

Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City



RESOLUTION NO. 16, SERIES OF 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 Altery;

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;

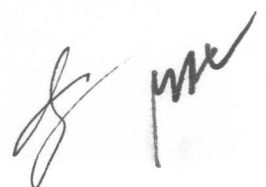
WHEREAS, the 14 April 2010 public consultation provided the venue for the ERC to discuss to the stakeholders the FIT system framework incorporated in the draft Rules, to clarify the various provisions thereof, and to receive additional comments and suggested revisions to the draft Rules;

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. (FGRI); (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;

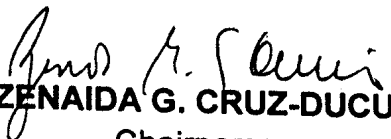


WHEREAS, after careful consideration, guided by the policy objectives in R.A. No. 9513, the ERC deems it appropriate to already finalize and promulgate the draft FIT Rules, as further revised.

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.

Pasig City, 12 July 2010.


ZENAIDA G. CRUZ-DUCUT
Chairperson


RAUF A. TAN
Commissioner


MARIA TERESITA R. GASTANEDA
Commissioner


ALEJANDRO Z. BARIN
Commissioner


JOSE C. REYES
Commissioner

sum 4

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.

RE Technologies refer to wind, solar, ocean, run of river hydropower, and biomass technology used by an Eligible RE Plant for the generation of electricity.

Retail Electricity Supplier or RES refers to any person or entity authorized by the ERC to sell, broker, market or aggregate electricity to End-Users in the Contestable Market.

Rules refer to these Feed-In Tariff Rules.

Run-of-river Hydropower refers to the generation of electricity utilizing the kinetic energy of falling or running water, where the facilities match water inflows

to the reservoirs as closely as is reasonably possible so that fluctuations in water outflows are not substantially more extreme or more frequent than would otherwise occur naturally.

Solar Energy Resource refers to energy derived from solar radiation that can be converted into useful thermal or electrical energy, as defined in R.A. No. 9513.

Transmission of Electricity refers to the conveyance of electricity through the high voltage backbone system.

Transmission Wheeling Charge refers to the rate associated with the cost incurred in the transmission of electricity from the generators to the distribution utilities' system or directly to consumers.

Wholesale Electricity Spot Market (WESM) refers to the Wholesale Electricity Spot Market created in accordance with R.A. No. 9136.

Wind Energy Resource refers to energy derived from wind that is converted into useful electrical or mechanical energy, as defined in R.A. No. 9513.

1.4. Scope

Subject to paragraph 3 hereof, the FITs to be established and approved pursuant to these Rules shall be specific for each emerging renewable energy technology and to be applied only to generation facilities which enter into commercial operation after effectivity of the FITs or to such parts of such existing facilities which have been substantially modified or expanded as described in Section 3. All Eligible RE Plants shall be entitled to the appropriate FITs as established and such FITs shall be paid by all On-Grid electricity consumers according to the FIT system established in these Rules.

All such RE Plants shall be deemed eligible upon issuance of a COC authorizing them to operate as FIT-eligible RE Plants, subject to the terms and conditions attached to it, among them, compliance with the Philippine Grid Code (PGC) and other pertinent laws, rules and regulations of the ERC. The ERC shall issue the appropriate rules or amendments to its COC Rules, PGC, and other existing rules, if necessary, to reflect any additional eligibility, technical, or other special requirements that shall be imposed on RE Plants for them to qualify as Eligible RE Plants.

RE Plants that have been in commercial operation before the FITs are established by the ERC pursuant to these Rules are not qualified for such FITs: *Provided, however*, that RE plants, which have started commercial operations after the effectivity of the R.A. No. 9513 and are not bound under any contract to supply the energy they generate to any DU or consumer, may avail of FITs from the time they are certified by ERC as eligible through an amendment of the COC issued to them and for a period of twenty (20) years less the number of years they have been in operation: *Provided, further*, that RE Plants, which have been in operation prior to the effectivity of R.A. No. 9513, may be granted lower FITs specific to them upon application and hearing, and after a showing that:

- (a) Such FITs are indispensable for their continued operations;
- (b) There is no legal impediment for them to be allowed such FITs, such as the existence of a power supply agreement/power purchase agreement with any DU or End- User; and

- (c) They have fulfilled such other requirements of the ERC.

2. Regulatory Framework for the Establishment of FITs

2.1. Coverage

Pursuant to Section 7 of R.A. No. 9513, under Chapter III entitled "On Grid Renewable Energy Development," the FIT System as established in these Rules shall apply only to On-Grid areas.

For the Off-Grid areas, the ERC may consider through a separate issuance the implementation of an RE incentive mechanism, consistent with Section 12 and 15(h) of R.A. No. 9513.

