

# Chapter 2

## Rural Power Projects

### ENERGY REGULATION NO. 1-94

RULES AND REGULATIONS IMPLEMENTING SECTION 5 (i) OF REPUBLIC ACT NO. 7638, OTHERWISE KNOWN AS THE “DEPARTMENT OF ENERGY ACT OF 1992”

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**SECTION 1. Title.** – Pursuant to Section 5 (i) of Republic Act No. 7638, otherwise known as the “Department of Energy Act of 1992,” which provides that the Department shall “devise ways and means of giving direct benefits to the province, city, or municipality, especially the community and people affected, and equitable preferential benefit to the region that hosts the energy resource and/or the energy-generating facility: *Provided, however,* That the other provinces, cities, municipalities, or regions shall not be deprived of their energy requirements,” the Department of Energy hereby adopts and promulgates the following rules and regulations.

**SECTION 2. Policy Objectives.** –

- a) To recognize and provide recompense for the contribution made by the pertinent barangay, municipality or city, province or region in hosting within their respective territorial jurisdiction the energy resource and/or energy-generating facility through which the rest of the country is energized;
- b) To lessen conflict of rights among LGUs, the community and people affected, the energy resource developers or power producers, and the appropriate agencies of the national government, recognizing that the relationship among them is

affected with public interest; and

- c) To promote harmony and cooperation among host LGUs, the community and people affected, the energy resource developers or power producers, and the appropriate agencies of the national government whereby the community and people affected and the host LGUs are provided with the benefits under a coordinated and consultative or participative process while the power producers or energy resources developers are accorded community support and legal protection by the host LGUs.

**SECTION 3. Scope of Application.** – These rules and regulations shall apply to energy resource development projects and energy-generating facilities located in all barangays, municipalities, cities, and provinces, except those falling within Metropolitan Manila, Metropolitan Cebu (Cebu City, Lapu-Lapu City and Mandaue City), Metropolitan Davao and other highly urbanized cities as defined under Section 452 of the *Local Government Code*.

The benefits under these rules shall be required prospectively from all energy resource developers and power producers including those existing at the time of the effectivity of these rules and regulations.

**SECTION 4. Definition of Terms.** – Unless the context otherwise indicates, the terms used in these rules and regulations shall have its following respective meanings:

- (a) “Barangay” shall be as defined in the *Local Government Code of 1991*.
- (b) “Benefits” refers to all forms of assistance or services that can be extended to the host LGU or host region.
- (c) “Beneficiary” refers to the host LGU or the host region entitled to the benefits.
- (d) “City” shall be as defined in the *Local Government Code of 1991*.
- (e) “Cogeneration Facility” refers to a facility which produces electricity or mechanical energy and forms of useful thermal energy (such as heat or steam) for industrial, commercial, heating, or cooling purposes through the sequential use of energy and is accredited as a cogeneration facility by the DOE.
- (f) “Community and People Affected” refers to *bonafide* residents of a host LGU and who were relocated as a result of the construction, and/or operation of an energy generating facility or the development of an energy resource development project, to official resettlement sites.
- (g) “DENR” refers to the Department of Environment and Natural Resources as reorganized by Executive Order No. 192, series of 1987, as amended.
- (h) “DILG” refers to the Department of Interior and Local Government created pursuant to Republic Act No. 6975, as amended.
- (i) “Distribution System” refers to the electric system of an electric utility which delivers electricity from transformation points to the transmission system to consumers or end users.
- (j) “DOE” refers to the Department of Energy created pursuant to Republic Act No. 7638.
- (k) “DOH” refers to the Department of Health created pursuant to Executive Order No. 119, series of 1987, as amended.
- (l) “DOLE” refers to the Department of Labor and Employment defined under Book IV, Title VII of Executive Order No. 292, series of 1987, as amended.
- (m) “DPWH” refers to the Department of Public Works and Highways as reorganized by Executive Order No. 124, series of 1987, as amended.
- (n) “Electricity Sales” refers to the sales proceeds derived by the power producer from the actual generation of the energy-generating facility net of station own use, and losses.
- (o) “Electric Utility System” refers to the distribution system of an electric cooperative, government-owned or privately-owned electric utility operating within one or several electric utility power grids.
- (p) “Electric Utility” refers to the electric cooperative, government-owned or private-owned electric utility within one or several electric utility power grids.
- (q) “Electrification” refers to the provision of dependable and adequate electric services to a franchised area.
- (r) “Energy-efficient technologies” refers to technologies which meet the ratio of useful energy output to energy input prescribed by the DOE under its circulars and/or its implementing rules and regulations.

