



DEPARTMENT CIRCULAR NO. DC2021-05-0011

GUIDELINES FOR THE ENDORSEMENT OF ENERGY EFFICIENCY PROJECTS TO THE BOARD OF INVESTMENTS FOR FISCAL INCENTIVES

WHEREAS, Article II Section 20 of the 1987 Constitution provides that the State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments;

WHEREAS, Article 39 of Executive Order No. (EO) 226 or the “Omnibus Investment Code of 1987” grants incentives to registered enterprises to the extent engaged in a preferred area of investment;

WHEREAS, Section 2 of Republic Act No. (RA) 7638 or the “Department of Energy (DOE) Act of 1992” states that it is the policy of the State to ensure a continuous, adequate, reliable, and economic supply of energy through, among others, judicious conservation and efficient utilization of energy, to keep pace with the country’s growth and economic development;

WHEREAS, Section 6 (a) and 25 of RA 11285 or the “Energy Efficiency and Conservation Act” (EEC Act) and Section 71 of Department Circular No. DC2019-11-0014 or the Implementing Rules and Regulations of the EEC Act (EEC-IRR), provide that the Board of Investments (BOI) shall include energy efficiency projects in the annual Investment Priorities Plan (IPP) for incentives under EO 226 and any other applicable laws for ten (10) years. After the aforementioned period, the BOI shall review extension of inclusion of the energy efficiency projects in the investment priorities plan and that EEC projects shall be exempt from Article 32(1) of EO 226;

WHEREAS, Memorandum Order No. 50, series of 2020 approved the 2020 IPP and BOI Memorandum Circular No. 2021-001 or the “General Policies and Specific Guidelines to Implement the 2020 IPP to implement the abovementioned provisions of the EEC Act and EEC-IRR;

WHEREAS, the DOE conducted public consultations attended by various stakeholders on 24 August 2020, 25 September 2020, and 15 April 2021; and,

WHEREAS, Section 72 of the EEC-IRR states that to qualify for the availment of the fiscal incentives allowed under the EEC Act, the energy efficiency projects must be certified by the DOE and registered with the BOI.

NOW THEREFORE, for and in consideration of the foregoing premises and pursuant to its mandate under the EEC-IRR, the DOE hereby promulgates the following guidelines:

Section 1. Title. This Department Circular shall be known as the “Guidelines for the Endorsement of Energy Efficiency Projects to the BOI for Fiscal Incentives.”

Section 2. Scope. This Department Circular shall establish the guidelines, rules, and procedures in the endorsement of energy efficiency projects to the BOI for registration in order to grant fiscal incentives to the proponents for the said project.

Section 3. Definition of Terms. This Department Circular hereby adopts by reference, the terms defined in EEC Act, EEC-IRR, and Department Circular No. DC2020-09-0018 or the “Guidelines in the Administration, Classification and Certification of ESCOs.”

Furthermore, the terms, as used in this Department Circular shall be understood to mean:

- 3.1 “Energy Audit” refers to a Level 2 (minimum) type of Energy Audit in reference to ASHRAE Standard for Commercial Building Energy Audits and PNS ISO 50002:2014 Standard on Energy Audit-Requirements with Guidance for Use;
- 3.2 “ESCO-Initiated Projects” refers to energy efficiency projects implemented by an ESCO that generate energy savings or improvement in productivity, and in turn, cost savings. The ESCO provides all the funding requirements of the project at no cost to the owner and payment of services rendered is derived from the generated savings;
- 3.3 “Project Boundary” refers to the percentage range of energy saving for the availment of corresponding Income Tax Holiday (ITH) as provided for in Section 8 of this Department Circular;
- 3.4 “Self-financed Projects” refers to energy efficiency projects wherein the company used of own capital fund and resources to implement an energy efficiency projects. This is in cases where a company had engaged the services of an ESCO and paid upfront for the services rendered by way of progress payments or any other similar schemes, the said company or the project owner can apply to the DOE for the endorsement of their energy efficiency projects to BOI for fiscal incentive; and
- 3.5 “TPPD/Project Special Purpose Vehicle (SPV)” are energy efficiency projects wherein the TPPD/Project SPV as asset owners/investors, requests for the endorsement directly from the DOE but nevertheless engages the services of an ESCO for the energy efficiency project.

