



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

Department Circular No. DC2019-06-0010 *m*

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

WHEREAS, the Department of Energy (DOE), in recognition of the right of the Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) to their ancestral domain and the natural resources, issued Department Circular No. DC2018-03-005, to expand the operational definition of Host Communities to include ICCs/IPs and their right to an equitable share of the financial benefits from host generating facilities and/or energy resources under the Energy Regulation (ER) 1-94 Program;

WHEREAS, Section 8 of the said Circular provides that the DOE, through the Electric Power Industry Management Bureau (EPIMB), shall issue an Administrative Operating Guidelines (AOG) for the availment and utilization of the financial benefits by the Host ICCs/IPs pursuant to the revised guidelines on ER 1-94 Program;

WHEREAS, to accelerate socio-economic development and to 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 entitled "*Providing for the Amendments to Rule 29, Part A of the Implementing Rules and Regulations of Republic Act No. 9136*";

WHEREAS, on 02 May 2019 the Joint Congressional Power Commission approved/ratified the DOE issued DC2018-03-005 and DC2018-08-0021.

NOW THEREFORE, FOR AND IN CONSIDERATION OF THE FOREGOING PREMISES, the DOE hereby adopts and promulgates this AOG for the availment and utilization of Financial Benefits by the Host ICCs/IPs in compliance with DC2018-03-005 in relation to 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 ICCs/IPs whose ancestral domains are host to Generation Facilities and/or Energy Resources 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 ICCs/IPs 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 Ancestral Domain Sustainable Development Protection Plan (ADSDPP)** refers to the consolidation of the plans of ICCs/IPs within an ancestral domain for the sustainable management and development of their land and natural resources as well as the development of human and cultural resources based on their indigenous knowledge, systems and practices.
- 2.2 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.
- 2.3 Indigenous Peoples' Development Plan (IPDP)** refers to specific development plan or consolidated plan prepared by the ICCs/IPs community, which is basically derived from their ADSDPP but are subject of separate social marketing, resource mobilization either with the Local Government Units (LGUs), other government agencies, international agencies and/or other private entities.
- 2.4 Indigenous Peoples Organization (IPO)** refers to private, non-profit voluntary organization of members of an ICCs/IPs which is recognized by them through their IPS.
- 2.5 Indigenous Political Structures (IPS)** refer to an 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 or body of similar nature.
- 2.6 National Commission on Indigenous Peoples (NCIP)** refers to an organization created pursuant to Republic Act No. 8371 or "*The Indigenous Peoples' Rights Act of 1997*", which shall be the primary government agency responsible for the formulation and implementation of policies, plans and programs to recognize, protect and promote the rights of the ICCs/IPs.
- 2.7 Reservoir** refers only to any of the following:

2.7.1 Geothermal reservoir refers to a subsurface geological environment where the geothermal fluids accumulate, circulate and/or re-injected to generate power.

2.7.2 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

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 runoff. 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.

3.2 All other emerging energy facilities

The Host ICCs/IPs, with respect to their ancestral domain, is that where the emerging energy 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 (ERD) 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 Development and Livelihood Fund (DLF) and another Twenty-five percent of one centavo per kilowatt-hour (P0.0025/kWh) shall be allocated as a Reforestation, Watershed Management, Health and/or Environment Enhancement Fund (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 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.

In the absence of Host ICCs/IPs, the funds allocated for the same shall form part of the Host Region. For the regional share, the Regional Development Council 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 ERD 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

All legitimate and bonafide ICCs/IPs, duly recognized and accredited by the NCIP, that host the generating facilities and/or energy resources, shall be entitled to the financial benefits under the ER No. 1-94 Program.

