

DEPARTMENT CIRCULAR NO. DC2023-__-_____

**THE RULES AND REGULATIONS ON ADMINISTRATIVE ACTIONS
FOR VIOLATIONS OF THE RPS RULES**

Pursuant to Section 36 of Republic Act (RA) No. 9513, and Section 24 of Department Circular (DC) No. DC2017-12-0015 dated 22 December 2017, DC No. DC2023-05-0015 and DC No. DC2023-05-0014 both dated 23 May 2023 (the DCs are hereinafter collectively referred to as the “*RPS Rules*”), the following rules and regulations on administrative actions for violations of the RPS Rules are hereby adopted and promulgated:

PART I – GENERAL PROVISIONS

Rule 1

Title, Scope, Definitions, Interpretation, Rules of Court

Section 1. Title. – This shall be known as the “*Guidelines Governing Administrative Actions for Violations of the RPS Rules*” (the “*Guidelines*”).

Section 2. Scope. – This Guidelines shall govern the procedure before the Department in all matters concerning the inquiry, investigation, and all other proceedings conducted by the Department pursuant to Section 36 of the RA No. 9513, Section 24(a), Rule 7 of DC No. DC2017-12-0015, as amended by DC No. DC2023-05-0015, and Section 21(a), Rule 7 of DC No. DC2023-05-0014. However, in the public interest and consistent with due process, the Department may except itself from this Guidelines and apply such fair and reasonable procedures to obtain the speedy disposition of administrative cases.

Section 3. Definitions. – Unless otherwise indicated, the following terms shall be understood as follows:

- a. “**Answer**” refers to a pleading in which the adverse party sets forth the defenses upon which he relies;
- b. “**Department**” refers to the Department of Energy;
- c. “**Decision**” refers to the act of the RPSCT on a Complaint or an action or inquiry of the Renewable Energy Management Bureau on the alleged violation of the RPS Rules by a respondent;

- d. **“Final Resolution”** refers to the act of the Secretary on the *Motion for Reconsideration* of an adverse *Decision* filed by the respondent;
- e. **“Office of the President”** refers to the Office of the President of the Philippines;
- f. **“Order”** refers to a directive issued by the RPSCT to a person or entity requiring them to answer allegations of violations of the RPS Rules;
- g. **“Renewable Energy Act”** or **“RE Act”** refers to RA No. 9513, otherwise known as the “Renewable Energy Act of 2008”;
- h. **“Renewable Energy Management Bureau”** or **“REMB”** refers to the bureau of the Department of Energy created pursuant to Section 32 of the RE Act;
- i. **“Respondent”** refers to a person or entity who has allegedly violated the RPS Rules;
- j. **“RPS Composite Team”** or **“RPSCT”** refers to the Composite Team created under Section 19, Rule 5 of DC No. DC2017-12-005, as the composition thereof may be ordered by the Secretary from time to time; and
- k. **“RPSCT Chairperson”** refers to an officer of the Department designated through a Special Order as Chairperson of the Composite Team;
- l. **“Secretary”** refers to the head of the Department of Energy.

Section 4. Interpretation and the Suppletory Application of Rules of Court. – This Guidelines shall be liberally construed to carry out the objectives of the RE Act and other renewable energy laws, rules and regulations, and to obtaining a just and expeditious settlement or disposition of administrative cases. The provisions of the Rules of Court, however, shall apply in a suppletory character.

PART II – PROCEEDINGS BEFORE THE RPSCT

Rule 2

Commencement of Administrative Actions

Section 1. Administrative Action, How Commenced. – All administrative actions for violations of the RPS Rules shall be commenced either by the filing of a verified *Complaint* with the RPSCT within four (4) years from the date of commission of the violation, or if the date be unknown, from the date of discovery of the violation; or upon the RPSCT’s

own initiative by an *Order* issued within one (1) year from the date of commission or date of discovery of the violation. The *Order* shall be issued upon the filing of REMB's findings, duly validated by a technical subcommittee created by the RPSCT for the purpose, that a person or entity may have violated the RPS Rules.

Section 2. Representation. – The *Complaint* may be prosecuted by the complainant by himself/herself or through counsel. The complainant and his/her counsel are required to conduct their business with politeness, decorum and courtesy.

Section 3. Partners Named, Individually. – When two or more persons associated in any business, transact such business under a common name, the associates may be sued under such common name.

The associates of the business who are sued under a common name may be named individually in the Answer filed by them or on their behalf with their respective postal addresses.

