



RESOLUTION NO. 15, SERIES OF 2012

**RESOLUTION ADOPTING THE POSITION OF THE COMMISSION ON THE
ISSUES PAPER PUBLISHED ON 02 APRIL 2012 AND THE CORRESPONDING
AMENDMENTS TO THE FEED-IN TARIFF RULES**

WHEREAS, Section 7 of Republic Act (R.A.) No. 9513, An Act Promoting the Development, Utilization and Commercialization of Renewable Energy Resources and for Other Purposes, and Section 5 of its Implementing Rules and Regulations (IRR) mandate the Energy Regulatory Commission (ERC), in consultation with the National Renewable Energy Board (NREB), to formulate and promulgate the Feed-in Tariff (FIT) system rules;

WHEREAS, in compliance with such mandate, the ERC promulgated the Feed-in Tariff Rules (FIT Rules) through Resolution No. 16, Series of 2010 on 12 July 2010;

WHEREAS, on 07 March 2012, the ERC received a letter from Department of Energy (DOE) Secretary Jose Rene Almendras, endorsing the letter of Honorable Senator Sergio Osmeña III, dated 22 February 2012, regarding his proposed bidding of Renewable Energy resources in setting the feed-in tariff rates;

WHEREAS, in preparation for the smooth and expedient implementation of the FIT mechanism under the RE Law, the ERC posted on its website on 02 April 2012, an Issues Paper to address, among others, the issue raised by Hon. Senator Osmeña III and other pertinent implementation issues;

WHEREAS, the ERC raised three (3) main issues in its paper, namely: (1) the use of competitive bidding process for the FITs; (2) NGCP's role as settlement agent; and (3) calculation of the FIT-Allowance;

WHEREAS, the ERC set the deadline for submission of comments on 18 April 2012 and the public consultation on 02 May 2012;

WHEREAS, the following entities submitted their comments:

- a. Cagayan Electric Power and Light Company, Inc. (CEPALCO)
- b. Distribution Management Committee (DMC)
- c. Manila Electric Company (MERALCO)
- d. National Grid Corporation of the Philippines (NGCP)
- e. National Renewable Energy Board (NREB)
- f. Philippine Electricity Market Corporation (PEMC)
- g. RE Developers Associations (submitted by NREB and WEDAP)
 - i. Biomass Renewable Energy Alliance, Inc. (BREA)
 - ii. Philippine Solar Power Alliance (PSPA)
 - iii. Philippine Association of Small-Scale Hydro Developers, Inc. (PassHydro)
 - iv. Bell Pirie Power Corporation (representing Ocean Thermal Energy Conversion technology)
 - v. Wind Energy Developers Association of the Philippines (WEDAP)
- h. Visayan Electric Company (VECO)

WHEREAS, after careful consideration of the comments and issues raised during the public consultation and guided by the policy objectives in R.A. No. 9513, the ERC deems it appropriate to release its position on the Issues Paper, and correspondingly amend the Feed-in Tariff Rules;

NOW THEREFORE, the ERC, after thorough and due deliberation, hereby **RESOLVES**, as it is hereby **RESOLVED**, (1) to **APPROVE** and **ADOPT** its "**POSITION PAPER**" hereto attached and made an integral part hereof as Annex "A"; and, (2) to **APPROVE** and **ADOPT** the corresponding amendments to the FIT Rules, as follows:

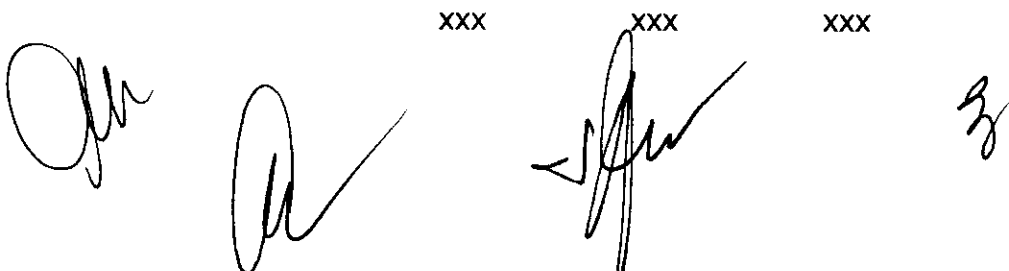
1.3 Definitions shall include the following

National Grid Corporation of the Philippines or NGCP refers to the entity that took over the transmission business of the National Transmission Corporation (TRANSCO) by virtue of R.A. No. 9511.

