

**General comments:**

MGEN fully supports the implementation of the Renewable Energy Law and the development of Renewable Energy (RE) technology, however, there are several issues and concerns that we feel the DOE must address prior to implementing the rules for RPS. For one we believe that the RPS must be aligned with the intent of EPIRA embodied by the phrase “to ensure the quality, reliability, security and affordability of the supply of power” and “to ensure transparent and reasonable prices of electricity”.

We are requesting that the DOE come up with a study on the cost implications of the RPS rules to the consumers prior to implementing the RPS. At the moment, the Philippines has been ranked as second country in Asia with highest electricity rate. Any policy direction from the government that will further increase the rate should be carefully deliberated and consumers be made aware of the said increase. We understand that the DOE has secured a consultant to study the potential rate increase but that results have yet to be finalized. It may be prudent for the DOE to delay the implementation of the RPS pending the results of the study.

Inasmuch as the possible increase in cost of electricity in this instance will be policy driven, we believe that the conduct of cost or price impact study is crucial before the RPS policy is approved and promulgated, so that all stakeholders can anticipate its commercial and economic effects.

**Specific Comments:**

Rule/Section	RPS Provision	MGEN Comments
<p><b>Rule 1, Section 5</b></p>	<p><b>Definition of Terms</b>                      k. National Renewable Energy Program refers to the policy framework provided in the RE Act for the indicative interim targets for the delivery of RE within the timeframe of 2011 to 2030</p>	<p>What is the basis for the definition of “<b>National Renewable Energy Program (NREP)</b>” particularly the part which states “<i>indicative interim targets for the delivery of RE within the timeframe of 2011 to 2030</i>”. Please publish the duly approved NREP, otherwise please publish the draft NREP and subject the same to public hearing and consultation</p> <p>a. <b>RPS</b> is defined as “refers to the market-based policy that requires the Mandated Participants to source an agreed portion of their</p>

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		<p>energy supply from eligible RE resources”</p> <ul style="list-style-type: none"> <li>i. The term “market-based” lacks substance in that the draft circular does not have market-based mechanisms (eg, CSP of PSAs from REs, market trading of RECs, etc) in the implementation of RPS</li> <li>ii. The adjective “agreed” is inappropriate, if not disingenuous, because in the first place Mandated Participants are required to source a portion of their energy supply.</li> <li>iii. The definition conveys physical compliance and does not provide a mechanism of compliance by purchase of RECs from those with excess (RE generators whose output is not fully contracted or from Mandated Participants who have excess RECs from PSAs from RE generators).</li> </ul> <p>b. Provide a proper definition of the term “<b>RPS Compliance Account</b>” considering its importance and usage in Section 15 (f) Rule 4.</p>
<p><b>Rule 2, Section 6</b></p>	<p><b>Implementation of RPS Rules</b>  Upon the effectivity of this Circular, the RPS Rules shall be implemented in Luzon, Visayas and Mindanao grids: <i>Provided</i>, That the DOE will issue separate rules for the operationalization of RPS in Mindanao until the operationalization of a Wholesale Electricity Spot Market (WESM) in Mindanao: <i>Provided further</i>, That public consultation with Mindanao stakeholders and electric power industry participants no</p>	<ul style="list-style-type: none"> <li>a. No reason or evidence is advanced why the operationalization of WESM in Mindanao is vital to the implementation of RPS in such grid. Defer the implementation of RPS, unless: <ul style="list-style-type: none"> <li>i. Clear evidence is shown that an operational WESM in Mindanao is vital to the implementation of RPS;</li> </ul> </li> </ul>