(s) “Energy-generating Facilities” refers exclusively to any of the following types of power plants constructed/operated to supply electricity:

1. “Coal-fired Power Plant” refers to an electricity-generating plant which uses coal (whether locally produced or imported) as fuel.
2. “Geothermal Power Plant” refers to an electricity-generating plant which utilizes geothermal steam and/or brine.
3. “Hydroelectric Power Plant” refers to an electricity-generating plant which utilizes the kinetic energy of falling or running water.
4. “Oil-fired Power Plant” refers to an electricity-generating plant which utilizes liquid or gaseous fuel such as industrial fuel oil or diesel. It shall not, however, include any electricity-generating plant fired by natural gas or liquefied petroleum gas.

(t) “Energy resource” refers only to any of the following:

1. “Biomass” refers to any organic matter used for energy, broadly classified into plant matters and animal residues. Plant matters are further categorized into (a) naturally-occurring resources such as forest and agricultural residues, and (b) cultivated resources such as woodlot or tree farms.
2. “Coal” refers to a black or brownish-black combustible rock formed by the accumulation, decomposition, and compaction of plant materials under a long acting geological process.
3. “Geothermal Resources” refers to all geothermal fluids existing naturally or formed by the artificial introduction

of adequate flow and heat essential for hydropower generation.

4. “Hydrothermal or Hydro resources” refers to natural streams, rivers or lakes that can be harnessed to provide the combination of adequate flow and heat essential for hydropower generation.
5. “Natural Gas” refers to gas obtained from the boreholes and wells and consisting primarily of hydrocarbons.

“Energy resource” may be classified as either conventional or nonconventional, imported or indigenous.

- 1) “Conventional energy resources” refer to energy resources such as coal, petroleum, hydro, and natural gas.
- 2) “Nonconventional energy resources” refer to energy resources which are renewable and indigenous, the conversion and utilization technology of which is characterized as decentralized and modular. These shall include biomass, mini-hydro, ocean waves, solar, wind, and similar energy resources.
- 3) “Imported energy resources” refer to energy resources which are principally obtained from outside the Philippines.
- 4) “Indigenous energy resources” refer to energy resources which originate or occur naturally in the Philippines.

(u) “Energy resource developer” refers to any person (whether natural or juridical) that is engaged or intends to engage in the development of energy resources.

- (v) “Franchise” refers to a privilege extended to a person (whether natural or juridical) to operate, maintain and/or distribute power within a specific geographical area.
- (w) “Franchised area” refers to a geographical area franchised to a public service entity, such as electric cooperative, or local government-owned or privately owned, electric utility.
- (x) “Franchise holder” refers to a person (whether natural or juridical) holding a franchise.
- (y) “Host LGU” refers to a local government unit (barangay, municipality, city or province) where the energy resource and/or energy-generating facility is located as determined under Section 5 hereof.
- (z) “Host region” refers to the region where the energy resource and/or energy-generating facility is located under Section 5 hereof.
- (aa) “Load dispatch” refers to the system of directing electricity supplied from energy-generating facilities to various electricity consumers.
- (ab) “Local Government Code” refers to Republic Act No. 7160.
- (ac) “Micro-hydroelectric power development” or “Micro-hydro” refers to the construction and installation of a hydroelectric-generating plant and its auxiliary facilities such as transmission, substation and machine shop with an installed capacity of less than 101 kilowatts.
- (ad) “Mineable coal reserve” refers to a well-defined mass of coal from which extraction is economically feasible.
- (ae) “Mini-hydroelectric power development” or “Mini-hydro” refers to the construction and installation of a hydroelectric-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.
- (af) “Municipality” shall be defined as in the *Local Government Code of 1991*.
- (ag) “NEA” refers to the National Electrification Administration created pursuant to Presidential Decree No. 269, as amended, tasked primarily to administer the rural electrification program.
- (ah) “NPC” refers to the National Power Corporation created pursuant to Republic Act No. 6935, as amended.
- (ai) “On-going energy-generating projects” refers to energy-generating facilities which are existing, and to those projects under which energy-generating facilities are under construction, at the time of the effectivity of these rules and regulations.
- (aj) “Power producer” refers to any person (natural or juridical) who is engaged in the construction and/or operation of an energy-generating facility.
- (ak) “Province” shall be as defined in the *Local Government Code of 1991*.
- (al) “Public Service Cooperative” refers to an electric cooperative that is organized as a cooperative under the provisions of Republic Act No. 6938.
- (am) “Reservoir” refers only to any of the following:
  1. “Geothermal reservoir” refers to a subsurface geological environment where the geothermal fluids accumulate and circulate.

