

DEPARTMENT CIRCULAR NO. _____

**PRESCRIBING AMENDMENTS TO SECTIONS 19 OF
DEPARTMENT CIRCULAR NO. DC2009-05-0008 ENTITLED,
RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 9513,
OTHERWISE KNOWN AS “THE RENEWABLE ENERGY ACT OF 2008”**

WHEREAS, Section 2(a) of Republic Act No. 9513, or the Renewable Energy Act of 2008 (the “RE Act”) provides the State policy to accelerate the exploration and development of renewable energy (RE) resources, such as, but not limited to, biomass, solar, wind, hydro, geothermal and ocean energy resources, including hybrid systems, to achieve energy self-reliance, through the adoption of sustainable energy development strategies to reduce the country’s dependence on fossil fuels and thereby minimize the country’s exposure to price fluctuations in the international markets, the effects of which spiral down to almost all sectors of the economy;

WHEREAS, Section 2(c) of the RE Act further declares the State policy to encourage the development and utilization of RE resources as tools to effectively prevent or reduce harmful emissions and thereby balance the goals of economic growth and development with the protection of health and the environment;

WHEREAS, pursuant to Section 33 of the RE Act, the Department of Energy (“DOE”) promulgated Department Circular No. DC2009-05-0008, or the Rules and Regulations Implementing the Republic Act No. 9513 (the “RE Act IRR”) on 25 May 2009;

WHEREAS, Section 19, Rule 6 of the RE Act IRR provides, among others, that all forces of potential energy and other natural resources are owned by the State, which include potential energy sources such as kinetic energy from water, marine current and wind; thermal energy from solar, ocean, geothermal and biomass; and that foreign RE Developers may also be allowed to undertake RE development through an RE Service/Operating Contract with the government, subject to Article XII, Section 2 of the Constitution;

WHEREAS, in implementing the RE Act, Section 19, Rule 6 of the RE Act IRR reserved the exploration, development and utilization of RE resources, namely, solar, wind, hydropower, geothermal and ocean or tidal energy, to Filipino citizens and corporations or associations at least sixty percent (60%) of whose capital is owned by Filipinos;

WHEREAS, the RE Act contains no provision imposing the afore-cited ownership restriction;

WHEREAS, on 29 September 2022, the Department of Justice (DOJ) rendered an Opinion¹ that the exploration, development and utilization of solar, wind, hydro and ocean or tidal energy should not be subject to the forty percent (40%) foreign equity limitation since these resources are (1) inexhaustible, hence, beyond the ambit of the term “natural resources” in Section 2, Article XII of the Constitution which contemplates only those resources that are susceptible of appropriation as understood under the constitutional provision, limited and exhaustible, and (2) considered as kinetic energy and therefore excluded from the term “all forces of potential energy”; but that the use of water sources, if the same is directly harvested from the source by foreign nationals or entities, may not be allowed based on the Water Code of the Philippines² and *IDEALS, Inc. vs. PSALM*³;

¹ Addressed to DOE Secretary Raphael P.M. Lotilla.

² Presidential Decree No. 1067, series of 1976.

³ G.R. No. 192088, 09 October 2012.

WHEREAS, removing the nationality requirement imposed on businesses engaged in the exploration, development and utilization of solar, wind, hydropower and ocean energy thereby allowing the entry of foreign capital into the country's RE industry will address one of the significant challenges towards achieving the targeted 35% share of RE in the power generation mix by 2030 and 50% share by 2040,⁴ lowering the cost of RE projects, and making cleaner energy more accessible to the greater public.

NOW THEREFORE, for and in consideration of the foregoing and to give meaning and purpose to the abovementioned DOJ Opinion, the DOE hereby issues, adopts, and promulgates the following amendments to the RE Act IRR:

Section 1. Deletion of Section 19 (A) of the RE Act IRR. Section 19 (A) of DC No. DC2009-05-0008 is hereby deleted.

Section 2. Amendment to Section 19 (B) of the RE Act IRR. Section 19 (B) of DC No. DC2009-05-0008 is hereby renumbered as Section 19 (A) and amended to read, as follows:

SEC. 19. Renewable Energy Service/Operating Contract

A. Parties to a Service/Operating Contract

The State may directly undertake the exploration, development, production and utilization of RE resources, or it may enter into RE Service or Operating Contracts with Filipino and/or foreign citizens or Filipino and/or foreign-owned corporations or associations: *Provided*, That RE Service or Operating Contracts for the following activities shall be reserved to Filipino citizens or corporations or associations at least sixty percent (60%) of whose capital is owned by Filipinos:

1. The appropriation of water direct from a natural source⁵; or
2. The exploration, development and utilization of geothermal resources, except for financial or technical assistance agreements for large-scale exploration, development and utilization of geothermal resources pursuant to Article XII, Section 2 of the Philippine Constitution.

Section 3. Renumbering of Section 19 (C) and (D) of the RE Act IRR. Section 19 (C) and (D) of DC No. DC2009-05-0008 are hereby renumbered as:

B. Guidelines on Award of RE Service/Operating Contract

The DOE shall, within one (1) month from the issuance of this IRR, formulate and promulgate the regulatory framework containing the guidelines governing a transparent and competitive system of awarding RE Service/Operating Contracts from pre-development to development/commercial stage, among others.

RE Sectors which are developing or utilizing non-naturally occurring resources such as, but not limited to, biomass, biogas, methane capture, and other waste-to-energy technologies, shall be covered by an RE Operating Contract which shall take into consideration the peculiar conditions and realities attendant to such sector; *Provided*, That the biomass sector shall be covered by an RE Operating Contract wherein the biomass developer commits to develop, construct, install,

⁴ National Renewable Energy Program 2020-2040:

https://www.doe.gov.ph/sites/default/files/pdf/announcements/nrep-2020-2040_0.pdf

⁵ *Supra* at Notes 2 and 3.

commission, and operate an RE generating facility subject to terms and conditions as specified therein.

C. Compliance with Existing Laws

The regulatory framework for the award of an RE Service/Operating Contract will take into consideration existing related laws on the exploration, development and utilization of RE Resources such as:

- (1) R.A. No. 7160, otherwise known as the “Local Government Code”, on the necessity of prior and periodic consultations with the local government units before any RE exploration activity is conducted within their respective jurisdictions. Existing projects shall be considered compliant with this requirement;
- (2) R.A. No. 8371, otherwise known as the “Indigenous Peoples Rights Act”; and
- (3) Existing environmental laws and regulations as prescribed by the DENR and/or any other concerned government agency, including compliance with the Environmental Impact Assessment (EIA) System.

An Environmental Compliance Certificate (ECC) from the appropriate regional office of the DENR would be sufficient to comply with the Act and this IRR.

Section 4. Separability Clause. If any provision of this Circular is declared invalid or unconstitutional, the other provisions not affected thereby shall remain valid and existing.

Section 5. Repealing Clause. Sections 3.19, 4.2.1, and 4.2.3 of Department Circular No. DC2019-10-0013 and other issuances inconsistent with the provisions of this Circular are hereby repealed, modified or amended accordingly.

Section 6. Effectivity. This Circular shall take effect fifteen (15) days following its publication in two (2) newspapers of general circulation and filing with the University of the Philippines Law Center – Office of the National Administrative Register.

RAPHAEL P.M. LOTILLA
Secretary

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