



Republic of the Philippines
DEPARTMENT OF ENERGY
(Kagawaran ng Enerhiya)

**2ND ADVISORY FOR THE IMPLEMENTATION OF DC2018-08-0021 AND ITS
SUPPLEMENTAL POLICY ISSUANCES**

TO : **Generation Companies and/or Energy Resource
Developers
Distribution Utilities
Designated Beneficiaries
Indigenous Cultural Communities and Indigenous
Peoples
All Concerned Agencies and Institutions**

DATE :

To provide further clarity and additional guidance in the implementation of certain provisions of **Department Circular No. DC2018-08-0021** entitled, "*PROVIDING FOR THE AMENDMENTS TO RULE 29 PART (A) OF THE IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 9136*" issued on 23 August 2018 and its supplemental issuances, the Department of Energy (DOE) hereby issues this 2nd Advisory Guidelines as follows:

**Part I. Clarifications on certain provisions of DC2018-08-0021 and
DO2019-01-001**

A. Interest earnings from the Interest-Bearing Current Accounts (IBCA) established by the Generation Companies (GenCos) and Designated Beneficiaries

In reference to Section 8, all interests that will be earned from the IBCA of the Generation Companies and Designated Beneficiaries shall form part of the available funds for the Designated Beneficiaries and shall be utilized for the purpose for which it was established.

B. Section 7.3.2 in Relation to the adverse findings by the concerned auditor

Pursuant to its mandate, the Commission on Audit (COA) shall conduct post audit functions such that any audit findings should not prohibit the GenCos and/or Energy Resource Developers (ERDs) to remit the financial benefits due to the Distribution Utilities (DUs), Host Local Government Units (LGUs) and Indigenous Cultural Communities and Indigenous Peoples (ICCs/IPs). Thus, instead of securing

clearance from COA, the Designated Beneficiaries shall submit to the corresponding Genco and/or ERD the following requirements:

1. Copy of the duly signed Liquidation Report by the Accountant of the Designated Beneficiaries with any proof that the same has been received by the concerned COA Office; and
2. An Annual Work Program (AWP) supported by the following documents:
 - a. For Host LGUs - Sanggunian Resolution endorsing the project;
 - b. For Host ICCs/IPs - endorsement thru a resolution by their Indigenous Political Structure or recognized Indigenous Leadership Structure but not limited to Indigenous Peoples Organization; and
 - c. For DUs- certification that the AWP is consistent with their Distribution Development Plan (DDP) issued by the DOE.

C. Supplemental Guidelines in relation to the last paragraph of Section 6.2

1. The Genco and/or ERD shall coordinate with the concerned Regional Development Council (RDC) of its respective Host Region on available existing Regional Share of the DLF and RWMHEEF;
2. The RDC shall endorse to the Genco an AWP consisting of the list of identified projects with the corresponding LGU Beneficiaries for funding under the Regional Share;
3. The RDC shall consolidate and endorse to the appropriate GenCo and/or ERD the following documents submitted for appropriate allocation of funds under Region Share:
 - a. AWP;
 - b. RDC Resolution;
 - c. Sanggunian Resolution by the identified LGU Beneficiary; and
 - d. A bank certificate from the AGDB from where the fund/s will be deposited.
4. Upon submission of the above documents, the GenCo and/or ERD shall process the transfer of the corresponding amount from the existing Regional Share to the identified LGU Beneficiary.
5. A MOA between the concerned RDC and GenCo and/or ERD will be executed to establish an agreement on the procedures to facilitate the allocation and remittance of the Regional Share to the identified LGUs, (Annex "A"). The individual project by the identified LGUs shall be governed by separate project implementation MOA (Annex "B") between the concerned RDC and the identified LGUs which shall include the following minimum provisions:

- a. Project Funded by ER 1-94 Regional Share;
- b. Project Fund Release Requirement and Timeline;
- c. Project Implementation and Monitoring; and
- d. Project Fund Liquidation and Close-Out.

