

DEPARTMENT CIRCULAR NO. 97-01-001

AMENDING CERTAIN PROVISIONS OF ENERGY REGULATIONS NO. 1-95, ENTITLED "RULES AND REGULATIONS IMPLEMENTING EXECUTIVE ORDER NO. 215 ON PRIVATE SECTOR GENERATION IN POWER GENERATION"

WHEREAS, the Department of Energy (the "Department") as part of its mandate under the *Department of Energy Act of 1992*, is embarking upon a major restructuring of the Philippine electric power industry;

WHEREAS, the Department is collaborating with Congress in formulating an "Omnibus Electric Power Industry Act", which will ordain reforms in restructuring the electric power industry and in promoting wider participation of the private sector in the generation, transmission and distribution subsectors;

WHEREAS, there is an increasing private sector involvement in power generation in the light of: i) continuing plans by non-utilities on generation primarily for their internal use; and ii) the establishment of special economic zones or "ecozones" which have the franchise to operate heat, light and power utilities by virtue of Republic Act No. 7916 creating the Philippine Economic Zone Authority;

WHEREAS, it would now be timely and imperative for the Department to monitor the entry of new generating capacity and thereby revise and prescribe certain provisions of Energy Regulations (E.R.) No. 1-95, consistent with the above-cited developments;

NOW, THEREFORE, the Department hereby adopts and promulgates the following amendments to certain provisions of E.R. No. 1-95:

SECTION 1. Part I, Article I, Sections 3 (n) and 3 (1.1) n *Definition of Terms* are hereby amended to read as follows:

"(n) 'Electric utility' refers to the

utility operating within the NAPOCOR grids or other electric systems such as an electric cooperative, local-government-owned and privately-owned electric utility, including any light and power utility operating within special zones established or registered by the Philippine Economic Zone Authority.

"(o) 'Renewable Energy Sources' means the following sources of energy that are regenerative or virtually inexhaustible, namely, biomass, solar, wind, micro-hydro (below 100 kilowatts) and mini-hydro (101 to 10,000 kilowatts), and also means by-product materials that, but for their use as a source of energy, would be considered waste."

SEC. 2. Part I, Article III, Section 6 is hereby amended to read as follows:

"SEC. 6. *Economic Criteria.* – Any proposed electric generating facility should submit to the EIAB at least a ten-year power supply agreement for capacity and energy between NAPOCOR and the electric utility that will be served by the facility to enable the EIAB to determine that said facility satisfies incremental load/demand, and should be able to demonstrate its potential for providing net foreign exchange savings for the country, by virtue of:

"(a) generating electric energy more efficiently or cheaper than can otherwise be generated

by existing or programmed generation facilities under the power development plans of NAPOCOR and/or other electric utilities; and/or

“(b) using indigenous and/or renewable energy sources; and/or

“(c) accessing lower costs of capital, cheaper plant investment, and/or locally-manufactured equipment.”

SEC. 3. Part I, Article IV, Section 9 is hereby amended to read as follows:

“SEC. 9 *EIAB Monitoring of accredited PSGFs.* – Owners/proponents of accredited PSGFs shall submit monthly status reports on the progress of each accredited project to the EIAB, and shall immediately inform the EIAB of any substantial changes in the project that may have an impact on the PSGF’s qualified status. The PSGF shall likewise advise the EIAB on the attainment of project milestones (e. g., site groundbreaking, issuance of environmental clearances and other permits, financial closing, etc.) for monitoring purposes.

“The EIAB shall render monthly reports to the DOE Secretary on the progress of accredited projects. Copies of these reports shall be regularly furnished to concerned bureaus and agencies of the DOE for information and coordination.”

SEC. 4. Part I, Article IV, Section 14 is hereby amended to read as follows:

“SEC. 14. *Generation by Non-Utilities Primarily for Internal Use.*

– A non-utility PSGF shall apply for accreditation and shall submit to the EIAB plans to construct and operate electric generating facility for the owner’s internal use subject to compliance with the economic criteria provided for in Section 6, Article III, Part I of these Rules and Regulations. In order to enable EIAB to determine that said facility satisfies incremental load/demand, the non-utility PSGF shall submit at least a ten-year power supply agreement for capacity and energy with the franchised electric utility where the generating plant is located. Such plans shall be reviewed by the EIAB and integrated into the formulation of the national power development plan.”

