

RULE AND REGULATIONS GOVERNING THE FILING PROCESSING OF APPLICATIONS FOR AUTHORITY TO CONSTRUCT AND OPERATE MINI-HYDROELECTRIC POWER PLANTS AND PROVIDING FOR THE TERMS AND CONDITIONS OF THE OPERATING CONTRACTS CONCLUDED PURSUANT THERETO

Pursuant to the authority vested upon it by Sec. 6 (1) and (4) of Republic Act No. 7156, otherwise known as the Mini-Hydroelectric Power Incentives Act, the Office of Energy Affairs hereby adopts and promulgates the following rules and regulations governing the filing and processing of applications for authority to construct and operate mini-hydroelectric power plants providing for the terms and conditions of the operating contracts concluded pursuant thereto for the contracts concluded pursuant thereto for the information and guidance of all concerned.

RULE I GENERAL PROVISIONS

Section 1. Title – These rules shall be known and cited as the rules and regulations governing the construction and operation of mini-hydroelectric (mini-hydro) power plants.

Section 2. Definition of Terms – Unless the context otherwise indicates, the following terms as used in these rules shall have the following meanings:

- a. Avoided cost shall refer to the costs of the affected grids had NAPOCOR generated the equivalent electric power itself before disposing the power to third parties.
- b. Capacity shall refer to the electric load for which a generating unit or other electrical apparatus is rated by the manufacturer; its unit of measurement is usually kilowatts (kw).
- c. Electric cooperative shall refer to cooperatives duly authorized to supply electricity or empowered to supply electric service.
- d. Electric utility shall refer to an electric cooperative, local government-owned or privately owned, operating a grid within the NAPOCOR grids or other electric systems.
- e. End-use shall refer to a user of electricity generated by a mini-hydro power plant.
- f. Feasibility study shall refer to a study which is based on data specific to the site where the mini-hydro power plant will be erected.
- g. Franchised area shall refer to a geographical area franchised to an electric utility for electricity supply to end-users.
- h. Grid operator shall refer to any operator of electrical systems of interconnected transmission lines, substations and generating plants of the National Power Corporation or the concerned electric utility as the case may be.
- i. Hydroelectric power shall refer to electric power produced by utilizing the kinetic energy of falling or running water to turn a turbine generator.
- j. Mini-hydroelectric power developer or developer shall refer to any individual, cooperative, corporation or association that is engaged in or one who intends to engage in the construction, installation and operation of a hydroelectric-power-generating plant

with an installed capacity of not less than 101 kilowatts nor more than 10,000 kilowatts. An end-user may also be a developer.

- k. Mini-hydroelectric power development shall refer to the construction and installation of a hydroelectric-power-generating plant and its auxiliary facilities such as transmission, substation and machine shop with an installed capacity of not less than 101 kilowatts nor more than 10,000 kilowatts.
- l. Mini-hydroelectric power plant shall refer to an electric-power-generating plant which (a) utilizes kinetic energy of falling or running water (run-of-river hydro plants) to turn a turbine generator producing electricity; and (b) has an installed capacity of not less than 101 kilowatts nor more than 10,000 kilowatts.
- m. NAPOCOR shall refer to the National Power Corporation created pursuant to R.A. 6395.
- n. OEA shall mean the Office of Energy Affairs.
- o. Rate shall refer to any price or tariffs with respect to sale or purchase of electric energy, usually measured in pesos per kilowatt-hour for energy payment and pesos per kilowatt for capacity payments.
- p. Person includes every individual not otherwise disqualified by law, or corporation, partnership, association or joint company, constituted and organized under the laws of the Philippines, at least sixty percent (60%) of the stock or paid-up capital of which belongs to the citizens of the Philippines.
- q. Water resource shall refer to a surface water course where the flow to be used by the turbines of the mini-hydro power plant is diverted from and restituted to after having passed the installations.
- r. Wheeling shall refer to the electric energy transmission services extended by NAPOCOR or an electric utility to enable the developer of a mini-hydro power plant to transmit power to another electric grid or end-user.

Section 3. Who May Apply – Any person defined in Section 2.p if these rules, not otherwise disqualified by law, may apply for authority to construct and operate a mini-hydroelectric power plant. In cases of holders of permits to operate mini-hydro power plants existing and operating at the time of the effectivity of these rules and who wish to avail of the incentive under R.A. 7156, registration and payment with the OEA of the application fee as provided in these rules shall be sufficient bases for the granting of their operating contracts, provided, that they register within six (6) months from the effectivity of these rules.