Section 4. Classification of Energy Efficiency Project. To simply categorize energy efficiency projects, the following project classification is hereby introduced:

- 4.1 Simple Energy Efficiency Projects that involve upgrading or retrofitting of a specific equipment or devices in a system such as but not limited to lighting retrofit, automated lighting control system or smart control system, HVAC upgrades, boiler replacement, and other similar devices or equipment within a system. *(as amended by DC2022-03-0004)*
- 4.2 Complex Energy Efficiency Projects that involve retrofitting or upgrading of system or a combination of systems such as but not limited to Cogeneration System, District Cooling System, Steam System from boiler to the steam load process equipment including its auxiliaries, Pumping System, HVAC System and its distribution line system, Compressed Air System, Process Line System for kilns and furnaces, Smart Manufacturing System, Building Energy Management System, etc. This includes Demand-Side Management (DSM) Projects or any other innovative DSM schemes with the intention to lower down overall demand consumption in the grid, which project were being implemented by an electric distribution utility or ESCO. *(as amended by DC2022-03-0004)*

Section 5. Qualifications of an Energy Efficiency Project. Energy Efficiency Projects that will realize energy savings, as further defined under Section 9 of this Department Circular, may qualify for registration, and be entitled to the incentives provided for under RA 11534 or the CREATE Act, as follows:

- 5.1 Retrofit project that involves the installation of equipment, devices, or system.
- 5.2 Modifications or expansions of an existing plant, facility, or establishment that involves the installation of equipment, devices, or system.
- 5.3 Energy savings and project cost must meet the prescribed minimum project boundary under Section 9 of this Department Circular.
- 5.4 Energy efficiency projects categorized as ESCO-Initiated, TPPD/Project SPV, or Self-Financed.
- 5.5 Government Energy Efficiency Projects (GEEPs) must be endorsed and duly approved by the Inter-Agency Energy Efficiency and Conservation Committee (IAEECC) consistent with the Government Energy Management Program (GEMP) Guidelines. *(as amended by DC2022-03-0004)*

Section 6. Endorsement of Energy Efficiency Project for BOI Fiscal Incentive. For the availment of fiscal incentives, the DOE shall endorse energy efficiency projects that passed the technical and the economic evaluation criteria as provided in Section 9.

Section 7. Application Requirements. The following shall be the documentary requirements for applications:

- 7.1 ESCO-Initiated Projects
 - a. Application letter indicating the intent to avail for BOI incentives (Annex A)
 - b. Application Form (Annex B)
 - c. Copy of DOE issued certificate of Registered ESCO or Certified ESCO
 - d. Copy of Energy Audit Report duly signed by a Registered or Certified Energy Auditor
 - e. Project Profile (Annex C)
 - f. Copy of Project Contract or Energy Saving Performance Guarantee Contract
 - g. Proof of Payment
- 7.2 TPPD/Project SPV
 - a. Application letter indicating the intent to avail for BOI incentives (Annex A)
 - b. Application Form (Annex B)
 - c. Certified True Copy of the documents on Corporate Personality
 - d. For sole proprietorship entity, the following documents are required:
 - i. Business registration
 - ii. Business permits
 - e. For corporate, partnership and joint venture entities, the following documents are required:
 - i. Business registration
 - ii. Business permits
 - iii. SEC registration
 - iv. Articles of incorporation