National Transmission Corporation or TransCo refers to the corporation organized pursuant to Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 to acquire all the transmission assets of the National Power Corporation (NPC)

2.5. Feed-in Tariff Allowance (FIT-All)

xxx xxx xxx



The FIT-All shall be established and set by the ERC on an annual basis upon petition by the TransCo, which is tasked with the settlement of the FITs of the Eligible RE Plants. However, if after any quarter of operation of the FIT-All scheme, TransCo has determined that the Working Capital Allowance as originally set has been depleted by more than fifty (50) percent due to higher FIT-eligible deliveries than the projections used in the setting of the FIT-All, TransCo shall be allowed to immediately file for the adjustment of the FIT-All to replenish the Working Capital Allowance.

The FIT-All shall take into account the following: the forecasted annual required revenue of the Eligible RE Plants; the previous year's over or under recoveries; TransCo's administration costs; the forecasted annual electricity sales; and such other relevant factors to ensure that no stakeholder is allocated with additional risks in the implementation of the FITs.

xxx xxx xxx

TransCo shall ensure that the FIT-All fund is sufficient to pay all RE producers regularly. As such, it shall include a sufficient allowance for the working capital requirements in case some customers default or delay in their obligations to collect and remit the FIT-All proceeds. Additionally, in order to minimize this risk, the ERC shall impose the appropriate penalties to the erring parties to discourage either delay or default in payment of the FIT-All proceeds, which include the imposition of a twenty (20) percent penalty surcharge, plus monthly interests on the unpaid amounts based on 91-day Treasury bill plus 300 basis points until fully paid, and allowing TransCo to apply for disconnection of any such erring party from the Grid should the delay or default in payment persist over more than two (2) billing periods.

2.6. FIT-All as a Separate Uniform Charge:

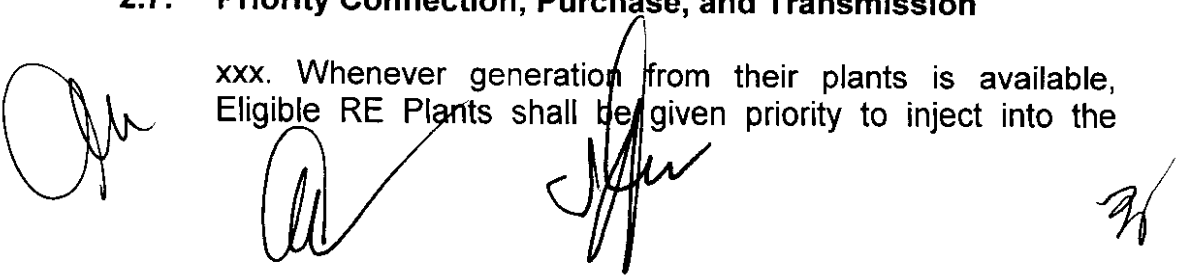
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Proceeds from the imposition and collection by the DUs and RES of the FIT-All shall be remitted to TransCo based on the more detailed guidelines to be established by the NREB and approved by the ERC for the collection and disbursement of the FIT-All fund.

For this purpose, TransCo shall consolidate the information on the generation of all Eligible RE Plants for all the On-Grid areas, including those that are embedded in the distribution system.

2.7. Priority Connection, Purchase, and Transmission

xxx. Whenever generation from their plants is available, Eligible RE Plants shall be given priority to inject into the

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network they are connected and shall be paid the corresponding FITs based on their actual metered deliveries, by all On-Grid electricity consumers through the TransCo, consistent with Sections 1.4, 2.5, 2.6, and 2.9. xxx.

