

DRAFT RPS RULES

DEPARTMENT CIRCULAR NO. _____

Rules Governing the Establishment of Renewable Portfolio Standard

Pursuant to Section 6, Chapter III of the Renewable Energy Act of 2008 (R.A. No. 9513) and Section 4, Rule 2, Part II of its Implementing Rules and Regulations (IRR), the DOE, upon recommendation by the National Renewable Energy Board (NREB), hereby issues, adopts and promulgates the following rules and regulations on the RPS.

Part I. General Provisions

Rule 1. Title, Declaration of Policy, and Definition of Terms

Section 1. Title and Scope. – This Department Circular shall be known as the “Rules Governing the Establishment of Renewable Portfolio Standards in the Philippines”. It shall hereinafter be referred to as the “Philippine RPS Rules”.

Section 2. Purpose for RPS. – The purpose of the RPS is to contribute to the growth of the renewable energy industry by diversifying energy supply, spur socio-economic development in rural areas, and help address environmental concerns of the country by reducing harmful emissions.

Section 3. Scope of the RPS Rules. - The scope of this RPS Rules is to establish the rules and regulations for the:

- (1) Types of RE resources, and identification and certification of generating facilities using said resources that shall be required to comply with the RPS obligations;
- (2) Yearly minimum RPS requirements upon the establishment of the RPS Rules;
- (3) Annual minimum incremental percentage of electricity sold by each **mandated** electric power industry participant which is required to be sourced from eligible RE Resources and which shall, in no case, be less than one percent (1%) of the supplier’s annual energy demand over the next ten (10) years;
- (4) Technical feasibility and stability of the transmission and/or distribution grid systems; and
- (5) Means of compliance by mandated electric power industry participant of the minimum percentage set by the government to meet the RPS requirements including direct generation from eligible RE Resources, contracting the energy sourced from eligible RE Resources, or trading in the REM.

Section 4. Definition of Terms. - as used in this Rules, the following terms shall be defined as follows:

- a. “Embedded Generation – refers to generating units that are indirectly connected to the Grid through the Distribution Utilities’ lines or industrial generation facilities that are synchronized with the Grid;
- b. Feed in Tariff or FIT – refers to a renewable energy policy that offers guaranteed payments on a fixed rate per kilowatt hour for emerging renewable energy sources, excluding generation for own use. Or to the rate itself as approved by the Energy Regulatory Commission;
- c. “Force Majeure” - refers to a typhoon, storm, tropical depression, flood, drought, volcanic eruption, earthquake, tidal wave or landslide or an act of public enemy, war (declared or undeclared), riot, insurrection, revolution, sabotage, blockade or any violent and threatening actions that may result or likely lead to extraordinary disruption of the operations of the electric power industry participant (?).
- d. National Grid Corporation of the Philippines (NGCP) - refers to the entity granted a franchise by the Congress of the Philippines to operate and maintain the transmission network of the Philippines in accordance with the provisions of the concession agreement with the Government of the Philippines
- e. Normalization Procedure – As applied in these Rules, is a statistical process of removing impact of non-recurring events in the analysis of data;
- f. Philippine Energy Plan – refers to overall energy program formulated and updated yearly by DOE and submitted to Congress pursuant to R.A. 7638.
- g. Renewable Energy Certificates (RECs) - are intangible energy assets that represent proof of compliance the unit of measurement and the value of which shall be defined in accordance with separate Rules regarding the RECs and the Rules on the Renewable Energy Market (REM), which shall be promulgated by the DOE. These certificates can be traded in the REM.

Further, this Rules hereby adopts by reference the definition of terms provided in R.A. 9513 and its implementing rules and regulations.

PART II. Renewable Portfolio Standards

Rule 2. RPS Policy and Mandate, RPS Mandated Sectors, Eligible Renewable Energy Resources

Section 5. The Renewable Portfolio Standard (RPS) – The Renewable Portfolio Standard is a market based policy that requires the mandated electric power industry participant to source an agreed portion of their energy supply from eligible RE resources.

