

Department Circular No. 2002-07-004

RULES OF PRACTICE AND PROCEDURE BEFORE THE DEPARTMENT OF ENERGY

Pursuant to the provisions of Section 5 (k) of R.A. 7638, otherwise known as the Department of Energy Act of 1992, in compliance with Executive Order No. 26 dated 7 October 1992, and in line with Department Special Order No. 2000-07-016, dated 13 July 2000, the following Rules of Practice and Procedure are hereby adopted and promulgated:

PART I – GENERAL PROVISIONS

RULE 1

Title, Definition, Scope and Construction

Section 1. Title of Rules – These Rules shall be known as the Rules of Practice and Procedure of the Department of Energy.

Section 2. Definitions – For purposes of these Rules, the terms:

- (a) “Department” shall refer to the Department of Energy.
- (b) “Deregulation Act” shall refer to the “Downstream Oil Industry Deregulation Act of 1998”.
- (c) “Director” shall mean the Director of the Office of the Legal Counsel.
- (d) “EIRA” shall refer to Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001.”
- (e) “Energy Act” shall refer to Republic Act No. 7638, the Department of Energy Act of 1992.
- (f) “OLC” shall mean the Office of the Legal Counsel of the Department of Energy.
- (g) “Public Service Act” shall refer to C.A. No. 146, as amended.
- (h) “Rules” shall refer to these Rules.
- (i) “Secretary” shall refer to the Secretary of Energy.

Section 3. Scope – These rules shall govern all pleadings, practice and procedure before the Department in all matters concerning inquiry, investigation,

hearing, study and/or any other proceedings conducted by the Department in the performance of its functions. However, in the public interest and consistent with due process, the Department may, in any particular matter, except itself from these rules and apply such fair and reasonable procedures to assist the parties to obtain speedy disposition of cases.

These rules shall likewise cover applications for the issuance of permits or other forms of authorization to entities involved in the supply and distribution of energy resources.

Section 4. Construction – These rules shall be liberally construed in order to protect and promote public interest and attain the objectives of the Public Service Act, the Energy Act, the Deregulation Act, the EIRA and any other law, statute, executive order or decree that is being, or may hereafter be, implemented by the Department in the most speedy and inexpensive disposition of cases. In the broader interest of justice and to avoid unnecessary delay, the Department may resort to summary proceedings in cases hereinafter provided.

Section 5. Suppletory Application of the Rules of Court of the Philippines. – In the absence of any applicable provision in, and provided they are not inconsistent with these Rules, the pertinent provisions of the Revised Rules of Court of the Philippines may, in the interest of expeditious disposition of cases and whenever practicable and convenient, be applied by analogy or in a suppletory manner.

RULE 2 PARTIES

Section 1. Who may be a Party – Any person or group of persons whether natural or juridical, who may be affected by the decision to be rendered by the Department in a particular case may be a party and may appeal, and participate in the manner hereinafter provided.

Section 2. Applicant – An applicant is any person who applies with the Department for a permit for the operation of services involved in energy resource supply activities or who seeks any other form of authorization, to undertake any matter or business that is within the jurisdiction of the Department.

Section 3. Complainant – A complainant is any aggrieved person who files a complaint against another party for legal redress on matters within the jurisdiction of the Department.

Section 4. Petitioner - A petitioner is any person who files an application with the Department **ex parte**, or where there are no parties in opposition, praying for the exercise of the powers of the Department, for authority to do some act which requires the sanction of the Department.

Section 5. Respondent – A respondent is any person or party, who may or may not be a holder of a permit or other form of authorization to whom an order is issued by the Department to appear or give his explanation in writing, or who is otherwise summoned to answer any allegation, imputation or issue in any case,

hearing or proceeding cognizable by the Department, or any person who may also be adversely or is otherwise affected by a complaint or petition.

Section 6. Oppositor – An oppositor is any person who interposes any objection against the approval of an application or petition.