- f. Copy of Energy Audit Report duly signed by a Registered or Certified Energy Auditor
 - g. Project Profile (Annex C)
 - h. Proof of Payment
- 7.3 Self-financed Projects
- a. Application letter indicating the intent to avail for BOI incentives (Annex A)
 - b. Application Form (Annex B)
 - c. Certified True Copy of the Documents on Corporate Personality
 - d. For sole proprietorship entity, the following documents are required:
 - i. Business registration
 - ii. Business permits
 - e. For corporate, partnership and joint venture entities, the following documents are required:
 - i. Business registration
 - ii. Business permits
 - iii. SEC registration
 - iv. Articles of incorporation
 - f. Copy of Energy Audit Report duly signed by a Registered or Certified Energy Auditor
 - g. Project Profile (Annex C)
 - h. Proof of Payment

Section 8. Application Procedure and Processing of the Application. The following shall be the application procedure for the issuance of a certificate of endorsement to BOI for fiscal incentives with reference to the process flow (Annex D) provided herein:

- 8.1 Applications shall be filed with the DOE Records Management Division (RMD), which shall in turn forward them to the Energy Utilization Management Bureau - Office of the Director (EUMB – OD) within one (1) working day from receipt.
- 8.2 The application documents will be returned to the applicant if it has been evaluated as incomplete without prejudice to reapplication.
- 8.3 The EUMB – OD will forward all received applications to the Energy Efficiency and Conservation Technology Promotion and Program Management Division (EPMPD) which will conduct the technical evaluation.
- 8.4 Whenever practicable, the submission of the application requirements through electronic means may be permitted.
- 8.5 The technical evaluation process entails detailed review of the technical documents relative to the submitted project application for fiscal incentives including data and other pertinent information therein attached, as well as the conduct of project site visits and interviews with the applicant. Provided, there is a compelling reason such visit cannot be undertaken due to natural calamity or event of national level such as pandemic: *Provided, That* other means can be explored through virtual meetings and the like.
- 8.6 The EUMB – EPMPD shall determine whether the application is a simple energy efficiency project or complex energy efficiency project for the purpose of determining the chargeable fees as provided for in the schedule of fees in Annex E.

- 8.7 The evaluation process including the issuance of certificate of endorsement to BOI shall be completed within twenty (20) working days from receipt of all required documents.

Section 9. Evaluation Criteria. Application to avail of fiscal incentives from BOI prior to the endorsement by the DOE – EUMB, must have passed the following criteria:

- 9.1 The energy efficiency project must have to meet the minimum project boundary of 15% and a minimum Project Investment Cost of PHP 10,000,000.00.
- 9.2 In coordination with the BOI, the DOE shall predetermine the possible incentives that can be availed by the project proponent.
- 9.3 An ESCO, certified and/or registered with the DOE, which invest and provide services under a contract with the owner of the plant, facility, or establishment, regardless of the sector, may qualify for DOE endorsement to the BOI.
- 9.4 The anticipated savings, due to energy efficiency and conservation measures to be installed/adopted will be evaluated by the technical staff, without prejudice, in order to make an independent calculation to be used for counterchecking. In case of discrepancies between the calculation of the applicant and that of the technical staff, the technical staff shall discuss with the applicant the sources of the discrepancies so that both parties can agree on the calculated anticipated savings. The ESCO representative and/or energy auditor (who made the energy audit report), should be present during the discussions. *(as amended by DC2022-03-0004)*

Section 10. Obligations under the Issued Endorsement. All companies that have been endorsed by the DOE shall comply with the following obligations:

- 10.1 Submit a Project Completion Report for ESCO and TPPD/SPVC initiated project or Project Commissioning Report (PCR) for Self-finance projects initiated by the Owner to EUMB not later than thirty (30) calendar days upon completion or before the commercial operation of the energy efficiency project/s using the form prescribed in Annex F.
- 10.2 Submit a Monthly Project Progress Report using the prescribed form (Annex G) during the progress of installation as well as during its commercial operation which shall end based on the estimated payback period.
- 10.3 Subject themselves and their projects to an independent verification by the DOE upon the issuance of the guidelines for the same; and
- 10.4 Such other requirements as may be required by the DOE for the attainment of the objectives of the EEC Act and EEC IRR.

