

[OEA, March 10, 1992]

**RULES AND REGULATIONS GOVERNING THE FILING AND
PROCESSING OF APPLICATIONS FOR AUTHORITY TO
CONSTRUCT AND OPERATE MINI-HYDROELECTRIC POWER
PLANTS AND PROVIDING FOR THE TERMS AND CONDITIONS OF
THE OPERATING CONTRACTS CONCLUDED PURSUANT THERETO**

Pursuant to the authority vested upon it by Sec. 6(1) and (4) of Republic Act No. 7156, otherwise known as the Mini-Hydroelectric Power Incentives Act, the Office of Energy Affairs hereby adopts and promulgates the following rules and regulations governing the filing and processing of application for authority to construct and operate mini-hydroelectric power plants providing for the terms and conditions of the operating contracts concluded pursuant thereto for the information and guidance of all concerned.

**Rule I
General Provisions**

SECTION 1. Title — These rules shall be known and cited as the rules and regulations governing the construction and operation of mini-hydro-electric (mini-hydro) power plants.

SECTION 2. Definition of Terms — Unless the context otherwise indicates, the following terms as used in these rules shall have the following meanings:

- a. **Avoided cost** shall refer to the costs of the affected grids had NAPOCOR generated the equivalent electric power itself before disposing the power to third parties.
- b. **Capacity** shall refer to the electric load for which a generating unit or their electrical apparatus is rated by the manufacturer; its unit of measurement is usually kilowatts (kw).
- c. **Electric cooperative** shall refer to cooperatives duly authorized to supply electricity or empowered to supply electric service.
- d. **Electric utility** shall refer to an electric cooperative, local government-owned or privately owned, operating a grid within the NAPOCOR grids or other electric systems.
- e. **End-user** shall refer to a user of electricity generated by a mini-hydro power plant.
- f. **Feasibility** study shall refer to a study which is based on data specific to the site where the mini-hydro power plant will be erected.

- g. **Franchised** area shall refer to a geographical area franchised to an electric utility for electricity supply to end-users.
- h. **Grid operator** shall refer to any operator of electrical systems of interconnected transmission lines, substations and generating plants of the National Power Corporation or the concerned electric utility as the case may be.
- i. **Hydroelectric power** shall refer to electric power produced by utilizing the kinetic energy of falling or running water to turn a turbine generator.
- j. **Mini-hydroelectric power developer or developer** shall refer to any individual, cooperative, corporation, or association that is engaged in or one who intends to engage in the construction, installation, and operation of a hydroelectric-power-generating plant with an installed capacity of not less than 101 kilowatts nor more than 10,000 kilowatts. An end-user may also be a developer.
- k. **Mini-hydroelectric power development** shall refer to the construction and installation of a hydroelectric-power-generating plant and its auxiliary facilities such as transmission, substation and machine shop with an installed capacity of not less than 101 kilowatts nor more than 10,000 kilowatts.
- l. **Mini-hydroelectric power plant** shall refer to an electric-power-generating plant which (a) utilizes kinetic energy of falling or running water (run-of-river hydro plants) to turn a turbine generator producing electricity; and (b) has an installed capacity of not less than 101 kilowatts nor more than 10,000 kilowatts.
- m. **NAPOCOR** shall refer to the National Power Corporation created pursuant to R.A. 6395.
- n. **OEA** shall mean the Office of Energy Affairs.
- o. **Rate** shall refer to any price or tariff with respect to sale or purchase of electric energy, usually measured in pesos per kilowatt-hour for energy payments and pesos per kilowatt for capacity payments.
- p. **Person** includes every individual not otherwise disqualified by law, or corporation, partnership, association or joint company, constituted and organized under the laws of the Philippines, at least sixty percent (60%) of the stock or paid-up capital of which belongs to the citizens of the Philippines.
- q. **Water resource** shall refer to a surface water course where the flow to be used by the turbines of the mini-hydro power plant is diverted from and restituted to after having passed the installations.
- r. **Wheeling** shall refer to the electric energy transmission services extended by NAPOCOR or an electric utility to enable the developer of a mini-hydro power plant to transmit power to another electric grid or end-user.

SECTION 3. Who May Apply — Any person defined in Section 2.p of these rules, not otherwise disqualified by law, may apply for authority to construct and operate a mini-hydroelectric power plant. In cases of holders of permits to operate mini-hydro

power plants existing and operating at the time of the effectivity of these rules and who wish to avail of the incentives under R.A. 7156, registration and payment with the OEA of the application fee as provided in these rules shall be sufficient bases for the granting of their operating contracts, provided, that they register within six (6) months from the effectivity of these rules.

SECTION 4. Content of the Application — All applications shall be made in writing, verified, accomplished in two (2) copies, and must show, among other things, the jurisdictional facts, the name and address of the applicant, the brief description of the project stating, among others, how water will be used, amount of water needed, power to be generated, etc., and place where applicant proposes to construct a mini-hydropower plant.

