grid;

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Philippines, by virtue of the powers vested in me by law, do hereby confirm the administrative authority and jurisdiction of the Department of Energy over geothermal reservations commonly known as the Tiwi-MakBan Geothermal Reservation Areas established respectively under Proclamation Nos. 739 and 1111, subject to existing rights of parties. Pursuant to this:

(1) The DOE, on behalf of the State, and in coordination with NPC, is directed to further develop the Tiwi-MakBan Geothermal Reservation Areas, subject to existing rights of parties vested upon by law or contract. For this purpose, the DOE may enter into service or renewable energy contracts for the exploration, development and/or utilization of geothermal resources or to enter into any other lawful agreement for the utilization of the same, under existing laws.

(2) The DOE and/or its service contractor, shall likewise coordinate among PSALM, NPC and the affected private parties for the implementation of the privatization of the Tiwi-MakBan Geothermal Complex to ensure that the transition of ownership thereof will not result in any disruption of the operations for the supply of steam and generation of power.

(3) All orders, rules, regulations issuances, or parts thereof, which are inconsistent with this Order are hereby repealed or modified accordingly.

(4) This Proclamation shall take effect immediately following its publication in the *Official Gazette* or in two (2) newspapers of general circulation.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 1st day of May, in the year of Our Lord, Two Thousand and Nine.

EXECUTIVE ORDER NO. 462

ENABLING PRIVATE SECTOR PARTICIPATION IN THE EXPLORATION, DEVELOPMENT, UTILIZATION AND COMMERCIALIZATION OF OCEAN, SOLAR AND WIND ENERGY RESOURCES FOR POWER GENERATION AND OTHER ENERGY USES.

WHEREAS, Section 2 of Article 12 of the Constitution provides that "all land of the public domain, waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, forest or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development and utilization of natural resources shall under the full control and supervision of the State. The State may directly undertake such activities, or may enter into coproduction, joint venture or production sharing agreements with Filipino citizens or corporations or associations at least sixty per centum of whose capital is owned by such citizens";

WHEREAS, Presidential Decree No. 1068 issued on January 12, 1977 directed the "acceleration of research, development and utilization of nonconventional energy resources" and Republic Act 7638 of December 9,1992 mandated the Department of Energy (DOE) to "formulate and implement a program for the accelerated development of nonconventional energy systems and the promotion and commercialization of its application";

WHEREAS, ocean, solar and wind (OSW) energy resources are forces of potential energy which are nonconventional, indigenous renewable, environment-friendly and of such abundance that could provide the Philippines self-sufficiency in energy and possibly surpluses for export in the future despite high energy demand due to rapid economic growth;

WHEREAS, it is in the national interest to accelerate the development and utilization of OSW energy resources by enabling private sector participation.

NOW, THEREFORE, I FIDEL V. RAMOS, President of the Republic of the Philippines, by virtue of the powers vested in me by law do hereby order:

SECTION 1. Exploration, Development and Utilization of OSW Energy Resource – Subject to existing rights, the government, extraction, harnessing, development and utilization of ocean, solar and wind (OSW) energy resources preferably with the participation of the private sector under a production-sharing contract awarded by the Secretary of the DOE, after due consultation with the host community/ies and local government units concerned, through public bidding or negotiation. The production-sharing contractor must be technically and financially capable of undertaking the operations required in the contract.

SEC. 2. Scope of Production-sharing Contracts – Production – sharing contracts as herein authorized shall be limited to lands of the public domain and offshore waters within the Philippine territory, contiguous zone and exclusive economic zone. All lands or offshore waters covered by contracts granted under this order shall be subject to public easement established or recognized by existing laws.

SEC 3. OSW Energy Projects in Private Domain – Energy generation of more than one (1) megawatt from OSW resources in private lands as well as the privately-held offshore shall be regulated by the DOE through the existing accreditation system

for power plants. Generation projects of one (1) megawatt or less shall be regulated by the local government unit/s concerned in accordance with pertinent local energy plan/s, coordinated with the national energy plan and approved by the DOE.

