

**Department of Energy
Department Circular No. _____**

**Prescribing the Administrative Operating Guidelines for the
Availment and Utilization of Financial Benefits by the Indigenous
Cultural Communities/Indigenous Peoples (ICCs/IPs) pursuant to
DOE Department Circular No. DC2018-03-0005**

WHEREAS, the DOE, in recognition of the rights of the ICCs/IPs to their ancestral domain and the natural resources therein, specifically the right for an equitable share of the benefits from generating facilities and/or energy resources in their ancestral domain, issued Department Circular No. DC2018-03-005 to expand the operational definition of Host Communities to include ICCs/IPs as well as allocate share of the financial benefits to ICCs/IPs that host generating facilities and/or energy resources under the "Benefit to Host Communities" Program;

WHEREAS, Section 8 of DC2013-03-005 provides that "within one hundred eighty (180) working days from the effectivity of this Circular, the DOE, through the Electric Power Industry Management Bureau, shall issue an Administrative Operating Guidelines for the availment and utilization of the financial benefits by the ICCs/IPs pursuant to the amendments hereof";

WHEREAS, to accelerate socio-economic development and have a more effective and efficient utilization of funds and to enforce the immediate provision of benefits to Host Communities, the DOE issued Department Circular No. DC2018-08-0021 (Providing for the Amendments to Rule 29, Part A of the Implementing Rules and Regulations of Republic Act No. 9136);

NOW THEREFORE, FOR AND IN CONSIDERATION OF THE FOREGOING PREMISES, the DOE hereby adopts and promulgates the following Administrative Operating Guidelines (AOG) for the Availment and Utilization of Financial Benefits by the ICCs/IPs in compliance with Section 8 of DC2018-03-005 and for consistency with DC2018-08-0021.

TITLE I. GENERAL PROVISIONS

Section 1. Purpose, Scope and Coverage

This AOG is issued to facilitate the availment and utilization of financial benefits by the Indigenous Cultural Communities (ICCs)/ Indigenous Peoples (IPs) whose ancestral domains are host to Generation Facilities and/or Energy Resource Development Facilities in the manner provided under DC2018-08-0021.

In the event that more than one facility is located in an ancestral domain or is hosted by the ICCs/IPs, each of the facility hosted by such ICC/IP is obliged to provide its individual share of financial benefits to the Host ICCs/IPs.

Section 2. Definition of Terms

For the purpose of this AOG, the terms herein are defined as follows:

- 2.1 Customary Laws** refers to a body of written and/or unwritten rules, usages, customs and practices traditionally and continually recognized, accepted and observed by respective ICCs/IPs including such institutions, but not limited to Bulalakaw, Palayag, Panalikot which are designated for specific community activities/tasks such protection of the watershed, water resources, forests and its flora and fauna.
- 2.2 Indigenous Peoples Development Plan** refers to specific development plan or consolidated plan prepared by the ICC/IP community, which is basically derived from their ADSDPP but are subject of separate social marketing, resource mobilization either with the Local Government Units, other government agencies, international agencies and/or other private entities.
- 2.3 Indigenous Peoples' Organization (IPO)** refers to private, non-profit voluntary organization of members of an ICC/IP community which is recognized by the ICC/IP through their IPS.
- 2.4 Indigenous Political Structures (IPS)** refers to organizational and cultural leadership systems, institutions, relationships, patterns and processes for decision making and participation, identified by the ICCs/IPs such as, but not limited to Council of Elders, Council of Timuays, Bodong Holders, or any other tribunal of body of similar nature.
- 2.5 Reservoir**, for the purpose of this Administrative Guidelines, refers only to any of the following:
 - 2.5.1 Geothermal reservoir**" refers to a subsurface geological environment where the geothermal fluids accumulate, circulate and/or re-injected to generate power.
 - 2.5.2 Hydropower reservoir**" refers to either a natural lake or an artificial lake created by the impounding of stream flow, run-off and subsurface water including but not limited to intakes, diversion wires and trans-basin underground tunnel which supplies water to a dam. It also refers to

where river or rivers supply or supplies water to a dam reservoir through a trans-basin underground tunnel to generate power.

2.6 Watershed is a land area drained by a stream or fixed body of water and its tributaries having common outlet for surface run-off. It encompasses the topographic and hydrological boundaries of the total land area that contributes to the flow of the water body, upstream of the water tapping point such as the dam crest.