RULE 3 PLEADINGS

Section 1. Pleading – The pleadings allowed by these Rules are the application, the complaint, the petition, the opposition, the answer, and such further pleadings as the Department may allow.

Section 2. Form of Pleading, Copies – All pleadings filed with the Department must be in triplicate and typewritten or printed on legal size bond paper and shall be in English. Every pleading shall contain the names and addresses of all the parties, the Department file number and designation of the pleading.

Section 3. Application – By means of an application or petition for permit or other forms of authorization, the applicant seeks for authorization or permission to undertake any matter within the power of the Department under the Public Service Act, the Energy Act, the Deregulation Act, the EIRA or any other law, statute, executive order or decree that is being, or may hereafter be, implemented by the Department, stating the ultimate facts on which the relief sought is based.

The Department will refer to the proper bureau or office the evaluation of the technical and financial qualifications of an applicant for a permit or other forms of authorization.

Section 4. Complaint – A complaint is a concise statement of the ultimate facts constituting the acts or matters complained of, and shall specify the relief sought. The names and addresses of the complainants and the respondents must be stated in the complaint, and whenever practicable, the date and place of the commission of the alleged act or omission complained of.

Section 5. Petition - A petition is an application made to the Department **ex parte** or where there are no parties in opposition, praying for the exercise of the powers of the Department for authority to do some act which requires the sanction of the Department.

Section 6. Opposition – An opposition is a pleading filed by an oppositor against the grant of an application or petition in which the oppositor states his right or interest affected by the application or petition and the ultimate facts constituting all his grounds for opposition.

Section 7. Answer – An answer is a pleading in which the respondent sets forth the defense upon which he relies. The respondent to whom an order is issued by the Department to show cause or against whom a complaint or petition is filed, shall file an answer within ten (10) calendar days from receipt of the

order, complaint or petition.

Section 8. Verification – All pleadings filed with the Department must be verified and accompanied by such documents as would reasonably tend to establish **prima facie** the truth of the factual allegations thereof.

Section 9. Service – Service may be by personal delivery or by registered mail, properly addressed to each party, together with all annexes attached thereto. All pleadings and motions submitted to the Department for filing must show proof of service thereof upon all parties to the case.

Section 10. Service upon Parties Represented by Counsel – When any party is represented by a counsel, service shall be made to his counsel of record.

Section 11. Contents of Pleadings – All pleadings filed with the Department must state clearly and categorically the ultimate facts upon which the pleader relies. Pleadings shall contain a prayer for the principal relief sought and may also add a general prayer for such further or other reliefs as may be deemed just and equitable.

Section 12. Amendments – Any modification or supplement to an application, complaint, petition or other pleadings shall be deemed as an amendment and must comply with the formal requirements of pleadings as mentioned in these rules.

Section 13. Amendment when Allowed – Amendments may be made as a matter of right at any time before any responsive pleading is filed and, thereafter, only with leave of the Department.

Section 14. Defect of Form – No defect in the form of any pleading allowed to be filed under these Rules will prejudice the pleader; however, the Department may direct amendments or require the submission of additional affidavits or supporting documents.

Section 15 Filing Fees - The Treasury Division of the Administrative Services Unit of the Department shall receive, collect or take the following fees:

- a. For filing a complaint – P10,000.00;
- b. For filing an appeal – P10,000.00;
- c. For certified copies of any paper, record, judgment – P10.00 per page;
- d. For filing an application for the grant of permit or other form of authorization to construct, install, own, operate and maintain pipeline system to transport energy resources – P10.00 per meter of pipeline.

RULE 4

MOTIONS IN GENERAL

Section 1. Scope & Contents – Every application for any procedural or interlocutory ruling or relief may be made through a motion. Motions shall state the relief sought and the grounds therefor and, if necessary, shall be accompanied by supporting affidavits and documents. Motions shall be in writing and copies thereof shall be served upon all parties at least three (3) days before the hearing thereof. All written motions shall specify the date and time for the hearing thereof.