Part II. Supplemental Guidelines in Relation to Section 2.3 of DO2019-12-0021:

Failure of the Designated beneficiaries to claim the ER 1-94 Funds due to absence of the required IBCA and/or have advised the DOE not to further utilized their allocated share, their ER 1-94 funds shall be deposited by the DOE to the National Treasury within sixty (60) days from the lifting of the declaration of the State of Public Health Emergency. For this purpose, designated beneficiaries can still avail of the said funds by coordination and submission of appropriate documents to the Department of Budget and Management.

During this state of public health emergency, designated beneficiaries can still avail the said funds for COVID-19 related projects and programs pursuant to DC2020-04-0008.

Part III. Supplemental Guidelines in Relation to Certain Provisions of DO2019-01-0001:

A. Sections 4.2.3 and 7.1.3 on Utilization of Regional Share under DLF and RWMHEEF

The guidelines for the transfer of DLF and RWMHEEF allocated for the Host Region, are as follows:

1. The DOE through the GenCo and/or ERD shall coordinate with RDC the available existing Regional Share for DLF and RWMHEEF;
2. The RDC shall endorse to the GenCo and/or ERD an AWP consisting of the list of projects identified with the corresponding LGU Beneficiaries for funding under the Regional Share. The submission of AWP shall be on or before 15 March 2021 and shall be the basis for the transfer of funds to the identified LGU Beneficiaries by the DOE;
3. The GenCo and/or ERD shall consolidate the following documents endorsed by the RDC and submit to DOE for appropriate allocation of funds under the Regional Share:
 - a. AWP;
 - b. RDC Resolution endorsing the projects;
 - c. Sanggunian Resolution by the identified LGU Beneficiary; and
 - d. A bank certificate of their general fund account, as applicable, issued by the AGDB from where the fund/s will be deposited.

4. Upon submission of the above documents, the DOE shall process the transfer of corresponding amount from the available Regional Share to the identified LGU Beneficiaries' trust or general fund account, as applicable.
5. The identified LGU Beneficiaries shall acknowledge the receipt of funds through the issuance of Official Receipt (OR) or Acknowledgement Receipt (AR).
6. The identified LGU Beneficiaries shall implement the project within thirty (30) working days upon the receipt of ER Funds.
7. Upon completion of the project, the identified LGU Beneficiaries shall immediately prepare the liquidation report duly signed by the concerned local accountant and accordingly received by the local COA.

During this State of Public Health Emergency, the identified LGU Beneficiaries can avail the said funds for COVID-19 response related projects and programs pursuant to DC2020-04-0008.

However, all remaining unallocated funds for the Regional Share shall be deposited by the DOE to the National Treasury within sixty (60) days upon lifting of the State of Public Health Emergency. For this purpose, the identified LGU Beneficiaries can still avail of said allocated financial benefits through appropriate coordination and submission of documents to the Department of Budget and Management.

B. Sections 3.1.2 and 3.1.3 on ER 1-94 funds from Not Constructed/Closed/Decommissioned plants

For the concerned GenCos and/or ERDs that have not constructed the power facility/ies nor commence with their commercial operations but have remitted to the DOE an initial/maintaining amount to open the Trust Accounts for its ER Funds, submittal of a certificate from their depository bank is required in order for the DOE to revert back the said funds to their account.

Meanwhile, the transfer of existing ER 1-94 funds to the host communities for Closed or Decommissioned GenCos and/or ERDs shall be treated as follows:

1. If the LGU/DU is already a host beneficiary by hosting the commercial operations of a separate GenCo or ERD, then funds will be deposited to its trust account.
2. If the LGU/DU is a non-host beneficiary, then transfer of funds can be made to its general fund account.

C. Financial Benefits allocated for the Indigenous Cultural Communities (ICCs)/ Indigenous Peoples (IPs)

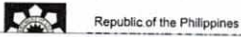
With respect to ICCs/IPs allocation of financial benefits, the DOE, NCIP and the concerned GenCo and/or ERDs shall endeavor to establish a technical monitoring

group and share among themselves on a timely basis, information and updated database to facilitate the exchange of information needed for the smooth processing and inclusion of ICCs/IPs as host beneficiaries under the ER 1-94 Program including possible development of a joint guidelines for project implementation and to ensure adherence to the generally accepted accounting and auditing regulations by the host ICCs/IPs.

For your immediate compliance.



