

**[ DOE DEPARTMENT CIRCULAR NO. 98-03-005,  
March 31, 1998 ]**

**RULES AND REGULATIONS IMPLEMENTING EXECUTIVE ORDER  
NO. 462**

Pursuant to Executive Order No. 462, "ENABLING PRIVATE SECTOR PARTICIPATION IN THE EXPLORATION, DEVELOPMENT, UTILIZATION AND COMMERCIALIZATION OF OCEAN, SOLAR AND WIND ENERGY RESOURCES FOR POWER GENERATION AND OTHER ENERGY USES", the Department of Energy hereby adopts and promulgates the following rules and regulations:

**General Provisions**

*SECTION 1. Title* — This Circular shall be known as the Rules and Regulations Implementing Executive Order No. 462, dated December 29, 1997, and may otherwise be cited as "OSW Implementing Rules and Regulations".

*SECTION 2. Policy Objectives* — This Circular shall have the following policy objectives:

- a. To accelerate the exploration, development, utilization and commercialization of ocean, solar and wind (OSW) energy resources which are indigenous, renewable, environment-friendly and of such abundance that can provide the Philippines self-sufficiency in energy and possibly surpluses for export in the future despite high energy demand due to rapid economic growth;
- b. To enable/enhance private sector participation in the exploration, development, utilization and commercialization of OSW energy resources;
- c. To ensure the proper management of OSW energy resources, consistent with the country's goals of energy self-sufficiency, affordability, and sustainable development.

*SECTION 3. Scope* — This Circular shall apply to the assessment, exploration, extraction, harnessing, development, utilization and/or commercialization of OSW energy resources in public, private and ancestral domains in the Philippines for power generation and other energy uses.

*SECTION 4. Definition of Terms* — Unless the context otherwise indicates, the terms used in this Circular shall have the following meanings:

- a. "Accreditation" means the authorization granted by the Department to an entity for the establishment of a power plant in accordance with Executive Order 215, dated July 10, 1987, and its implementing rules and regulations.
- b. "Ancestral domain" means the ancestral domain area as defined in Republic Act

No. 8371, otherwise known as the "Indigenous Peoples Rights Act of 1997";

c. "Contract area" means the area awarded under an OSW production-sharing contract for OSW production-sharing contract for OSW energy resources in public domain;

d. "Contractor" means a production-sharing contractor for the assessment, exploration, extraction, harnessing, development, utilization and/or commercialization of OSW energy resources in public domain;

e. "Department" means the Department of Energy created under Republic Act No. 7683;

f. "Electric utility" means an entity with a franchise to operate a distribution system, or to engage in the business of commercially supplying electricity within a specified area, or both.

g. "Environmental Compliance Certificate (ECC)" means the document issued by the Secretary of the Department of Environment and Natural Resources (DENR) or the DENR Regional Executive Director certifying that a proposed project or undertaking will not cause significant negative environmental impact, and that the project proponent has complied with the requirements of the EIS System;

h. "Environmental Impact Statement (EIS)" means the document(s) stating the result of studies on the environmental impact/s of a project, as well as the discussions on direct and indirect consequences upon human welfare and ecological and environmental integrity. The EIS may vary from project to project but shall contain in any case all relevant information and details about the proposed project or undertaking, including the environmental impacts of the project and the appropriate mitigating and enhancement measures;

i. "Environmental Impact Statement System (EIS System)" means the process institutionalized for the purposes of assessing the significance of the effects of any project on the quality of the physical, biological, and socio-economic environment, and designating appropriate preventive, mitigating and enhancement measures;

j. "Exclusive Economic Zone" means the area that includes the water, the air space superjacent to it, and the seabed and its sub-oil of the area extending beyond but not exceeding a distance of 200 nautical miles from the Philippine baselines;

k. "Franchise" means the privilege to operate, maintain and/or distribute power within a specific geographical area;

l. "Government" means the government of the Republic of the Philippines;

m. "Host Municipality/City" means the municipality or city where the OSW energy project is located;

n. "Host community" means a group of persons living in the environmental impact area or the area of environmental influence of an OSW energy project;

o. "Hybrid OSW system" means a power plant system that involves the use of a

combination of ocean, solar and/or wind energy resources, or a combination of any of the OSW energy resources with any other energy source/s, whether renewable or nonrenewable to sustain a stable output;

p. "Negotiated Commercial Contract (NCC)" means an OSW production-sharing contract, without a pre-commercial contract (PCC) component, providing the terms and conditions for the commercial phase of the OSW energy project;

q. "Ocean energy" means any form of energy such as kinetic, thermal and chemical, from a body of water that is substantially influenced by tides;

r. "Offshore" means the water, sea bottom and sub-surface from the shore or coastline at the highest equinoctial tide level to the outer limit of the exclusive economic zone;

s. "OSW energy" means the energy that is harnessed/generated or produced from ocean, solar and wind;

t. "Private domain" means private land or privately held offshore area, including alienable and disposable land being claimed by a holder claimant, or occupant who has acquired a vested right thereto under the law, although the corresponding certificate or evidence of title or patent has not been actually issued;

u. "Public Domain" means all lands and waters in the possession or ownership of the State, as distinguished from lands possessed by private individuals;

v. "OSW production-sharing contract" means a contract or an agreement entered into by and between the government, through the Department, and a qualified person or entity involving the assessment, exploration, extraction, harnessing, development, utilization and/or commercialization of OSW energy resource.