Section 2. Provisional Permit or Authorization - Motions praying for the issuance of a provisional permit or other form of authorization to operate must be in writing and accompanied by affidavit(s) of merit and other supporting documents showing the necessity of the relief prayed for, together with proof of service to the other party. Such motions shall be governed by Rule 15 hereof.

PART II – PROCEDURE IN APPLICATIONS

RULE 5 APPLICATION

Section 1. How Commenced – Any proceeding the object of which is to obtain a permit or any form of authorization under the Public Service Act, the Energy Act, the Deregulation Act, the EIRA and/or any other law, statute, executive order or decree that is being, or may hereinafter be, implemented by the Department shall be commenced by the filing of the corresponding application.

Section 2. Contents – The application shall contain a concise statement of the service proposed or permit or authorization applied for, and the ultimate facts that would qualify or entitle the applicant to the grant of the permit or authorization. When the application is predicated on a permit or other form of authorization, sale, lease, mortgage or any other contract, such permit or authorization or contract shall be impleaded in the application by alleging in substance its salient provisions and appending to the application a copy of the permit or authorization, contract or pertinent document.

RULE 6 NOTICE OF APPLICATION

Section 1. Issuance of the Notice – After the filing of the application, it shall be docketed, and the hearing officer/s duly designated by the Department shall issue a notice that such application has been filed with the Department and furnish the list of affected parties, if any, to the applicant.

Section 2. Publication and Service – The applicant shall cause the aforesaid notice, at his own expense, to be published once in one (1) newspaper of general circulation in the Philippines at least ten (10) calendar days before the date of the proceeding; provided, that if an application covers only one (1) region, publication in the local newspaper circulated within that region is sufficient. The applicant shall also serve copies of the notice, with copies of the application, to the affected parties, as furnished by the Department.

RULE 7 OPPOSITION

Section 1. Contents – Within ten (10) calendar days from receipt by the affected party of the notice referred to in Section 1 Rule 6 hereof, a written opposition, not a motion to dismiss, may be filed against an application with copy served upon the applicant, in which the oppositor shall state concisely his right of interest affected by the application and the ultimate facts constituting all his grounds for opposition.

PART III – PROCEDURE IN COMPLAINTS AND PETITIONS

RULE 8 COMPLAINTS & PETITIONS

Section 1. How Commenced – Any action, the object of which is to subject a holder of a permit or authorization or any person operating without authority from the Department to any penalty that may be imposed, or other measure that may be taken in the public interest by the Department for violation by such holder or any person of the provisions of the Public Service Act, the Energy Act, the Deregulation Act, the EIRA or any other law, statute, executive order or decree that is being, or may hereinafter be, implemented by the Department, or the terms and conditions of his certificate or any order, decision or regulations of the Department shall be commenced by the filing of a complaint or petition.

Section 2. Sufficiency of Complaint or Petition – A complaint or a petition is sufficient if it contains the name of the complainant or offended party, the name of the respondent, a reference, whenever practicable, to the provisions of the law, statute, executive order or decree being implemented by the Department or the permit or authorization, order, decision or regulation violated; the acts or omissions complained of as constituting the offense, and the date and place of the commission of the offense.

Section 3. Separate Allegations – Whenever two or more offenses are charged in one (1) complaint or petition, each offense must be separately alleged.

RULE 9 MOTU PROPRIO ACTIONS

Section 1. Institution of Action by the Department – The Department may **motu proprio** initiate an action or inquiry against any person or entity when so required by law, public or national interest, and/or in its exercise of any of the powers vested upon it. In the exercise thereof, the Department may commence such hearing or inquiry by an order to show cause, setting forth the grounds for such order.

Section 2. Other Instances – When the basis of a **motu proprio** action is a violation of Department orders, rules or regulations, the order shall allege with definiteness and clarity, the violation and also the range or extent of the sanction that may be imposed should the violation be substantiated.