If the respondents are Distribution Utilities or Electric Cooperatives or other entities holding a public franchise or licensed by the Energy Regulatory Commission, the officers and/or directors or other responsible officers thereof shall be named respondents.

Section 4. Form and Content of the Complaint. – The *Complaint* shall be in writing, verified, and shall contain the names and addresses of the parties, the power of attorney/authority of the authorized representative, and a concise statement of the ultimate facts constituting the complainant's cause/s of action. It shall specify the relief/s sought, but it may add a general prayer for such further or other relief/s as may be deemed just or equitable. Every pleading filed shall likewise contain a caption setting forth the name of the Department, the title of the case, the case number, and the designation of the pleading.

A *Complaint* is verified by an affidavit stating that the affiant has read the pleading and that the allegations therein are true and correct, based on personal knowledge or authentic documents, and the factual allegations therein have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery.

A *Complaint* which contains a verification based on "information and belief" or upon "knowledge, information, and belief" or lacks proper verification, shall be treated as an unsigned pleading.

The *Complaint* shall include a certification that the party commencing the action has not filed any other action or proceeding involving the same issue or issues before any tribunal or agency nor such action or proceeding is pending in other quasi-judicial bodies; Provided, however, that if any such action is pending, the status of the same must be stated, and should knowledge thereof be acquired after the filing of the *Complaint*, the party concerned undertakes to notify the RPSCT within five calendar (5) days from such

knowledge. Failure to comply with the foregoing requirements shall not be curable by mere amendment of the *Complaint* but shall be cause for dismissal of the case without prejudice to its refiling. The submission of a false certification or non-compliance with any of the undertakings therein, or the acts of the party or his/her counsel which clearly constitute willful and deliberate forum shopping, shall be ground for summary dismissal with prejudice.

No *Complaint* shall be accepted by the RPSCT unless it is accompanied by the required filing fee.

Section 5. Modes of Filing. – A verified *Complaint* shall be filed with the RPSCT through the following:

- a. Personal delivery;
- b. Registered mail;
- c. Private courier; or
- d. Electronic mail (email).

Section 6. Filing Through Email or Other Electronic Filing System Approved by the Department. –

- a. The verified *Complaint* shall be filed through email addressed to `rpsct_complaint@doe.gov.ph` and in portable document format (PDF).
- b. An email acknowledgment shall be sent to the complainant indicating the RPSCT's receipt of the verified *Complaint* through email.
- c. The verified *Complaint* filed through email must be accompanied by the email addresses and mobile numbers of the complainant, his/her legal counsel/s or representative/s on record, and the respondent, if known to the complainant. It is the duty of the parties, their legal counsels or authorized representatives to update the RPSCT if there are any changes in the email addresses on record.
- d. After the initial electronic filing and the payment of the appropriate fees, the parties shall subsequently submit, by personal service, registered mail, or private courier, a Universal Serial Bus (USB) drive containing the document submitted together with the copy of the receipt of payment of the filing fee.

Section 7. Payment of Filing Fee and Docketing. – The *Complaint* shall be filed in triplicate with the RPSCT, which shall issue an order for the payment of the required fee.

The complainant shall pay a filing fee of no less than PhP2,500.00 but not more than PhP20,000.00, or as may be prescribed by the RPSCT upon the approval of the DOE Secretary.

Upon payment of the required fee, the complainant, his/her counsel, or representative, shall submit to the RPSCT Secretariat a copy of the official receipt and present the original copy thereof for comparison. Immediately after the receipt of proof of payment of the required fee, the RPSCT Secretariat shall acknowledge receipt of the papers by assigning the Administrative Complaint Number and docket the same.

Section 8. *Evaluation of Complaint; Notice to Answer.* – Within five (5) working days from receipt of the proof of payment of filing fee, the RPSCT shall resolve whether to dismiss the *Complaint* outright for non-compliance with any of the requirements under this Rule or to require the respondent to answer.

If the *Complaint* is sufficient in form and substance, a *Notice to Answer* together with a copy of the *Complaint* shall be served to the respondent through the RPSCT Secretariat by personal service, registered mail, private courier, or email. If the service is done through registered mail, the return card shall be attached to the documents as evidence of receipt. The proof of service of the *Notice to Answer* shall be made in writing by the RPSCT Secretariat and shall set forth the manner, place and date of service, shall specify any papers which have been served with the process and the name of the person who received the same, and shall be sworn to when made by a person other than an employee of the Department.

Section 9. *Motu Proprio Action; Contents of the Order.* – The *Order* referred to in Section 1 of this Rule shall cite the duly validated findings of REMB and allege with definiteness and clarity the violation, as well as the range or extent of the sanction that may be imposed should the violation be substantiated. The *Order* shall be served to the respondent and the proof of service thereof shall follow the procedure set forth in the immediately preceding Section.

