

Department Circular 2000-03-003

FURTHER AMENDING THE PROVISIONS OF ENERGY REGULATIONS 1-94, ENTITLED "RULES AND REGULATIONS IMPLEMENTING SECTION 5 (i) OF REPUBLIC ACT NO. 7638, OTHER WISE KNOWN AS THE DEPARTMENT OF ENERGY ACT OF 1992" AND ITS ATTENDANT RULES AND PROCEDURES

WHEREAS, Energy Regulations (E.R.) No. 1-94 promulgated on May 24, 1994 by the Department of Energy (DOE) prescribed the provisions of direct benefits to permit local government units (LGUs) hosting energy resource development projects and/or energy-generating facilities within their territorial jurisdiction, pursuant to Section 5 (i) of Republic Act No. 7638 (Department of Energy Act of 1992);

WHEREAS, E.R. No. 1-94 required energy resource developers and/or power producers to provide, among others, a set of financial benefits equivalent to one centavo per kilowatt-hour from electricity sale proceeds their energy projects or energy-generating facilities;

WHEREAS, under Section 6 of E.R. No. 1-94, the host LGUs and host regions are entitled to the following benefits from the energy resource developers and/or power producer;

- a. 25% of one-centavo (P0.0025) per kilowatt for electrification fund;
- b. 25% of one-centavo (P0.0025) per kilowatt for development and livelihood fund; and
- c. 50% of one-centavo (P0.005) per kilowatt for reforestation, watershed management, health and/or environment enhancement fund;

WHEREAS, Department Circular No. 95-11-0009 and Department Circular No. 96-08-009, issued November 8, 1995 and August 9, 1996, respectively, prescribed the guidelines and procedures for the granting of the financial benefits required under E.R. No. 1-94 and established Trust Accounts for the electrification fund, the development and livelihood fund and the reforestation, watershed management, health and/or environment enhancement fund for the benefit of LGUs which are hosts to energy generating facilities and/or energy resource;

WHEREAS, full implementation of the grant of financial benefits has been hampered by concerns and issues requiring clarification of certain provisions of the aforesaid E.R. and circulars;

WHEREAS, the DOE conducted consultations with the concerned parties to address the aforesaid concerns and issues;

WHEREAS, upon said consultations, it has become imperative to amend certain provisions of the aforesaid E.R. and circulars to rationalize the above-mentioned allocations so as to effectuate more direct and immediate benefits to concerned LGUs hosting energy generating facilities and/or energy resource;

WHEREFORE, premises considered, the DOE hereby adopts and promulgates the following amendments to certain provisions of E.R. No. 1-94 and its attendant rules and guidelines;

SECTION 1. Amendments to Section 3 of E.R. No. 1-94 on Scope of Application, to read as follows:

"These rules and regulations shall apply to energy resource development projects and energy-generating facilities located in all barangays, municipalities, province including those located within the Metropolitan Manila, Metropolitan Cebu (Cebu City, Lapu-lapu City, Mandaue City), Metropolitan Davao and other highly urbanized cities as defined under Section 452 of the Local Government Code."

SECTION 2. Amendment to Section 5 of E.R. No. 1-94 on Beneficiaries.

Section 5.c. is hereby amended to clarify provisions of sections 5.c.(2)(b) and 5.c.(2)(c) and incorporate new Sections 5.c.(3) and 5.c.(4), to read as follows:

"Section 5.c. Host LGU or region shall be understood as follows:

x x x

1. With respect to energy resources:

(b) Geothermal. The host LGU with respect to geothermal resources is where the producing geothermal reservoir is located as delineated by geochemical, geophysical, and exploration surveys. "Producing geothermal reservoir" refers to the subsurface geological environment where the geothermal fluids accumulate and circulate, inclusive of the production and re-injection/recharge zones.