2.8. Distribution Utilities with Embedded Eligible RE Plants or their own Eligible RE Plants

xxx xxx xxx

The proceeds of this generation cost recovery mechanism, in addition to the proceeds of the imposition of the FIT-All, shall likewise be remitted by the DU to the TransCo, based on the guidelines referred to in Section 2.6, for them to form part of the FIT-All fund.

2.9. Settlement

xxx. TransCo shall be responsible for the disbursement of the FIT-All fund for the purpose of settlement and payment of the FITs for the Eligible RE Plants. The funds pertaining to the FIT-All and all interests accruing thereon shall be kept in a separate trust account with any government financial institution for the benefit of the Eligible RE Plants.

For this purpose, TransCo shall consolidate the information on energy deliveries in kWhs of all Eligible RE Plants and the RE generation for the entire On-Grid areas and shall make this information available to relevant stakeholders.

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6. Administration of FITs

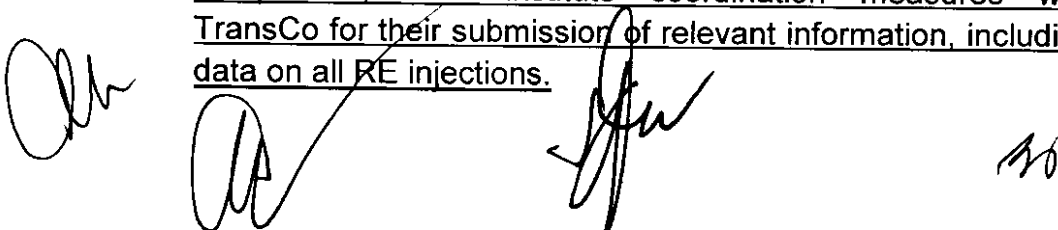
Being in-charge of the FIT settlement, TransCo shall be authorized to perform the following for all RE generation:

xxx xxx xxx

e. Based on applicable FITs and FIT duration, enter into an RE Payment Agreement (REPA) with Eligible RE plants. The ERC shall issue a pro-forma REPA after due proceedings. Any REPA executed between TransCo and an Eligible RE Plant, which conforms to the pro-forma REPA shall be deemed approved.

In case of dispute between or among the electricity sector participants, the ERC shall decide.

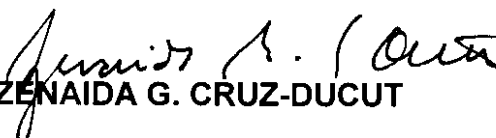
NGCP, DUs and the RES, upon open access and retail competition, shall institute coordination measures with TransCo for their submission of relevant information, including data on all RE injections.




This Resolution shall take effect fifteen (15) days after its publication in a newspaper of general circulation in the country.

Let copies of this Resolution be furnished the University of the Philippines Law Center Office of the National Administrative Register (UPLC-ONAR).


Pasig City, 19 November 2012.


ZENAIDA G. CRUZ-DUCUT

Chairperson


MARIA TERESA A.R. CASTAÑEDA
Commissioner


JOSE C. REYES
Commissioner


ALFREDO J. NON
Commissioner


GLORIA VICTORIA C. YAP-TARUC
Commissioner


SOM/DTL/FSC/J

POSITION PAPER

Introduction

Pursuant to Section 7 of Republic Act (R.A.) No. 9513, An Act Promoting the Development, Utilization and Commercialization of Renewable Energy Resources and for Other Purposes, and Section 5 of its Implementing Rules and Regulations (IRR), the Energy Regulatory Commission (ERC) promulgated the Feed-in Tariff Rules (FIT Rules) on 12 July 2010, through Resolution No. 16, Series of 2010.

Considering the various issues raised by electric industry stakeholders on the FIT system as provided for in the FIT Rules, the ERC, on 02 April 2012 posted an Issues Paper in its website at *www.erc.gov.ph* for comments, inputs and suggestions. The following issues were identified in the paper:

1. Using competitive bidding process in setting the FITs;
2. National Grid Corporation of the Philippines' (NGCP) role as settlement agent; and
3. Calculation of the FIT Allowance.

The ERC sought comments and views on the foregoing issues and conducted a public consultation on 02 May 2012.