2. "Hydro reservoir" refers to either a natural lake or an artificial lake created by the impounding of streamflow, runoff and subsurface water behind a dam.
3. "Petroleum/Natural Gas reservoir" refers to a subsurface-geological environment where crude oil and/or natural gas accumulate under adequate trap conditions.

(an) "Rural Electric Cooperative" refers to a corporation organized under Republic Act 6038, or Presidential Decree No. 269, as amended by Presidential Decree No. 1645, or a cooperative supplying or empowered to supply electric service which has heretofore been organized under the *Philippine Non-Agricultural Act*, whether or not converted under Presidential Decree No. 269.

(ao) "Small Scale Mining (SSCM) Permittee" refers to a holder of a DOE permit to exploit coal resources covering an area within a coal operating contract or a free area outside of a coal operating contract. An SSCM coal permit covers a compact and contiguous area not exceeding five (5) hectares within a geological coal reserve not exceeding 50,000 metric tons.

(ap) "Watershed" refers to a land area drained by a stream or fixed body of water and its tributaries having a common outlet for surface runoff.

**SECTION 5. Beneficiaries. –**

- (a) Direct benefits shall be provided to the host LGU, especially the community and people affected while equitable preferential benefits shall be provided to the host region.
- (b) Community and People affected shall be understood as defined under Section 4 (f) of these rules and regulations.

(c) Host LGU or host region shall be understood as follows:

(1) With respect to energy-generating facilities, in the case of power barges, the host LGU or host region is that where the power barge is moored; in all other cases, the host LGU or host region is that where the energy-generating facility is physically located. Energy-generating facilities shall not include transmission lines and substations.

(2) With respect to energy resources:

(a) Coal. The host LGU or host region is that where the producing positive coal reserve is located, as delineated by geophysical, geological and exploration surveys.

(b) Geothermal. The host LGU or host region is that where the producing geothermal reservoir is located as delineated by detailed geochemical, geophysical, and exploration surveys.

(c) Hydro. The host LGU or host region 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 or host region is that where the producing petroleum/natural gas reservoir is located, as delineated by detailed geochemical, geophysical exploration surveys.

The developed energy resource field is delineated on the ground by the production facilities and other physical installations related to the project.

- (e) Unless otherwise provided in these rules and regulations, the DOE shall, after due consultation with the affected parties, determine the proportion of benefits to be received by one host LGU vis-à-vis another host LGU in the event the energy-generating facility or the energy resource development overlaps more than one host LGU. In rationalizing such sharing of benefits, the DOE shall consider the area occupied and the amount of energy generated or produced by the energy-generating facility or energy resource project in one host LGU vis-à-vis the other host LGUs, and such other equitable basis for apportionment.

**SECTION 6. Nature of Benefits.** – Consistent with Section 5 hereof, the community and people affected, the pertinent host LGU indicated below or the host region shall be entitled to the following benefits from the energy resource developer or power producer, depending on the type of energy resource being developed or energy-generating facility being constructed or operated:

(a) Power Benefits.