(c) Hydro. The host LGU with respect to energy resources is where the hydro reservoir is located as delineated by detailed topographic, geological, and geotechnical investigation, reservoir and dam height optimization studies; and as delineated by detailed ground surveys. "Hydro reservoir" refers to either a natural lake or an artificial lake created by the impounding of stream flow, runoff and subsurface water behind the dam.

x x x

(3) With respect to integrated energy generating facilities, the host LGU or region is that where the energy-generating facilities and energy resources are located.

1. With respect to energy-generating facilities and/or energy resource located in a special economic zone, the host LGU or region is that where the special economic zone is located."

SECTION 3. *Amendments to Section 6 of E.R. No. 1-94 on Nature of Benefits.*

- a. In line with the thrust of the government to improve access of electricity services to rural and non-viable areas and the high demand for electrification projects, the DOE finds it more beneficial to increase the fund allocation for electrification.

- i. *Section 6.a.(1) of E.R. No. 1-94 is hereby amended to read as follows:*

"Section 6.a.(1) Electrification

- a. The power producer and/or energy resource developer shall set aside fifty percent of one-centavo (P0.005) per kilowatt-hour of the total electricity sales of the energy-generating facilities as an electrification fund to be applied in the following radiating manner: (i) the official resettlement or relocation sites of the community and people affected; (ii) the host barangay; and (iii) the host municipality or city.

After electrification has reached the municipal or city level, fifty percent (50%) of the said electrification fund or P0.0025 per kilowatt-hour of total electricity sale shall be utilized for the electrification of barangays within the host province and region with priority given to arrears identified in the provincial/regional development plan or energization plan. The remaining fifty percent (50%) of the electrification fund or P0.0025 per kilowatt-hour of total electricity sales shall be utilized for energy-intensive development and livelihood projects or reforestation, watershed management, health and/or environment enhancement projects of the host communities following the proportion in Sec. 6.e. of E.R. No. 1-94 as amended by sec.3(a)(ii) and Sec.3(a)(iii) hereof.

- b. In implementing said order of radiating benefit, priority shall be given to the more populous barangay that is nearer in distance to the power plant and thereafter to the more populous barangay that is nearer in distance to the energy source. Any dispute regarding the sequence of electrification of barangays shall be settled through a final determination by the DOE after due consultation with the affected parties. In settling such disputes, the DOE shall give due weight to the relative population density and proximity of the energy-generating facilities to the contending host LGUs, as well as proximity to the nearest tapping point of the franchised distribution utility.
 - c. Electrification of host LGUs or region shall be undertaken by the relevant franchised distribution utility or any of its duly accredited contractor/s, herein referred to as the project implementor. To accelerate, however, energization of host LGUs or region, the power producer or energy resource developer or their respective duly accredited contractor/s may implement such projects subject to the condition set forth under sub-paragraph (e) of this Section: Provided, That in the

case where such project is implemented through a contractor other than the franchised distribution utility, all works shall be done in conformity with the standard construction assemblies, duly accepted by the franchised distribution utility.

- d. In order to achieve and maintain efficient, reliable and adequate supply of electricity, the total electrification fund may be utilized to defray the cost of necessary capital expenditures other than distribution lines such as but not limited to power transformers, substations and other power line equipment devices, and associated operating expenses such as repairs and maintenance, subject to the evaluation of the DOE.
- e. All facilities financed from the electrification fund shall be owned, operated and maintained by the relevant franchised distribution utility which is obligated to provide services to the concerned LGU. The distribution utility may however, contract the operation and maintenance of the line to the private sector provided that the electricity rate charges to the customers shall be approved by the Energy Regulatory Board (ERB). Notwithstanding the foregoing provisions, for purposes of setting the power tariffs and return on rate base, the assets financed by the electrification fund shall not form part of the rate base. Likewise, the maintenance expenses as well as the depreciation of the assets financed by the electrification fund, shall not form part of the operating cost base of the relevant franchised distribution utility."

(ii) Section 6.e. is hereby amended to read as follows:

"Section 6.e. Development and Livelihood.

x x x

1. The development and livelihood fund shall be applied in an equitable preferential manner for the exclusive benefit of the community and people affected, the host LGU or region in the following manner:
 - a. Resettlement Area - 5%
 - b. Host barangay - 20%
 - c. Host Municipality/City - 35%
 - d. Host Province - 30%
 - e. Host Region - 10%

Provided, that in the absence of official resettlement are, funds allocated for the resettlement shall form part of the allocation of the host barangay.