**RULE 10
ANSWER**

Section 1. Answer – Within a period of ten (10) calendar days from receipt of a **motu proprio** order or a copy of the petition or complaint, the respondent shall file an answer whether admitting or denying the material allegations or facts set forth in said **motu proprio** order, petition or complaint, or setting forth the reason why respondent cannot admit or deny said allegations. The pleader must state the facts and law upon which he relies for his defense with definiteness and clarity.

**RULE 11
MOTION TO DISMISS**

Section 1. Grounds – No motion to dismiss shall be entertained unless such motion is incorporated in the answer of the respondent under any of the following grounds:

- (A) The facts alleged in the complaint or **motu proprio** order do not constitute a violation of the

Department's rules and regulations or do not entitle the complainant or petitioner to the relief sought.
- (B) The Department has no jurisdiction over the nature of the case or controversy.
- (C) The applicant has not complied with the jurisdictional requirements of an application.

PART IV – PROCEEDINGS BEFORE THE DEPARTMENT

**RULE 12
PRE-HEARING CONFERENCE**

Section 1. Pre-Hearing Conference – After the answer or the opposition has been filed, the hearing officer/s duly designated by the Department shall issue notice to all the parties to appear for a pre-hearing conference to consider:

- (A) The possibility of an amicable settlement in cases that may be compromised;
- (B) Simplification of the issues through stipulation of facts and/or admission, including admissions of

documents and their authenticity; and
- (C) Such other matters as may aid in the just,

speedy, and inexpensive disposition of the case.

Section 2. Failure to Appear – All parties and their counsels, if any, shall attend the pre-hearing conference with full authority to enter into an agreement on any and all matters necessary to expedite the proceedings. The Department may, in case of failure to appear on the part of a party and his counsel, issue an order of default against the absent party, and, thereafter, the hearing officer/s may receive evidence **ex parte**.

Section 3. Amicable Settlement – When an amicable settlement is reached as provided under Section 1 (A), Rule 12 hereof, it shall be reduced to writing duly signed by the parties. Such compromise agreement shall then be the basis of an order or decision of the Department.

Section 4. Nature of Proceedings – The proceedings before the Department shall be non-litigious in nature. Subject to the requirements of due process, the technicalities of law and procedure and the rules obtaining in the courts of law shall not strictly apply thereto. The Department may avail itself of all reasonable means to ascertain the facts of the controversy speedily, including ocular inspection and examination of well informed persons.

Section 5. Postponement – Postponement or continuance of hearing may be granted only on highly meritorious grounds provided that no more than two (2) postponements or continuances shall be allowed.

RULE 13 SUMMARY PROCEEDINGS

Section 1. Cases that may be the subject of summary proceedings are:

(A) Non-Contested Cases – When there is no opposition filed against an application or no answer has been filed against a complaint or petition or when the opposition or the answer filed fails to tender an issue, the Department may conduct summary proceedings.

(B) Contested Cases – When the opposition or the answer does not contest the material allegations of the application or the complaint for violation of Department rules and regulations, respectively, although affirmative defenses are stated therein, the Department may conduct summary proceedings.

(C) Applications – All applications for permit or other forms of authority to engage in business in the petroleum industry in whatever capacity, or classification may be conducted through summary proceedings.

Section 2. Summary Proceedings, How Conducted – After the time for filing an answer has expired and none has been filed or after the issues have been joined by the filing of the answer or the opposition, and the hearing officer/s shall have determined that the case is one which may be the subject of summary

proceedings under Section 1 of this Rule 13, the hearing officer/s shall summon the parties to appear before him/them and require the parties to bring all documentary evidence that they may have in support of their claims or defenses.