- (1) Electrification. – (a) The power producer shall set aside twenty-five percent of one centavo (P 0.0025) per kilowatt-hour of the total electricity sales of the energy-generating facility as an electrification fund to be applied exclusively to the missionary electrification of the official resettlement or relocation sites of the community and the people affected, and thereafter, of the relevant host LGU or host region in the following order of radiating benefit: (i) the host barangay, (ii) the host municipality or city, (iii) the host province, and finally (iv) the

host region. In implementing said order of radiating benefit, priority in electrification shall be given to the more populous barangay that is nearer in distance to the electricity-generating facility. 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 of, and proximity of the energy-generating facility to, the contending host LGUs.

- (2) The electrification of the host municipality or city may be accomplished through a public service cooperative or PSC. In this connection, the NEA shall facilitate the granting of the necessary franchise to a PSC but upon satisfactory showing that such PSC is economically viable, and will be able to provide better service at lower cost to consumers within the pertinent host LGU. Once the PSC is established, the operator of the energy-generating facility shall provide, in a manner that will not entail substantial incremental cost to the operator, technical assistance to the PSC, particularly in the area of reducing system losses.
- (3) The PSC, or in its absence, the relevant franchise holder shall use the electrification fund exclusively to defray the cost of necessary capital expenditures associated with electrification such as distribution lines, transformers, and substations, and subsidiarily, associated operating expenses such as repairs and maintenance. Priority in extending expenditure shall be given to the extension and upgrading of distribution lines: *Provided however,*

That the PSC or in its absence, the relevant franchise holder shall retain each year twenty percent (20%) of the amount it received for the year to defray the cost of repairs and maintenance of its existing distribution lines and substations. The electrification fund shall be used as provided in Section 6 (a) (1) (c): *Provided however*, That the assets financed by the electrification fund shall not form part of the rate base, and 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 PSC or relevant franchise holder, for purposes of setting its power tariffs and return on rate base.

- (4) The power producer shall be responsible for directly remitting the electrification fund to the PSC or in its absence, the relevant franchise holder. The DOE shall ensure that the electrification fund shall be used as provided in Section (a) (1) (c). Towards this end, the DOE shall formulate the appropriate guidelines and mechanisms for fund disbursement and utilization.

(b) Prioritization of load dispatch.

In times of energy shortage, the energy-generating facility shall prioritize up to twenty-five percent (25%) of its contracted or available capacity (whichever is lower) which shall be delivered to the appropriate electric utility for distribution to the official resettlement/relocation sites of the community and people affected, and thereafter, to the relevant host LGU or host region in the following order of radiating benefit: (i) power circuits in direct contact with the host barangay; (ii) power circuits in direct contact with the host municipality or city; (iii) power circuits in direct contact

with the host province; and (iv) power circuits in direct contact with the host region. The remaining seventy-five percent (75%) shall be dispatched to the grid so as not to unreasonably deprive other municipalities, cities, provinces, or regions of their energy requirements.

Towards this end, the energy generating facility, NPC, the relevant electric utility, and such other party that may be contractually involved with the generation, transmission, and distribution of power shall reach an agreement to ensure the implementation of this benefit, which agreement shall be approved by the DOE.

The NPC, unless another government owned and/or controlled corporation engaged in energy projects is designated by the Secretary of the DOE, shall effect the prioritization of load dispatch benefit in the absence of a power purchase agreement or arrangement between the power producer and the electric utility in the relevant resettlement/relocation sites or host LGU/s.

(c) Reduction in the cost of electricity.

- (1) Pursuant to the mandate of Section 294 of the *Local Government Code* that “at least eighty percent (80%) of the proceeds derived from the development utilization of hydrothermal, geothermal, and other sources of energy shall be applied solely to lower the cost of electricity in the local government unit where such a source of energy is located,” host LGUs are strongly urged to operationalize this directive through an appropriate system. The term “proceeds from the development and utilization of hydrothermal, geothermal, and other sources of energy” shall have the same meaning as it has under Section 294 of the *Local Government*

Code.