For funds allocated to the host province and host region, preferential benefits shall be given to communities hosting the areas traversed by transmission lines and substations or similar facilities."

(iii) Section 6.f. is hereby amended to read as follows:

"Section 6.f. Reforestation, Watershed Management, Health and or/ Environment Enhancement Fund

One-fourth of one centavo (P0.0025) per kilowatt-hour of the total electricity sales of the energy-generating facilities shall be set aside by the power producer and/or energy resource developer to be used for reforestation, watershed management, health and/or environment enhancement which shall be allocated as follows:

- a. Resettlement Area - 5%
- b. Host Barangay - 20%
- c. Host Municipality/City - 35%
- d. Host Province - 30%
- e. Host Region - 10%

Provided, that in the absence of official any resettlement area, funds allocated for the resettlement shall form part of the allocation of the host barangay. Reforestation and watershed projects shall be prioritized by the following:

- a. Concerned DOE attached agencies for energy reservations; and
 - b. DENR Regional Office for non-energy reservation areas.
- b. The following additional paragraphs are hereby incorporated after Section 6.f of E.R. No. 1-94, to read as follows:

"The foregoing paragraph notwithstanding, financial benefits required from power producer and/or energy resource under Sec. 6.e and Sec. 6.f of E.R. No. 1-94 as amended in Sec. 3(a) (ii) and Sec. 3(a)(iii) hereof, with respect to energy-generating facilities located within the Metropolitan Manila, Metropolitan Cebu (Cebu City, Lapu-lapu City, and Mandaue City), Metropolitan Davao and other highly urbanized cities shall be set aside into one account to finance electrification projects and thereafter, any development, livelihood, reforestation, watershed management, health and/or environment enhancement projects deemed beneficial to any host barangay, host municipality/city and host province.

Electrification of host LGUs shall be based on the following priority areas:

- a. Resettlement area, host barangay and host city of the energy generating facilities and/or energy resource;
- b. Host communities of other facilities and/or energy resource with insufficient accrued electrification fund;
- c. Areas traversed by transmission lines and sub-stations or similar facilities; and
- d. Areas not directly connected to the grid or national transmission system which include isolated or remote communities.

In the case of an integrated energy generating facility where the generating facility is located within a highly urbanized city and the corresponding resource is located outside the said highly urbanized city, the financial benefits shall be utilized in

accordance with Sec. 6.e and Sec. 6.f of E.R No. 1-94 as amended in Sec. 3 (a) (ii) and Sec. 3(a)(iii) hereof.

- c. The last two paragraph of Section 6 on Advanced Financial Assistance is amended to read as follows:

"After commencement of the commercial operation of a power generating facility, the benefits and/or financial assistance advanced by the energy resource developer or the power producer during pre-operation stage or before the start of commercial operation for the purpose of securing favorable endorsement from the community and people affected or the host LGUs, after Republic Act No. 7638 has become effective or pursuant to these rules and regulations, shall be credited by the energy resource developer, power producer or successor-in-interest assignees against the benefits required under these rules and regulations.

The total advanced financial assistance shall be amortized at a rate of twenty percent (20%) of the total accrued yearly financial benefits, irrespective of the type of projects and programs implemented, until such time that the expenses have been fully paid."

SECTION 4. *Consistent with Section 3 hereof, Section 7.d of E.R. No. 1-94, as amended by E.R. No. 1-94 A, is hereby amended to read as follows:*

"Section 7.d. Oil/Petroleum/Natural Gas.