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

6.1 All ICCs/IPs that host generating facilities and/or energy resources in order to be considered legitimate and bonafide Host ICCs/IPs and be entitled to financial benefits under ER No. 1-94 Program are required to submit to the concerned NCIP Regional Offices the following requirements, as applicable:

6.1.1 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) or Certificate of Ancestral Land Title (CALT), issued by the NCIP; Certificates of Ancestral Domain Claims (CADC) or Certificates of Ancestral Land Claims (CALC), issued by the Department of Environment and Natural Resources before the enactment of RA No. 8371 or "*The Indigenous Peoples' Rights Act of 1997*"; Collective Certificates of Land Ownership Awards (CLOAs) in the name of the ICCs/IPs as a community, issued by the Department of Agrarian Reform; or any other form of formal recognition of title including those issued titles according to the Commonwealth Act No.141 or the "*Public Land Act*", as amended, and under the Torrens System, shall submit the following:

6.1.1.1 Certified true copy of a Certificate of Title of any of the following: CADT, CALT, CADC, CALC, Collective CLOA, Original Certificate of Title; and

6.1.1.2 Map and technical description showing the coverage of said Ancestral Domain/Land.

6.1.2 ICCs/IPs publicly known to occupy their Ancestral Domain/Land

A. ICCs/IPs with application for CADT or CALT with the NCIP, shall submit the following:

- 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 NCIP stating that application of the concerned ICCs/IPs is still in process and the status of its delineation; and
- 6.1.2.3 The community validated map of the area being applied for a map from the ADO of the NCIP showing the area subject of delineation.

B. ICCs/IPs who have not applied for delineation shall submit the following:

- 6.1.2.4 Certification by the NCIP that the ICCs/IPs hosting the generation facility and/or energy resource is entitled to receive benefits from the ER 1-94 Program; and
- 6.1.2.5 Any government issued/recognized map, including but not limited to Provincial Land Use Map, Municipal Land Use Map, NAMRIA maps, showing the location of the areas being claimed by the ICCs/IPs, and indicative map showing the natural boundaries of Ancestral Domains.

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 Certification from the NCIP that the ICCs/IPs hosting the generation facility and/or energy resource is entitled to financial benefits under the ER-194 Program; and

6.1.3.4 Maps of the areas declared as civil reservations and official resettlement sites.

Section 7. Declaration of Legitimate and Bonafide ICCs/IPs Beneficiaries

- 7.1 All ICCs/IPs who have submitted the complete requirements as mentioned in Section 6 shall be endorsed by NCIP to the DOE, within thirty (30) days after receipt thereof. However, even after the endorsement to the DOE, if 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, due process of law shall be observed in the process of delisting the Host ICCs/IPs.
- 7.2 The DOE shall notify the concerned GenCo and/or ERD, copy furnished the NCIP and the concerned Host ICCs/IPs, of the inclusion of the legitimate and bonafide ICCs/IPs as beneficiaries
- 7.3 The DOE shall establish a data base of all qualified Host ICCs/IPs which 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 Accounts

- 9.1 **“Trust Accounts”** shall mean the interest-bearing current accounts in trust for the ER 1-94 funds which shall be established by the GenCos and/or ERDs, concerned DUs, Designated Beneficiaries and ICCs/IPs pursuant to Section 8 of DC2018-08-0021.
- 9.2 The Host ICCs/IPs shall establish Trust Accounts for the DL and RWMHEE Funds for each generation facility and/or energy resource with the following account names, to wit:

Host ICCs/IPs Name-GENCO – DLF (ER 1-94)
Host ICCs/IPs Name-GENCO – RWMHEEF (ER 1-94)

- 9.3 The GenCo and/or ERD shall likewise establish a dedicated Trust Accounts in favor of each of their Host ICCs/IPs who 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 Preparation of Project Proposals

The following principles shall be considered in the preparation of the Annual Work Program (AWP) by the Host ICCs/IPs:

- 10.1 In recognition of the right of Host ICCs/IPs to determine the type and pace of their own development and to decide their priorities for development, the Host 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/land.
- 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 1-94 Program should seek to integrate and harmonize the planning, coordination and control of proposed development projects in the developmental plans of the Host ICCs/IPs, 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 The AWP shall be prepared and submitted subject to the following considerations:
- 11.1.1 Project Goals and Objectives/ End Results including but not limited to promotion of rural development, improvement of socio-economic conditions and/or addressing environmental concerns;
- 11.1.2 Identification of target Beneficiaries;