SEC. 4. Exclusive Privilege – A production-sharing contract under this Order shall bestow exclusive privilege to the contractor for the exploration, development and utilization of the OSW energy resources in the contract and during the term of the contract. Such privilege shall be transferable to another qualified person only upon approval of the Secretary of the DOE.

SEC. 5. Resource-use Conflicts – In case other natural resources are present in the contract area, the multiple-use concept shall be applied insofar as practicable subject to RA 7586 otherwise known as National Integrated Protected Area System Law (NIPAS). If a natural resource-use conflict is not resolved by multiple use, the first-come-first-serve principle shall prevail.

SEC. 6. OSW Energy Resources in Government Reservations. OSW energy resources in government reservations, except in areas that have been established and specifically delineated as protected areas under the procedures prescribed by the NIPAS law, shall be availed of only through the production-sharing contract system under this Order.

SEC. 7. Qualification of Contractor. A contractor under this order shall be a qualified natural or juridical person seeking to explore, develop, utilize and harness OSW energy resources in the Philippines for purposes of producing power and/or types of energy. Details of financial, technical and other qualifications of a contractor shall be specified by the Secretary of the DOE in the implementing rules and regulations of this Order.

SEC 8. Production-sharing Contract Components. A production-sharing contract under this Order shall include a "Pre-Commercial Contract" and a "Pre-Negotiated Commercial Contract". The Pre- Commercial Contract shall involve exploration, resource assessment, piloting, feasibility studies, environment impact studies and all other studies prior to commercial production. The Pre- Negotiated Commercial Contract shall provide in terms and conditions for the commercial phase of the project which shall be negotiated at the same time as the Pre-Commercial Contract.

SEC. 9 Declaration of Commerciality. Upon determination of the commercial feasibility of the project within or at the end of the "Pre-Commercial Contract", the contractor shall submit to the Secretary of the DOE a written declaration that the project is commercially feasible. The Secretary, upon review of the facts supporting such declaration and after due public consultation with the host community and local government unit/s concerned, shall issue a "Letter of Confirmation" which shall automatically bring into force the "Pre-Negotiated Commercial Contract".

SEC. 10 Contract Area. For purposes of the delineation of OSW energy contract areas under this Order, the Philippine territory, its contiguous zone and its exclusive economic zone shall be divided into meridional blocks, (one- half (1/2) minute of latitude and one-half (1/2) minute of longitude each with an area of about eighty-one (81) hectares. The minimum size of a contract area for ocean, solar or wind or any combination there shall be one meridional block (about 81 hectares) whether on land or offshore. The maximum area that can be awarded to a qualified person shall be 100 blocks (about 8,100 hectares) for wind or solar or their combination and 1,000 blocks (about 81,000 hectares) for ocean or a combination of ocean and wind and/or solar, all over the Philippines.

SEC. 11. Occupation Fee. For contract areas on land, an occupation fee of fifty pesos (P50.00) per hectare, or a fraction thereof, Shall be paid by the Contractor immediately upon award of the contract and yearly thereafter

at the date of award. Such payment shall be made to the treasury of the Municipality or City where the contract area is located. For contract areas offshore, the occupation of fee of fit pesos (50.00) per hectare per year shall be paid by the contractor to the Treasurer of the Municipality or City, as defined in the local Government Code, the occupation fee of fifty pesos (P50.00) per hectare per year shall be paid by the contractor to the DOE immediately upon issuance of said "Letter of Confirmation". This fee shall be allocated to the local government units in accordance with section 292 of R.A. 7160, otherwise known as the Local Government Code of 1991. The Secretary of the DOE is authorized to increase the fee when public interest so requires.

SEC. 12. Relinquishment. During the pre-commercial phase of the contract, at least fifty percent (50%) of the Contract Area held shall be relinquished at the end of every two years subject to the approval of the Secretary of the DOE. The relinquished area shall be of a regular shape consisting of contiguous meridional blocks. The contractor shall specify the first area that will be retained for the commercial phase of the project in the "declaration of commerciality".