Section 4. Content of the Application – All applications shall be made in writing, verified, accomplished in two (2) copies, and must show, among other things, the jurisdictional facts, the name and address of the applicant, the brief description of the project stating, among others, how water will be used, amount of water needed, power to be generated, etc., and place where applicant proposes to construct a mini-hydro power plant.

Section 5. Documents to Accompany Application – All applications shall be accompanied by such documents as would reasonably establish prima facie the truth of the factual allegation thereof, including but not limited to the following:

- a. Certificate of Registration from the Securities and Exchange Commission together with a copy of Articles of Incorporation or Certification from the Department of Trade and Industry in case the applicant is a single proprietorship;
- b. Proposed Memorandum of Agreement between the applicant and either the NAPOCOR, the franchised electric utility, or other end-user as the case may be, on power purchase as well as on the use of existing lines and the associated wheeling fees, as applicable;
- c. Comprehensive feasibility study providing the technical, economic, financial, social, as well as the administrative viability of the project. It shall likewise include a feasibility reports particularly highlighting the activities for the proposed project, such as:
 - 1. Data collection and review of any available pre-feasibility study, other pertinent data and study reports relevant to the proposed project;
 - 2.
 - 3. Detailed program for all survey and investigation works required in the study, such as topographic survey which will enable utilization of maps of sufficient scale (1:500) for layout purposes, geologic mapping, drilling (if any), establishment of gauging station, and others which may be deemed necessary;
 - 4. Site inspection and field reconnaissance from time to time to confirm data obtained and design made;
 - 5. Necessary hydrologic and hydraulic studies;
 - 6. Plant operation and maintenance studies for optimization and determination of the power and energy capability of the project;
 - 7. Determination as to whether or not the power and energy from the proposed mini-hydro power facility is marketable as an isolated facility;
 - 8. Alternative layout of developments on the basis of topographic data available for optimization of selected parameters in the project;
 - 9. Detailed layout and preliminary design to establish configuration of each structure in the development;
 - 10. Establishment of unit prices and preparation of detailed quantity and cost estimates of the recommended schemes;
 - 11. Project Description shall be submitted according to the guidelines set by the Department of Environment and Natural Resources (DENR) which should incorporate the measures that a project proponent intends to take to ensure that the adverse effects of the proposed project on the environment will be avoided if not minimized. It should also include a watershed development plan and the endorsement from the Local Government Unit;
 - 12. Construction schedule for the proposed project;
 - 13. Economic and financial evaluation including sensitivity analysis on specific factors;
 - 14. Recommendation on additional investigation program to be carried out during the detailed design and implementation phase, if deemed necessary; and
 - 15. Manual for operations of the power plant which shall be prepared in respect of all requirements provided by law for the operation of a mini-hydro power plant. If power is sold to the grid, the operation of the plant shall be governed by dispatch rules assigned by the grid operator.
- d. Processing fee of one (1) Peso (P1.00) per kilowatt estimated installed capacity.

- e. Such other papers and documents as may be required by the OEA.

Section 6. Financial Requirements – In determining the financial capability of the applicant, the OEA shall be guided by the following financial indicators:

- a. The applicant has minimum working capital of at least Thirty-Five Thousand Pesos (P35,000.00) per kilowatt to support the first two (2) years of the project's work program and must demonstrate that it has the capability to raise additional working capital of at least sixty percent (60%) of the estimated project cost to fund the remaining works and the plant's subsequent operations;
- b. Current ratio of 1.5:1;
- c. Debt equity ration of 3:1; and
- d. Such other factors which would substantially establish the applicant's financial capability.

Section 7. The amounts specified in Section 6.a shall be adjusted accordingly in cases of extraordinary inflation of the Philippines Peso in accordance with the provisions of Article 1250 of the Civil Code of the Philippines.

Section 8. Defective Application –When an application is filed and it is found to be defective either in form or in substance or incomplete as to certain data, the OEA shall within two (2) days inform the applicant of such a fact in writing, with notice that the correction or deficiency must be supplied within fifteen (15) working days from receipt of the notice.

If the applicant fails to supply the required correction within the said period, the application shall be deemed to have been abandoned and forthwith, the same shall be returned to the applicant together with all the documents attached thereto. However, for good cause shown, the period may be extended by the OEA upon written request made before the expiration of the period sought to be extended.

