

DEPARTMENT CIRCULAR NO. DC 2022- _____

**PROVIDING THE OPT-IN MECHANISM UNDER
GREEN ENERGY AUCTION PROGRAM IN THE PHILIPPINES**

WHEREAS, Republic Act No. 7638, otherwise known as the “Department of Energy (DOE) Act of 1992” or the “DOE Charter,” declares it as a policy of the State to, among others, ensure a continuous, adequate, and economic supply of energy through the integrated and intensive exploration, production, management and development of the country's indigenous energy resources;

WHEREAS, Section 5(b) of the DOE Charter mandates the DOE to develop and update the existing Philippine energy program which shall provide for an integrated and comprehensive exploration, development, utilization, distribution and conservation of energy resources, with preferential bias for environment-friendly, indigenous, and low-cost sources of energy. The program shall include a policy direction towards the privatization of government agencies related to energy, deregulation of the power and energy industry, and reduction of dependency on oil- fired plants;

WHEREAS, Section 5(c) of the DOE Charter directs the DOE to establish and administer programs for the distribution of energy resources of all forms, whether conventional or non-conventional;

WHEREAS, Section 5(h) of the DOE Charter empowers the DOE to formulate and implement a program for the accelerated development of non-conventional energy systems and the promotion and commercialization of its applications;

WHEREAS, Section 2 of Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001” or “EPIRA,” declares the policy of the State to, among others: (a) to ensure the quality, reliability, security and affordability of the supply of electric power; (b) ensure fair and non-discriminatory treatment of public and private sector entities in the process of restructuring the electric power industry; (c) assure socially and environmentally compatible energy sources and infrastructure; and (d) promote the utilization of indigenous and new and renewable energy (RE) resources in power generation in order to reduce dependence on imported energy;

WHEREAS, Chapter III, Section 37(e)(i) of the EPIRA mandates the DOE to encourage private sector investments in the electricity sector and promote the development of indigenous and RE sources;

WHEREAS, Section 37(i) of the EPIRA empowers the DOE to develop policies and procedures, and as appropriate, promote a system of energy development incentives to enable and encourage electric power industry participants to provide adequate capacity to meet demand including, among others, reserve requirements;

WHEREAS, Section 37(j) of the EPIRA mandates that the Department shall endeavor to provide for an environment conducive to free and active private sector participation and investment in all energy activities;

WHEREAS, Section 37(p) of the EPIRA authorizes the DOE to formulate such rules and regulations as may be necessary to implement the objectives of the EPIRA;

WHEREAS, Republic Act No. 9513, otherwise known as the “Renewable Energy Act of 2008” or the “RE Act,” declares the policy of the State to increase the utilization of RE by institutionalizing the development of national and local capabilities in the use of RE systems, and promoting its efficient and cost-effective commercial application by providing fiscal and non-fiscal incentives;

WHEREAS, Section 5 of the RE Act designates the DOE as the lead agency mandated to implement the provisions thereof;

WHEREAS, the DOE, based on its demand-supply simulations, determines that the country needs immediate additional capacities to adequately serve the increasing electricity demand and system security requirements;

WHEREAS, the DOE has determined that the competitive bidding process under the Green Energy Auction (GEA) Program is one of the best ways to accelerate the development of renewable energy systems and the promotion and commercialization of its applications, encourage free and active private sector participation and investment in all energy activities, and provide adequate capacity to meet demand including reserve requirements;

WHEREAS, the GEA Program was promulgated by the DOE on November 19, 2021 under DC 2021-11-0036, with a directive for an issuance of a corresponding Department Circular for the Opt-in Mechanism.

WHEREAS, the Opt-in Mechanism under the GEA Program aims to lessen the subsidies under the Feed-in-Tariff system over time through enabling direct contracting of RPS Mandated Participants from the GEAP pool;

NOW, THEREFORE, in consideration of the foregoing, the DOE hereby issues and promulgates the following Opt-in Mechanism to supplement the implementation of the GEA Program.

RULE 1 GENERAL PROVISIONS

Section 1. Title. This Circular shall be known as "***Providing the Opt-in Mechanism Under the Green Energy Auction Program in the Philippines***" or the "***Opt-in Mechanism Under GEAP***."

Section 2. Purposes and Objectives. This Opt-in Mechanism Under GEAP is hereby promulgated to:

- 2.1. Decrease the applicable FIT-All rate charged to end- users;
- 2.2. Meet any RPS Mandated Participant supply and RPS requirements through the Opt-In Mechanism at the RPS Mandated Participant's own option; and
- 2.3. Comply and provide further guidelines in the implementation of Department Circular No. DC2021-11-0036 or the GEA Program.