- (2) The host LGU, through its sanggunian, may pass a resolution specifying the terms of application of said proceeds pursuant to Section 294 of the *Local Government Code*. The amount appropriated under the resolution may be transferred to the relevant PSC, REC or electric utility operating within the host LGU. In turn, such PCC, REC or electric utility shall immediately apply the amount in the next billing to lower the cost of electricity in its franchised area within the host LGU.

(d) Skills Development.

For the community and people affected as well as *bona fide* residents of the host barangay, and the host community or city, the energy resource developer and/or power producer shall establish relevant training and skills development programs which may include the development of skills pertinent to business of energy generation or electrification and skills in reforestation and other agro-industrial skills. Towards this end, upon consultation with the appropriate government agencies, a memorandum of agreement may be entered into by the host barangay, the host city or municipality, and the energy resource developer or power producer. For monitoring purposes, a copy of such memorandum of agreement must be submitted to the DOE.

(e) Preference in Employment.

Qualified members of the community and people affected and qualified *bona fide* residents of the host barangay and the host municipality or city shall be given preference in employment with the energy-generating facility or energy development operation pursuant to the procedure set out under Republic Act

No. 6685 and the applicable provisions of Department Order No. 51 series of 1990 of the DPWH which sets forth the guidelines for the implementation of Republic Act No. 6685.

- (f) Preference in Procurement of Local Supplies and Services.

All energy resource developers and power producers shall source their supplies and service requirement from within the host LGU provided such supplies and services are available therein at competitive price, delivery/service schedule, quantity, and quality.

(g) Development and Livelihood Fund.

- (1) Consistent with Section 5 hereof, all power producers shall set aside twenty-five percent (25%) of one centavo (P 0.0025) per kilowatt-hour of the total electricity sales of the energy-generating facility to establish and maintain a development and livelihood fund.

- (2) 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 proportions: five percent (5%) to the barangays hosting the official resettlement/relocation sites of the community and the people affected, fifteen percent (15%) to the host barangay, twenty-five percent (25%) to the host municipality or city, twenty-five percent (25%) to the host province, and the remainder to the host region.

- (3) The power producer and the energy resource developer, to the extent of their respective contributions, shall administer the development and livelihood fund. They shall each submit to the DOE for the



latter's approval, development and livelihood programs after consultation with the appropriate affected parties.

- (4) The power producer and the energy resource developer shall each hold its contribution to the development and livelihood fund in trust for the beneficiaries as enumerated under Section 6 (e) (2). Such funds shall not be mingled with its general fund and must be deposited in interest bearing accounts. Interest earned on the development and livelihood fund shall accrue to the benefits enumerated under Section 6 (e) (2).

(h) Reforestation, Watershed Management Health and/or Environment Enhancement Fund.

- (1) One-half of one centavo (P 0.0005) per kilowatt-hour of the total electricity sales of the energy-generating facility shall be set aside by the power producer to be used for reforestation, watershed management, health and/or environment enhancement. The power producer and the energy resource developer, to the extent of their respective contribution to the fund, shall each submit work programs for reforestation watershed management, health and/or environment enhancement which would have to be approved by the DOE in consultation and close coordination with the DENR, the DOH, the relevant water districts, local government units, regional development councils, non-government organizations, and other affected parties. The power producer and/or the energy resource developer may provide for the contracting out of the proposed activities, provided that the power producer and/or the energy resource

developer shall remain primarily responsible for the implementation of such program. For a unified watershed management effort, however, the power producer and/or the energy resource developer shall turn over the amount allocated for reforestation and watershed management to the watershed reservation manager designated by law for the area.

The foregoing paragraph notwithstanding, the DOE may, at the request of the power producer and/or the energy resource developer after consultation with the local government officials, non-governmental organizations and other affected parties, redirect part or all of said fund in any given year to other projects which are determined to be more beneficial to the host LGUs with particular attention, although not limited to environmental projects with long-term benefits.

