

**[ EXECUTIVE ORDER NO. 462, December 29, 1997 ]**

**ENABLING PRIVATE SECTOR PARTICIPATION IN THE  
EXPLORATION, DEVELOPMENT, UTILIZATION AND  
COMMERCIALIZATION OF OCEAN, SOLAR AND WIND ENERGY  
RESOURCES FOR POWER GENERATION AND OTHER ENERGY  
USES**

WHEREAS, Section 2 of Article 12 of the Constitution provides that "all lands of the public domain, waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, forest or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development and utilization of natural resources shall under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture or production-sharing agreements with Filipino citizens or corporations or associations at least sixty per centum of whose capital is owned by such citizens";

WHEREAS, Presidential Decree No. 1068 issued on January 12, 1977 directed the "acceleration of research, development and utilization of nonconventional energy resources" and Republic Act 7638 of December 9, 1992 mandated the Department of Energy (DOE) to "formulate and implement a program for the accelerated development of nonconventional energy systems and the promotion and commercialization of its application";

WHEREAS, ocean, solar and wind (OSW) energy resources are forces of potential energy which are nonconventional, indigenous, renewable, environment-friendly and of such abundance that could provide the Philippines self-sufficiency in energy and possibly surpluses for export in the future despite high energy demand due to rapid economic growth;

WHEREAS, it is in the national interest to accelerate the development and utilization of OSW energy resources by enabling private sector participation.

NOW, THEREFORE, I, FIDEL V. RAMOS, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

*SECTION 1. Exploration, Development and Utilization of OSW Energy Resources.* — Subject to existing rights, the government, through the DOE, shall engage in the assessment, exploration, extraction, harnessing, development and utilization of ocean, solar and wind (OSW) energy resources, preferably with the participation of the private sector under a production-sharing contract awarded by the Secretary of the DOE, after due consultation with the host community/ies and local government unit/s concerned, through public bidding or negotiation. The production-sharing

contractor must be technically and financially capable of undertaking the operations required in the contract.

*SECTION 2. Scope of Production-Sharing Contracts.* — Production-sharing contracts, as herein authorized, shall be limited to lands of the public domain and offshore waters within the Philippine territory, contiguous zone and exclusive economic zone. All lands or offshore waters covered by contracts granted under this Order shall be subject to public easements established or recognized by existing laws.

*SECTION 3. OSW Energy Projects in Private Domain.* — Energy generation of more than one (1) megawatt from OSW resources in private lands as well as in privately-held offshore areas shall be regulated by the DOE through the existing accreditation system for power plants. Generation projects of one (1) megawatt or less shall be regulated by the local government unit/s concerned in accordance with pertinent local energy plan/s, coordinated with the national energy plan and approved by the DOE.

*SECTION 4. Exclusive Privilege.* — A production-sharing contract under this Order shall bestow exclusive privilege to the contractor for the exploration, development and utilization of the OSW energy resources in the contract area during the term of the contract. Such privilege shall be transferable to another qualified person only upon approval of the Secretary of the DOE.

*SECTION 5. Resource-Use Conflicts.* — In case other natural resources are present in the contract area, the multiple-use concept shall be applied insofar as practicable subject to RA 7586 otherwise known as National Integrated Protected Area System law (NIPAS). If a natural resource-use conflict is not resolved by multiple use, the first-come-first-serve principle shall prevail.

*SECTION 6. OSW Energy Resources in Government Reservations.* — OSW energy resources in government reservations, except in areas that have been established and specifically delineated as protected areas under the procedures prescribed by the NIPAS law, shall be availed of only through the production-sharing contract system under this Order.

*SECTION 7. Qualification of Contractor.* — A contractor under this Order shall be a qualified natural or juridical person seeking to explore, develop, utilize and harness OSW energy resources in the Philippines for purposes of producing power and/or types of energy. Details of financial, technical and other qualifications of a contractor shall be specified by the Secretary of the DOE in the implementing rules and regulations of this Order.

*SECTION 8. Production-Sharing Contract Components.* — A production-sharing contract under this Order shall include a "Pre-Commercial Contract" and a "Pre-Negotiated Commercial Contract". The Pre-Commercial Contract shall involve exploration, resource assessment, piloting, feasibility studies, environment impact studies and all other studies prior to commercial production. The Pre-Negotiated Commercial Contract shall provide in terms and conditions for the commercial phase of the project which shall be negotiated at the same time as the Pre-Commercial Contract.

*SECTION 9. Declaration of Commerciality.* — Upon determination of the commercial