This Position Paper describes the position of the ERC with regards to the three main issues mentioned above, following the ERC's consideration of the comments and views received from various stakeholders and those raised during the public consultation.

1. Using a competitive bidding process to set the FITs

ISSUE:

Section 5 of the FIT Rules provides that the National Renewable Energy Board (NREB) shall calculate and submit the FIT to the ERC for its approval. The recommended FITs may be calculated based on a reference cost study of each technology based on a real candidate project or a hypothetical one as long as it is representative of average conditions of the RE Plant, and in consideration of all non-price incentives in R.A. 9513. The Rules also provide that the FITs should take into account the expected capacity for each technology set as installation targets, including the duration in which these targets will be achieved.

The NREB filed its recommended FITs to the ERC on 16 May 2011 and the Department of Energy's (DOE) resolution approving the final Installation Targets on 6 July 2011. Since then, the ERC has been conducting hearings on the said application.

Recently, it has been raised and suggested by Honorable Senator Sergio Osmeña in his letter addressed to Honorable Secretary Jose Rene Almendras and subsequently forwarded to the ERC that instead of using the cost-based methodology as outlined in Section 5 of the FIT Rules, the ERC may use a competitive bidding process to ensure lower FIT rates.

Sen. Osmeña likewise indicated in the said letter that the RE Act itself, specifically Section 7, did not provide for any specific ratemaking mechanism in determining the FIT, thus, it is within the ERC's mandate and jurisdiction to set the rules in the determination of the FIT, as long as the following conditions specified under the RE Act are met:

- a. Priority connections to and priority purchase and transmission of electricity to the grid;
- b. A fixed tariff with a mandated number of years which shall not be less than twelve (12) years; and
- c. To be used in compliance to the Renewable Portfolio Standards and the Rules that will be established by the Department of Energy (DOE).

ERC's POSITION:

Auction or competitive bidding is one mechanism used by other jurisdictions such as Brazil, China, Ireland and the United Kingdom to promote renewable energy. This is also popularly known as reverse auction. Indeed, this mechanism can lower the cost of renewable energy deployment; however, according to a study conducted by Paolo Cozzi of The Center for International Environment and Resource Policy entitled "Assessing Reverse Auctions as a Policy Tool for Renewable Energy Deployment", there is the risk of underbidding and breach of contract unless certain design elements are present.¹

¹ Assessing Reverse Auctions as a Policy Tool for Renewable Energy Deployment by Paolo Cozzi, Energy, Climate, and Innovation Program, The Fletcher School, Tufts University, The Center for International Environment & Resource Policy, May 2012

While the ERC recognizes that the bidding mechanism, in general, can achieve RE deployment at a lower cost, it is cognizant of the fact that the RE market in the Philippines is yet to be developed, thus, the environment is not conducive to competition. A perfect market is conditioned not only on the number of participants and the degree of control on the prices, but also on the availability and access to information regarding costs and prices. The Philippines is still in the stage of aspiring to attract potential investors as ultimate players in the RE market, thus, information on project costs and technology has yet to be fully established. For this reason, the above-stated risk of underbidding is very likely to happen.

Further, the timelines set forth in the RE Law indicate the Government's resolve to hasten the deployment of RE in the country. As it is, there are already delays in the implementation of the RE Law and the ERC, for its part, is committed to perform its legal mandate to see through the implementation of the FIT system. By implementing the FIT system early on, the ERC anticipates that the sector will gain the necessary experience and accumulate reliable cost information, which can then support the design and sustain the adoption of an incentive mechanism different from the current FIT system.

To clarify, the ERC is not closing its doors on the proposed competitive bidding. It, however, interposes its concerns on the timing of its implementation. Once the RE market is developed, the ERC has no doubt that such mechanism will be effective in bringing down the cost of RE in the country. In fact, by moving towards the implementation of the initial FIT rates it approved, the ERC is laying the foundation for the market to be ready for such mechanism in the future.