RULE II

CRITERIA IN DETERMINING THE APPROVAL OR DISAPPROVAL OF THE APPLICATION

Section 1. The OEA, in processing an application, shall be guided, but not limited, the following:

- a. The operation of the proposed mini-hydro power projects will promote public interest in a proper and suitable manner
- b. The applicant is financially and technically capable of undertaking the proposed mini-hydro power project and meeting the responsibilities incident to its operation.
- c. The construction and operation thereof will not result in the closure or stoppage of existing water outlets, passageways, conduits, or the like from the water source.

- d. The requirements of public safety and Environmental Compliance Certificate are complied with.
- e. Generally, the construction and operations thereof will promote and achieve the purposes of R.A. 7156.

Section 2. Processing Period – the OEA shall resolve the application within four (4) months from receipt thereof provided that all the documents and clearances contemplated in these rules are timely submitted and no objection have been raised by concerned parties.

RULE III GRANTING OF LICENSE OR AUTHORITY AND EXECUTION OF OPERATING CONTRACT

Section 1. Issuance of Authority or License – if the OEA approves an application, it shall issue a certificate of authority or license to construct and operate a mini-hydro power plant to the applicant or to the person in whose name the application was made and an operating contract detailing the rights and obligation between the OEA and the developer shall forthwith be executed.

Section 2. Effectivity – Unless sooner revoked for cause, the license shall be co-terminus with the term of the mini-hydro power operating contract which shall be for a period of 25 years, renewable for another 25 years.

Section 3. Grounds for Revocation – any of the following among other things, may constitute a ground for the revocation or cancellation of the license and the operating contract:

- a. Failure of the licensee/contractor to comply with the conditions and requirements under which the license was issued;
- b. Licensee's/contractor's violation of any of the provisions of the operating contract or R.A. 7156.

Section 4. The mini-hydro power plant operating contract contemplated under these rules shall contain the following rights and privileges as well as the obligations of the developer:

RIGHTS AND PRIVILEGES OF THE DEVELOPER

- a. The developer shall be fully exempted from income taxes levied by the National Government for seven (7) years from the start of commercial operations.
- b. Within seven (7) years from the date of awarding the contract, it shall be exempted from payment of tariff duties and value-added tax on the importations⁵⁵⁵⁵ into the Philippines of all machinery and equipment including control and communication equipment: Provided, that said machinery, equipment, materials and parts: (a) are not manufactured domestically in reasonable quantity and

- quality at reasonable prices; (b) are directly and actually needed and will be used exclusively in the construction and impounding of water, transformation into energy, and transmission of electric energy to the point of use; and (c) are covered by shipping documents in the name of the duly registered developer to whom the shipment will be directly delivered by customs authorities: Provided, further, that prior approval of the OEA has been obtained before the importation of such machinery, equipment, materials and parts is made.
- c. The developer that purchases machinery, equipment, materials and parts from a domestic manufacturer shall be given a tax credit equivalent to one hundred percent (100%) of the value of the value-added tax and customs duties that would have been paid on the machinery, equipment, materials and parts had these items been imported. The tax credit on domestic capital equipment shall be given: Provided, that the sale of such machinery, equipment, materials and parts shall be made within seven (7) years from the date of issuance/awarding and if such machinery, equipment, materials and parts are directly needed and will be used exclusively by the developer. The approval by the OEA shall also be obtained by the local manufacturer.
 - d. The developer shall enjoy special realty tax rates on equipment and machinery not exceeding two and a half percent (2.5%) of their original cost.
 - e. The developer shall be exempted from the ten percent (10%) value-added tax on the gross receipts derived from the sale of electric power whether wheeled through the NAPOCOR grid or through existing electric utility lines.