After commercial operation commences, benefits and/or financial assistance advanced after Republic Act No. 7638 became effective or pursuant to these rules and regulations by the energy resource developer or the power producer during pre-operation stage or before the start of commercial operation to secure the favorable endorsement of the community and people affected or the host LGUs, shall be applied at the rate of twenty percent (20%) per year by the energy resource developer, power producer or successors-in-interest assignees thereof, against the benefits required under these rules and regulations.

Cost incurred or to be incurred by the power producer or the energy developer to comply with environmental standards imposed under DENR Administrative Order Nos. 14 and 14A and with such other stricter emission, safety, health or environmental standards that may be imposed by any government agency in the future, may be deducted from the benefits required under these rules and regulations, but at a rate of not more than

fifty percent (50%) of the total benefits due in any year (inclusive of the twenty percent (20%) mentioned in the foregoing paragraph): *Provided*, That if in any year the cost of compliance exceeds fifty percent (50%) of the total benefits for the year. The uncovered cost shall be added to similar costs in subsequent years until the full amount is recovered without interest.

**SECTION 7. *Scope of Benefits.*** – The community and people affected, the relevant host LGU (indicated in the foregoing section) or the host region of the following energy-generating facilities or energy resource development projects shall be entitled to the corresponding benefits set forth below:

(a) Coal

(1) Coal Mines

- (a) Reduction in the cost of electricity under Section 6 (a) (3);
- (b) Skills development under Section 6 (b);
- (c) Preference in employment under Section 6 (c); and
- (d) Procurement of local supplies and services under Section 6 (d).

(2) Coal Thermal Power Plants

- (a) Electrification benefits under Section 6 (a) (1);
- (b) Prioritization of load dispatch under Section 6 (a) (2);
- (c) Skills development under Section 6 (b);
- (d) Preference in employment under Section 6 (c);

- (e) Procurement of local supplies and services under Section 6 (e);
- (f) Development and livelihood fund under Section 6 (e); and
- (g) Reforestation, watershed management, health and/or environment enhancement fund under Section 6 (f).

(3) Mine-Mouth Coal Plants

- (a) Electrification benefits under Section 6 (a) (1);
- (b) Prioritization of load dispatch under Section 6 (a) (2);
- (c) Reduction in the cost of electricity under Section 6 (a) (3);
- (d) Skills development under Section 6 (b);
- (e) Preference in employment under Section 6 (c); and
- (f) Procurement of local supplies and services under Section 6 (d);
- (g) Development and livelihood fund under Section 6 (e); and
- (h) Reforestation, watershed management, health and/or environment enhancement fund under Section 6 (f).

(b) Geothermal Resource Development Projects and Power Plants.

- (1) Electrification benefits under Section 6 (a) (1);
- (2) Prioritization of load dispatch under Section 6 (a) (2);

- (3) Reduction in the cost of electricity under Section 6 (a) (3);
- (4) Skills development under Section 6 (b);
- (5) Preference in employment under Section 6 (c);
- (6) Procurement of local supplies and services under Section 6 (d);
- (7) Development and livelihood fund under Section 6 (e);
- (8) Reforestation, watershed management, health and/or environment enhancement fund under Section 6 (f).

Inasmuch as geothermal resource development projects and geothermal power plants are integral to each other, the community and people affected, the pertinent host LGU or host region shall be entitled to only one set of benefits from the geothermal resource developer and power plant operator which, with the exception of the benefit provided under Section 6 (a) (3), shall be shared by them equitably. Among the community and people affected, the pertinent LGU or region hosting the geothermal resource development project and those hosting the geothermal power plant, the DOE shall determine in an equitable manner the actual sharing of benefits between them upon consultation with the affected parties.

(c) Hydro Resource Development Projects and Power Plants.

- (1) Electrification benefits under Section 6 (a) (1);

- (2) Prioritization of load dispatch under Section 6 (a) (2);
- (3) Reduction in the cost of electricity under Section 6 (a);
- (4) Skills development under Section 6 (b);
- (5) Preference in employment under Section (b);
- (6) Procurement of local supplies and services under Section 6 (d);
- (7) Development and livelihood fund under Section 6 (e); and

- (8) Reforestation, watershed management, health and/or environment enhancement fund under Section 6 (f).