SEC. 13. Duration of Contract. The Pre-Commercial Contract shall have a maximum period of five (5) years of solar and/or wind and seven (7) years for ocean or in combination with solar and /or wind. The Commercial Contract, involving any of the energy resource of their combination, shall have a maximum duration of twenty-five (25) years, renewable one for the same number of years.

SEC. 14. Government Share. Considering the prospectivity of generating profit from the operation of the contract, a government share (GS) shall be determined through bidding or negotiation between the DOE and the contractor. The GS shall include a signature bonus and production bonus. The signature bonus shall be given to DOE at the date of signing of the Pre-Negotiated Commercial Contract upon the issuance of a "Letter of confirmation" of the commercial feasibility of the project by the Secretary of the DOE. The production bonus shall be paid to the DOE at the end of each calendar year during the commercial phrase of the project. To protect the welfare of electricity consumers, the GS shall be limited to clues that shall not result in electricity prices higher than the contracted selling rates to electric utility in the area where the project is located.

SEC. 15. Allocation of Government Share. The Government Share as referred in the preceding section shall be allocated in accordance with section 290 and 292 of Republic Act No. 7160, otherwise known as the local Government Code of 1991.

SEC. 16. Incentives for Production-sharing Contractor. The contractor shall be granted incentives and privileges that are allowed in existing laws; and government will further assist, if necessary, pioneering projects on OSW energy development and commercialization to make them viable.

SEC. 17. Termination and Abandonment. Termination and abandonment procedures, primarily for the purpose of environmental rehabilitation, shall be spelled out in the production-sharing contract. Commencing from the year of commercial production, the contractor shall open a "trust account" jointly in the name of contractor, the DOE and the concerned municipality/ies or city/ies wherein an amount equivalent at least one centavo (P0.01) per kwh of electricity sold shall be deposited in a commercial bank on a quarterly basis to cover the cost of environmental assurance and rehabilitation during termination and abandonment. The amount shall be determined by the Secretary of DOE in consultation unit/based on environmental assurance requirement per project.

SEC. 18. Environmental Impact Assessment. The work program for the pre-commercial phase of a production-sharing contract shall

include environmental impact assessment in accordance with P.D. 1586, otherwise known as the "Philippine Environmental Impact Statement (EIS) System", and its implementing rules and regulations. The environmental Compliance Certificate arising from such environmental impact assessment shall be a supporting document to the "Declaration of Commerciality".

SEC. 19. Implementing Unit. In accordance with Section 8 (d) of RA 7638, the Secretary of DOE shall create a service unit that will provide necessary ancillary services for the implementation of this Order. Funds for operations of this unit shall be defrayed from the appropriate fund of the Office of the President in 1997 and 1998. Thereafter, the acquired funds for the operations of this unit may be included in the budget of the DOE in the general Appropriations Act.

SEC. 20. Implementing Rules and Regulations. The Department of Energy, in coordination with concerned government agencies shall formulate and issue the necessary implementing rules and regulations within sixty (60) days after the effectivity of this Order.

Sec. 21. Effectivity. This Executive Order shall take, effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Done in the City of Manila, this 29th of December in the year of Our Lord, Nineteen Hundred and Ninety-Seven.

By the President:
Ruben D. Torres
Executive Secretary

EXECUTIVE ORDER NO. 232

AMENDING EXECUTIVE ORDER NO. 462, SERIES OF 1997, ENABLING PRIVATE SECTOR PARTICIPATION IN THE EXPLORATION, DEVELOPMENT, UTILIZATION AND COMMERCIALIZATION OF OCEAN, SOLAR AND WIND ENERGY RESOURCES FOR POWER GENERATION AND OTHER ENERGY USES.

