

[ERC RESOLUTION NO. 16, S. 2010, July 12, 2010]

RESOLUTION ADOPTING THE FEED-IN TARIFF RULES

WHEREAS, Section 7 of Republic Act (R.A.) No. 9513, An Act Promoting the Development, Utilization and Commercialization of Renewable Energy Resources and for Other Purposes, and Section 5 of its Implementing Rules and Regulations (IRR) mandate the Energy Regulatory Commission (ERC), in consultation with the National Renewable Energy Board (NREB), to formulate and promulgate Feed-In Tariff (FIT) system rules;

WHEREAS, in pursuance of this mandate, and as part of the formulation of said Rules, on 18 January 2010, the ERC released its initial draft of the proposed FIT Rules and invited all interested parties to comment thereon;

WHEREAS, responding to such invitation of the ERC, several stakeholders submitted their comments, among them: (1) Cagayan Electric Power and Light Company, Inc. (CEPALCO); (2) Department of Energy-World Bank (DOE-WB) Consultant-Marcial Ocampo; (3) Distribution Management Committee (DMC); (4) Energy Logics Philippines, Inc. (ELPI); (5) Gerald Pagobo, MSEE, UP Diliman; (6) Manila Electric Company (MERALCO); (7) National Grid Corporation of the Philippines (NGCP); (8) National Power Corporation (NPC); (9) National Renewable Energy Board (NREB); (10) Next Power Consortium, Inc.; (11) Philippine Electricity Market Corporation (PEMC); (12) Private Electric Power Operators Association (PEPOA); (13) Quezon Power (Philippines), Limited Co.; (14) Trans-Asia Renewable Energy Corporation (TAREC); and (15) Wind Energy Developers Association of the Philippines (WEDAP);

WHEREAS, after considering the comments submitted by the above-named stakeholders, on 10 March 2010, the ERC posted on its website its draft of the FIT Rules and directed all interested parties to submit their comments on or before 31 March 2010;

WHEREAS, the following parties submitted their comments on the draft FIT Rules: (1) Aboitiz Power; (2) Cagayan Electric Power and Light Co., Inc. (CEPALCO); (3) Energy Development Corporation (EDC); (4) Manila Electric Company (MERALCO); (5) National Grid Corporation of the Philippines (NGCP); (6) Northwind Power Development Corporation (Northwind); (7) National Renewable Energy Board (NREB); (8) Philippine Electricity Market Corporation (PEMC); (9) Trans-Asia Renewable Energy Corporation; (10) Wind Energy Developers Association of the Philippines (WEDAP); and (11) Mr. David Tan of Altergy;

WHEREAS, on 14 April 2010, the ERC conducted a public consultation at its office in Pasig City to discuss the issues or comments submitted with respect to the draft FIT Rules;

WHEREAS, the 14 April 2010 public consultation provided the venue for the ERC to discuss to the stakeholders the FIT system framework incorporated in the draft Rules, to clarify the various provisions thereof, and to receive additional comments and suggested revisions to the draft Rules;

WHEREAS, on 17 May 2010, the ERC released an updated draft of the FIT Rules, to incorporate additional revisions, which were intended to address the concerns discussed in the submitted comments, as well as during the public consultation, to clarify or supplement some of the provisions in the previous draft of the proposed Rules, to incorporate the ERC's position on the issues raised by the interested stakeholders, and to fine-tune the draft Rules, so as to keep it more attuned towards the achievement of the policy objectives stated in R.A. No. 9513;

WHEREAS, the ERC subjected the aforesaid updated draft of the FIT Rules to a final round of consultation by giving all interested stakeholders another opportunity to submit any additional comments and inputs they may have thereon;

WHEREAS, the ERC received additional comments and inputs from several parties, among them: (1) Aboitiz Power; (2) Cagayan Electric Power & Light Co., Inc. (CEPALCO); (3) Distribution Management Committee (DMC); (4) Department of Energy (DOE); (5) Energy Development Corporation (EDC); (6) Enfinity Asia Pacific Limited; (7) First Gen Renewables, Inc. (FGR|); (8) Land Bank of the Philippines (LBP); (9) Manila Electric Company (MERALCO); (10) Montalban Methane Power Corporation; (11) National Grid Corporation of the Philippines (NGCP); (12) Northwind Power Development Corporation; (13) National Renewable Energy Board (NREB); (14) PASS Hydro; (15) Philippine Electricity Market Corporation (PEMC); (16) Trans-Asia Renewable Energy Corporation; and (17) Wind Energy Developers Association of the Philippines (WEDAP);

WHEREAS, the comments, suggestions, and requests for clarification submitted by these stakeholders impelled the ERC to introduce further revisions to the draft FIT Rules;

WHEREAS, after careful consideration, guided by the policy objectives in R.A. No. 9513, the ERC deems it appropriate to already finalize and promulgate the draft FIT Rules, as further revised.

NOW THEREFORE, the ERC, after thorough and due deliberation, hereby **RESOLVES,** as it is hereby **RESOLVED,** to **APPROVE** and **ADOPT,** the **"FEED-IN TARIFF RULES"**, hereto attached as Annex "A" and made an integral part hereof.

This Resolution shall take effect fifteen (15) days after its publication in a newspaper of general circulation in the country.

(SGD.) ZENAIDA G. CRUZ-DUCUT
Chairperson

(SGD.) RAUF A. TAN
Commissioner

(SGD.) ALEJANDRO Z. BARIN
Commissioner

(SGD.) MARIA TERESA A.R.
CASTANEDA
Commissioner

(SGD.) JOSE C. REYES
Commissioner

FEED-IN TARIFF (FIT) RULES

1. General Provisions

1.1. Background

Pursuant to Section 7 of Republic Act (R.A.) No. 9513, An Act Promoting the Development, Utilization and Commercialization of the Renewable Energy Resources and for Other Purposes, and Section 5 of its Implementing Rules and Regulations (IRR), the Energy Regulatory Commission (ERC) hereby adopts and promulgates these Feed-In Tariff (FIT) Rules.