SEC. 5. Part II, Article I, Section 2 is hereby amended to read as follows:

SEC. 2. *Definition of Renewable Resource Power Production Facilities (RRPPFs).* – RRPPFs, as defined in these Rules and Regulations, refers to any facility which produces electricity by the use of renewable energy sources as its primary energy source. Renewable energy sources means the following sources of energy that are regenerative or virtually inexhaustible, namely, biomass, micro-hydro (below 100 kilowatts) and mini-hydro (101 kilowatts to 10,000 kilowatts), and also means by-product material that, but for their use as a source of energy, would be considered waste. Geothermal, small-hydro (10,000 kilowatts to 50,000 kilowatts) and large-hydro (over 50,000 kilowatts) facilities should be considered Block Power Production Facilities as provided for under Part III of these Rules and Regulations.

“Primary energy source, on the other hand, means the fuel/s used for the generation of electricity, except that such terms do not include:

“(a) The minimum amounts of fuel required for ignition, start up, testing, flame stabilization and control uses; and

“(b) The minimum amounts of fuel required to alleviate or prevent:

“ (i) unanticipated equipment outages; and

(ii) emergencies directly affecting the public health, safety or welfare, which would result from electric power outages.”

SEC. 6. Part II, Article II, Section 1 is hereby amended to read as follows:

“SECTION 1. *Accreditation of RRPPFs and Cogeneration Facilities.* – An RRPPF meeting the general qualifications under Article III of Part I of these Rules and Regulations, without requiring the submission of any long-term power supply agreement, is a qualified PSGF. A cogeneration facility is a qualified PSGF under these Rules and Regulations if it meets the general qualifications under Article III of Part I, and the thermal efficiency standard for cogeneration projects, as defined in Section 2 of this Article.”

SEC. 7. Part III, Article I, Section 2 is hereby amended to read as follows:

“SEC. 2. *Formulation and Submission of Power Development Plans of NAPOCOR and/or Other Electric Utilities.* – Pursuant to Section 1 of Article I and Sections 1 and 2 of Article II, Part I, the DOE shall

require NAPOCOR and/or individual electric utilities to submit power development programs covering a ten-year period, for the DOE’s review and approval. NAPOCOR shall submit to the DOE an annual update of its Power Development Program (PDP) on or before the first day of June beginning 1997 and every year thereafter.

“Such submissions should include NAPOCOR’s system load forecasts and generation requirements, resource and technology assessments and evaluations, cost assumptions and other technical parameters, and the resulting system expansion plans for NAPOCOR’s major and small-island power grids. NAPOCOR’s submissions should identify power generation projects to be undertaken through private sector participation, the justifications for such, and the indicative timetable for undertaking prequalification of interested power sector entities, tendering of bids, evaluation, and award of private power contracts for each of the projects identified.

“Individual electric utilities seeking to implement or contract the implementation of generation projects shall be required to enter into long-term power supply agreements for capacity and energy of at least ten years with NAPOCOR’s system planning activities. Such electric utilities shall submit to the DOE their individual or combined long-term power development plans, which shall contain an efficient portfolio or generation (including projected power purchases from NAPOCOR and qualified PSGFs) and demand-side resources on or before 30 April 1997 and every year after, for the DOE’s review and approval.

“Accordingly, no application for accreditation of any proposed electric generating facility for an electric utility shall be entertained by the DOE without the concerned electric utility’s long-term power supply agreement with NAPOCOR and its DOE-approved power development plan.

“NAPOCOR and/or other electric utilities shall inform and seek the DOE’s prior approval to implement generation projects not included in the approved development plans.”

SEC. 8. Part III, Article I, Section 3 is hereby amended to read as follows:

“SEC. 3. *DOE Review of Power Development Plans.* – The DOE’s Energy Industry Administration Bureau (EIAB), as part of its mandate to review, evaluate, and accredit private sector proposals, shall review the power development plans of NAPOCOR and other electric utilities.