Inasmuch as hydro development projects and hydroelectric power plants are integral to each other, the community and people affected, the pertinent host LGU or host region shall be entitled to only one set of benefits from the hydro developer and power plant operator which with the exception of the benefit provided under Section 6 (a) (3), shall be shared by them equitably. Among the community and people affected, the pertinent LGU or region hosting the hydro reservoir and those hosting the hydroelectric power plant, the DOE shall determine in an equitable manner the actual sharing of benefits between them upon consultation with the affected parties.

(d) Oil/Petroleum/Natural Gas.

- (1) Indigenous Petroleum
  - (a) Reduction in the cost of electricity under Section 6 (a) (3);

- (b) Skills development under Section 6 (b);
  - (c) Preference in employment under Section 6 (c); and
  - (d) Procurement of local supplies and services under Section 6 (d).
- (2) Oil-Fired Power Plants.
- (a) Electrification benefits under Section 6 (a) (1);
  - (b) Prioritization of load dispatch under Section 6 (a) (2);
  - (c) Skills development under Section 6 (b);
  - (d) Preference in employment under Section 6 (c);
  - (e) Procurement of local supplies and services under Section 6 (d);
  - (f) Development and livelihood fund under Section 6 (e); and
  - (g) Reforestation, watershed management, health and/or environment enhancement fund under Section 6 (f).
- (3) Natural Gas- and LNG-Fired Power Plants.
- (a) Electrification benefits under Section 6 (a) (1);
  - (b) Reduction in the cost of electricity under Section 6 (a) (3);
  - (c) Skills development under Section 6 (b);
  - (d) Preference in employment under Section 6 (c);
  - (e) Procurement of local supplies and services under Section 6 (d); and
  - (f) Development and livelihood fund equivalent to one-half of one centavo (P 0.005) per kilowatt hour, which amount shall be applied in an equitable preferential manner in accordance with the proportion prescribed under Section 6 (e) (2).
- SECTION 8. Exemptions. –**
- (a) Each of the following shall be exempted from providing the benefits required under these rules and regulations:
    - (1) a small-scale coal mining (SSCM) permittee;
    - (2) an energy-generating facility with an aggregate installed capacity or operating generating capacity that is less than ten (10) megawatts (MW);
    - (3) an energy-generating facility located in a special economic zone which sells or exports less than ten (10) megawatts (MW) of its surplus power output outside of the special economic zones where it is located;
    - (4) an energy-generating facility for the exclusive internal use of the owner (e.g., integrated to the plant); and
    - (5) an on-going energy-generating project with a negotiated benefits package which is better than or at least substantially equal to the benefits provided hereunder, as determined and certified by the DOE.
  - (b) Consistent with the policy of the State to accelerate the development and commercialization of non-conventional energy systems, and to provide incentives

for energy efficient technologies (such as cogeneration facilities), energy-generating facilities which utilize non-conventional energy resources, or energy efficient technologies shall not be required to provide the host LGU and/or host region with the benefits enumerated in these rules and regulations.

- (c) In meritorious cases similar to those enumerated in the foregoing Section 8 (a) and (b), the DOE may, after consultation with the affected parties, grant full or partial exemption upon application by the energy resource developer or power producer.
- (d) In any case of two or more proximate energy-generating facilities owned or operated directly or indirectly by the same person or entities, each of which was split to meet the criteria for exemption under Section 8 (a) (2) and (3), the Secretary may, in order to prevent evasion of these rules and regulations, consider said facilities as one. "Control" shall mean ownership of stocks in a corporation possessing at least one-third of the total voting power of all classes of stock entitled to one vote.
- (e) Notwithstanding Section 8 (a) and (b), consistent with Section 5 (i) of Republic Act No. 7638, the Secretary of the Department of Energy may authorize government-owned and/or controlled corporations engaged in energy resource development and/or energy-generating projects, to provide benefits or financial assistance to host LGUs equivalent to those required under these rules and regulations, and approve the same.