TITLE II. PROVISION OF FINANCIAL BENEFITS

Section 3. Beneficiaries

The Financial Benefits shall be provided to the Host ICCs/IPs and shall be understood as follows:

3.1 With respect to Generation Facilities

The Host ICCs/IPs, with respect to their ancestral domain, is that where the Generation Facility is physically located. In the case of power barges, the Host ICCs/IPs is that where the power barge is moored. Generation Facilities shall not include transmission lines and substations.

3.2 With respect to Energy Resources

3.2.1 Integrated Geothermal

The Host ICCs/IPs, with respect to their ancestral domain, is that where the producing geothermal reservoir is located as delineated by geochemical, geophysical, and exploration surveys. Producing geothermal reservoir refers to the subsurface geological environment where the geothermal fluids accumulate and circulate, inclusive of the production and re-injection/recharge zone.

3.2.2 Integrated Hydropower

The Host ICCs/IPs, with respect to their ancestral domain, is that where the hydropower reservoir is located as delineated by detailed topographic, geological and geotechnical investigations, reservoir and dam height optimization studies, and as delineated by detailed ground surveys.

The Host ICCs/IPs, with respect to their ancestral domain, is where the watershed is located, as in all land areas drained by a stream or fixed body of water and its tributaries having common outlet for surface run-off. It encompasses the topographic and hydrological boundaries of the total land

area that contributes to the flow of the water body, upstream of the water tapping point such as the dam crest.

3.3 All other emerging energy facilities

The Host ICC/IP, with respect to their ancestral domain is where the new Generation Facility is physically located, as approved by the DOE.

Section 4. Allocation and Application of Financial Benefits Fund

4.1 Consistent with Section 6 of Department Circular No. DC2018-08-0021, the Generation Company (GenCo) and/or Energy Resource Developer shall set aside one centavo per kilowatt-hour (P0.01/kWh) of the Electricity Sales as Financial Benefit.

4.2 Twenty-five percent of one centavo per kilowatt-hour (P0.0025/kWh) of the Electricity Sales shall be allocated as DLF and another Twenty-five percent of one centavo per kilowatt-hour (P0.0025/kWh) shall be allocated as a RWMHEEF.

The DLF and RWMHEEF shall be allocated in the following manner:

4.2.1	Community and People Affected	- 5%
4.2.2	Host Barangay/s	- 20%
4.2.3	Host Municipality/ies or City/ies	- 35%
4.2.4	Host Province/s	- 30%
4.2.5	Host ICCs/IPs	- 5%
4.2.6	Host Region/s	- 5%

4.3 Provided that, if there are more than one host ICCs/IPs for a generation facility and/or energy resource, the DLF and RWMHEEF share of 5% each shall be divided equally among the host ICCs/IPs.

Provided further, that, in the absence of ICCs/IPs, the funds allocated for the same shall form part of the Host Region.

Provided finally, that, for the regional share, the Regional Development Council (RDC) shall identify its Beneficiaries, which may possibly include a non-Host ICCs/IPs, within the region. The allocated share for the identified Beneficiary shall then be remitted by the GenCo and/or Energy Resource Developer to the general account/s of the former.

TITLE III. REQUIREMENTS FOR AVAILMENT OF FINANCIAL BENEFITS BY HOST ICCS/IPs

Section 5. Host ICCs/IPs under ER No. 1-94 Program

In accordance with Section 1.1 of Department Circular No. DC2018-03-0005, all legitimate and bonafide ICCs/ips, duly recognized and accredited by the National Commission on Indigenous People (NCIP), and issued with Certificate of Ancestral Domain Title that host the generating facilities and/or energy resources, among others, shall be entitled to the financial benefits under the ER No. 1-94 Program.

