

DEPARTMENT CIRCULAR NO. DC 2023-00-000

**PRESCRIBING THE GUIDELINES FOR THE OPT-IN
MECHANISM UNDER GREEN ENERGY AUCTION
PROGRAM IN THE PHILIPPINES**

WHEREAS, Republic Act No. 7638, otherwise known as the “Department of Energy (DOE) Act of 1992” or the “DOE Charter,” declares it as a policy of the State to, among others, ensure a continuous, adequate, and economic supply of energy through the integrated and intensive exploration, production, management, and development of the country's indigenous energy resources.

WHEREAS, Section 5(h) and Section 5 (k) of the DOE Charter empower the DOE to among others, formulate and implement a program for the accelerated development of non-conventional energy systems and the promotion and commercialization of its applications; and formulate such rules and regulations as may be necessary to implement the objectives of the DOE Charter, respectively,

WHEREAS, Section 2 of Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001” or “EPIRA,” declares the policy of the State to, among others: (a) to ensure the quality, reliability, security, and affordability of the supply of electric power; (b) ensure fair and non-discriminatory treatment of public and private sector entities in the process of restructuring the electric power industry; (c) assure socially and environmentally compatible energy sources and infrastructure; and (d) promote the utilization of indigenous and new and renewable energy (RE) resources in power generation in order to reduce dependence on imported energy;

WHEREAS, Section 37(i) of the EPIRA empowers the DOE to develop policies and procedures, and as appropriate, promote a system of energy development incentives to enable and encourage electric power industry participants to provide adequate capacity to meet demand including, among others, reserve requirements;

WHEREAS, Section 37(j) of the EPIRA mandates that the DOE shall endeavor to provide for an environment conducive to free and active private sector participation and investment in all energy activities;

WHEREAS, Section 37(p) of the EPIRA authorizes the DOE to formulate such rules and regulations as may be necessary to implement the objectives of the EPIRA;

WHEREAS, Republic Act No. 9513, otherwise known as the “Renewable Energy Act of 2008” or the “RE Act,” declares the policy of the State to increase the utilization of RE by institutionalizing the development of national and local capabilities in the use of RE systems, and promoting its efficient and cost-effective commercial application by providing fiscal and non-fiscal incentives;

WHEREAS, Section 5 of the RE Act designates the DOE as the lead agency mandated to implement the provisions thereof;

WHEREAS, in pursuit of its mandates under the RE Act, the DOE promulgated on 19 November 2021 Department Circular No. DC2021-11-0036, otherwise known as “*Providing the Revised Guidelines for the Green Energy Auction Program in the Philippines*” or the “*GEAP Guidelines*”, is intended to support and/or facilitate immediate and timely investments in new or additional RE capacities to ensure the provision of adequate supply and competitive rates of electricity in the country;

WHEREAS, under Section 10 of the GEAP Guidelines, the DOE shall issue the guidelines for the Opt-In Mechanism, which aims to lessen the charges under the Feed-in-Tariff system over time by enabling direct contracting of the RPS Mandated Participants from the GEAP pool;

WHEREAS, the DOE has determined that the competitive bidding process under the GEAP is one of the best ways to accelerate the development of RE resources as well as increase the investments in RE and other energy activities, and provide adequate capacity to meet demand including grid reserve requirements;

WHEREAS, the DOE conducted virtual public consultations on the draft Opt-In Mechanism Guidelines on 18 and 21 March 2022 covering Luzon and Visayas stakeholders, and Mindanao stakeholders, respectively;

NOW, THEREFORE, in consideration of the foregoing, the DOE hereby issues and promulgates the guidelines to implement the Opt-In Mechanism to supplement the implementation of the GEAP.

Section 1. Title. This Circular shall be known as “*Prescribing the Guidelines for the Opt-In Mechanism Under the Green Energy Auction Program in the Philippines*” or the “*Opt-In Mechanism Under GEAP*.”

Section 2. Purposes and Objectives. This Opt-In Mechanism Under GEAP is hereby promulgated to:

- (a) Meet any RPS Mandated Participant supply and RPS requirements through the Opt-In Mechanism at the RPS Mandated Participant's option;
- (b) Comply and provide further guidelines in the implementation of Department Circular No. DC2021-11-0036 or the GEAP Guidelines; and
- (c) Reduce the impact on the applicable FIT-All rate charged to end-users, as applicable.

Section 3. Scope. This Circular shall apply to the following:

- (a) RE Registrar
- (b) Renewable Portfolio Standards (RPS) Mandated Participants;
- (c) Energy Regulatory Commission (ERC);
- (d) Market Operator;
- (e) National Transmission Corporation (TransCo); and
- (f) Winning Bidders, as defined under Section 7 of this Circular;

Section 4. Definition of Terms. This Circular hereby adopts, by reference, the terms as defined in the EPIRA, RE Act, and their respective implementing rules and regulations, RPS On-Grid Rules, the Omnibus RE Guidelines, the WESM Rules, FIT Rules, and Green Energy Auction Program insofar as the said terms are consistent herewith, as well as the relevant DOE Department Circulars.