- 11.1.3 Project Implementation Plan with specific timelines;
- 11.1.4 Availability of funds; and
- 11.1.5 No unliquidated project funds
- 11.2 The AWP shall be consistent with the ADSDPP/IPDP, adopted in consensus by the concerned Host ICCs/IPs, which is submitted to the LGU concerned for integration in the LGU's development plans.
- 11.3 At the request of the Host ICCs/IPs, the GenCo and/or ERD, through its designated Community Relation (COMREL) personnel, shall assist the host ICCs/IPs in the preparation of the AWP or project proposals, including multi-year project plans.
- 11.4 The AWP shall be submitted in print copy to the GenCo and/or ERD not later than March 15 of every year. Host ICCs/IPs shall identify the priority tangible projects under DLF and RWMHEEF that can be implemented within the reference year of the AWP.
- 11.5 Eligible Projects
- The following infrastructures, tools and equipment acquisition, and livestock and seedlings dispersal shall be qualified as tangible projects for funding:
- 11.5.1 Livelihood and Community Development;
- 11.5.2 Reforestation, Watershed Management and Climate Change Resiliency;
- 11.5.3 Health Service Enhancement; and
- 11.5.4 Public Service Facility/ies.
- 11.6 AWP Documentary Requirement:
- A Certification from the concerned members of the IPS or any authorized and recognized traditional leadership / decision making structure, such as, but not limited to, the duly recognized IPO stating that the AWP has been prepared in consultation with the community member and that such have been informed of the final plan and have agreed thereto, and that the concerned Host ICCs/IPs have no unliquidated project funds under ER 1-94.
- 11.7 For tangible projects requiring the participation or cooperation of non-government entities, the linkages and roles must be well-defined and stipulated

in the appropriate legal document such as but not limited to a Memorandum of Agreement (MOA).

Section 12. Fund Release

The validation of the AWP by the GenCo and/or ERD shall be limited to the availability of the Financial Benefits in accordance with the specific target timelines, which shall be completed within thirty (30) days upon receipt of the complete documentation from the Host ICCs/IPs.

Section 13. Project Implementation

13.1 A MOA shall be entered into by and amongst the GenCo and/or ERD, and the concerned Host ICCs/IPs, to effect project implementation, monitoring and audit.

13.2 All acquisition and procurement of tangible projects and disbursements must comply with Republic Act No. 9184 or the "Government Procurement Reform Act", its Implementing Rules and Regulations and related issuances and shall follow the government accounting rules and regulations.

TITLE VI. REMITTANCE OF FINANCIAL BENEFITS

Section 14. Remittance of Financial Benefits

14.1 The DLF and RWMHEEF shall be remitted by the GenCo and/or ERD directly to the concerned Host ICCs/IPs through the Trust Accounts established for the purpose.

14.2 The Financial Benefits shall be remitted quarterly based on the reported Electricity Sales, within fifteen (15) calendar days after the end of each billing quarter.

14.3 Remittance of Financial Benefits shall be subject to the compliance of the Host ICCs/IPs of their submission of the following:

14.3.1 AWP as provided in Section 11 of this AOG; and

14.3.2 Liquidation of the completed projects funded and included in the AWP to the Commission on Audit (COA) or in accordance with MOA between Host ICCs/IPs and the GenCos and/or Energy Resource Developers, whichever is applicable.

In case of an adverse findings of the Auditor, the Host ICCs/IPs shall address the findings within the prescribed period stated in the report and comply with the COA requirements.

- 14.3.3 In the event of non-compliance of the Host ICCs/IPs with the requirements for the remittance of Financial Benefit, the corresponding fund shall be remitted to the dedicated Trust Accounts established by the GenCo and/or ERD as provided in Section 9.3 of this AOG.