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	<p>later than one (1) year for the effectivity of this Circular will be required. For purposes of this Section, Luzon, Visayas and Mindanao shall be treated as separate and distinct grids: <i>Provided</i>, That the DOE may reclassify the grids.</p>	<p>ii. RPS will be implemented only after WESM is operationalized in Mindanao</p>
<p><b>Rule 2, Section 7</b></p>	<p><b>Minimum Annual RPS Requirement.</b> To maintain the RE share in the national energy mix to at least thirty five percent (35%) by 2030, the minimum annual target per grid shall be equal to the sum of the minimum target of all Mandated Participants in the grid. The minimum annual RPS requirement per Mandated Participant shall be computed by the Composite Team in coordination with NREB.</p> <p>Provided, That the annual RPS requirement shall be calculated in accordance with the following formula, all expressed in MWh:</p> $\begin{aligned} \text{RPS}(n) &= \text{RPS}(n-1) + \text{AMI}(n) \\ &= \text{RPS}_0 + \sum \text{AMI}(n) \\ &= \text{RPS}_0 + K \sum \text{AMI}(n-1) \end{aligned}$	<p>a. Basis for setting minimum share of 35% by 2030? Provide cost impact study</p> <p>b. Is minimum annual RPS requirement per Mandated Participant determined on ex post basis? If not, will there be an ex ante determination and a “true up” adjustment later?</p> <p>c. If a Mandated Participant has exceeded its minimum annual RPS requirement will such excess be allowed to be used for future credits? How long into the future?</p>
<p><b>Rule 2, Section 8</b></p>	<p><b>Minimum Annual Incremental RE Percentage.</b> The minimum annual increment in the RPS level shall be initially set at 2.15 percent (2.15%) to be applied to the actual supply portfolio of the Mandated Participant in each grid for the previous year. This is to determine the current year’s requirement for the RECs of the Mandated Participant: <i>Provided</i>, That the minimum annual percentage may be adjusted by the NREB when:</p> <p>a. There are substantial changes in relevant to the market in the grid; or</p> <p>b. The set percentage is deemed insufficient to attain the target set by the DOE.</p>	<p>a. Basis for setting 2.15% provide cost impact study?</p> <p>b. Because of its far-reaching economic impact, this should be set under a quasi-legislative process by DOE upon presentation of evidence therefor and recommendation by the NREB <i>(Note: DOE is lead agency for RA 9513; does it have quasi legislative authority)</i></p> <p>c. What’s the rationale that the Minimum Annual Incremental RE Percentage be the same for all Mandated Participants? Such</p>

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		<p>scheme effectively demands more from a Mandated Participant who already starts with a higher RE percentage. Suggest that Mandated Participant who already complies with the RPS percentage shall be exempt</p> <p>d. The Minimum Annual Percentage may be adjusted after a careful study on cost implication has been done and after quasi-legislative process has been undertaken ( see item b, above); it should not be simply be adjusted by the authority of NREB.</p>
<b>Rule 2, Section 12</b>	<b>Generation RPS Targets.</b> The Mandated Participant shall be guided by the RE generation targets to be determined by the NREB consistent with the targets set in the NREP duly approved by the DOE	The implementation of RPS requires that it is in accordance with the National Renewable Energy Program (NREP). The DOE should first comply with the issuance of a duly approved NREP and in connection with the implementation of the RPS, advert to the specific requirements of the NREP that the RPS aims to satisfy
<b>Rule 4, Section 14</b>	<p><b>Compliance Mechanisms.</b> The Mandated Participant shall use any one, a combination, or all of the following in complying with this Circular:</p> <ul style="list-style-type: none"> <li>a. Allocation from the System Operator, currently the NGCP, pursuant to the FIT Rules or the relevant rules issued by the ERC therefor. RE Generation allocated by the System Operator pursuant to FIT Rules shall be used for compliance purposes and cannot be traded;</li> <li>b. Generation from Embedded RE power generating facilities, duly</li> </ul>	<ul style="list-style-type: none"> <li>a. The section does not provide how the mechanisms become market-based (consistent with the use of such term in the definition of RPS).</li> <li>b. If Competitive Selection Process CSP is required for Mandated Participants with captive customers in securing their PSAs, then CSP should also be a requirement in their PSAs for REs to comply with the RPS.</li> <li>c. The ERC should provide rules and guidelines governing the pass-</li> </ul>