Section 3. Scope. This Circular shall apply to the following:

- 3.1 RPS Mandated Participants
- 3.2 Winning Bidders
- 3.3 National Transmission Corporation (TransCo)
- 3.4 Energy Regulatory Commission (ERC)
- 3.5 Market Operator

Section 4. Definition of Terms. This Circular hereby adopts, by reference, the terms as defined in the EPIRA, RE Act, and their respective implementing rules and regulations, RPS On-Grid Rules, the Omnibus RE Guidelines, the WESM Rules, FIT Rules and Green Energy Auction Program insofar as the said terms are consistent herewith, as well as the relevant DOE Department Circulars.

Furthermore, the terms, as used in this Circular, shall be defined as follows:

- 4.1. **“Opt-In Participation Agreement”** or **“OPA”** shall be the contract among TransCo, Market Operator and the Opt-In Participant as more particularly described in Section 8 of this Circular.
- 4.2. **“Opt-In Mechanism”** refers to the process defined in Section 5 of this Circular.
- 4.3. **“Opt-In Capacity”** pertains to the capacity contracted by the RPS Mandated Participant consistent with this Circular.
- 4.4. **“Opt-in Participants”** refers to the RPS Mandated Participants, that are subject to eligibility requirements under Section 5.2, which exercised the Opt-In Mechanism.

RULE 2 OPTING-IN

Section 5. Opt-In Mechanism. Consistent with Department Circular No. DC2021-11-0036 or the GEA Program, any DU shall have the option to procure from the GEAP pool of Winning Bidders under a particular auction round and thereby carve-out such DU-procured volumes from the FIT-All compensation.

Other RPS Mandated Participants, like the RES or GenCos with Directly Connected Customers under the deregulated sector, may exercise Opt-In Mechanism as well. The RPS Mandated Participants which exercise this option are called Opt-In Participants. The capacity attributable to the carve-out volume by Opt-In Participants is called the Opt-In Capacity.

The RPS Mandated Participants shall have the following Opt-In Mechanism:

- 5.1 **Submission of Intent to Opt-In.** Any RPS Mandated Participant may exercise its option to Opt-In within the schedule specified in Section 5.4 of this Circular. The RPS Mandated Participant shall submit a letter request to the Department of Energy (DOE) specifying the Opt-In Capacity, with attached Board Resolution or Secretary's Certificate showing the authority to Opt-in.
- 5.2 **Eligibility Requirements.** DOE shall establish eligibility requirements for the Opt-In Participants, including parameters such as, but not limited to, NEA credit rating, financial ratio, and form of security deposit. The eligibility requirements shall be clearly defined and posted on the DOE website.
- 5.3 **Opt-In Participation Agreement.** Each of the Opt-In Participants, TransCo and Market Operator shall enter into an OPA subject to the endorsement by the DOE of the eligibility and Opt-In capacity of each Opt-In Participants. The Opt-In Participant shall recognize that it shall remit the Opt-In proceeds to the Market Operator corresponding to the weighted GET and Opt-In Capacity generation. The OPA is further defined in Section 8 of this Circular.
- 5.4 **Opt-In Capacity.** The Opt-In Capacity as specified by the Opt-In Participant in the letter request and shall correspondingly be stated in the OPA. The corresponding Opt-In energy shall be determined through multiplying the total energy generated by the Winning Bidders by the proportion of the Opt-In Capacity to the total capacity in the GEAP auction round.

- 5.5 **Timeline.** RPS Mandated Participants shall file their intent to Opt-In with DOE every fourth (4th) quarter of each year (Year 1). The start date of Opting-In shall be every January billing period of Year 3. All Opt-In Capacities for Year 3 shall be considered by TransCo in its Year 3 estimated FIT-All requirement to be filed with the ERC in Year 2. The Opt-In Participant, TransCo and Market Operator shall enter into the OPA on Year 2.
- 5.6 **CSP Exemption.** Opting-In shall be deemed compliant with the CSP requirement of the DOE considering that the average GET is a price that is below the ERC-set GEAR Price resulting from the public auction under the GEAP. The RESA approved by the ERC under the FIT Rules shall be the same template for the OPA.