2. NGCP's role as settlement agent or FIT-All Administrator

ISSUE:

Sections 2.5, 2.9 and 6 of the FIT Rules assigned the National Grid Corporation of the Philippines (NGCP) as the settlement agent of the FITs. The responsibilities of NGCP as such include the following:

- a. Collection and consolidation of information on energy deliveries and RE generation for the entire on-grid areas;
- b. Audit of the metering;

- c. Determination of the FIT-All to be charged to end-users, to be applied to the ERC for approval;
- d. Determination of monthly payments to each Eligible RE Plants based on actual metering;
- e. Collection and disbursement of the FIT-All fund; and
- f. Enter into an RE Payment Agreement (REPA) with Eligible RE Plants, proforma of which shall be issued by the ERC.

However, the legality of NGCP, being a private corporation, as the settlement agent for the FITs, is in question. It has been argued that the FIT-All fund is a public fund and hence, should not be left to the administration of a private entity. Instead, it is proposed that the said funds should be administered by a government agency. Because of this, industry stakeholders are looking at other entities that are government-owned to act as the administrator of the FIT-All Fund.

In view of this, the ERC is setting the venue for suggestions and comments on whether it should retain the NGCP as the administrator of the funds or it should designate a government-owned entity to administer the same.

ERC'S POSITION:

The ERC received several comments agreeing that there is indeed a question on the legality of the NGCP as the settlement agent and recommending that the responsibility as Fund Administrator be transferred to a government entity.

The ERC, on 13 September 2012, received a letter from NREB, confirming its previous recommendation to designate the National Transmission Corporation (TransCo), in place of the NGCP as the FIT-All Administrator. The confirmation came after the NREB's receipt of an opinion from the Office of the Government Corporate Counsel (OGCC) stating that the FIT-All Fund is a public fund. NREB posited that the FIT-All Fund being deemed as public fund, it must be administered by a government agency, such as TransCo. Further, on 18 September 2012, the ERC received a letter from TransCo, signifying its interest and willingness to accept the endorsement of NREB as mentioned above.

Although the issue regarding the nature of the FIT-All Fund can only be determined with finality by the courts, the ERC has deemed it proper to accept NREB's endorsement of TransCo as FIT-All Administrator instead of the NGCP,

if only to put to rest any objection to NGCP's designation as such. The ERC is confident that TransCo, with the cooperation of all other stakeholders, will be able to discharge the functions and responsibilities of the FIT-All Administrator as mentioned in the FIT Rules.

Accordingly, the ERC will issue the appropriate amendments to the FIT Rules to reflect this change.

3. Calculation of FIT-Allowance

ISSUE:

Sections 2.5 and 2.6 of the FIT Rules provide for the setting by the ERC of a Feed-in Tariff Allowance (FIT-All) which is a separate uniform fee in PhP/kWh that will be charged to all end-users. Such FIT-All shall be set by the ERC annually upon petition by the NGCP who is the settlement agent of the FITs.

The FIT-All shall include the following:

- a. Forecasted annual required revenue of RE Plants;
- b. Previous years' over/ under recoveries;
- c. Administration costs;
- d. Forecasted annual electricity sales; and
- e. Allowance for working capital requirements.

The FIT-All shall be included in the following:

- a. Transmission billing of NGCP for directly-connected customers;
- b. Distribution billing statement from Distribution Utilities; and
- c. Retail Electricity Suppliers billing statements upon the implementation of Open Access and Retail Competition.

While the FIT Rules have provided for what comprises the FIT-All, the calculation of the same has yet to be provided for. For the smooth and expedient implementation of the FITs once approved by the ERC, there is a need, at this early stage, to review and set the manner by which the FIT-All will be calculated. This includes the methodology, formula and the procedure for the setting of the Fit-All. Thus, the ERC opens itself for suggestions on the appropriate procedure for the setting of the FIT-All.

ERC POSITION:

The NREB, on 16 April 2012, endorsed to ERC its proposed FIT-All Payment and Collection Guidelines, which is currently undergoing the Rule-Making process, pursuant to the ERC's Rules of Practice and Procedures (RPP).

The FIT-All Payment and Collection Guidelines will address the issue raised on the calculation of the FIT-All, thus, this issue will be resolved by the ERC's action on NREB's proposal for the adoption and issuance of the FIT-All Payment and Collection Guidelines