The DOE, through EUMB, shall issue guidelines for the effective administration of the procedure for the monitoring, verification and evaluation (MVE): *Provided, That* the guidelines shall only be issued after public consultation: *Provided further, That* the effectivity and timelines of any issued guidelines will be mutually agreed upon with the recipient of the incentives.

Section 11. Reportorial Obligation of EUMB. The EUMB shall provide an annual report on the endorsed projects to the DOE Secretary.

Section 12. Administration of Endorsed Energy Efficiency Projects. The EUMB shall maintain and publish the Registry of all Energy Efficiency Projects, which availed incentives. The Registry shall contain such pertinent information for purposes of apprising and guiding the public on the benefits of installing such projects.

Section 13. Prohibited Acts. Pursuant to the provisions of the EEC Act and the EEC-IRR, any person or entity or their responsible officers found in violation of any of the prohibited acts enumerated below, shall be held liable thereof for the following acts:

- 13.1 Failure to submit a Project Completion/Commissioning Report within thirty (30) calendar days upon completion of the energy efficiency projects;
- 13.2 Failure to subject themselves and their projects to independent verification by the DOE upon the issuance of the guidelines for the same;
- 13.3 Failure to provide accurate information or the provision of false or misleading information as required to be submitted under the EEC Act, the EEC-IRR, or this Department Circular; and,
- 13.4 Failure to comply with issued orders of the DOE in the discharge of its enforcement powers.

Section 14. Administrative Procedures. Upon the determination that any person or entity has committed any of the prohibited acts in Section 12 of this Department Circular, the DOE may consider the following measures prior to the imposition of fines and penalties:

- 14.1 Require an explanation supported by reports, returns and other documents to rebut the alleged commission of the prohibited EEC Act;
- 14.2 In cases where an explanation has been issued but the DOE finds a violation because of materially insufficient reports, false returns, non-submission of required documents, provide a recommendation to the said person or entity;
- 14.3 Disclose the name of the person or entity after it has received a recommendation and comply with such recommendation; and
- 14.4 Issue an order in cases where the said person or entity fails to follow or comply with the recommendation of the DOE. The failure on the part of the person or entity to comply with the order shall be a valid ground for the imposition of the administrative fines and penalties in accordance with the Schedule of Penalties and Fines (Annex H).

Section 15. Criminal Action. The DOE, in addition to administrative proceedings against any person or entity for violation of the prohibited acts specified under Section 12 of this Department Circular, may also institute the corresponding criminal action against any responsible person, officers and employees of any establishment or organization found criminally liable for the said prohibited acts in accordance with Section 33 of the EEC Act and Section 84 of the EEC IRR.

Section 16. Transitory Clause. All pending applications at the time of the effectivity of this Department Circular shall be governed by the same.

Section 17. Information, Education and Communication Activities. Pursuant to Section 85 of the EEC IRR, the DOE shall develop and undertake a national awareness and advocacy program covering energy efficiency and conservation and pursue partnerships with relevant stakeholders for the appreciation of this Department Circular.

Section 18. Repealing Clause. The provisions of other circulars, orders, issuances, rules and regulations, which are inconsistent with the provisions of this Department Circular are hereby repealed, amended, modified or superseded accordingly.

Section 19. Separability Clause. If for any reason, any section or provision of this Department Circular is declared unconstitutional or invalid; such parts not affected shall remain in full force and effect.

Section 20. Effectivity. This Department Circular shall take effect fifteen (15) calendar days following its publication in at least two (2) newspapers of general circulation. Copies of this Department Circular shall be filed with the University of the Philippines Law Center - Office of the National Administrative Register.

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

Sgd.

ALFONSO G. CUSI
Secretary

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