1. Indigenous Petroleum and/or Natural Gas Resources Development Projects

X X X

1. Natural Gas-and LNG-fired Power Plants

- a. Electrification benefits equivalent to twenty-five percent of one-centavo (P0.0025) per kilowatt-hour to be applied in the radiating manner: (i) the official resettlement or relocation sites of the community and people affected; (ii) the host barangay; (iii) the host municipality or city, (iv) host province; and (v) host region;
- b. Skills development under Section 6(c);
- c. Preference in employment under Section 6(c);
- d. Procurement of local supplies and services under Section 6(d);
- e. Development and livelihood fund equivalent to fifty percent of one centavo (P0.005) per kilowatt-hour, which amount shall be applied in an equitable preferential manner in accordance with the proportion prescribed under Section 6(e) of E.R 1-94 as amended in Sec. 3(a)(ii)."

SECTION 5. *Amendment to Department Circular No. 95-11-009*

a. *Amendment to Section 1.e, to read as follows:*

"Section 1.e. Administration of the funds shall be undertaken by any of the following:

1. The National Power Corporation (NPC), for its energy-generating facilities/projects, with respect to DLF and RWMHEEF.
2. The DOE, through its Financial Management Services, for and on behalf of energy-generating facilities and/or energy resource development projects owned and/or operated by the following entities:
 - a. For NPC with respect to EF;
 - b. For NPC-Philippine National Oil Company (PNOC) integrated energy projects with respect to EF, DLF and RWMHEEF;
 - c. For independent power producers (IPPs) under such private power schemes as Built-Operate-Transfer (BOT), Energy Conversion Agreement (ECA), Rehabilitate-Operate-Lease (ROL), etc. and involving sale of the generated electricity to the NPC with respect to EF, DLF and RWMHEEF; and
 - d. For IPPs involving sale of the generated facilities/projects to the franchised electric distribution utilities with respect to EF, DLF and RWMHEEF.
3. In the event that the energy generating facilities/projects of the NPC have been privatized, all funds shall be transferred to DOE for administration. Accordingly, Memorandum of Agreements (MOAs) entered into by NPC and DOE shall be amended to reflect new owner of the facility and assignment of responsibilities to the new owner for the settlement of fund to DOE."

b. *Amendment to Section 4 of Department Circular 95-11-009 on Project Implementation, to read as follows:*

"Section 4. *Project Implementation*

- a. The power producer and/or energy resource developer shall assist the host LGUs in the preparation of annual work program/project proposals consistent with Annex "A", to be implemented in any given year. The amount of financial benefit accruing to the pertinent funds in the immediate preceding year shall be used as basis in the preparation of annual work program/project proposals. The said annual work program/project proposal shall be submitted by the power producer and/or energy resource developer not later than 15 March of every year.
- b. All work programs/project proposals for DLF and RWMHEEF shall be implemented within one year upon receipt of funds. Said work programs/projects proposals shall be implemented, supervised and administered by the concerned LGU.
- c. The power producer and/or energy resource developer shall review work programs/project proposals on development and livelihood, and reforestation, watershed management, health and/or environment enhancement duly endorsed by the host LGUs/region through a resolution passed by its sanggunian/Regional Development Council. In

the case of the official resettlement area, work program/project proposals may be endorsed by the resettlement organization, association or cooperative duly certified by the power producer and/or energy resource developer and registered under the concerned government agencies. The power producer and/or energy resource developer shall make the appropriate endorsement of annual work program/project proposals to DOE for further review and approval. The review and approval of said work program/project proposals shall be completed by DOE within twenty (20) days upon receipt of complete documentation. Thereafter, project implementation shall proceed as prescribed under Sub-section f(1) hereof.