2.2. Per technology and size

Technology-specific FITs shall be approved by the ERC based on such FITs to be recommended by the NREB. Such technology-specific FITs may further be differentiated based on the size of the Eligible RE Plant, as may be recommended by the NREB.

2.3. Fixed

The FIT to be established shall be a fixed tariff, instead of a premium, and shall be set and approved in accordance with the methodologies and procedures outlined in these Rules. When already appropriate, the ERC shall issue the rules for the adoption of premium-based FITs.

2.4. Time-of-Use (TOU) FITs

FITs for peak hours and off-peak hours may be established for renewable energy technologies that can follow the dynamics of demand such as biomass energy systems and hydropower, as may be recommended by the NREB.

2.5. Feed-in Tariff Allowance (FIT-All)

Electricity consumers who are supplied with electricity through the distribution or transmission network shall share in the cost of the FITs in part through a uniform charge (in PhP/kWh) to be referred to as the FIT-All and applied to all billed kWh.

The FIT-All shall be established and set by the ERC on an annual basis upon petition by the NGCP, which is tasked with the settlement of the FITs of the Eligible RE Plants. However, if after any quarter of operation of the FIT-All scheme, NGCP has determined that the Working Capital Allowance as originally set has been depleted by more than fifty (50) percent due to higher FIT-eligible deliveries than the projections used in the setting of the FIT-All, NGCP shall be allowed to immediately file for the adjustment of the FIT-All to replenish the Working Capital Allowance.

The FIT-All shall take into account the following: the forecasted annual required revenue of the Eligible RE Plants; the previous year's over or under recoveries; NGCP's administration costs; the forecasted annual electricity sales; and such other relevant factors to ensure that no stakeholder is allocated with additional risks in the implementation of the FITs.

The forecasted annual required revenue of the Eligible RE Plants shall be determined considering the following: for deliveries to the transmission network, the forecasted annual generation of the Eligible RE Plants and the applicable FITs for the year. For deliveries to distribution network, the forecasted annual generation of these embedded Eligible RE Plants, the applicable FITs for the year, and the annual average generation charge of all the distribution utilities where the Eligible RE Plants are embedded, consistent with Section 2.8, shall be considered. The projected WESM generation revenues shall also be considered, if applicable, based on subsequent issuances of the ERC as mentioned in Section 2.9.

NGCP shall ensure that the FIT-All fund is sufficient to pay all RE producers regularly. As such, it shall include a sufficient allowance for the working capital requirements in case some customers default or delay in their obligations to collect and remit the FIT-All proceeds. Additionally, in order to minimize this risk, the ERC shall impose the appropriate penalties to the erring parties to discourage either delay or default in payment of the FIT-All proceeds, which include the imposition of a twenty (20) percent penalty surcharge, plus monthly interests on the unpaid amounts based on 91-day Treasury bill plus 300 basis points until fully paid, and allowing NGCP to disconnect any such erring party from the Grid should the delay or default in payment persist over more than two (2) billing periods.

2.6. FIT-All as a Separate Uniform Charge

The FIT-All shall be included in the transmission billing statement as a separate line item to be imposed and collected by the NGCP from the consumers who are directly connected to its system and in the distribution billing statement as a separate line item to be imposed and collected by the DUs from the consumers connected to their respective systems. Upon the start of open access and retail competition, the FIT-All shall be included among the charges to be imposed and collected, also as a separate item, by the Retail Electricity Suppliers from their respective customers.

Proceeds from the imposition and collection by the DUs and RES of the FIT-All shall be remitted to NGCP based on the more detailed guidelines to be established by the NREB and approved by the ERC for the collection and disbursement of the FIT-All fund.

For this purpose, NGCP shall consolidate the information on the generation of all Eligible RE Plants for all the On-Grid areas, including those that are embedded in the distribution system.

2.7. Priority Connection, Purchase, and Transmission

All Eligible RE Plants shall enjoy priority connection to the transmission or distribution system, as the case may be, subject to their compliance with the pertinent standards and ERC rules governing such connection. Whenever generation from their plants is available, Eligible RE Plants shall be given priority to inject into the network they are connected and shall be paid the corresponding FITs based on their actual metered deliveries, by all On-Grid electricity consumers through the NGCP, consistent with Sections 1.4, 2.5, 2.6, and 2.9. For this reason, NGCP and the DUs, in the case of

embedded Eligible RE Plants, shall proportionately allocate among all their customers and consumers connected to them the renewable energy covered by the FIT system flowing into their systems.

2.8. Distribution Utilities with Embedded Eligible RE Plants or their own Eligible RE Plants

The embedded Eligible RE Plants or DU-owned Eligible RE Plants shall deliver the energy they generate to the DU where they are connected for such energy be allocated among the DU's customers or to the transmission system through the DU's system, subject to the payment by the Eligible RE Plants of the applicable DU wheeling charges.