“The EIAB, in consultation with the Energy Planning and Monitoring Bureau, shall formulate the parameters for the planning horizon and disseminate the same not later than 31 March 1997 and every year thereafter.

“The review of power development plans shall take into account consistency with the general and specific policies for the energy sector, validate the assumptions used in formulation of such plans, and check the consistency of such plans with national and regional resource assessments, development programs, and project timetables of various energy upstream activities.

“The EIAB shall likewise review the list of power generation projects for private sector implementation and the indicative timetables towards ensuring sufficient lead times for undertaking dissemination, project organization, and preparation of competitive proposals. The EIAB may also recommend in its approval of the individual development plans of NAPOCOR and/or electric utilities scaling down or integration of proposed generation projects to ensure the generation of more competitive proposals, with due consideration of cost advantages from economies of scale.

“The EIAB shall recommend the DOE’s approval and adoption of power development plans and their integration with the Philippine Energy Plan not later than 30 June 1997 and every year thereafter.

“NAPOCOR and/or other electric utilities shall inform and seek the DOE’s prior approval to implement generation projects not included in the approved power development plans.”

SEC. 9. Part IV, Article III, Section 9 is hereby amended to read as follows:

“SEC. 9. *Formulation of Power Development Plan.* – Electric utilities owning and operating facilities for self-generation shall submit to the DOE, for review and approval, their individual or combined long-term power development plans, which shall contain an efficient portfolio of generation (including projected power purchases from NAPOCOR and other qualified PSGFs) and demand-side resources on or before 30 April 1997 and every year thereafter.”

SEC. 10. DEPARTMENT CIRCULAR NO.96-08-010 dated 26 August 1996, suspending accreditation of certain power generation proposals, is hereby repealed.

SEC. 11. This Circular shall take effect immediately a day after its complete

publication in at least two (2) newspapers of general circulation.

Fort Bonifacio, Taguig, Metro Manila, 21 January 1997.

FRANCISCO L. VIRAY
Secretary

DEPARTMENT CIRCULAR NO. 2000-03-004

FURTHER AMENDING ENERGY REGULATIONS NO. 1-95 DATED JANUARY 2, 1995 ENTITLED "RULES AND REGULATIONS IMPLEMENTING EXECUTIVE ORDER NO. 215 ON PRIVATE SECTOR PARTICIPATION IN POWER GENERATION" AS AMENDED BY DEPARTMENT CIRCULAR NO.97-01-001 DATED JANUARY 21, 1997

WHEREAS, Executive Order No. 215 issued on July 10, 1987 allows the participation of private sector in power generation;

WHEREAS, the Department of Energy (the DOE) encourages the participation of the private sector in the power generation business consistent with the said Executive Order;

WHEREAS, the DOE recognizes the unique contribution to be made by Renewable Resource Power Production Facilities (RRPPF) also known as the New and Renewable Energy Facilities (NREF) in the country's generation mix and in meeting rural electrification targets;

WHEREAS, there is an imperative need to facilitate and enhance the participation of RRPPF/NREF in power generation in view of the country's growing electricity requirement;

NOW, THEREFORE, the DOE hereby adopts and promulgates the following amendments to Energy Regulations No. 1-95 as amended by DEPARTMENT CIRCULAR NO.97-01-001:

SECTION 1. Part I, Article IV, Section I of Energy Regulations No. 1-95 as amended by

DEPARTMENT CIRCULAR NO.97-01-001 is hereby amended to read as follows:

"SECTION 1. *Contents of the Application.* – The contents of applications for accreditation as a qualified Private Sector Generation Facility (PSGF) should generally contain the following information:

"(a) Name and address of the applicant and location of the proposed facility;

"(b) Project organizational set-up;

"(c) Names of cooperative/participating companies, equity participation, incorporation documents, audited financial statements for the last two fiscal years, and records of successful experience in similar activities over the last five (5) years;

"(d) Project financing plans;

"(e) Administrative and technical manpower complements;