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	<p>certified by the DOE and issued a Certificate of Compliance (COC) by the ERC;</p> <ul style="list-style-type: none"> <li>c. Generation from an eligible RE power generating facility with a Power Supply Agreement (PSA) duly approved by the ERC;</li> <li>d. A REC acquired from the Renewable Energy Market (REM) where the ownership and value per unit shall be defined by the DOE in a separate circular; and</li> <li>e. Any generation from Net Metering arrangements.</li> </ul>	<p>through of costs in complying with RPS for the captive market. This should be clearly stated in the circular.</p> <ul style="list-style-type: none"> <li>iii. Is compliance to RPS mandatory to the DU no matter the cost to the captive customer?</li> <li>iv. If compliance is through PSA or through purchase of RECs, the ERC should provide a long-term levelized rate threshold above which the cost of compliance with RPS is already detrimental to the interest of captive customer (How much higher can RE rates be allowed than the rate which a DU would otherwise get from a non-RE source?)</li> <li>v. ERC should likewise provide a mechanism of comparative evaluation of RPS compliance from PSAs or from purchase of RECs</li> <li>d. Compliance to RPS shall only become mandatory after the following are in place: <ul style="list-style-type: none"> <li>vi. The separate circular referred to in Section 14 (d) Rule 4</li> <li>vii. The ERC rules governing the pass-through of costs (section 6.c, above)</li> <li>viii. The issuance of guidelines by the DOE of the transaction fee referred to in Section 15 (i) Rule 4 and the approval of the specific fees by the ERC</li> </ul> </li> </ul>
<b>Rule 4, Section 15</b>	<b>Section 15. General Principles on the Establishment of the REM and the RE Registrar.</b> The DOE shall establish the REM to facilitate the issuance,	<ul style="list-style-type: none"> <li>a. It is under the premise that the PEMC will continue to remain under the supervision of the DOE that PEMC shall establish the RE</li> </ul>

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	<p>commercialization and verify compliance with the annual RPS requirement. As part of the REM, the PEMC, under the supervision of the DOE shall establish the RE Registrar and shall issue, keep and verify RECs corresponding to energy generated from eligible RE facilities. The following principles shall be considered in the establishment of the rules and guidelines governing the REM and the RE Registrar:</p> <ul style="list-style-type: none"> <li>a. The RE Registrar will issue one certificate per MWh of generation produced from a registered generating unit.</li> <li>b. The registration shall be designed so a REC can be claimed only once.</li> <li>c. All Mandated Participants shall have registered with the RER their individual RPS Compliance Accounts.</li> <li>d. Excess RECs of the Mandated Participant can be traded pursuant to Section 14 (b) Rule 4;</li> <li>e. A REC shall be valid for three (3) years and can be banked only during its validity.</li> <li>f. The Mandated Participant may be assessed periodically with corresponding penalties for non-compliance with the RPS requirement consistent with the REC validity.</li> <li>g. A Mandated Participant will prove compliance with the RPS by having the proper quantity of RECs in their RPS Compliance Account in the RE Registrar, consistent with Section 8, Rule 2 of this Circular.</li> <li>h. During the first three years of the RPS program, the DOE shall review the REM Rules for possible revisions based on the rate of compliance of the Mandated Participant, REC</li> </ul>	<p>Registrar and shall issue, keep and verify RECs corresponding to generation from eligible RE facilities. However, such functions and responsibilities are different from the Articles of incorporation of the PEMC whose primary purpose is to “manage, govern and administer an efficient, competitive, transparent and reliable market for the wholesale and purchase of electricity and ancillary services in the Philippines (the Wholesale Electricity Spot Market or “WESM”. Accordingly, subsuming the REM under the PEMC may not only be legally untenable but may further complicate the resolution of the long-pending issue of how PEMC’s governance structure may be organized to give substance to the meaning of “independent”. Moreover, the WESM operates as a bid-based real-time market for energy. In sharp contrast, the REM refers to the market where the trading of the RECs (and not the energy itself) is made. The object of the WESM trade is to satisfy an ex ante energy requirement while the object of the REM trade is to satisfy an ex post compliance obligation. We suggest the creation of a separate REM and RE Registrar under the governance of a board independent from government (in the fashion of the Philippine Stock Exchange)</p> <ul style="list-style-type: none"> <li>b. The circular should provide the key market principles and mechanism to prevent abuse of</li> </ul>