OBLIGATIONS OF THE DEVELOPER

- a. The developer shall perform all mini-hydro power operations and provide all necessary services, technology and financing in connection therewith. It shall commence construction of the project within twelve (12) months from the awarding of the contract. An extension may be applied for another twelve (12) months for justifiable reasons, as determined by the OEA.
- b. The developer shall be responsible for securing and complying with all the legal requirements related to the construction of mini-hydro power plant facilities and shall be subject to the provisions of laws of general application relating to labor, health, safety and ecology.
- c. The developer shall develop and operate the field in accordance with accepted good mini-hydro power field practices using modern and scientific methods to enable maximum economic production of mini-hydro power and to avoid hazards to life, health and waters pursuant to an safeguard the watershed area of its mini-hydro power plant system against illegal logging and other forms of forest destruction and/or assist the DENR in the enforcement of forestry rules and regulations or rehabilitation of the watershed area.
- d. The developer shall furnish the OEA promptly with mini-hydro power information, data and reports relative to the operations, except for proprietary techniques use in developing such information, data and reports. It shall report to

the OEA any socio-economic project/programs implemented in the mini-hydro power site/community.

- e. The developer shall maintain detailed financial and technical records and accounts of its operations.
- f. The developer shall conform to regulations regarding, among other, safety, demarcation of the contract area, noninterference with rights of other operations such as irrigation, geothermal, and coal mining, housing development, access roads, etc. It shall also undertake to negotiate for the acquisition, by whatever legal mode, of private properties affected by the project and the establishment of easement for the dam, access roads and the related structures/facilities. It shall be strictly required to observe its construction methods and techniques which could not hamper or disrupt the operations of other infrastructures at the at the upstream, downstream or near the vicinity of the projects site. In all cases where the proposed mini-hydro power development entails the closure or stoppage of existing water outlets, passageways, connections, conduits, apertures or the like from the water source, it shall be mandatory for the developer to restore or reengineer such water outlets, passageways, connections, conduits, apertures or the like on its account or expense, and in such a manner that existing users or appropriators shall not be permanently deprived of their use or appropriation.
- g. The developer shall maintain all meters and measuring equipment in good order and allow access to these as well as the development sites and operations to inspectors authorized by the OEA.
- h. The developer shall operate and maintain the mini-hydro power plant or system at maximum efficiency as possible and promote highest possible production of power and energy. It shall provide the OEA with a quarterly report on electricity generated by the power plant.
- i. The developer shall negotiate on the provision for interconnection with either NAPOCOR, the local electric cooperative grid or electric utilities and shall furnish the OEA with a copy of its sales contract with the buyer. It shall first offer to sell electric power to either NAPOCOR, franchised private electric utilities or electric cooperatives. It shall install adequate protective devices at the power plant which are required to ensure safe and unperturbed operation of the local electricity network to which the plant is interconnected.
- j. The developer shall allow the OEA to inspect the plant during and after its construction, and shall also provide the OEA documents required for proper monitoring and planning purposes.
- k. At all times, the developer shall observe and maintain proper hygiene and sanitation at the projects site. Garbage, waste, chemicals and the like shall be disposed off or dumped properly on garbage pits. Chemicals such as acids, oils and grease shall be stored properly and shall not be allowed to contaminate the environment.
- l. The developer shall seek the approval of the OEA for any major change in its work program.
- m. The developer shall allow appropriate officials of the Bureau of Internal Revenue and authorized representatives of the OEA at all reasonable times full access to

accounts, books and records relating to the mini-hydro power operations for tax and other fiscal operations.

- n. The developer shall be subject to Philippine income tax after seven (7) years of commercial operation. The OEA shall be furnished a copy of the official receipt covering payment to the Bureau of Internal Revenue for privilege tax paid, supported with pertinent documents required in the application for tax credits on domestic capital equipment procured in the Philippines.
- o. The developer shall give priority in employment to Philippine nationals. It shall agree to employ qualified Filipino personnel in the operations and, after commercial production commences, shall undertake, upon prior approval of the OEA, the schooling and training of Filipino personnel for labor and staff position, including administrative, technical and executive management positions. It shall undertake a program of training assistance for OEA. Costs and expenses of training Filipino personnel for the developer's own employment shall be included in the operating expenses. Costs and expenses of a program of training for the OEA's personnel shall be borne on a basis to be agreed upon by the OEA and the developer. The employment of alien technical and specialized personnel (including the immediate members of their families) who may exercise their professions solely for the mini-hydro power operations of the developer shall not be unreasonably withheld. However, the developer shall undertake a program of technology transfer by assigning at least one (1) understudy to work with each of the alien technical and specialized personnel. It shall be clear that upon the termination of the employment or connection of any such alien with developer, the pertinent laws and regulations on immigration shall immediately apply to him and his immediate family.
- p. The developer shall post a bond or other guarantee of sufficient amount in favor of the OEA and with surety or sureties satisfactory to the OEA conditioned upon the faithful performance by the developer of any or all of the obligations under and pursuant to the contract within sixty (60) days after the effective date of the contract.