Section 6. Requirements for ICCs/ips to be entitled under ER 1-94 as Host ICCs/IPs

6.1 All ICCs/IPs that hosts generating facilities and/or energy resources shall be considered legitimate and bonafide Host ICCs/IPs and be entitled to financial benefits under ER No. 1-94 are required to submit to the concerned Regional Office of NCIP of the following requirements:

6.1.1 Host ICCs/IPs whose ancestral domains/lands are formally recognized

All ICCs/IPs whose ancestral domains/ lands are formally recognized through a Certificate of Ancestral Domain Title (CADT), Certificate of Ancestral Land Title (CALT), issued by the National Commission on Indigenous Peoples; Certificates of Ancestral Domain Claims (CADC), Certificates of Ancestral Land Claims (CALC) issued before the enactment of the Indigenous Peoples Rights Act by the Department of Environment and Natural Resources, Collective Certificates of Land Ownership Awards (CLOAs), issued to the community in the name of the ICCs/IPs by the Department of Agrarian Reform, any other form of formal recognition of title including those issued titles according to the Public Land Act and under the Torrens System shall submit the following:

6.1.1.1 The Certificate of Title which may be any of the following: CADT, CALT, CADC, CALC, Collective CLOA, Original Certificate of Title, Transfer Certificate of Titles; and

6.1.1.2 Map showing the coverage of said Certificate of Title.

6.1.2 ICCs/IPs whose application for CADT or CALT is still in process with the NCIP

ICCs/IPs whose application for CADT or CALT is still in process with the NCIP, shall submit:

- 6.1.2.1 A certified copy of the Resolution for delineation issued by the body authorized by the ICCs/IPs to file an application for delineation of ancestral domains/ ancestral lands.
- 6.1.2.2 A certification from the Ancestral Domains Office (ADO) of the National Commission on Indigenous Peoples that application of the concerned ICCs/IPs is still in process and the status of its delineation.
- 6.1.2.3 The community validated map of the area being applied for or a map from the ADO of the NCIP showing the area subject of delineation.

6.1.3 ICCs/IPs living within civil reservations and/or official resettlement areas

All ICCs/IPs living within civil reservations and/or who have been displaced by any government project and who have been resettled in official resettlement areas for ICCs/IPs:

- 6.1.3.1 In the case of civil reservations, a copy of the Civil Reservation Proclamation from the National Archives. Provided that for purposes of securing a copy of the Civil Reservation Proclamation, the ICCs/IPs shall be assisted by the ADO of the NCIP.
- 6.1.3.2 In the case of official resettlement sites, a copy of the Official Resettlement Site from the appropriate government agency that caused the resettlement
- 6.1.3.3 Accreditation from the National Commission on Indigenous Peoples, through the concerned Ethnographic Commissioner, that the ICCs/IPs hosting the generating facility is entitled to financial benefits under the ER-194 Program
- 6.1.3.4 Maps of the areas declared as civil reservations and official resettlement sites.

6.1.4 ICCs/IPs publicly known to occupy their territories since time immemorial but who have not applied for delineation

All ICCs/IPs publicly known to occupy ancestral territories since time immemorial but who have not applied for delineation shall submit:

- 6.1.4.1 Accreditation by the National Commission on Indigenous Peoples through a resolution by its Commissioners sitting en banc, that the ICCs/IPs hosting the generation facility/ energy resource development project is entitled to receive benefits from the ER-194 Program

6.1.4.2 Any government issued map, including but not limited to Provincial Land Use Map, Municipal Land Use Map, NAMRIA maps, showing the location of the traditional areas being claimed by the ICCs/IPs.

6.2 All ICCs/IPs who have submitted the complete requirements shall be endorsed by NCIP to the DOE, within thirty (30) days after submission of the requirements.

Provided that, at anytime after being endorsed by NCIP, the ICCs/IPs is proven to have not actually met the criteria/requirements mentioned above and not qualify as host beneficiary, the NCIP shall recommend to the DOE the delisting of said ICCs/IPs as host beneficiary.

Provided further that, in all instances of possible delisting, due process of law shall be observed

Section 7. Declaration of Official ICCs/IPs Beneficiaries

7.1 All ICCs/IPs who have satisfied and submitted the above requirements, and who are endorsed by the NCIP to the DOE shall avail of the benefits under the ER 1-94 Program. The DOE shall issue an advisory letter to the concerned Generation Company, copy furnished the NCIP and the concerned Host ICCs/IPs, informing them to include the said bonafide ICCs/IPs as host beneficiary.

7.2 The DOE shall prepare a registry and/or official listing of all such Host ICCs/IPs entitled to receive benefits under the program, which shall be updated periodically. Such registry shall be posted in the DOE portal for information and transparency purposes.