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	<p>market activity and general success in meeting RPS goals; and</p> <p>i. A transaction fee may be imposed by PEMC for transactions undertaken in the REM and RE Registrar subject to the setting of operational charges to be approved by the ERC; Provided, that a separate issuance will be issued to serve as guidelines for the same.</p>	<p>market power and anti-competitive behavior in the REM:</p> <p>i. Comparative evaluation between a PSA with an RE generator or buying RECs for a DU to comply with the RPS for its captive customers</p> <ol style="list-style-type: none"> <li>1. How will a DU decision to favor a PSA with a renewable generator be compared with decision to simply purchase RECs?</li> <li>2. What happens if the ex post result shows a different result from the chosen course of action?</li> </ol> <p>ii. REC Trading</p> <ol style="list-style-type: none"> <li>1. Ex ante (eg, to sell a put or call option at a future time) or ex post (eg, to sell an REC on the back of an actual RE generation)</li> <li>2. Under an organized auction or trading or by private negotiations?</li> <li>3. If under organized auction or trading, Uniform Clearing Price? Pay as Bid? Reverse Auction?</li> </ol> <p>iii. Must offer rule</p> <ol style="list-style-type: none"> <li>1. If RECs are traded under an organized auction, are holders of tradable RECs required to offer all to the potential buyers?</li> </ol>

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		<ul style="list-style-type: none"> <li>2. With a proposed REC validity of 3 years, will buyers be limited to only those with an actual compliance gap or may include speculators who may buy and sell later?</li> <li>iv. Price cap <ul style="list-style-type: none"> <li>1. Will there be a price cap on RECs?</li> <li>2. Will a price cap be imposed on the RECs for captive customers only?</li> </ul> </li> <li>v. Treatment of sales proceeds of a DU's excess RECs <ul style="list-style-type: none"> <li>1. Will the gain (or loss) from such sales proceeds be passed on to its captive customers as a discount (or incremental charge)?</li> </ul> </li> <li>c. Cross reference of section 15 (d) Rule 4 to Section 14 (b) Rule 4 appears to be wrong.</li> <li>d. Section 15 (f) appears to convey an ex post assessment of compliance with RPS periodically. How often will such assessment be done and how long after such assessment that a Mandated Participant must have to close its compliance gap? <ul style="list-style-type: none"> <li>i. If the assessment period is less than a year (say, a quarter), because even RE plants require maintenance or has vagaries in generation capacity, there may be periods of RPS compliance</li> </ul> </li> </ul>