ALFONSO G. CUSI
Secretary



JUL 19 2021

MEMORANDUM OF AGREEMENT

**By and Between the _____ (Name of
Generation Company) and Regional Development
Council**

*For the implementation of Project/s funded under the Energy
Regulations (ER) No. 1-94 Program as per Department
Circular (DC) Nos. 2018-08-0021 and its Supplemental Policy
Issuances*

KNOW ALL MEN BY THESE PRESENTS:

This Memorandum of Agreement (hereinafter referred to as the
"**Agreement**") is made and entered into in the Philippines by and between:

The (*Name of Generation Company*), a Generating Company which is a
private corporation duly organized and existing under the laws of the
Philippines, with principal office address at _____, hereinafter, referred
to as "GenCo Acronym"; and

Regional Development Council, a national government entity of the
Republic of the Philippines, with office address at the National Economic and
Development Authority (NEDA) Regional Office , _____,
duly represented herein by <name> RDC Chairperson, hereinafter referred to
as "**RDC**";

The GenCo Acronym and **RDC**, shall herein referred to collectively as
"**Parties**" and individually as a "**Party**".

WITNESSETH:

WHEREAS, Section 5 (i) of Republic Act No. 7638 (R.A. No. 7638),
otherwise known as the "Department of Energy Act of 1992" mandates the
Department of Energy (DOE) to devise ways and means of giving direct
benefits to the province, city or municipality, especially the community and
people affected and equitable and preferential to the region that hosts the
energy resource and/or the energy-generating facility;

WHEREAS, Energy Regulation No. 1-94 (ER 1-94) was promulgated by
the DOE on 01 August 1994 to operationalize the implementation of section 5
(i) of R.A. No. 7638, which provides the granting of financial benefits to the host
communities of the energy-generation company and/or energy resources;

WHEREAS, Section 66 of R. A. No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001” and Rule 29(A) of its Implementing Rules and Regulations (EPIRA-IRR) require all energy generation companies (GenCos) and/or energy resource developers (ERDs) to provide financial benefits equivalent to one centavo per kilowatt-hour (P0.01/kWh) of the total electricity sales of the generation facility to the region, province, city or municipality and barangay that hosts the generation facility and energy resource facility, as well as the establishment of corresponding trust accounts and the administration thereof by the DOE;

WHEREAS, in accordance with R.A. No. 8371 also known as “The Indigenous Peoples’ Rights Act of 1997”, the DOE promulgated Department Circular (DC) No. DC2018-03-0005 on 20 March 2018 recognizing the rights of the Indigenous Cultural Communities (ICCs) and Indigenous Peoples (IPs) to their ancestral domain and the natural resources therein and provides for reasonable share in Development and Livelihood Fund (DLF) and Reforestation, Watershed Management, Health , and/or Environment Enhancement Fund (RWMHEEF) components of the ER 1-94 funds;

WHEREAS, on 07 August 2018, DOE issued **DC2018-08-0021**, entitled, “Providing for the Amendments to Rule 29 Part (A) of the Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9136” or “Benefits to Host Communities, where in Section 6.2 of the said DC states that the financial benefit shall be allocated in the following manner:

“Twenty-five percent (25%) of one-centavo per kilowatt-hour (P0.0025/kWh) for DLF; and Twenty-five percent (25%) of one centavo per kilowatt-hour (P0.0025/kWh) for RWMHEEF”;

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

- 6.2.1. Community and People Affected - 5%
- 6.2.2. Host Barangay/s - 20%
- 6.2.3. Host Municipality/ies or City/ies - 35%
- 6.2.4. Host Province/s - 30%
- 6.2.5. Host ICCs/IPs - 5%
- 6.2.6. Host Region - 5%

In the absence of Community and People Affected, funds allocated for the same shall form part of the fund for the Host Barangay.

In the absence of ICCs/IPs, the funds allocated for the same shall form part of the fund for the Host Region.”