In case the delivery is made to the DUs, prior to retail competition and open access, such DUs shall include in their respective monthly generation charge to their consumers the generation cost portion of the actual energy deliveries of the embedded Eligible RE Plants or DU-owned Eligible RE Plants. This shall be computed using the actual deliveries of these RE Plants and the average generation charge of the particular DU from all its other generation sources. If all the requirements of the DU shall come from embedded Eligible RE Plants, the generation charge to be imposed on the DU's consumers shall be that as determined by the ERC.

The proceeds of this generation cost recovery mechanism, in addition to the proceeds of the imposition of the FIT-All, shall likewise be remitted by the DU to the NGCP, based on the guidelines referred to in Section 2.6, for them to form part of the FIT-All fund.

2.9. Settlement

The process of settlement includes the determination of the monthly payments to each Eligible RE Plant based on actual metering and the applicable FITs. NGCP shall be responsible for the disbursement of the FIT-All fund for the purpose of settlement and payment of the FITs for the Eligible RE Plants. The funds pertaining to the FIT-All and all interests accruing thereon shall be kept in a separate trust account with any government financial institution for the benefit of the Eligible RE Plants.

For this purpose, NGCP shall consolidate the information on energy deliveries in kWhs of all Eligible RE Plants and the RE generation for the entire On-Grid areas and shall make this information available to relevant stakeholders.

In consultation with all relevant stakeholders, the ERC may consider the issuance of additional guidelines governing the dispatch and settlement process, to integrate the same, if necessary, in the WESM operations.

2.10. Adjustments to the FITs

The ERC shall adjust the FITs annually for the entire period of its applicability to allow pass-through of local inflation and foreign exchange (FOREX) rate variations. For this purpose, the ERC shall employ a simple benchmarking indexation formula to apply to all technologies based on the applicable percentage sharing between local and foreign capital as will be determined by ERC in the setting of the FITs, as follows:

$$Adjustment = \left\{ z \times \frac{RPCPI_n}{RPCPI_o} \right\} + \left\{ y \times \frac{FEA_n}{FEA_o} \right\}$$

Where:

z = percentage share of local capital

y = percentage share of foreign capital

$RPCPI_n$ = the arithmetic average of the monthly values of the Republic of the Philippines Consumer Price Index for the 12 calendar months immediately preceding the 6 calendar months immediately preceding the Adjustment Date as published by the National Statistic Coordination Board of the Philippines in <http://www.nscb.gov.ph>

$RPCPI_0$ = the arithmetic average of the monthly values of the Republic of the Philippines Consumer Price Index, base period calendar year 2009, which is 160.

FEA_n = the arithmetic average of the month-end reference rates between the Philippine peso and the US Dollar for 12 calendar months immediately preceding the 6 calendar months immediately Preceding the Adjustment Date as published by the Treasury Department of the Bangko Sentral ng Pilipinas.

FEA_0 = the arithmetic average of the month-end reference rates between the Philippine Peso and the US Dollar for the calendar year 2009 which is 47.8125

Adjustment Date = January 1 of year n .

The ERC shall publish the adjusted FITs annually on or before the fifteenth (15th) day of January of each year and use them in the calculation of the FIT-All for the current year.

2.11. Degression

To encourage the RE producers to invest at the initial stage and hasten deployment of RE, the FITs to be established by ERC shall be subject to a degression rate which it shall determine based on NREB's recommendation. The Eligible RE Plants shall be entitled to such degressed FITs corresponding to the year when they started commercial operation. The ERC may approve a different degression rate for different technologies.

3. Applicability of FITs

FITs shall be established for each generation plant, using:

- a. Wind energy resources;
- b. Solar energy resources;
- c. Ocean energy resources;

- d. Run-of-river Hydroelectric power resources;
- e. Biomass energy resources; and
- f. RE components of the technologies listed above of Hybrid Systems, as defined under Section 4-(w) of R.A. No. 9513.

Additional or incremental capacities above an established generation baseline of existing facilities utilizing the technologies listed above that undergo re-powering, modernization and/or expansion shall also be eligible for the FITs.

FITs shall be paid for such electricity from power plants using technologies mentioned above, which is exported to the distribution or transmission network, as metered at the high voltage side of the step-up transformer at the Eligible RE Plant side.

In case of generation from DU-owned Eligible RE Plants or Eligible RE Plants primarily intended for Own-Use, FITs shall only be paid for such amount of electricity actually exported to the distribution or transmission network and not utilized for their own use.

4. Duration of FITs

Eligible RE Plants shall be entitled to the applicable FITs to them for a period of twenty (20) years. After this period, should these plants continue to operate, their tariffs shall already be based on prevailing market prices or whatever prices they should agree with an off-taker.