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		<p>shortfall which may not otherwise obtain if the assessment period is longer (say, a year) or the period to comply with an RPS gap is longer (say, 2 quarters).</p> <p>e. Section 15 (h) appears to convey that the RPS Rules may only be reviewed after the first 3 years. This is an unwarranted restriction. The rules may be changed anytime if necessary. A new Section or Rule should be developed for Rule Change (in the same fashion adopted in Chapter 8 of the WESM Rules).</p>
<p><b>Rule 5, Section 16</b></p>	<p><b>Creation of a Composite Team</b>  For the purpose of implementing the provisions of this Circular, a Composite Team is hereby created to be composed of representatives from the following:</p> <ul style="list-style-type: none"> <li>a. Designated representative of the NREB Chair;</li> <li>b. Electric Power Industry Management Bureau (EPIMB);</li> <li>c. Renewable Energy Management Bureau (REMB);</li> <li>d. Legal Services (LS); and</li> <li>e. Energy Policy and Planning Bureau (EPPB).</li> </ul> <p>Provided, That the NREB representative shall serve as Chair of the Composite Team.</p>	<ul style="list-style-type: none"> <li>a. The circular has not provided any reason or evidence calling for the need to organize a Composite Team.</li> <li>b. The circular also does not provide the professional and experience qualification in selecting the representatives, considering the gravity of their responsibilities in Section 17.</li> <li>c. The circular does not provide who has supervisory authority over the Composite Team and accountability over their performance of their responsibilities.</li> <li>d. In lieu of subsuming the REM under the PEMC and the creation of a Composite Team to implement the provisions of the circular and considering the far-reaching implications of RPS, we propose the creation of a separate juridical entity for the REM with a governance structure from</li> </ul>

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		<p>stakeholders (the Mandated Participants and RE generators) and independent from Government and an efficient and cost effective market operations to implement RPS with the market-based mechanisms (open trading), its monitoring (registrar and compliance), and evaluation (cost studies). Please refer to Section 7 (a), above.</p>
<p><b>Rule 5, Section 17</b></p>	<p><b>Responsibilities of the Composite Team</b></p> <p>The Composite Team shall discharge the following functions under this Circular:</p> <p>a. Compute the minimum annual RPS requirement per Mandated Participant, in consultation with NREB as provided under Section 8, Rule 2;</p> <p>b. Submit a Compliance Report of Mandated Participants for the RE Registrar as provided in Section 18, Rule 6 after its review and validation for submission to the DOE Secretary copyfurnished the ERC and NREB;</p> <p>c. Recommend the suspension of compliance or the carryover of compliance to the RPS of any Mandated Participant as provided in Section 22, Rule 8;</p> <p>d. Initiate a study on the cost implication of minimum annual RPS requirement before and after the initial implementation of RPS; and</p> <p>e. Such other responsibilities and roles as directed by the DOE. Through a separate issuance.</p>	<p>a. On Section 17 (a):</p> <p>i. what is the import of the term “<i>compute the minimum RPS requirement per Mandated Participant</i>”? Is this simply to quantify the RECs credited to the RPS Compliance Account and to determine the compliance with the minimum RPS requirement for the period under review?</p> <p>ii. What are the tasks which is purported to be done in using the term “<i>in consultation with the NERB</i>”? How will such consultation proceed when the Composite Team and the NREB each adopts a different view on the same matter?</p> <p>b. What is being intended to be achieved in Section 17 (b)? Is it to lodge with the Composite Team the responsibility of determining whether a Mandated Participant complied with RPS and to submit its findings with the RE Registrar which will form the basis of the “Compliance Report” which it is tasked to submit. In the first place, the RE Registrar is simply</p>

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		<p>intended to be “the entity that issues, keeps and verifies RECs corresponding to energy generated from eligible RE facilities and sold to or used by end-users.” It is not the right party to make the determination of compliance with the RPS requirement of Mandated Participants. We suggest amending section 17 (b) to lodge with the Composite Team the principal responsibility of determining the compliance of a Mandated Participant with the RPS requirements and to submit its findings and recommendations with the DOE.</p> <p>c. On Section 17 (d), what is the objective of initiating a study on the cost implication of minimum annual RPS requirement before and after the initial implementation of RPS? In the first place, shouldn't it be the case that a study has already been done on the cost implication of the minimum annual RPS requirement particularly since a minimum annual incremental RE percentage of 2.15% has been established and recommended to be implemented under the draft RPS circular? If no study has been undertaken and publicly subjected to scrutiny, then we recommend to have the study of cost implication done and subjected to public hearing before any minimum annual incremental RE percentage is stated in Section 8 of the circular.</p>