**SECTION 9. Review and Audit.** – With respect to the electrification fund, the development and livelihood fund, and the reforestation, watershed management, health and/or environment enhancement fund, the power producer, the energy resource developer and the fund administrator of any of these

funds shall keep and maintain complete and separate books of account for such funds in accordance with generally accepted accounting principles. In addition, the power producer, the energy resource developer, (the and) the fund administrator shall submit to the DOE every six (6) months a detailed statement of the sources and uses of such funds. With respect to said funds, the DOE shall have the right to inspect, review, and audit the books of accounts of the power producer, the energy resource developer and the fund administrator to ascertain and ensure compliance with these rules and regulations, particularly that the funds had been and are being expended in accordance herewith. In this connection, the power producer, the energy resource developer, and the fund administrator shall allow duly authorized representatives of the DOE full access to their respective accounts, books and records. Should the DOE find that the funds are not being spent by the power producer, the energy resource developer and the fund administrator in accordance with these rules and regulations, the DOE may assign the funds to another entity to enable the fund purpose to be duly accomplished.

The DOE may require the power producer, the energy resource developer, or the fund administrator to post a bond therewith in an amount to be determined by the DOE.

**SECTION 10. Implementation and Enforcement Measures.** The DOE shall take all necessary reasonable measures to ensure the proper enforcement of these rules and regulations, which measures shall not be limited to those specified under this Section.

In the event of violation or non-compliance with these rules and regulations, the DOE may, upon prior notice and hearing to the power producer or the energy resource developer, (a) issue an order to the power producer or the energy resource developer to cease and desist operations; and/or (b) withdraw, suspend, revoke, cancel, or annul the geophysical survey or service contract

of the energy resource developer of the accreditation status granted to the power producer. However, in the case of willful violation of or willful failure to comply with these rules and regulation, the DOE may, without prior notice and hearing, but after proper investigation or verification, *muto propio*, or upon verified complaint by any aggrieved party, proceed with the enforcement measures enumerated in this paragraph.

**SECTION 11. *Settlement of Disputes.*** – All conflicts or disputes arising from the implementation of these rules and regulations shall be under the jurisdiction of the DOE.

**SECTION 12. *Transition Period.*** – The electrification fund (including increments thereto), the development and livelihood fund, and the reforestation, watershed management, health and/or environment enhancement fund (when applicable) shall be kept in trust by the power producer pending the formalization of the relevant guidelines on fund utilization and disbursement by the DOE. Interest earned during the transition

period shall be for the benefit of the trust. After due consultation with the relevant affected parties, the DOE shall formulate such guidelines.

**SECTION 13. *Separability Clause.*** – If any clause, sentence, paragraph or part of these rules and regulations shall be judged by any Court of competent jurisdiction to be invalid or unconstitutional, such judgment shall not affect, impair, or invalidate the remainder of said rules and regulations, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy.

**SECTION 14. *Effectivity.*** – These rules and regulations, and any amendments thereto shall take effect upon the lapse of thirty (30) days from complete publication in the *Official Gazette*, or in one (1) newspaper of general circulation, whichever occurs earlier.

**DELFIN L. LAZARO**

Secretary  
24 May 1994

## ENERGY REGULATION NO. 1-94-A

AMENDING ENERGY REGULATIONS NO. 1-94, DATED 24 MAY 2004 WHICH PRESCRIBED RULES AND REGULATIONS IMPLEMENTING SECTION 5 (i) OF REPUBLIC ACT NO. 7638, OTHERWISE KNOWN AS THE DEPARTMENT OF ENERGY ACT OF 1992

**WHEREAS**, Energy Regulations No. 1-94 issued on 24 May 1994 prescribed the provision of direct benefits to pertinent local government units hosting energy resources 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**, under Section 8 of E.R. 1-94, an energy-generating facility fired by natural gas shall be exempted from providing the

benefits required under the said regulations;

**WHEREAS**, the Philippine Natural Gas Project is deemed as a high priority project that would need the favorable endorsement and full support to host LGUs of power plants fired by natural gas, including liquefied natural gas (LNG), but is precluded from authorizing the same under the said regulations;

**WHEREAS**, considering that natural gas and LNG have been recognized as