Section 5. The OEA shall verify and monitor the standards applied by the developer of the mini-hydro power plant and ascertain whether or not the construction and operation of the mini-hydro power plant by the developer is in accordance with the approved design and standards of optimum safety/electricity generation.

Section 6. The OEA shall appoint the developer its attorney-in-fact and shall give and grant to the developer authority to act for and in its behalf in the negotiation and conclusions of agreements and payment for the use of surface rights, rights-of-way and similar rights for the account of the developer so as to enable the developer to have ingress into and egress from the contract area and to perform all mini-hydro power operations in accordance with this contract and otherwise for any and all purposes necessary or proper in connection with this contract.

Section 7. Suspension of Obligations – Any failure or delay on the part of either party in the performance of its obligations or duties hereunder shall be excused to the extent attributable to Force Majeure. If operations are delayed, curtailed or prevented by such causes, the time for enjoying the rights and carrying out the obligations hereunder shall be extended for a period

equal to the period thus involved: Provided, however, that if operations are delayed, curtailed or prevented by force Majeure for a continuous period of three (3) months, the operating contract may thereafter be terminated by either party at anytime that the Force Majeure exists.

Force Majeure shall include Acts of God, unavoidable accidents, acts of war or conditions arising out of or attributable to war (declared or undeclared), riots, insurrections, strikes, lockouts, and other similar labor disturbances, floods and storms. The party whose ability to perform its obligation is so affected shall notify the other party thereof in writing stating the cause, and both parties shall do all reasonably within their power to remove such cause.

RULE IV NONEXCLUSIVE DEVELOPMENT

Section 1. the development of less than fifty percent (50%) of the mini-hydro power potential of the proposed site shall be non exclusive. The OEA, after a thorough review and evaluation of its technical and economic viability, may grant the development of the site to its full power potential to any qualified developer forfeits his option shall be given to the original developer; provided, further, that in case the original developer forfeits his option to pursue development of the hydroelectric power resource to its fullest potential, it shall be reimbursed by the successor-developer of the value of its investment based on the declared value of the development for real estate tax purposes over the immediately preceding three (3) years or, in case the declared value over said period differs, on the average value thereof.

Section 2. Nonexclusive Permit – The OEA may issue, on a first-come-first-served basis, a nonexclusive permit, to conduct a three-month reconnaissance study on the mini-hydro power potential of an area.

RULE V TERMS AND CONDITIONS FOR THE PURCHASE AND TRANSMISSION OF ELECTRICITY GENERATED

Section 1. The NAPOCOR shall purchase the maximum electricity generated by the mini-hydro power plant in case the mini-hydro power plant cannot be connected with any other electric utilities or end-users.

Section 2. Use of Transmission Lines – The NAPOCOR and other electric utilities shall allow the mini-hydro power developer to deliver its generated electricity to the developer's customers through their existing lines so as to serve such third parties under terms which are to be mutually agreed upon, or if no agreement can be reached, under terms set by the OEA.

Section 3. Rates for the Purchase of Electricity – The rates for the purchase of electricity that the developer may charge to NAPOCOR and other electric utilities shall be at a price agreed upon by the parties. Such price shall be based on NAPOCOR's or the utility's avoided cost which shall refer to the costs of the affected grids had NAPOCOR generated the electric power itself before disposing the power to third parties.

Section 4. In cases where a developer needs new transmission facilities to bring the power from the mini-hydro power plant to such third parties, the developer shall negotiate with NAPOCOR or electric utility, as the case may be, for possible sharing of the cost of the facilities construction.

**RULE VI
SETTLEMENT OF CONFLICTS**

Section 1. All conflicts or disputes arising from the implementation of R.A. 7156 and the provisions of these rules, except those arising from debtor-creditor relations, shall be under the jurisdiction of the OEA.

RULE VII

Section 1. These rules and any amendments thereof shall take effect fifteen (15) days after publication in the Official Gazette.

Done this 10th day of March, nineteen hundred and ninety-two in Makati, Metro Manila.

Signed:

RUFINO B. BOMASANG
Acting Executive Director
Office of Energy Affairs

Attested by:

GRISELDA J. G. BAUSA
Officer-in-Charge
Officer of the Deputy Executive Director
For Energy Operations