TITLE IV. ESTABLISHMENT AND ADMINISTRATION OF FINANCIAL BENEFITS BY THE HOST ICCS/ IPS

Section 8. Administration of Financial Benefits

The administration of the Financial Benefits under the DLF and RWMHEEF shall be undertaken by the concerned Host ICCs/IPs.

Section 9. Establishment of Trust Account

9.1 The Host ICCs/IPs shall establish trust accounts for each generation facility from which it shall receive financial benefits specific for the DL and RWMHEE Fund provided under the ER 1-94 Program with the following account name, to wit:

Host ICC/IP Name-GENCO – DLF (ER 1-94)

Host ICC/IP Name-GENCO – RWMHEEF (ER 1-94)

9.2 The GenCo and/or Energy Resource Developer shall likewise establish a dedicated trust account in favor of each of their host ICCs/IPs who may fail to comply with the requirements, hereunder provided, for remittance of financial benefits.

TITLE V. PROJECT APPROVAL AND IMPLEMENTATION

Section 10. Guiding Principles in the Formulation and Implementation of Projects

The Annual Work Program (AWP) by the host ICCs/IPs shall be guided by the following principles:

10.1 In recognition of the right of ICCs/IPs to determine the type and pace of their own development and to decide their priorities for development, the ICCs/IPs, at all times, shall fully participate in the development, implementation, monitoring and evaluation of all projects and programs introduced into their ancestral domains.

10.2 All projects and programmes introduced or proposed shall consider the IP's Indigenous Knowledge Systems and Practices, their traditional livelihood, industries and technologies, without dismissing the importance of mainstream technologies and methods.

10.3 In the interest of efficiency, economy and effectiveness in the management of watersheds, the ER-194 Program should seek to integrate and harmonize the planning, coordination and control of proposed development projects in the developmental plans of the Host communities, such as but not limited to ADSDPP and/or IPDP.

10.4 The Host ICCs/IPs shall conduct the minimum social preparation activities such as, but not limited to, community consultations and orientations in the preparation of the AWP to ensure greater stakeholder/ community participation.

Section 11. Preparation of Annual Work Program

11.1 An AWP shall be prepared by the Host ICCs/IPs identifying therein the tangible projects under the DLF and RWMHEEF, in accordance with Section 12 of DC2018-08-0021, to be implemented within the reference year.

11.2 The AWP shall be drawn from the ADSDPP, adopted by consensus by the concerned ICCs/IPs and/or the IPDP, if any submitted to the LGU for integration into local government's development plans.

11.3 At the request of the Host ICCs/IPs, the Generation Company and/or Energy Resource Developer, through its designated COMREL, shall assist the host ICCs/IPs in the preparation of the AWP/ project proposals.

11.4 The AWP shall be prepared and submitted subject to the following considerations:

11.4.1 Project Goals and Objectives/ End Results including but not limited to promotion of rural development, upliftment of socio-economic conditions and/or addressing environmental concerns;

11.4.2 Identification of Beneficiaries in the Ancestral Domains

11.4.3 Project Implementation Plan with specific targets and timelines

11.4.4 AWP Documentary Requirements:

11.4.4.1 The Resolution of the concerned Indigenous Political Structure (IPS) or any authorized and recognized Traditional Leadership/ Decision making structure, such as but not limited to, IPOs certified by IPS of the concerned ICCs/IPs stating the AWP has been prepared in consultation with its members and such members have been informed of the final plan, and have agreed to endorse and submit such plan to the concerned Generation Facility, copy furnished the DOE and NCIP.

11.4.4.2 Resolution from the community members affirming and authorizing the IPS or the recognized Traditional Leadership/ Decision Making Body such as, but not limited to IPOs certified by the IPS, to represent them and enter into agreements with the DOE and the Generation Facility and/or Energy Resource Developer.

11.4.4.3 Undertaking by the concerned IPS or any traditional recognized Leadership Decision Making Body, such as but not limited to IPOs certified by the IPS, certifying that the concerned ICCs/IPs have no unliquidated project funds.

11.4.4.4 Endorsement of the NCIP, through its Regional Director, where the host community is located with the concurrence of the Ethnographic Commissioner stating the requirements stated above in the preparation and approval of the AWP has been complied with.