Section 10. *Venue of Hearings.* – All hearings on actions covered by these Guidelines shall, as far as practicable, be held within the premises of the Department. However, the parties may request that hearings be held via remote or teleconferencing arrangements.

Rule 3 Answer

Section 1. *Answer.* – Within a period of ten (10) working days from receipt of the *Notice to Answer* or *Order*, the respondent shall file an *Answer* whether admitting or denying the material allegations or facts set forth in the *Complaint* or *Order*, or setting forth the reason why respondent cannot admit or deny said allegations. The respondent must state the facts and law relied upon for their defense with definiteness and clarity.

Section 2. *Default.* – (a) If the respondent fails to file an *Answer* within the time allowed therefor, the RPSCT shall *motu proprio* or upon motion of the complainant with notice to the respondent, and proof of such failure, declare the respondent in default. Thereupon, the RPSCT shall proceed to issue a *Decision* granting the complainant such relief as

his/her pleading may warrant or hold respondent liable for the violation stated in the *Order*, unless the RPSCT, in its discretion and upon motion of the respondent, requires the respondent to submit an *Answer*. All such *Decisions* shall comply with Rule 4 of this Guidelines.

(b) A party declared in default may, at any time after notice thereof and before the issuance of the *Decision*, file a motion under oath to set aside the order of default upon proper showing that his/her failure to answer was due to fraud, accident, mistake or excusable negligence and that he/she has a meritorious defense. In such a case, the order of default may be set aside on such terms and conditions as the RPSCT may impose in the interest of justice.

(c) A party in default shall not be entitled to notice of subsequent proceedings, unless s/he files a motion to lift or set aside the order of default.

Section 3. *Motion to Dismiss Not Allowed.* – No motion to dismiss on any of the grounds mentioned in the Rules of Court and in any other law shall be allowed except on the ground of prescription. Such grounds other than prescription shall instead be pleaded as affirmative defenses, the resolution of which shall be made in the decision on the merits. The RPSCT may, for good cause shown, conduct a hearing on any of the affirmative defenses if this will expedite the resolution of the case.

Rule 4 Decision and Motion for Reconsideration

Section 1. *Decision.* – Whether or not the respondent submits an *Answer*, the case shall be decided by the RPSCT within ninety (90) working days from respondent's receipt of the *Complaint* or *Order*.

Prior to the rendition of the *Decision*, the RPSCT may conduct a clarificatory hearing during which the parties shall be afforded the opportunity to be present but without the right to examine or cross-examine the witness being questioned. Where the appearance of the parties or witnesses is impracticable, the clarificatory questioning may be conducted in writing, whereby the questions desired to be asked shall be reduced into writing and served on the witness concerned who shall be required to answer the same in writing and under oath. *Decisions* shall be served by personal service, registered mail, private courier, or email, as the case may require.

Section 2. *Contents of the Decision.* – The *Decision* of the RPSCT shall be signed by the RPSCT Chairperson, and shall contain a clear, concise and brief statement of the (a) facts of the case; (b) issue/s involved; (c) findings of fact; (d) applicable law or rules; (e) conclusion and reasons therefor, (f) recommendation on the revocation of respondent's license, franchise, or authority to operate or the filing of criminal complaint, if warranted, and (g) the dispositive portion. For the purpose of crafting the *Decision*, the RPSCT may call upon the various units of the Department to provide him/her support. The *Decision* shall be filed with the REMB, who shall cause true copies thereof to be served upon the

counsel of the respondent, or in the absence of any counsel of record, on the respondent himself/herself.

Section 3. Evidence Required. – Substantial evidence shall be sufficient to support *Decision*. A fact may be deemed established if it is supported by substantial evidence. It means such relevant evidence which a reasonable mind might accept as adequate to support or justify a conclusion.

Section. 4. RPSCT Not Bound by Technical Rules of Evidence. – The RPSCT shall consider relevant and material evidence, rule on offer of evidence and exclude all irrelevant matters, and shall act according to justice and fairness. The RPSCT shall not be strictly bound by the technical rules of evidence. The RPSCT shall, however, take cognizance of the official acts of the legislative, executive and the judicial departments of the Philippines, the laws of nature, scientific facts as published in treatises, periodicals, or pamphlets and other facts which are of public knowledge or general knowledge as would enable the RPSCT to rule upon the technical issues in the case.