NOW, THEREFORE, in view of the foregoing, the **Parties** hereto hereby stipulate and agree as follows:

I. Responsibilities of the Parties

1.1 The *GenCo Acronym* shall:

- a. Coordinate with the RDC the available funds for its allocation/distribution to the identified LGU/beneficiary/ies;
- b. Require the RDC to submit the following pertinent documents regarding the allocation of the Regional Share of Region ____:
 - i. a RDC Resolution endorsing the identified LGU/beneficiary/ies of regional share together with the authority that the funds will be directly deposited to the account of the concerned LGU/beneficiary;
 - ii. Annual Work Program Annual Work Program including the copy of the **Notice of Fund Allocation** to LGU/beneficiary of the approved project.
- c. Require the RDC for their LGU/beneficiaries closely monitor the submission of documents of the following documents:
 - i. Annual Work Program;
 - ii. Signed and notarized MOA for Project Implementation by and between the RDC and concerned LGU/beneficiary;and
 - iii. Bank certificate from the authorized government depository bank where the LGU/beneficiary conducts its official financial transactions.
- d. Based on the submitted MOA for Project Implementation between the RDC and its concern LGU/Beneficiary, facilitate the remittance of allocated regional share to the concerned LGU/Beneficiary's submitted bank account the amount equivalent to the result of the bidding of the project;
- e. Inform the RDC on the remittance of funds to the accounts of concerned LGU/beneficiaries and require submission of the Original Receipt (OR) or Acknowledgement Receipt (AR), whichever is applicable.
- f. Upon remittance of funds, require RDC to closely monitor each project implementation;
- g. Shall monitor the liquidation report of funds from the RDC; and
- h. Shall hold in abeyance the remittance of succeeding funds until the liquidation of the total funds previously released to the LGU/beneficiaries is completed.

- i. When physical validation is necessary and/or applicable, the GenCo may validate and/or participate before/during/after the implementation of the project by the designated LGU of the concerned RDC.

1.2 The RDC shall:

- a. Identify LGU/beneficiary based on the available funds and the criteria set by the RDC;
 - b. Brief the potential LGU/beneficiary about the ER 1-94 Program fund source and the process of accessing it;
 - c. Upon the allocation, engage each LGU/beneficiary into a MOA for Project Implementation;
 - d. Provide GenCo copy of the **Notice of Fund Allocation** to LGU/beneficiary of the approved project included in the RDC's Annual Work Program;
 - e. Require from the LGU/beneficiary the submission of the following documents:
 - i. Annual Work Program; and
 - ii. Bank certificate from the authorized government depository bank where the LGU/beneficiary conducts its official financial transactions.
 - f. Upon notice from GenCo on the remittance of funds, closely monitor each project implementation and provide a status report on the disposition of funds;
 - g. Be directly responsible for monitoring the liquidation of funds allocated by the GenCo for a given period of time.
 - h. Be cognizant of the fact that consistent with (DC) Nos. 2018-03-000 and 2018-08-0021, all financial benefits under the ER 1-94 Program shall be subject to the generally accepted accounting and auditing rules and regulations.
 - i. When physical validation is necessary and/or applicable, the RDC may seek assistance from the concerned GenCo to participate before/during/after the implementation of the project by the designated LGU of the RDC.
- II. Any agreement or contract that any of the **Parties** may enter into for the implementation of the ER 1-94 Program shall be subject to this Agreement.
 - III. This Agreement shall be binding upon and inure to the benefits of the respective successor and/or assignee of any of the parties hereto; provided, that none of the parties may assign or transfer any of its rights or obligations herein stated without the prior written consent of the other parties.

IV. This Agreement may be amended and/or revoked only by written consent of all Parties

IN WITNESS WHEREOF, the Parties hereby set their hands this _____ day of _____, Twenty Thousand Twenty at _____.

Name of Generation Company

Regional Development Council

By:

By:

Name/Designation

Name/Designation

Signed in the presence of :

(representative)

(representative)

MEMORANDUM OF AGREEMENT

**By and Between the Regional Development
Council-Region___ and _____ (LGU)**

*For the implementation of Project/s funded under the Energy
Regulations (ER) No. 1-94 Program as per Department
Circular (DC) Nos. 2018-08-0021 and its Supplemental Policy
Issuances*

KNOW ALL MEN BY THESE PRESENTS:

This Memorandum of Agreement (hereinafter referred to as the
"**Agreement**") is made and entered into in the Philippines by and between:

The Regional Development Council-_____ (specify the Region) , a
national government entity of the Republic of the Philippines, with office
address at the National Economic and Development Authority (NEDA)
Regional Office , _____, duly represented herein by
<name> RDC Chairperson, hereinafter referred to as "**RDC-Region_____**";

The (*designated local government unit*), a local government unit with
principal office address at _____ herein by its
(Chairman/Mayor/Governor), _____ who is duly
authorized to represent it in this Agreement, hereinafter referred to as
"**LGU-_____**";

The RDC and LGU-_____, shall herein referred to collectively as
"**Parties**" and individually as a "**Party**".