1.2. Objectives/Purpose

These Rules establish the FIT system and shall regulate the method of establishing and approving the FIT and the Feed-In-Tariff Allowance (FIT-All).

1.3. Definitions

As used in these Rules, the following terms shall have the following respective meanings:

Biomass Energy Systems refer to energy systems which use biomass energy resources as defined under Section 4(b) of R.A. No. 9513 to produce heat, steam, mechanical power or electricity through either thermo-chemical, biochemical or physico-chemical processes, or through such other technologies which shall comply with the prescribed environmental standards pursuant to R.A. No. 9513.

Certificate of Compliance or COC refers to a certificate given to an Entity by the ERC to engage in the operation of a power plant facility used to generate electricity pursuant to Section 6 of R.A. No. 9136 and Sections 4 and 5 of the Implementing Rules and Regulations of R.A. No. 9136.

Consumer refers to any person or entity requiring the supply and delivery of electricity from the distribution or transmission network for its own use.

Commercial Operation refers to the state at which the Eligible RE Plant generated the first kilowatt-hour of energy after commissioning or testing, or two (2) months from the start of such commissioning or testing, whichever comes earlier.

Commercial Operation Date refers to the date when the Eligible RE Plant starts Commercial Operations.

Commissioning and Testing refers to the series of activities, tests and procedures undertaken in order to start Commercial Operations of a generation facility.

Degression Rate refers to the rate to be applied to the FITs to reduce it over time, to take into account the maturing of renewable energy technology and the resulting cost reduction.

Department of Energy or DOE refers to the government agency created pursuant to R.A. No. 7638 and whose expanded functions are provided in R.A. No. 9513.

Distribution System refers to the system of wires and associated facilities belonging to a franchised distribution utility extending between the delivery points on the transmission or subtransmission system or generator connection and the point of connection to the premises of the end-user.

Distribution Utility or DU refers to any electric cooperative, private corporation, government-owned utility or existing local government unit that has an exclusive franchise to operate a distribution system in accordance with R.A. No. 9136.

Distribution Wheeling Charge refers to the cost or charge regulated by the ERC for the use of distribution system and/or the availment of related services.

Eligible RE Plants refer to the power facilities with Certificates of Compliance issued to them that utilize emerging RE resources identified in Section 7 of R.A. No. 9513 or to such parts of such existing facilities that have been substantially modified or expanded as described in Section 3, which enter into commercial operation after effectivity of the FITs. They include those facilities intended for their owners' use, which are connected to the transmission or distribution networks and are able to deliver to such networks their generation or parts thereof.

Embedded RE Plants refers to RE Plants that are connected to a distribution system and have no direct connection to the grid.

Energy Regulatory Commission or ERC refers to the independent quasi-judicial regulatory body created under Section 38 of R.A. No. 9136.

ERC Rules of Practice and Procedures or ERC RPP refers to the Rules promulgated by the ERC on June 22, 2006 governing proceedings before it.

Existing Facilities refer to those RE Plants, which are already commercially operating before the establishment of the FITs and do not qualify under any of the provisos in Section 1.4.

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 any generation for own use, or to the rate itself as established pursuant to these Rules.

Feed-In Tariff Allowance or FIT-All refers to the charge established pursuant to Section 2.5 of these Rules.

FIT-All Fund refers to the fund established pursuant to Section 2.5 of these Rules comprising proceeds of the collection of the FIT-All by the NGCP and implementation of the generation cost recovery mechanism under Section 2.8.

Generation Baseline Capacity refers to the installed capacity of existing RE Plant based on the last reportorial submission to the ERC as required under the terms of the COC for such existing RE Plant prior to repowering, modernization and/or expansion.

Generation for Own-Use refers to electricity generated by a power plant and utilized for auxiliary services essential to its continued operations and/or its own consumption.

Hydroelectric Power Resources refer to water resources found technically feasible for development of hydropower projects which include rivers, lakes, waterfalls, irrigation canals, springs, ponds, and other bodies of water.

Implementing Rules and Regulations or IRR means the Implementing Rules and Regulations of R.A. No. 9513.

Installation Target refers to the megawatt capacity per RE Technology and the number of years that it shall be achieved as set by NREB.

National Grid Corporation of the Philippines or NGCP refers to the entity that took over the transmission business of the National Transmission Corporation (TRANSCO) by virtue of R.A. No. 9511.

National Renewable Energy Board or NREB refers to the body created pursuant to R.A. No. 9513 to perform various functions to achieve the goals of R.A. No. 9513.

Ocean Energy Resource refers to energy derived from ocean or tidal current, ocean thermal gradient or wave energy that can be converted into electrical or mechanical energy, as defined in R.A. No. 9513.

Off-Grid System refers to an electrical system not connected to the wires and related facilities of the On-Grid System of the Philippines.

On-Grid System refers to electrical systems composed of interconnected transmission lines, distribution lines, substations, and related facilities for the purpose of conveyance of bulk power to the grid.

Renewable Energy or RE refers to renewable energy resources as defined under Section 4 (uu) of R.A. No. 9153.

Renewable Energy Payment Agreement (REPA) refers to the agreement between NGCP and an Eligible RE Plant setting out the obligations of both parties, particularly, the obligation of the NGCP to pay the applicable FIT to such Eligible RE Plant. The form and substance of the pro-forma REPA shall be formulated by NREB in consultation with NGCP and other interested parties and approved by the ERC.