- d. For reforestation and watershed management projects, work program/project proposals should be coordinated and endorsed by the DENR Regional Office or the watershed management administrator in the area.
- e. For electrification program, the power producer and/or energy resource developer shall coordinate with the concerned relevant franchised distribution utility in the development of said program for the communities/barangays energization/prioritization in any given year. The annual electrification programs shall be directly transmitted to the DOE through EIAB for review and evaluation. The NEA shall assist the DOE in the review and evaluation of said electrification programs. Thereafter, project implementation shall proceed as prescribed under Sub-section f(2) hereof.
- f. Upon submission of complete documentation of the work program/project proposals, project implementation shall proceed in any of the following manner:
 1. For development and livelihood, and reforestation, watershed management, health and/or environment enhancement projects a Memorandum of Agreement (MOA) shall be forged among the DOE, power producer and/or energy resource developer, and the concerned LGU to effect project implementation and funds commitment. The DOE/NPC for their respective administered fund shall then make the necessary fund allocation and shall forthwith release the project funds directly to the concerned host LGU or relevant project implementor within fifteen (15) days upon submission of complete supporting documents pursuant to the provisions in the MOA.
 2. For electrification projects, a Memorandum of Agreement (MOA), shall be forged among the DOE, relevant franchised distribution utility/project implementor, power producer and/or energy resource developer, and the concerned host LGU to effect funds commitment and project implementation. The DOE shall then make the necessary fund allocation and shall forthwith release the funds allocation and shall forthwith release the funds to the franchised distribution utility/project implementor within fifteen (15) days upon submission of complete supporting documents pursuant to the provisions in the MOA.

- a. Implementation of electrification projects utilizing funds accrued since the establishment of the trust accounts shall follow Sub-section (e) and Sub-section (f)(2) hereof.
 - b. All fund disbursement shall follow government accounting and auditing rules and regulations.
 - c. In the event of unjustified disbursement of fund and non-completion or delay in the implementation of the work program by the LCU concerned, the DOE shall defer releases of fund for the succeeding year/s or take appropriate and reasonable measures to impose necessary sanctions in accordance with any existing and future government rules and regulations until such time that the LGU would be able to justify said disbursement to the satisfaction of the DOE."
- c. *Consistent with Section 5.b hereof, the Annexes of A, B and C of Department Circular No. 95-11-009 are hereby repealed."*

SECTION 6. *Amendment to Section 1(f) of Department Circular No. 95-11-009, as amended by the Department Circular No. 98-11-010, to read as follows:*

"f. All interest earnings from the funds shall be set aside into one trust account to be utilized in the order of the following priority:

- a. Electrification of the direct host barangay and host municipality/city with insufficient accrued electrification fund;
- b. Electrification of areas traversed by transmission lines and substations or similar facilities;
- c. Electrification of areas not directly connected to the grid or national transmission system which include isolated or remote communities; and;
- d. Any project that will protect the host LGUs and sustain the operation of the energy resource/energy generating facilities.

SECTION 7. *Amendments to Department Circular No. 96-08-009*

- a. *Amendments to Section III on Utilization of the Electrification Fund, to read as follows:*

In cases where the grid-type is deemed unviable for particular host LGU or host region as determined by the DOE, the funds intended for the purpose may be ordered redirected by the DOE for appropriate energy projects that can provide immediate electrification to such host LGU or region, through the use of new and renewable energy (NRE) technologies with electricity-generating potentials like solar energy, mini0hydro, biomass and such other similar projects.

New and renewable energy project proposals for host LGU or region shall be referred by the Energy Industry Administration Bureau (EIAB) to Energy

Utilization Management Bureau (EUMB) of the DOE for evaluation. The NRE technology recommended by EUMB to be adapted may be contracted out by the DOE."

For the purpose of this subsection, a rural energy service provider having expertise and good track record in the field of indigenous or renewable energy development, may be tapped to implement the electrification of the host LGUs.

b. Amendments to Section IV on Sharing of Benefits, to read as follows:

"IV. Sharing of Benefits

- i. In the event that the generating facilities and/or the energy resource overlaps more than one host LGU, the development and livelihood fund and the reforestation, watershed management, health and/or environment fund shall be equally allocated among host LGUs: Provided, however that, in cases where the political boundaries of the energy generating facilities and/or energy resource are clearly delineated by land surveys duly approved by the DENR-Land Management Bureau, sharing shall be allocated based on the percentage of the land area occupied by the said generating facilities and/or energy resource.
- ii. For integrated energy resource and energy generating facilities where the facilities are located in a highly urbanized city and the corresponding energy resource is located outside said city, sharing shall be as follows:
 - a. 50% for the host communities of energy generating facilities; and
 - b. 50% for the host communities of energy resource."