WHEREAS, Section 5 (i) of Republic Act No. 7638 (R.A. No. 7638),
otherwise known as the "Department of Energy Act of 1992" mandates the
Department of Energy (DOE) to devise ways and means of giving direct
benefits to the province, city or municipality, especially the community and
people affected and equitable and preferential to the region that hosts the
energy resource and/or the energy-generating facility;

WHEREAS, Energy Regulation No. 1-94 (ER 1-94) was promulgated by
the DOE on 01 August 1994 to operationalize the implementation of section 5
(i) of R.A. No. 7638, which provides the granting of financial benefits to the host
communities of the energy-generation company and/or energy resources;

WHEREAS, Section 66 of R. A. No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001” and Rule 29(A) of its Implementing Rules and Regulations (EPIRA-IRR) require all energy generation companies (GenCos) and/or energy resource developers (ERDs) to provide financial benefits equivalent to one centavo per kilowatt-hour (P0.01/kWh) of the total electricity sales of the generation facility to the region, province, city or municipality and barangay that hosts the generation facility and energy resource facility, as well as the establishment of corresponding trust accounts and the administration thereof by the DOE;

WHEREAS, in accordance with R.A. No. 8371 also known as “The Indigenous Peoples’ Rights Act of 1997”, the DOE promulgated Department Circular (DC) No. DC2018-03-0005 on 20 March 2018 recognizing the rights of the Indigenous Cultural Communities (ICCs) and Indigenous Peoples (IPs) to their ancestral domain and the natural resources therein and provides for reasonable share in DLF and RWMHEEF components of the ER 1-94 funds;

WHEREAS, on 07 August 2018, DOE issued **DC2018-08-0021**, entitled, “Providing for the Amendments to Rule 29 Part (A) of the Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9136” or “Benefits to Host Communities, where in Section 6.2 of the said DC states that the financial benefit shall be allocated in the following manner:

“Twenty-five percent (25%) of one-centavo per kilowatt-hour (P0.0025/kWh) for DLF; and Twenty-five percent (25%) of one centavo per kilowatt-hour (P0.0025/kWh) for RWMHEEF”;

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

- | | |
|--|-------|
| 6.2.1. Community and People Affected | - 5% |
| 6.2.2. Host Barangay/s | - 20% |
| 6.2.3. Host Municipality/ies or City/ies | - 35% |
| 6.2.4. Host Province/s | - 30% |
| 6.2.5. Host ICCs/IPs | - 5% |
| 6.2.6. Host Region | - 5% |

In the absence of Community and People Affected, funds allocated for the same shall form part of the fund for the Host Barangay.

In the absence of ICCs/IPs, the funds allocated for the same shall form part of the fund for the Host Region.”

WHEREAS, the RDC-___ and GenCo entered into a Memorandum of Agreement (MOA) for the allocation and remittance of all available regional shares administered by the DOE and/or GenCo for DLF and RWMHEEF to the LGU beneficiaries to be identified and endorsed by RDC accrued from the commercial operation of the Genco Facility;

WHEREAS, the LGU requested the RDC-___ to provide financial benefits for the following hereinafter referred to as "PROJECT/s":

Title of Project	Project Cost	Fund Source	
		DLF	RWMHEEF

WHEREAS, RDC-___, evaluated and confirmed that the PROJECT is qualified for funding under DOE issued E.R. No. 1-94 policy guidelines;

NOW, THEREFORE, in view of the foregoing, the **Parties** hereto hereby stipulate and agree as follows:

I. Responsibilities of the Parties:

1.1. The RDC shall:

- a. Issue a **Notice of Fund Allocation** to LGU/beneficiary of the approved project included in the RDC's Annual Work Program;
- b. Upon accomplishment of MOA for Project Implementation, require the LGU/beneficiary the submission of the following documents:
 - i. Annual Work Program; and
 - ii. Bank certificate from the authorized government depository bank where the LGU/beneficiary conducts its official financial transactions.
- c. Upon accomplishment and notarization, provide GenCo copy the MOA for Project Implementation;
- d. Act as an observer in the bidding of the PROJECT to be conducted by the LGU and upon submission by the LGU of the result of bidding, endorse the same to GenCo;
- e. Allow the DOE/GenCo to directly transfer the equivalent Project fund, based on the result of the Bidding, in the name of the LGU/beneficiary under the latter's checking account cited 1.2.a below;
- f. Conduct monitoring on the progress of project implementation and disbursement schedules in coordination with GenCo;

- g. Nullify this Agreement in the event that disbursement of funds for the **PROJECT** cannot be justified to the satisfaction of the RDC-___;
- h. Re-evaluate approved projects not acted upon within one (1) year from the effectivity of this Agreement for reason other than force majeure; and
- i. Defer approval of future projects if the LGU fails to complete, sustain and maintain the **PROJECT** and/or utilize in full/liquidate the **PROJECT** fund/s, except in cases of force majeure and/or fortuitous event.

1.2 The *LGU*-___ shall:

- a. Upon receipt of **Notice of Fund Allocation**, immediately proceed to the conduct competitive public bidding or Alternative Methods of Procurement, when applicable;
- b. Submit to the RDC copy of bank certificate from the authorized government depository bank where the usual official business transactions are being undertaken;
- c. Within fifteen (15) working days after the approval of the LGU's Head of the Procuring Entity of the winning bidder, submit to the RDC, the pertinent bidding documents as prescribed in Republic Act no. 9184 or the "Procurement Law" to facilitate the processing of the release of fund for the **PROJECT**;
- d. Commence with the implementation of the **PROJECT** within thirty (30) working days from the date of receipt of **PROJECT** fund;
- e. Ensure completion of the **PROJECT** within ninety (90) working days from the date of **PROJECT** implementation and notify the **RDC** that the same is ready for technical inspection and financial audit based on the monthly status reports submitted by the **LGU**;
- f. Shoulder any additional costs that may arise due to underestimation, price escalation of **PROJECT** or in excess of the remitted **PROJECT** fund;
- g. Upon endorsement of RDC, allow the Genco to validate and/or participate before/during/after the implementation of the project by the designated LGU of the concerned RDC.
- h. Return to the **GenCo** any unused **PROJECT** fund within thirty (30) working days upon notification, completion or non-completion of the **PROJECT** including the interest earned by the fund from the date of

receipt, pursuant to Section 6.7, of COA Circular No. 94-013;

- i. Within thirty (30) working days upon completion of the **PROJECT**, submit to the **RDC** a copy of Liquidation Report stamp received by the Local COA and supporting documents for the completion of **PROJECT**;
 - j. Hold the RDC and GenCo free from any suit whatsoever that may be filed by any party in connection with, and arising from the implementation of the **PROJECT**;
 - k. Any other agreement or contract that the **LGU** may enter into for the implementation of the **PROJECT** shall conform to the provisions of this Agreement;
 - l. Seek the RDC for written approval, any deviation in the approved **PROJECT** design and specification, and time extension to complete the **PROJECT**; and
 - m. Upon endorsement of the RDC, allow the Genco to validate and/or participate as observer before/during/after the implementation of the project by the designated LGU of the concerned RDC.
- II. This Agreement shall be binding upon and inure to the benefits of the respective successor and/or assignee of any of the parties hereto; provided, that none of the parties may assign or transfer any of its rights or obligations herein stated without the prior written consent of the other parties.
 - III. This Agreement may be amended and/or revoked only by written consent of all Parties.

IN WITNESS WHEREOF, the Parties hereby set their hands this _____ day of _____, Twenty Thousand Twenty at _____.

Regional Development Council
By:

Barangay/Municipality/Province
By:

Name/Designation

Chairman/Mayor/Governor

Signed in the presence of :

(representative)

(representative)