Section 6. Decrease in FIT-All Charge. The FIT-All Fund requirement represents the difference between the ERC approved FIT rate and the prevailing market price (Cost Recovery Rate or CRR), plus other components. The Opting-in by RPS Mandated Participants shall have the effect of decreasing the FIT-All Fund requirement, which will eventually reduce the FIT-All rate charged to end-users.

The Opt-In Participants shall pay the Opt-In proceeds to the Market Operator corresponding to their Opt-In Capacity and weighted average GET. The payments of the Opt-In Participants under the OPA shall accrue under the FIT-All Fund administered by TransCo.

TransCo shall report the reductions in FIT-All charge attributable to the Opt-In transactions to the DOE and ERC.

Section 7. Pricing. The weighted average GET (Php/kWh) shall be calculated by dividing the total amount to be paid to all the Winning Bidders for a particular auction round by their total energy generated. The weighted average GET corresponding to the Opt-In Capacity shall be charged, not against the FIT-All rate, but against the Opt-In Participants as part of the generation charge payable by the relevant Captive customers. The Opt-In Participants shall pay the weighted average GET price as per Sections 6, 8.2 and 8.3 of this Circular.

For avoidance of doubt, the GET of each Winning Bidder shall not be affected by the Opt-In Mechanism.

RULE 3
REVISIONS TO FIT RULES, FIT ALL GUIDELINES
AND ADDITIONAL RELATED TEMPLATE

Section 8. Opt-In Participation Agreement Template. The ERC shall formulate and approve a OPA template with the following features:

- 8.1. The Market Operator shall provide the following:
 - 8.1.1. Monthly energy generated by RE Developers under GEAP to TransCo for the computation of the weighted average GET.
 - 8.1.2. Upon TransCo's submission of the weighted average GET, Market Operator shall prepare a Summary of settlement allocation including the Opt-in transactions as described in Section 5.4.
- 8.2. RPS Mandated/Opt-In Participants shall remit the settlement proceeds to the Market Operator based on the summary of settlement allocation and subsequently, the Market Operator shall remit the same to TransCo.
- 8.3. TransCo shall settle the FIT Revenue claims of RE Developers under GEAP and, in turn, the RE Developer under GEAP shall issue Official Receipt to TransCo for any FIT Differential paid to them and to the RPS Mandated/Opt-In Participant for the Actual Cost Recovery Revenue (ACRR).
- 8.4. The corresponding payment of the Opt-In Participant shall accrue to the FIT-All Fund and, in principle, shall reduce the FIT-All rate charged to the end-users.
- 8.5. Opt-in participants and Winning bidders should declare their BCQs to facilitate minimal disruption to existing processes and to ensure more accurate calculation of line rental charges once the market trading nodes are assigned to them.
- 8.6. The Market Operator shall develop a methodology for allocating the Opt-in energy such that bilateral contract declarations between Opt-In participants and Winning Bidders are proportionate to their respective shares in the Opt-in Capacity.

Section 9. Revisions to FIT Rules and FIT-All Guidelines. Within six (6) months from the issuance of this Circular, the ERC shall issue necessary revisions in FIT Rules and

FIT-All Guidelines consistent with this Circular to ensure the proper implementation of the Opt-In Mechanism. For the avoidance of doubt, the revisions shall include the following:

- 9.1. Allow RPS Mandated Participants, as Opt-In Participants, to pay directly to the Market Operator;
- 9.2. Formulate and approve an OPA template;
- 9.3. Allow TransCo, Market Operator and Opt-In Participant to enter an OPA; and
- 9.4. Allow for bilateral contract quantity declaration for the Opt-In Participant under one common node for dispatched energy of the Winning Bidders.

Section 10. Non-Diminution of Vested Rights. No provision of this Circular shall be construed as diminishing or impairing any right vested by virtue of existing laws, contracts, or agreements.

Section 11. Separability Clause. If any provision of this Circular is declared invalid or unconstitutional, the other provisions not affected thereby shall remain valid and subsisting.

Section 12. Repealing Clause. All previous issuances, rules and regulations inconsistent with this Circular are hereby repealed, amended or modified accordingly.

Section 13. Effectivity. This Circular shall take effect fifteen (15) days after its filing with the University of the Philippines Law Center — Office of the National Administrative Register and publication in at least two (2) newspapers of general circulation.

ALFONSO G. CUSI
Secretary

Issued on _____ at the Department of Energy, Energy Center,
Rizal Drive, Fort Bonifacio, Taguig City, Metro Manila