SECTION 8. *Community Relations Officer (COMREL)*

The power producer and/or energy resource developer is hereby required to designate one Community Relations Officer (COMREL) for each power plant, tasked to:

- a. Coordinate with the LGU on the preparation of its annual work program/project proposals;
- b. Assist in the preparation of all work program/project proposals prior to release of funds;
- c. Monitor the implementation of all DOE approved work programs/project proposals; and
- d. Act as liaison officer to all concerned government agencies relative to the implementation of E.R. No. 1-94, as amended.

SECTION 9. *Qualified development and livelihood (D & L) and reforestation, watershed management, health and/or environment enhancement (RWMHEE) projects.*

All work program/project proposals should be able to demonstrate the potential for enhancing progress, the provision of a decent source of livelihood, or the upliftment of the community's general condition of living. In this regard, the DOE deemed it appropriate to qualify projects on D&L and RWMHEE as listed under Annex A hereof.

SECTION 10. *Other Provisions.*

- a. All Department Circulars, Orders, Memoranda or other issuances or portions thereof which are inconsistent with this Circular are hereby superseded, modified or amended accordingly.
- b. All exemptions previously granted by the DOE to power producer and/or energy resource developer in respect to the required financial benefits, unless otherwise provided for in this Circular, shall continue to be enforced.
- c. All provisions of this Circular shall be applied to the financial benefits accrued from the period 26 December 1998 and the succeeding quarters thereafter. Provisions for interest earnings shall be applied since the establishments of trust accounts and the succeeding quarters thereafter.
- d. This Department Circular shall take effect fifteen (15) days after its complete publication in a newspaper of general circulation.

Fort Bonifacio, Taguig, Metro Manila, 17 March 2000.

(SGD)
MARIO V. TIAOQUI
Secretary

Witnessed by:

(SGD)
NAZARIO C. VASQUEZ
President, PNOC-EDC

EDGARDO BAUTISTA
President, SEP

"Annex A"

DEVELOPMENT PROJECTS

- ?? Streetlighting
- ?? Farm to Market Road

- ?? Multi-Purpose Pavement
- ?? Farm produce collection and buying section
- ?? Rice/Corn Milling
- ?? Communal Irrigation System
- ?? Small water impounding projects
- ?? Fishports
- ?? Seawalls
- ?? Day Care Center
- ?? School Building
- ?? Public market
- ?? Slaughterhouse
- ?? Public drainage/sewerage system
- ?? Bridge
- ?? Flood control measures

LIVELIHOOD PROJECTS

- ?? Food production/processing
- ?? Ice plant
- ?? Livestock and poultry production
- ?? Handicraft production
- ?? Aquaculture
- ?? Skills training for LGU administered livelihood project
- ?? Vegetable seed farm
- ?? Small scale services livelihood projects
- ?? Corn/Rice Milling
- ?? Carpentry/Furniture Shop
- ?? Radio, Refrigerator and TV servicing
- ?? Garment Weaving
- ?? Engine mechanic services
- ?? Electrical wiring and design
- ?? Dressmaking
- ?? Gold and silver trading and jewelry making
- ?? Blacksmith shop
- ?? Welding shop

HEALTH RELATED PROJECTS

- ?? Water supply system
- ?? Municipal Hospital
- ?? Medical equipment/facilities
- ?? Medicinal plant gardens

REFORESTATION & WATERSHED MANAGEMENT PROJECTS

- ?? Improvement of forest cover
- ?? Vengineering measures
- ?? Community-based forestry management
- ?? Agro-forestry
- ?? Conservation of mangrooves
- ?? Seedling nursery

Funding for the above-listed projects shall include costing of materials, equipment and labor, exclusive of payment for salaries, wages, honoraria, allowances, administrative expenses, transportation, and travel expenses, and other similar expenses that may be incurred in the processing and release of funds, and implementation of said projects.