After the implementation of the initial FITs, the ERC shall determine the appropriate duration of the succeeding FITs to be established, which may already at the minimum of twelve (12) years as stated in R.A. No. 9513, subject to extension depending on the full load number of hours that the plant should run during the first 12 years.

5. Determination of FITs

The FITs that NREB shall calculate and submit to the ERC for approval shall be in accordance with the methodology that the ERC shall adopt. For the initial FITs, the NREB may base its calculations on a reference cost study for each technology based on a real candidate project or a hypothetical one depending on the available information. The project to be chosen shall be representative of the average conditions of the renewable energy plant operating in compliance or at par with applicable international technical standards and practices for such technologies, and the pricing study shall consider also all non-price incentives in R.A. No. 9513.

The NREB shall propose the FITs taking into account the expected MW capacity for each technology that it shall set as installation targets and the number of years when this target shall be achieved.

The FITs shall cover the costs of the plant, including the costs of other services that the plant may provide, as well as the costs of connecting the plant to the transmission or distribution network, calculated over the expected lives of the plant, and provide for market-based weighted average cost of capital (WACC) in determining return on invested capital.

6. Administration of FITs

Being in-charge of the FIT settlement, NGCP shall be authorized to perform the following for all RE generation:

- a. Collect information for all RE injections in any distribution or transmission network across the Philippines, including those of the Eligible RE Plants that are embedded in the distribution networks;
- b. Audit the metering;
- c. Based on the applicable FIT and the actual injections, calculate the payments for each Eligible RE Plant;
- d. Collect and make payments; and
- e. Based on applicable FITs and FIT duration, enter into an RE Payment Agreement (REPA) with Eligible RE plants. The ERC shall issue a pro-forma REPA after due proceedings. Any REPA executed between NGCP and an Eligible RE Plant, which conforms to the pro-forma REPA shall be deemed approved.

In case of dispute between or among the electricity sector participants, the ERC shall decide.

All Eligible RE Plants are required to submit information for all RE injections to the NGCP.

7. Review of FITs

The NREB shall monitor and review regularly the development of RE generation and the impact of FITs and report to ERC within three (3) years and every two (2) years thereafter.

The ERC may review and re-adjust the FITs, in the following cases:

- a. When the installation target per technology as defined by NREB is achieved;
- b. When the installation target per technology is not achieved within the period targeted;
- c. When there are significant changes to the costs or when more accurate cost data become available that will already allow NREB to calculate the FITs based on such methodology that shall later on be adopted by the ERC; and
- d. Other analogous circumstances that justify review and re- adjustment of the FITs.

In such cases, the NREB shall inform the ERC of the necessity of reviewing the FITs. The ERC suo moto shall initiate the proceedings for Rule-making for the review and

re-adjustment of the FITs, in accordance with the procedure outlined in these Rules and in the ERC RPP.

The new FITs that may be set by the ERC following this review shall apply only to new RE projects. Eligible RE plants in commercial operation as of the time of approval of the new FITs shall be entitled to their prevailing FITs.

8. Procedure for the Setting of the FITs

Upon the effectivity of these Rules, the ERC shall issue a Notice of Rule-making for the establishment and fixing of the FITs in accordance with these Rules. The filing shall conform to the procedures in the ERC Rules of Practice and Procedure (ERC RPP) on Rule-making. In the said Notice, the ERC shall direct NREB within the period stated therein to submit its recommended FITs. In its submission, NREB shall provide discussion on the installation targets per technology, which it shall ensure are consistent with the Renewable Portfolio Standards (RPS) and whatever RPS Rules that will be established by the DOE and the details and results of its reference cost study for each technology.

If necessary, the ERC shall choose and appoint experts to assist it in the evaluation of the NREB's recommended FITs, with the cost of such engagement to be borne by NREB.

9. Final Provisions

9.1. Exception Clause

Where good cause appears, the ERC may allow an exemption from any provision of these Rules, if such is found to be in the public interest and is not contrary to law or any other related rules and regulations.

9.3. Separability Clause

If any provision or part of a provision of these Rules is declared invalid or unconstitutional by a court of competent jurisdiction, those provisions which are not affected thereby shall continue to be in full force and effect.

9.4. Repealing

All prior rules and guidelines, or portions thereof, issued by the ERC that are inconsistent with these Rules are hereby repealed or modified accordingly.


9.5. Effectivity

These Rules shall take effect within fifteen (15) days following its complete publication in a newspaper of general circulation.



Page 11 of 12

Pasig City, July 12, 2010


ZENAIDA G. CRUZ-DUCUT
Chairperson


RAUF A. TAN
Commissioner


ALEJANDRO Z. BARIN
Commissioner


MARIA TERESA A.R. CASTAÑEDA
Commissioner


JOSE C. REYES
Commissioner

M 80m