WHEREAS, Executive Order No. 462, Series of 1997, enables the private sector to participate in the exploration, development, utilization and commercialization of ocean, solar and wind (OSW) energy resources for power generation and other energy uses;

WHEREAS, it is in the national interest to accelerate the development and utilization of OSW energy resources by encouraging greater private sector investment and participation in the implementation of new and renewable energy (NRE) activities and projects;

WHEREAS, in line with the government's property alleviation thrust especially in remote rural areas, the use of NRE resources will be prioritized in electrifying off-grid barangays;

WHEREAS, considering the important role of the private sector, market-driven approach should be adopted in the development and utilization of NRE resources;

WHEREAS, hybrid systems (i.e. using both NRE and conventional) should be pursued for power generation with special consideration to the technical and economic aspects of the project.

NOW, THEREFORE, I, JOSEPH EJERCITO ESTRADA, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

SECTION 1. Section 1,2,14 and 16 of Executive Order No. 462, Series of 1997, are hereby respectively amended to read as follows: "Section 1. Exploration, Development and Utilization of OSW Energy Resources. Subject to existing rights, the government, through the Department of Energy (DOE), shall engage in the assessment, field verification, harnessing, development and utilization of ocean, solar and wind (OSW) energy resources through the participation of the private sector under production sharing contracts awarded by the Secretary of the DOE, after due consultation with the host communities and local government units concerned, through public bidding or negotiation. The production sharing contractor must meet DOE standards for technical and financial capability."

"Sec. 2. Scope of Production-sharing Contracts. Production-sharing contracts, are herein authorized, shall be applied to projects meeting all of the following criteria: a. Harnesses OSW resources in lands of the public domain and/or offshore waters within the Philippine territory, contiguous zone and exclusive economic zone. All lands or offshore waters covered by contracts granted under this \order shall be subject in public easement established or recognized by existing laws; b. Has a net electric output of more than 1 MW for sale to an electric utility. Projects that do not meet all of the above criteria shall be considered as private OSW Projects and shall be subject to Section 3 thereof.

"Sec. 14. Government Share. Considering the prospectivity of generating profit from the operation of the contract, a government share (GS) shall be determined through bidding or negotiation between the DOE and the contractor. The GS shall include a signature bonus and production bonus. The signature bonus shall be given to DOE at the date of signing of the Pre-Negotiated Commercial Contract upon the issuance of a "Letter of Confirmation" of the commercial feasibility of the project by the Secretary of the DOE. The government shall waive the signature bonus on the first project to reduce the pre-operating cost burden on the OSW production-sharing contractor. The production bonus shall be paid to the DOE at the end of each calendar year during the commercial phase of the project and shall be applied only after the project has fully recovered its preoperating expenditures. Moreover, to protect the welfare of electricity consumers, the GS shall be limited to values that shall not result in electricity prices higher than the contracted selling rates to electric utility in the area where project is located. The production bonus shall not exceed 15% of net proceeds where net proceeds is equal to the sum of gross sales less operating and maintenance costs."

"Sec. 16. Assistance to OSW Developers. In addition to the incentives and privileges under existing laws, the DOE shall assist OSW developers in the following areas:

a. Obtain all applicable fiscal and non-fiscal incentives, including registration as pioneer industry under the Board of Investments.

b. Allow OSW developers to charge the cost of assessment, field verification and feasibility studies of such other sites to its current commercial projects to encourage the development of more OSW resources in other sites.

c. Secure access to lands and/or offshore areas where OSW energy resources shall be harnessed.

d. Undertake a regular study that will provide the basis for the proper valuation of intermittent electrical energy generation from OSW resources and reflect future developments, taking into consideration the vast differences in scale and application of OSW energy resources."

Sec. 2. Implementing Rules and Regulations. The DOE, in coordination with concerned government agencies, shall issue amendments to the existing rules and regulations within sixty (60) days after effectivity of the Order.

Sec. 3. Effectivity. This Executive Order shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Done in the City of Manila, this 23rd day of April in the year of our Lord, Two Thousand.

By the President:

(Sgd)
RONALDO B. ZAMORA
Executive Secretary