SECTION 5. Documents to Accompany Application — All applications shall be accompanied by such documents as would reasonably establish *prima facie* the truth of the factual allegation thereof, including but not limited to the following:

a. Certificate of Registration from the Securities and Exchange Commission together with a copy of Articles of Incorporation or Certification from the Department of Trade and Industry in case the applicant is a single proprietorship;

b. Proposed Memorandum of Agreement between the applicant and either the NAPOCOR, the franchised electric utility, or other end-user as the case may be, on power purchase as well as on the use of existing lines and the associated wheeling fees, as applicable;

c. Comprehensive feasibility study proving the technical, economic, financial, social, as well as the administrative viability of the project. It shall likewise include a feasibility report particularly highlighting the activities for the proposed project, such as:

1. Data collection and review of any available pre-feasibility study, other pertinent data and study reports relevant to the proposed project;
2. Detailed program for all survey and investigation works required in the study, such as topographic survey which will enable utilization of maps of sufficient scale (1:500) for layout purposes, geologic mapping, drilling (if any), establishment of gauging station, and others which may be deemed necessary;
3. Site inspection and field reconnaissance from time to time to confirm data obtained and design made;
4. Necessary hydrologic and hydraulic studies;
5. Plant operation and maintenance studies for optimization and determination of the power and energy capability of the project;
6. Determination as to whether or not the power and energy from the proposed mini-hydro power facility is marketable within the existing system or is marketable as an isolated facility;

7. Alternative layout or developments on the basis of topographic data available for optimization of selected parameters in the project;
 8. Detailed layout and preliminary design to establish configuration of each structure in the development;
 9. Establishment of unit prices and preparation of detailed quantity and cost estimates of the recommended schemes;
 10. Project Description shall be submitted according to the guidelines set by the Department of Environment and Natural Resources (DENR) which should incorporate the measures that a project proponent intends to take to ensure that the adverse effects of the proposed project on the environment will be avoided if not minimized. It should also include a watershed development plan and the endorsement from the Local Government unit;
 11. Construction schedule for the proposed project;
 12. Economic and financial evaluation including sensitivity analysis on specific factors;
 13. Recommendation on additional investigation program to be carried out during the detailed design and implementation phase, if deemed necessary; and
 14. Manual for operations of the power plant which shall be prepared in respect of all requirements provided by law for the operation of a mini-hydro power plant. If power is sold to the grid, the operation of the plant shall be governed by dispatch rules assigned by the grid operator.
- d. Processing fee of one Peso (P1.00) per kilowatt estimated installed capacity.
- e. Such other papers and documents as may be required by the OEA.

SECTION 6. Financial Requirements — In determining the financial capability of the applicant, the OEA shall be guided by the following financial indicators:

- a. The applicant has a minimum working capital of at least Thirty-Five Thousand Pesos (P35,000.00) per kilowatt to support the first two (2) years of the project's work program and must demonstrate that it has the capability to raise additional working capital of at least sixty percent (60%) of the estimated project cost to fund the remaining works and the plant's subsequent operations;
- b. Current ratio of 1.5:1;
- c. Debt equity ratio of 3:1; and
- d. Such other factors which would substantially establish the applicant's financial capability.

SECTION 7. The amounts specified in *Section 6.a* shall be adjusted accordingly in cases of extraordinary inflation of the Philippine Peso in accordance with the provisions of Article 1250 of the Civil Code of the Philippines.

SECTION 8. Defective Application — When an application is filed and it is found to be defective either in form or in substance or incomplete as to certain data, the OEA shall within two (2) days inform the applicant of such a fact in writing, with notice that the correction or deficiency must be supplied within fifteen (15) working days from receipt of the notice.

If the applicant fails to supply the required correction within the said period, the application shall be deemed to have been abandoned and forthwith, the same shall be returned to the applicant together with all the documents attached thereto. However, for good cause shown, the period may be extended by the OEA upon written request made before the expiration of the period sought to be extended.

Rule II

Criteria in Determining the Approval or Disapproval of the Application

SECTION 1. The OEA, in processing an application, shall be guided, but not limited, by the following:

- a. The operation of the proposed mini-hydro power project will promote public interest in a proper and suitable manner.
- b. The applicant is financially and technically capable of undertaking the proposed mini-hydro power project and meeting the responsibilities incident to its operation.
- c. The construction and operation thereof will not result in the closure or stoppage of existing water outlets, passageways, conduits, or the like from the water source.
- d. The requirements of public safety and Environmental Compliance Certificate are complied with.
- e. Generally, the construction and operations thereof will promote and achieve the purposes of R.A. 7156.

SECTION 2. Processing Period — The OEA shall resolve the application within four (4) months from receipt thereof provided that all the documents and clearances contemplated in these rules are timely submitted and no objections have been raised by concerned parties.

Rule III

Granting of License or Authority and Execution of Operating Contract

SECTION 1. Issuance of Authority or License — If the OEA approves an application, it shall issue a certificate of authority or license to construct and operate a mini-hydro power plant to the applicant or to the person in whose name the application was made and an operating contract detailing the rights and obligations between the OEA and the developer shall forthwith be executed.

SECTION 2. Effectivity — Unless sooner revoked for cause, the license shall be co-terminus with the term of the mini-hydro power operating contract which shall be