TITLE VII. PROJECT MONITORING

Section 15. Constitution of Monitoring Team

For purposes of monitoring and validating the completed ER 1-94 projects being implemented by Host ICCs/IPs, a monitoring team shall be constituted, to be headed by the a Representative from the NCIP Regional Office concerned and shall be assisted by the following:

- a. Representative of the concerned Host ICCs/IPs as certified by the IPS;
- b. Representative from the concerned GenCos and/or ERD; and
- c. Representative from a National or Local Civil Society Organization.

Section 16. Functions of the Monitoring Team

The Monitoring Team shall ensure the timely completion of the project based on the proposed timelines. For this purpose, upon completion of the project, the Monitoring Team shall conduct a final evaluation of the completed projects.

TITLE VIII. AUDIT OF FINANCIAL BENEFITS

Section 17. Audit of Financial Benefits and Monitoring AWP Implementation

17.1 Electricity Sales Audit

The DOE, through its Power Compliance Division (PCD) – Financial Services (FS), shall conduct periodic audit and review of reported electricity sales, fund allocation and remittances of Financial Benefits of the GenCos and/or ERDs to the Host ICCs/IPs. The DOE shall maintain a database of the reported/validated Electricity Sales and remitted Financial Benefits.

17.2 Monitoring of AWP Implementation

Department Circular No. DC2019-____-____ "Prescribing the Administrative Operating Guidelines for the Availment and Utilization of Financial Benefits by the Indigenous Cultural Communities/Indigenous Peoples pursuant to DOE Department Circular No. DC2018-03-0005

Every December 31 of each year, the GenCos and/or ERDs shall submit to DOE the implementation status of the tangible projects contained in the validated AWP vis-a-vis the utilization of the Financial Benefits by the concerned Host ICCs/IPs.

TITLE IX. SETTLEMENT OF DISPUTES

Section 18. Settlement of Disputes

- 18.1 Any issues arising from the implementation of this AOG shall be under the jurisdiction of the DOE. Provided, that all issues between and amongst ICCs/IPs, shall be resolved in accordance with their own customary laws/conflict resolution mechanism in the presence of NCIP representative/s upon the request by the concerned Host ICCs/IPs. A copy of the signed resolution shall be provided to the DOE and NCIP not later than fifteen (15) days from its issuance.
- 18.2 In case of jurisdictional issues such as geographical location of the GenCo and/or ERD boundary disputes, the matter shall be resolved by the appropriate government agencies.
- 18.3 The GenCo and/or ERD shall hold in abeyance the processing of the AWP submitted by the Host ICCs/IPs involved or affected, including the direct remittance of financial benefits, until said conflict/dispute has been resolved.

TITLE X. OTHER PROVISIONS

Section 19. Information, Education and Communication Activities

Upon effectivity of this AOG, the DOE shall undertake Information, Education and Communication (IEC) activities to concerned Host ICCs/IPs to ensure its proper implementation. It may also conduct orientation and training for the Monitoring Team to capacitate them to effectively perform their functions

Section 20. Transitory Provisions

- 20.1 Within thirty (30) days after the effectivity of this AOG, the NCIP in collaboration with the DOE shall determine the list of Host ICCs/IPs which shall be updated regularly.

20.2 The DOE shall notify the concerned GenCo and/or ERD to set aside the five percent (5%) share for the Host ICCs/IPs, which shall be released to the concerned Host ICCs/IPs only upon satisfaction of the requirements as provided in Section 11.

Section 21. Separability Clause

If for any reason, any provision of this AOG 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 22. Repealing Clause

All issuances inconsistent with the provisions of this AOG are hereby repealed or amended accordingly.

Section 23. Effectivity

This AOG shall take effect within fifteen (15) days after its publication in two (2) newspapers of general circulation and certified true copies thereof shall be filed with the University of the Philippines Law Center, Office of the National Administrative Registrar.

Issued this _____ at DOE, Energy Center, Rizal Drive, Bonifacio Global City, Taguig City, Metro Manila.


ALFONSO G. CUSI
Secretary



JUN 14 2019