Section 12. Submission of the AWP

In accordance with Section 10.2 of Department Circular No. DC2018-08-0021, the AWP shall be submitted both in print and in electronic copy to the GenCo and/or Energy Resource Developer not later than March 15 of every year.

Section 13. Project Implementation

13.1 Upon submission of the complete documents and validation by the GenCo/Energy Resource Developer of the AWP, project implementation by the Host ICC/IP shall proceed upon receipt of the financial benefits from the concern GenCo and/or Energy Resource Developer.

13.2 For DLF an RWHEEF projects, a Memorandum of Agreement shall be entered into by and amongst the GenCo and/or Energy Resource Developer, the concerned Host ICCs/IPs, and the NCIP, if needed, to effect project implementation, monitoring and audit.

13.3 The NCIP shall assist the parties on the following:

13.3.1 Development of MOA template;

13.3.2 Explanation on the contents of the said MOA to the concerned IPs/ICCs; and,

13.3.3 Facilitates the MOA signing.

TITLE VI: REMITTANCE OF FINANCIAL BENEFITS

Section 14. Remittance of Financial Benefits

Pursuant to Section 7 of DC2018-08-0021, the DLF and RWMHEEF shall be remitted by the GenCo directly to the concerned Host ICCs/IPs through its established trust account provided in Section 11 of this Circular.

Section 15. Constitution of Monitoring Team

15.1 For purposes of monitoring and inspection of completed ER 1-94 projects implemented by Host ICC/IP, a monitoring team shall be constituted headed by concerned NCIP Regional Office and shall be composed by the following:

15.1.1 1 Representative of the concerned ICCs/IPs

15.1.2 1 Representative from the concerned GenCos and/or Energy Resource Developers

15.1.3 1 Representative from a National or Local Civil Society Organization

15.1.4 1 IP Representative from the National Anti-Poverty Council

Section 16. Functions of the Monitoring Team

The Monitoring Team shall ensure the completion of project through close monitoring of the project implementation. For this purpose, upon completion of the project, the Monitoring team shall conduct a terminal evaluation of the completed projects.

Title VII. SETTLEMENT OF DISPUTES

Section 17. Settlement of Disputes

17.1 All conflicts or disputes arising from the implementation of this AOG shall be under the jurisdiction of the DOE. Provided, that all disputes between and amongst ICCs/IPs, the same shall be resolved in accordance with their own justice /conflict resolution mechanism. Provided further, that a written copy of the resolution shall be provided to the DOE and NCIP 15 days from the resolution of the conflict.

17.2 In case of conflict of jurisdiction such as issues on the geographical location of the generation facilities and/or energy resource developer, and/or, boundary disputes arise, the matter shall be resolved in accordance with applicable laws.

17.3 The GenCo shall hold in abeyance the processing of the AWP submitted by the Host ICC/IP involved or affected, including the direct remittance of financial benefits, until said conflict/dispute has been resolved.

TITLE VIII. OTHER PROVISIONS

Section 18. Information, Education and Communication Activities

18.1 Upon effectivity of this AOG, the DOE shall undertake Information, Education and Communication activities to concerned stakeholders to ensure its proper implementation.

18.2 During transition, the DOE may conduct the orientation and training for the Monitoring Team immediately prior to the conduct of audit and inspection of completed ER No. 1-94 projects to ensure that they will effectively perform their functions as such.

Section 19. Non-Compliance by Concerned Parties

Any violation of this Circular among any such concerned parties shall be a ground by the DOE for institution of appropriate legal action without prejudice to criminal and/or administrative liability in accordance with existing laws rules and regulations.

Section 20. Separability Clause

If for any reason, any provision of this Guidelines is declared unconstitutional or invalid, the other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

Section 21. Repealing Clause

Except in so far as that may be manifestly inconsistent herewith, nothing in this Guidelines shall be construed to repeal any of the mechanisms already existing or responsibilities already provided for under existing laws.

Section 22. Effectivity

This Circular shall take effect within fifteen (15) days after its publication in two (2) newspapers of general circulation and submission of copies thereof to the UP Law Center.

Issued this ____ day of February 2019 in the Energy Center, Rizal Drive, BGC, Taguig City, Metro Manila.

ALFONSO G. CUSI
Secretary