Section 5. Motions for Reconsideration. – *Motions for Reconsideration* of the *Decision* of the RPSCT under this Guidelines shall be under oath and filed within fifteen (15) calendar days from receipt of the *Decision*. The RPSCT shall resolve *Motions for Reconsideration* of the *Decision* within thirty (30) working days after its submission.

Rule 5

Appeal to the Secretary and Final Resolution

Section 1. Appeal to the Secretary. – The respondent may appeal the *Resolution* of the RPSCT to the Secretary.

Section 2. Procedure on Appealed Cases. – In case of an appeal under the preceding section, the following rules shall apply:

- a. An appeal from a *Resolution* shall be perfected by filing with the RPSCT a Notice of Appeal, within a period of fifteen (15) calendar days from receipt of notice of such *Resolution*.
- b. Before an appeal may be filed, it must be first shown that a *Motion for Reconsideration* from a *Decision* has been filed with the RPSCT and the same has been denied;
- c. Appellant's *Position Paper* shall contain the following data/matters:
 - i. Exact date of the appealed *Resolution*;
 - ii. Exact date when the appealed *Resolution* was received;
 - iii. Information regarding compliance with the requirements for appeal under these Guidelines;
 - iv. Brief statement of the case and the facts;

- v. Reasons or grounds for appeal;
- vi. Arguments in support of the appeal; and
- vii. Relief sought.

The Secretary may require the filing of additional pleadings to provide additional information.

- d. Any party filing the required pleading or documents and other pleadings pertinent to the appealed case shall furnish the Office of the Secretary copies thereof.

Section 3. *Final Resolution and Motion for Reconsideration.* – The appeal shall be decided by the Secretary and shall issue a *Final Resolution* within thirty (30) working days from receipt of the appellant’s *Position Paper. Motions for Reconsideration* of the *Final Resolution* of the Secretary shall have the same grounds and formal requirements prescribed under Section 5, Rule 4 hereof. The Secretary shall resolve *Motions for Reconsideration* of the *Final Resolution* within thirty (30) working days after its submission.

The *Final Resolution* shall be filed with the REMB, who shall cause true copies thereof to be served upon the counsel of the respondent, or in the absence of any counsel of record, on the respondent himself/herself.

Rule 6 Administrative Penalties and Sanctions

Section 1. *Administrative Penalties Imposable.* – After formal investigation, the Department, through the RPSCT, may impose one (1) or more of the following administrative penalties, pursuant to Section 36 of the RA No. 9513, Section 24(a), Rule 7 of DC No. DC2017-12-0015, and Section 21(a), Rule 7 of DC No. DC2023-05-0014:

- a. The imposition of administrative fines in such amount as deemed reasonable by the Department, which shall in no case be less than One Hundred Thousand Pesos (PhP100,000.00) to Five Hundred Thousand Pesos (PhP500,000.00), or the total amount of damages caused or the costs avoided for noncompliance, whichever is higher, upon the discretion of the RPSCT.

The cost avoided for noncompliance shall refer to the difference between the retail rate if the respondent was RPS compliant (RR_1) and the retail rate actually charged to its customers (RR_2) multiplied by the Net Electricity Sales (NES) in kWh for the year of noncompliance.

$$\text{Cost Avoided for Noncompliance} = [(RR_1 - RR_2) \times (NES)] \times (365)$$

- b. The cancellation of any permit, license, authority, or registration which may have been granted by the Department, or the suspension of the validity thereof for such

period of time as the Department may deem reasonable, which shall not exceed one (1) year; and

- c. The withholding of any permit, license, authority or registration which is being secured by the respondent from the Department.

The fines above shall be imposed against the officers and/or directors or other responsible officers and shall not be passed on to the Captive Market.

In addition to the administrative penalties enumerated above, the Department, citing the Decision of the RPSCT, may also recommend to the appropriate government entity/agency the revocation of the respondent's license, franchise, or authority to operate for the second violation committed by the respondent.

If it is the third violation of the same person or entity, the Department, citing the Decision of the RPSCT, shall recommend to the appropriate government office the filing of a criminal action for violation of the RE Act and other relevant laws.

In every case, the Department shall act upon the recommendation to revoke the respondent's license, franchise, or authority to operate or file a criminal action only after finality of the Decision.

Rule 7

Finality of Decisions and Final Resolutions, and Entry Thereof

Section 1. *Finality of Decision and Final Resolution.* – The *Decision* of the RPSCT, shall become final and executory fifteen (15) calendar days after the receipt of a copy thereof by respondent, unless within the said period an *Appeal* of the *Decision* to the Secretary has been filed.

