



Republic of the Philippines
DEPARTMENT OF ENERGY
(Kagawaran ng Enerhiya)

DEPARTMENT CIRCULAR NO. DC2022-11-0034 *JK*

PRESCRIBING AMENDMENTS TO SECTION 19 OF
DEPARTMENT CIRCULAR NO. DC2009-05-0008 TITLED,
RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 9513,
OTHERWISE KNOWN AS "THE RENEWABLE ENERGY ACT OF 2008"

WHEREAS, Section 2(a) of Republic Act No. 9513, or the Renewable Energy Act of 2008 (the "RE Act") provides the State policy to accelerate the exploration and development of renewable energy (RE) resources, such as, but not limited to, biomass, solar, wind, hydro, geothermal and ocean energy resources, including hybrid systems, to achieve energy self-reliance, through the adoption of sustainable energy development strategies to reduce the country's dependence on fossil fuels and thereby minimize the country's exposure to price fluctuations in the international markets, the effects of which spiral down to almost all sectors of the economy;

WHEREAS, Section 2(c) of the RE Act further declares the State policy to encourage the development and utilization of RE resources as tools to effectively prevent or reduce harmful emissions and thereby balance the goals of economic growth and development with the protection of health and the environment;

WHEREAS, pursuant to Section 33 of the RE Act, the Department of Energy ("DOE") promulgated Department Circular No. DC2009-05-0008, or the Rules and Regulations Implementing Republic Act No. 9513 (the "RE Act IRR") on 25 May 2009;

WHEREAS, Section 19, Rule 6 of the RE Act IRR provides, among others, that all forces of potential energy and other natural resources are owned by the State, which include potential energy sources such as kinetic energy from water, marine current and wind; thermal energy from solar, ocean, geothermal and biomass; and that foreign RE Developers may also be allowed to undertake RE development through an RE Service/Operating Contract with the government, subject to Article XII, Section 2 of the Constitution;

WHEREAS, in implementing the RE Act, Section 19, Rule 6 of the RE Act IRR reserved the exploration, development and utilization of RE resources, namely, solar, wind, hydropower, geothermal and ocean or tidal energy, to Filipino citizens and corporations or associations at least sixty percent (60%) of whose capital is owned by Filipinos;

WHEREAS, the RE Act contains no provision imposing the afore-cited ownership restriction;

WHEREAS, on 29 September 2022, the Department of Justice (DOJ) rendered an Opinion¹ that the exploration, development and utilization of solar, wind, hydro and ocean or tidal energy should not be subject to the forty percent (40%) foreign equity limitation since these resources are (1) are inexhaustible, hence, beyond the ambit of the term "natural resources" in Section 2, Article XII of the Constitution which contemplates only those resources that are susceptible of appropriation as understood under the constitutional provision, limited and exhaustible, and (2) considered as kinetic energy and therefore excluded from the term "all forces of potential energy"; but that the use of water sources, if the same is directly harvested from the source by foreign nationals or entities, may not be allowed based on the Water Code of the Philippines² and *IDEALS, Inc. vs. PSALM*³;

¹ Addressed to DOE Secretary Raphael P.M. Lotilla.

² Presidential Decree No. 1067, series of 1976.

³ G.R. No. 192088, 09 October 2012.

WHEREAS, removing the nationality requirement imposed on businesses engaged in the exploration, development and utilization of solar, wind, hydropower and ocean energy thereby allowing the entry of foreign capital into the country's RE industry will address one of the significant challenges towards achieving the targeted 35% share of RE in the power generation mix by 2030 and 50% share by 2040,⁴ lowering the cost of RE projects, and making cleaner energy more accessible to the greater public.

NOW THEREFORE, for and in consideration of the foregoing and to give meaning and purpose to the abovementioned DOJ Opinion, the DOE hereby issues, adopts, and promulgates the following amendments to the RE Act IRR:

Section 1. Deletion of the text of Section 19 (A) of the RE Act IRR. The text of Section 19 (A) of DC No. DC2009-05-0008 is hereby deleted and replaced with "[deleted]".

Section 2. Amendment to Section 19 (B) of the RE Act IRR. Section 19 (B) of DC No. DC2009-05-0008 is hereby amended to read as follows:

B. Parties to a Service/Operating Contract

The State may directly undertake the exploration, development, production and utilization of RE resources, or it may enter into RE Service or Operating Contracts with Filipino and/or foreign citizens or Filipino and/or foreign-owned corporations or associations.⁵

Section 3. Separability Clause. If any provision of this Circular is declared invalid or unconstitutional, the other provisions not affected thereby shall remain valid and existing.

Section 4. Repealing Clause. Sections 3.19, 4.2.1, and 4.2.3 of Department Circular No. DC2019-10-0013 and other issuances inconsistent with the provisions of this Circular are hereby repealed, modified or amended accordingly.

Section 5. Effectivity. This Circular shall take effect fifteen (15) days following its publication in two (2) newspapers of general circulation and filing with the University of the Philippines Law Center – Office of the National Administrative Register.


RAPHAEL P.M. LOTILLA
Secretary



Issued on 15 NOV 2022 at Energy Center, Bonifacio Global City, Taguig City.

⁴ National Renewable Energy Program 2020-2040:

https://www.doe.gov.ph/sites/default/files/pdf/announcements/nrep-2020-2040_0.pdf

⁵ The following activities shall be reserved to Filipino citizens or corporations or associations at least sixty percent (60%) of whose capital is owned by Filipinos:

1. The appropriation of water direct from a natural source (Presidential Decree No. 1067; *IDEALS v. PSALM*, G.R. No. 192088, 09 October 2012);
2. The exploration, development and utilization of geothermal resources, except for financial or technical assistance agreements covering the large-scale exploration, development and utilization of geothermal resources (Article XII, Section 2 of the Philippine Constitution); or
3. The utilization of timber and non-timber forest products originating from lands of the public domain and private lands where the collection, harvesting and processing of timber or wood are permitted or the utilization of naturally-occurring flora on lands of the public domain (Article XII, Section 2 of the Philippine Constitution; Presidential Decree No. 705 as amended).