Section 6. Annual RPS Requirement. -

All electric power industry participants mandated to comply with the RPS shall be required to maintain a minimum share of renewable energy in their portfolio consistent with the level set by the NREB calculated in accordance with the following formula:

$$\text{AVERAGE (RE}_n + \text{RE}_{n-1} + \text{RE}_{n-2} + \text{RE}_{n-3} + \text{RE}_{n-4})$$

Where

n = Prior year before RPS imposition

RE = Share of renewable energy to total portfolio expressed in percentage

Section 7. Annual Increase of RE Portfolio. – The DOE shall increase the RPS rate by at least one percent (1%) of its annual energy demand within the period of ten (10) years from effectivity of this Rules. Provided: That the annual increase should correspond to the installation target. Further, all electric power industry participants mandated to comply with the RPS shall also increase the share of RE in their energy portfolio annually by at least one percent (1%) or by the annual rate to be determined by the DOE.

Rule 3. Annual RE Generation Requirement, Annual RPS Requirement and Installation Target

Section 8. Renewable Energy Resources covered by RPS. - The renewable energy resources eligible for purposes of compliance with the RPS shall be as follows:

- I. Renewable Energy Resources Entitled to FITs
 - a. Biomass;
 - b. Waste to energy technology;
 - c. Wind energy;
 - d. Solar energy;
 - e. Run of river hydropower sources;
 - f. Ocean energy;
 - g. Hybrid systems as clearly defined in the RE Law;
- II. Renewable Energy Resources not Entitled to FITs
 - a. Impounding hydropower sources that meet internationally accepted standards;

- b. Geothermal energy;
- c. Other renewable energy technology that may be later identified upon the recommendations of the NREB.

Section 9. RPS Mandated Sectors. - Unless otherwise provided, the following entities are mandated to comply with the RPS:

- a. All Distribution Utilities (DUs) for all its existing customers and subsequently the captive market upon commencement of retail competition and open access;
- b. All licensed retail electricity suppliers for the contestable market upon commencement of retail competition and open access;
- c. All local retail electricity suppliers;
- d. Supplier of Last Resort (SoLR) upon commencement of retail competition and open access;
- e. Generating Companies serving the directly connected customers;
- f. Entities duly authorized to operate within economic zones;
- g. Other entities that shall be identified by NREB.

Section 10. Installation Targets - All electric power industry participants mandated to comply with the RPS shall be guided by the installation targets to be identified by the DOE. DOE shall issue a separate Circular on the Installation Targets.

Section 11. Baseline Data for Calculation of RPS

- a. Formula - the formula that will be used in determining the baseline data for purposes of compliance with the RPS shall be:

$$\text{AVERAGE } (P_n + EG_n) + (P_{n-1} + EG_{n-1}) + (P_{n-2} + EG_{n-2}) + (P_{n-3} + EG_{n-3}) + (P_{n-4} + EG_{n-4})$$

Where n = Prior year before RPS Rules imposition

P = Purchases

EG = Embedded generation

- b. Baseline Electricity Data - the baseline electricity data that will be applied to the formula in the preceding paragraph shall be as follows:
 - i. Average total kWh purchases plus all output from embedded generating facilities of the Distribution Utility for the past five (5) years preceding the imposition of the RPS and subsequently calculated every year thereafter as the moving average of the past five (5) years;

- ii. Average kWh purchases of directly connected customers for the past five (5) years preceding the imposition of the RPS and subsequently calculated every year thereafter as the moving average of the past five (5) years.
- iii. In the case of the retail electricity suppliers, the sum of the average total kWh purchases for the past five (5) years preceding the imposition of the RPS and subsequently calculated every year thereafter as the moving average of the past five (5) years.