Section 3. Offer of Exhibit/Documentary Evidence – The complainant, the petitioner or applicant shall submit all documentary evidence he may have which shall be authenticated before the hearing officer/s and marked as exhibits; then the respondent, or the oppositor shall submit counter documents or affidavits which shall be authenticated before the hearing officer/s as exhibits after which the parties shall formally offer their respective exhibits in the same order, stating the purposes for which they are offered. After the formal offer of evidence, the hearing officer/s may propound clarificatory questions on the documents presented and may require the submission of position papers or memoranda.

Section 4. Submission of Memorandum, Position Paper, etc. – In order to expedite resolution of the case, the hearing officer/s may require the parties to submit, in addition to the memoranda, position papers or last pleading required of them, a draft of the decision they seek, stating clearly and distinctly the facts and the law or rules and regulations upon which it is based. Following the termination of the hearing and the submission by the parties of the required memorandum and draft of the decision they seek, the Department may, after considering and appreciating the applicable laws, rules and regulations and the evidence submitted, adopt, in whole or in part, either of the parties' draft decision or reject both.

RULE 14 POWERS AND DUTIES OF HEARING OFFICER/S

Section 1. Powers and Duties – The hearing officer/s shall have the following powers and duties:

- (A) To administer oaths and affirmations;
- (B) To receive evidence and rule on the admissibility of evidence as to relevance, materiality or competence of such evidence.

Section 2. Period to Decide Case - Should the hearing officer/s determine that the case cannot be heard by summary proceedings, he/they shall inform the Secretary who shall then issue an order setting the case for hearing, which hearing shall be terminated within sixty (60) calendar days from initial hearing.

Section 3. Role of Hearing Officer/s in Proceedings – The hearing officer/s shall personally preside in the conferences/hearings and, except as otherwise provided by law, he/they shall determine the order of presentation of evidence by the parties, subject to the requirements of due process. He/they shall take full control of the proceedings, examine the parties and their witnesses to satisfy himself/themselves with respect to the matters at issue, and may allow the parties or their counsel to ask questions only for the purpose of clarifying points of law or fact involved in the case. He/they shall limit the presentation of evidence to

matters relevant to the issue before him/them and necessary for a just and speedy disposition of the case.

Section 4. Presentation of Evidence – The party initiating the case shall be the first to present his evidence to support his case.

Section 5. Extent of Cross-Examination – In the cross-examination of witnesses, only relevant, pertinent and material questions necessary to enlighten the hearing officer/s shall be allowed.

Section 6. Records of Proceedings – The proceedings before a hearing officer/s need not be recorded by stenographers but the hearing officer/s shall prepare a written summary of the proceedings, including the substance of the evidence presented, in consultation with the parties. The written summary shall be signed by the parties and shall form part of the records.

RULE 15 PROVISIONAL RELIEF

Section 1. Grounds for Provisional Relief – Upon the filing of an application, complaint or petition or at any stage thereafter, a party to a case may, pending hearing of the main case, file a motion seeking a procedural remedy, interlocutory order or a provisional authority to operate or undertake any activity within the jurisdiction of the Department, setting forth the remedy or relief prayed for and the grounds relied upon for the grant of such provisional relief. The motion must be accompanied by an affidavit of merit and other supporting documents together with proof of service to the other party.

Section 2. Grant of Provisional Relief – The Department may grant or deny a motion for provisional relief, without prejudice to a final decision on the matter. However, nothing shall prohibit the Department, **motu proprio**, from granting any provisional relief to any party when public interest so requires.

RULE 16 DECISIONS AND MOTIONS FOR RECONSIDERATION

Section 1. Contents of Decisions – The decisions of the Department shall be signed by the Secretary and shall be clear, concise and include a brief statement of the (a) facts of the case; (b) issue (s) involved; (c) finding of facts; (d) applicable law or rules; (e) conclusion and reasons therefor, and (f) the dispositive portion. They shall be filed with the hearing officer/s who shall, within three (3) days from receipt thereof, cause true copies thereof to be served upon the counsel of the parties, or in the absence of any counsel of record, on the parties themselves.