Furthermore, the terms, as used in this Circular, shall be defined as follows:

- (a) **“Opt-In Participation Agreement”** or **“OPA”** shall be the contract between TransCo and the Opt-In Participant for FIT eligible RE, and between Market Operator and Opt-In Participant for Non-FIT, as further described in Section 8 of this Circular.
- (b) **“Opt-In Mechanism”** refers to the process defined in Section 5 of this Circular.
- (c) **“Opt-In Capacity”** pertains to the capacity, in MW, contracted by the RPS Mandated Participant consistent with this Circular.
- (d) **“Opt-In Participants”** refer to the RPS Mandated Participants: Distribution Utilities, Retail Electricity Suppliers, and Generation Companies with Directly-Connected Customers, that comply with the eligibility requirement under Section 5(a) herein and exercise Opt-In Mechanism.

Section 5. Opt-In Mechanism. Consistent with Department Circular No. DC2021-11-0036 or the GEAP Guidelines, any Mandated Participants shall have the option to procure from the GEAP pool of Winning Bidders under a particular auction round and thereby carve out such procured volumes from the FIT-All compensation.

The RPS Mandated Participants shall be guided by the following:

- (a) **Eligibility Requirement.** Compliance with FIT-All payments of the RPS Mandated Participants shall serve as their eligibility requirement to participate in Opt-In Mechanism. The DOE through the GEAC shall determine the Opt-In Participants for each auction round and subsequently provide the list of Opt-In Participants to TransCo and Market Operator.

- (b) **Participation in Opt-In Mechanism.** An RPS Mandated Participant that complies with the eligibility requirement prescribed under this Circular, may exercise its option to Opt-In. The RPS Mandated Participant shall submit the Opt-In Capacity, with an attached Board Resolution or Secretary's Certificate showing the authority to Opt-In, to TransCo and Market Operator.
- (c) **Opt-In Capacity.** The Opt-In Capacity as specified by the Opt-In Participant in the letter request shall correspondingly be stated in the OPA.
- (d) **Opt-In Energy.** The corresponding Opt-In energy shall be determined by multiplying the percentage of the Opt-In Capacity by the total energy generated by the Winning Bidders on a particular GEA round.
- (e) **Opt-In Submission Date.** RPS Mandated Participants shall file their intent to Opt-In with DOE sixty (60) days from posting of Notice of Award, to be included in the determination of GEAP capacity for the immediate Auction Round to be conducted by the DOE. The OPA shall take effect after the execution of the Renewable Energy Payment Agreement (REPA) by the Winning Bidder. However, the OPA start date shall be agreed upon between the parties mentioned in Section 8(d).
- (f) **CSP Exemption.** Any DU that exercised Opt-In Mechanism shall be deemed compliant with the Competitive Selection Process (CSP) requirement of the DOE considering the GEAP Winning Bids are within the ERC-set GEAR Prices for the particular GEA Round.

Section 6. Opt-In Pricing. The Market Operator shall calculate the weighted average GET (Php/kWh) by dividing the total amount to be paid to all the Winning Bidders for a particular auction round by their total energy generated. The weighted average GET corresponding to the Opt-In Capacity shall be charged, not against the FIT- All rate, but against the Opt-In Participants as part of the generation charge payable by and collected from the relevant Captive.

The Opt-In Participants shall pay the weighted average GET price as per Sections 8(b), and 8(c) of this Circular.

Section 7. GEAP Pool of Winning Bidders. The capacities offered in GEA-1, GEA-2, and succeeding auction rounds will be included in the GEAP Pool of Winning Bidders and shall be considered in the determination of the total available Opt-In capacity for a given year. *Provided, That* an RE power project must have a capacity of 5 MW and above to be pooled under this Rules.

OPT-IN PARTICIPATION AGREEMENT TEMPLATE AND OTHER PROVISIONS

Section 8. Opt-In Participation Agreement Template. The OPA Template will include the following, among others:

- (a) Names of the parties: Market Operator or TransCo and Opt-In Participant;

- (b) Opt-In Capacity;
- (c) Weighted average GET; and
- (d) Start date and End date of the OPA.

Section 9. Regulatory Support. The pass-through cost of Opt-in energy supplied by Distribution Utilities to its captive customers shall not in any way exceed the calculated blended rate of the GET as approved by the ERC. Provided, further that said pass-through costs shall not form part of the FIT-All Charges, duly approved by the ERC. To this end, the ERC shall promulgate the necessary guidelines to implement this provision and shall assist the DOE in the full implementation of this policy.

Section 10. Non-payment of Opt-In Price. If an Opt-In participant fails to pay the Opt-In price for three (3) consecutive months, the OPA shall be deemed terminated and Opt-In Capacity shall be offered in the Market. Such Opt-In Participant shall not be allowed to request carry-over of RPS compliance for such period and therefore subject to penalty provisions under the RPS Rules.

Section 11. Non-Diminution of Vested Rights. No provision of this Circular shall be construed as diminishing or impairing any right vested by virtue of existing laws, contracts, or agreements.

Section 11. Separability Clause. If any provision of this Circular is declared invalid or unconstitutional, the other provisions not affected thereby shall remain valid and subsisting

Section 12. Repealing Clause. All previous issuances, rules, and regulations inconsistent with this Circular are hereby repealed, amended, or modified accordingly.

Section 13. Effectivity. This Circular shall take effect fifteen (15) days after its filing with the University of the Philippines Law Center — Office of the National Administrative Register and publication in at least two (2) newspapers of general circulation.

RAPHAEL P.M. LOTILLA
Secretary

Issued _____ at the Department of Energy, Energy Center, Rizal Drive, Fort Bonifacio, Taguig City, Metro Manila