Provided: Further, that the DOE may apply normalization procedures in the event that the year preceding the imposition of the RPS is deemed to be not representative of the regular operations of the distribution utilities and/or retail electricity suppliers.

Furthermore, that the annual projected increment in the share of RE to the total electricity portfolio of each DU or retail electricity supplier shall be based on the most recent Philippine Energy Plan.

- c. The calculation of the baseline and all data to be used shall be submitted by the mandated electric power industry participants to and verified by the DOE.

Section 12. Review of RPS. - The Rules on the RPS may be reviewed by the DOE once every two (2) years or as necessary.

Rule 4. Compliance Mechanisms and Renewable Energy Certificate

Section 13. Compliance Mechanisms. –The mandated electric power industry participants shall use any of the following instruments in complying with the RPS:

- a. Allocation from the system operator (TRANSCO, or its successor-in-interest) pursuant to the Rules on the Feed-in Tariffs;
- b. Generation from embedded renewable energy resource facility (certified by the DOE and with Certificate of Compliance obtained from ERC);
- c. Power Supply Agreement (PSA) between the mandated electric power industry participant and the eligible RE Resource Generating Company approved by the ERC;
- d. Renewable Energy Certificate (REC) traded in the REM where the unit of one REC will be defined by the Rules on the RECs; and

- e. Net metering arrangements subject to the standards on connection approved by the ERC.

Section 14. The Renewable Energy Certificate – The DOE shall establish the Renewable Energy Market (REM) to facilitate the issuance and utilization of RECs for compliance with the Annual RPS Requirement. The following principles will be used by the DOE in establishing the rules and guidelines that will govern the REM and the RECs:

- a. Any RPS mandated entity may store excess RECs in the RE Registry for its compliance in the succeeding year: Provided, That the REC shall be valid only for a period of one (1) year or 12 months subject to the promulgation of the REM Rules;
- b. The RE Registry shall issue the relevant RPS mandated entity an REC resulting from its per unit procurement of energy sourced from a renewable energy source.

PART III. Prohibited Acts, Administrative and Penal Sanctions

Rule 5. Prohibited Acts and Sanctions

Section 15. Monitoring and Enforcement of Compliance with the RPS

The submission of the Compliance Report shall be within an appropriate period to be determined upon the establishment of the Renewable Energy Registrar. The DOE shall certify the level of compliance of each mandated participant. The Compliance Report shall contain the following:

- a. Compliance level of each mandated electric power industry participant;
- b. Total volume of RECs generated;
- c. Total shortfall/excess in RECs, if any;
- d. Other information that may be required by the DOE.

Pursuant to Sec. 35 of the Renewable Energy Law, the DOE shall impose appropriate sanctions against any mandated electric power industry participant for non-compliance or violation of RPS rules.

Section 16. Penalties for Non-Compliance with the RPS Rules. Pursuant to Section 35 of the R.A. 9513 and Rule 12 Part VI of the IRR, any person found not complying or violating the RPS Rules shall be subject to the following sanctions:

- a. Administrative Liability. The DOE may impose a penalty ranging from reprimand to revocation of license with corresponding fine ranging from a minimum of One Hundred Thousand Pesos (₱100,000.00) to Five Hundred Thousand Pesos (₱500,000.00), depending on the gravity of the offense.
- b. Criminal Liability. In accordance with Section 36 of the R.A. 9513, any person, who willfully aids or abets the commission of a crime prohibited herein or who causes the commission of any such act by another shall be liable in the same manner as the principal. Provided, that in case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, chief operating officer, chief executive officer, directors or officers responsible for the violation.

Provided further that the perpetrators of any of the prohibited acts provided for under Section 35 of the R.A. 9513, upon conviction thereof, shall suffer the penalty of imprisonment of from one (1) year to five (5) years, or a fine ranging from a minimum of One Hundred Thousand Pesos (₱100,000.00) to One Hundred Million Pesos (₱100,000,000.00), or twice the amount of damages caused or costs avoided for non-compliance, whichever is higher, or both upon the discretion of the court.