The *Final Resolution* of the Secretary shall become final and executory fifteen (15) calendar days after the receipt of a copy thereof by respondent, unless within the said period an appeal to the Office of the President has been perfected.

Section 2. *Entry of Decisions and Final Resolutions.* – If no *Motion for Reconsideration* or appeal is filed within the periods provided in this Guidelines, the REMB upon the instance of the RPSCT shall forthwith cause the entry of the *Decision* or *Final Resolution* in the Records Management Division. The date of finality of said *Decision* or *Final Resolution* shall be deemed to be the date of its entry. The record shall contain the dispositive part of the *Decision* or *Final Resolution* and shall be signed by the RPSCT Chairperson or Secretary, as the case may be, with a certificate that such *Decision* or *Final Resolution* has become final and executory.

Rule 8
Appeal to the Office of the President

Section 1. *Appeal to the Office of the President.* – The respondent may appeal the *Final Resolution* of the Department to the Office of the President. However, interlocutory orders shall not be appealable.

Section 2. *Procedure on Appealed Cases.* – The procedure provided in Administrative Order No. 22, Series of 2011 entitled “Prescribing the Rules and Regulations Governing Appeals to the Office of the President” shall govern appeals by aggrieved parties of the *Final Resolutions* of the Department to the Office of the President.

Rule 9
Confidentiality of Proceedings

Section 1. *Prohibited Disclosure.* No employees of the Department and the officers and members of the RPSCT shall discuss the case or any phase thereof with either the complainant or respondent, or his/her counsel of record in the absence of the other party, or with any third person not having any interest or legal standing before the Department.

PART III – INSTITUTION OF CRIMINAL PROCEEDINGS BY THE DEPARTMENT

Rule 10
Prohibited Acts, Penalties, and Commencement of Criminal Actions

Section 1. *Prohibited Acts and Penalties.* – For the purposes of this Guidelines, and pursuant to Sections 35(a) and 35(e) of the RA No. 9513, non-compliance or violation of the RPS Rules and non-compliance with the established guidelines that the Department will adopt for the implementation of RA No. 9513 are prohibited acts.

Pursuant to Section 36 of the RA No. 9513, any person who willfully commits any of the prohibited acts, upon conviction thereof, shall suffer the penalty of imprisonment of one (1) year to five (5) years, or a fine ranging from a minimum of One Hundred Thousand Pesos (PhP100,000.00) to One Hundred Million Pesos (PhP100,000,000.00), or twice the amount of damages caused or costs avoided for non-compliance, whichever is higher, or both, upon the discretion of the court.

Section 2. *Institution of Criminal Action by the Department.* – The RPSCT, after having resolved the administrative action or inquiry, and finding that there is a third violation by the respondent, shall refer the matter to the relevant government agency for the conduct of criminal investigation and prosecution of any person who willfully commits any of the prohibited acts, in accordance with existing laws, rules, and regulations. Likewise, any person who willfully aids or abets the commission of any such act by another shall be liable in the same manner as the principal.

In the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, chief operating officer, chief executive officer, directors or officers responsible for the violation.

PART IV – FINAL PROVISIONS

Section 1. *Participation of the Legal Services.* – For the purposes of this Guidelines, the Legal Services shall assist and support the concerned units of the Department during the administrative and criminal proceedings.

Section 2. *Separability.* – If any provision in these Guidelines or application of such provision to any circumstances is held invalid, the remainder of these Guidelines shall not be affected thereby.

Section 3. *Repealing Clause.* – The provisions of other circulars, orders, issuances, rules and regulations, which are inconsistent with the provisions of these Guidelines are hereby repealed, amended, superseded or modified accordingly.

The portions of Section 24 of DC2017-12-0015 and Section 21 of DC2023-05-0014 referring to the applicability of the DOE Rules of Practice and Procedure to cases covered by these Guidelines are hereby repealed.

Section 4. *Information, Education and Communication Activities.* – Pursuant to Section 31, Rule 10 of the IRR of the RE Act, the Department, together with National Renewable Energy Board, shall develop and implement a comprehensive information, education and communication activities that are designed to increase the public awareness and appreciation of these Guidelines and the renewable energy industry in general.

Section 5. *Effectivity.* – These Guidelines shall take effect fifteen (15) days after publication in two (2) newspapers of general circulation. Copies of these Guidelines shall be filed with the University of the Philippines Law Center – Office of the National Administrative Register.

RAPHAEL P.M. LOTILLA
Secretary

Issued on _____, at Energy Center, Rizal Drive, Bonifacio Global City, Taguig City.