Section 2. Decisions – The Department shall render a final decision, order, ruling or resolution in accordance with the following rules:

- (a) In Summary Proceedings – When summary proceedings have been conducted, the Department shall, within ten (10) calendar days after the case has

been submitted for resolution, render a decision, order, ruling or resolution on the matter.

(b) In Contested Proceedings. – In contested proceedings where a formal hearing has been conducted, the

Department shall render a decision, order, ruling or resolution within thirty (30) calendar days after the case has been submitted for decision.

(c) Grant of Other Relief. – In all decisions, orders, rulings or resolutions, the Department may grant such other relief or impose such terms as it may deem necessary in order to promote public interest.

Section 3. Motions for Reconsideration – Motions for reconsideration of any order, resolution or decision of the Department shall not be entertained except when based on palpable or patent errors, provided that the motion is under oath and filed within ten (10) calendar days from receipt of the order, resolution or decision, with proof of service that a copy of the same has been furnished within the reglementary period, the adverse party and provided further, that only one (1) such motion from the same party shall be entertained. No pleading shall be allowed other than the motion for reconsideration and opposition thereto. The filing of a motion for reconsideration shall interrupt the running of the period for filing an appeal with the Office of the President.

RULE 17 APPEAL

Section 1. Appeal. – Any party may appeal the order, ruling, or decision of the Department to the Office of the President. However, interlocutory orders cannot be the subject of an appeal.

Sec. 2. Procedure on Appealed Cases. – In case of an appeal under the preceding section, the following rules shall apply:

- a) An appeal from an order, decision or ruling of the Department shall be perfected by filing with the Department a notice of appeal and with the Office of the President, within a period of fifteen (15) calendar days from notice of such order, ruling or decision; copy of the notice of appeal must be furnished all parties to the case;
- b) Before an appeal will be filed it must be shown that a motion for reconsideration from the order, ruling or decision has been filed with the Department and the same has been denied.
- c) Upon the filing of the notice of appeal, the appellant shall pay with the Department an appeal fee of One Thousand Pesos (P10,000.00), whereupon, the Department shall act on the notice of appeal and shall transmit the certificate of payment of the appeal fee to

the Office of the President.

- d) Appellant's position paper shall contain the following data/matters:
 - 1) Exact date of the appealed order, ruling, decision;
 - 2) Exact date when the appealed order, ruling or decision was received by him;
 - 3) Information regarding compliance with the requirements for appeal under these rules;
 - 4) Brief statement of the case and the facts;
 - 5) Reasons or grounds for appeal;
 - 6) Arguments in support of the appeal;
 - 7) Relief sought.

The Secretary may require the filing of additional pleadings to provide additional information.

- e) Any party filing the required pleading or documents and other pleadings pertinent to the appealed case shall furnish the adverse party/ies, including the Department, copies thereof.

Sec. 3. Effect of Appeal. – An appeal shall stay the award, order or decision of the Department unless otherwise provided by law, or the appellate agency directs execution pending appeal, as it may deem just, considering the nature and circumstances of the case.

Sec. 4. Appeal from the Order of the Secretary. – The order of the Secretary in appealed cases shall be appealable within fifteen (15) calendar days from receipt thereof to the Office of the President of the Philippines.

Sec. 5. Execution of Order, Ruling or Decision of the Department. – The order, ruling, decision, or resolution of the Department shall become executory fifteen (15) calendar days after the expiration of the period of appeal if no appeal is taken.

Sec. 6. Entry of Judgment. – The judgment of the Department shall be entered upon finality, or fifteen (15) calendar days after the expiration of the period to appeal, if no appeal is taken.

RULE 18
EFFECTIVITY

These rules shall take effect fifteen (15) days after publication in the Official Gazette or in at least two (2) newspapers of general circulation.

Fort Bonifacio, Taguig, Metro Manila, July 31, 2002.

VICENTE S. PÉREZ, JR.
Secretary