Section 17. Exemption from Compliance.

The DOE may, on any given year, exempt an RPS Mandated RE Generator and/or an RPS Mandated Distributor & Supplier from compliance with the Annual RE Generation Requirement or Annual RPS Requirement, as the case may, under any or all of the following conditions:

- a. Inadequate supply of the eligible RE Resources to meet the Annual RPS Requirement;
- b. Unavailable capacity at both the transmission and relevant distribution network to transport the eligible RE Resource generation to the grid;
- c. Cost of compliance has reached 300% of the ERC-approved FIT; and
- d. Occurrence or existence of Force Majeure affecting or preventing the RPS Mandated Sectors from complying with the Annual Requirements, as the case may be.

PART IV. Final Provisions

Rule 5. Transitory and Other Provisions

Section 18. Transitory Provisions.

No provision of this Circular shall be taken to diminish any right vested by virtue of existing laws, contracts, or agreements.

Section 19. Reportorial Requirements.

The DOE shall establish a reliable database required for the implementation of the RPS Rules. To this end, the following entities shall be required to submit these documents:

- a. All DUs shall submit the following information covering the period that will be defined by the DOE. The information shall reflect the following:
 - i. Purchases broken down by generating facility, power source and/or through the Wholesale Electricity Spot Market (WESM);
 - ii. For purchases from the Power Sector Assets and Liabilities Management Corporation (PSALM) /National Power Corporation (NPC), all purchases shall be segregated into RE and non-RE based resources on the proportionate share of the non-Value Added Tax allocation from PSALM/NPC; and
 - iii. Output from Embedded Generation facilities.
- b. All Generating Companies shall be required to submit data on sales to directly connected customers for the period to be identified by the DOE.
- c. The TRANSCO, or its successor in interest, (NGCP) shall submit the following to the DOE:
 - i. A committed Transmission Development Plan that identifies network expansion/rehabilitation to enable delivery of new [Eligible?] RE Resources to the grid that will include the total investments required to support the Renewable Energy industry;
 - ii. A list of Transmission Services Agreements and other related transmission services” signed between the Renewable Energy developer and TRANSCO, or its successor -in-interest;
 - iii. A technical study/evaluation of incremental ancillary services requirement for a reliable power service delivery given the intermittency nature of the Renewable Energy.
- d. Each RPS mandated electric power industry participant shall submit an Implementation Plan to the DOE which shall contain the following:
 - i. Existing bilateral contracts, if any, that will be used as mechanism to comply with the RPS Rules;
 - ii. Existing Transition Supply Contracts (TSCs) that can be used as mechanism to comply with the RPS Rules;

- iii. Forecast of DU's compliance with the RPS in kWh and corollary kW, which may include, among others, Embedded Generation, bilateral contracts, purchases from the REM and other mechanisms identified as means of compliance herein;
- iv. Distribution network expansion/upgrade plans for Embedded Generation facilities.

Section 20. Information, Education and Communication Activities to Stakeholders.

Pursuant to Rule 10, Section 31 of the IRR, the DOE, through the REMB, shall develop and implement an intensive and massive information, education and communication (IEC) activities that are designed to increase the public awareness and appreciation of the RPS Rules and the RE industry as a whole.

Section 21. Separability Clause. If any provision of this Rules is declared unconstitutional, the remainder of this Rules or the provision not otherwise affected shall remain valid and subsisting.

Section 22. Repealing Clause. Any law, presidential decree or issuance, executive order, letter of instruction, administrative rule or regulation contrary to or inconsistent with the provisions of the RE Act and this Rules is hereby repealed, modified or amended accordingly.

Section 23. Effectivity. This Circular shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Signed this ____ of ____ 2011 at the Department of Energy, Energy Center, Merritt Road, Fort Bonifacio, Taguig City, Metro Manila.