w. "Qualified person" means any citizen of the Philippines with capacity to contract, or a corporation, partnership, association, cooperative or any other business aggrupation organized under the laws of the Republic of the Philippines, at least sixty percent (60%) of the capital of which is owned by citizens of the Philippines;

x. "Qualified hybrid OSW system" means a hybrid OSW system that uses a combination of more than one energy resource that are all renewable or a combination of one or more OSW energy resource with one or more non-renewable energy source, provided that: (a) there is no grid electricity available in the project area from National Power Corporation or other duly accredited grid operator; (b) the OSW energy output is not less than 75% of the annual output of the system; and (c) the non-renewable installed capacity is not more than 50% of the OSW energy installed capacity;

y. "Secretary" means the Secretary of the Department of Energy;

z. "Solar Energy" means the energy transmitted from the sun;

aa. "Wind energy" means a form of kinetic energy arising from the movement of air;

bb. "Working capital" means net liquid assets (quick assets less current liabilities)

consisting primarily of cash, temporary investments (marketable securities) and short-term receivables.

## **OSW PROJECTS IN PUBLIC DOMAIN**

*SECTION 5. OSW Production-Sharing Contract (OSWC)* — Any person who engages or intends to engage in the assessment, exploration, extraction, harnessing, development, utilization and/or commercialization of any OSW energy resource in public domain shall secure an OSW production-sharing contract (OSWC) with the government through the Department.

*SECTION 6. Components of an OSWC* — An OSWC, as a general rule, shall consist of a Pre-Commercial Contract (PCC) and Pre-negotiated Commercial Contract (PNCC), the scope and application of which are as follows:

a. PCC — The PCC shall involve exploration, resource assessment, piloting, feasibility studies, environmental impact studies, and/or all other studies prior to commercial production, and shall be patterned after Model Contract Form No. 462-A prescribed by the Department. The PCC shall be signed by the Contractor and the Secretary at the time of the award of the OSWC.

b. PNCC — The PNCC shall involve the development, extraction, harnessing, utilization and commercialization of the OSW energy resource concerned. It shall be negotiated at the same time as the PCC and shall be patterned after Model Contract Form No. 462-B prescribed by the Department. The PNCC shall be signed by the Contractor and the Secretary after the Letter of Confirmation is issued to signify government approval of the Declaration of Commerciality for the project. When the project involves an installed capacity of one (1) megawatt or less, whether as one centralized system or as an aggregate of several small systems, the conditions and requirements for the PNCC shall be simplified and rationalized with respect to the need to encourage small-scale private sector investment in OSW energy development. For this purpose, the government share in Section 21 and the trust account for termination and abandonment in Section 27 of this Circular shall be minimized by negotiation and the requirements for Declaration of Commerciality shall be simplified.

*SECTION 7. OSW Without Pre-Commercial Contract Component* — When conditions warrant, such as when enough information is available for an area to determine commercial feasibility, environmental impact and other conditions for commercialization of OSW energy the Pre-Commercial Contract (PCC) component of an OSW may be waived. In this case, an application for OSW shall be for a Negotiated Commercial Contract (NCC) using Model Contract Form No. 462-C. Such application shall be accompanied by a Declaration of Commerciality and other related documents.

*SECTION 8. Accreditation of OSW Power Plant Projects* — OSW Power plant projects in public domain shall go through the accreditation process of the Department in accordance with Executive Order No. 215 and its implementing rules and regulations, prior to the issuance of the Letter of Confirmation by the Secretary on the Contractor's Declaration of Commerciality; Provided that, for hybrid OSW systems, the ratio of OSW input and non-renewable source input may depart from relevant provisions of Energy Regulations No. 1-95, subject to the requirements for

qualified hybrid OSW system as defined in item (x) Section 4 of this Circular.

*SECTION 9. Duration of Contracts* — The PCC for solar and/or wind energy shall have a term of two (2) years extendible three times for one year period per extension. For ocean energy, whether exclusively or in combination with solar and/or wind, the PCC shall have a term of three (3) years extendible four times for one year period per extension.

The PNCC or NCC for any OSW energy project shall have a term of twenty-five (25) years, renewable once for the same number of years.

*SECTION 10. Qualifications of a Contractor* — A Contractor must be a qualified person as defined in Section 4 (w) of this Circular. He must be technically and financially qualified to implement the work program of the OSW Project applied for. The qualifications of a Contractor shall be based on the work program submitted, together with the application and in particular, the following attributes:

a. Technical — The Contractor shall be able to undertake the work program by himself or engage the services of competent technical personnel to carry out the work program. For the purpose of assuring the availability of competent personnel, the Contractor shall submit to the Department the names of consultants and the extent and nature of work assigned to them.

b. Financial — The financial qualifications of a Contractor shall be: (1) working capital of at least 100% of the cost of the work program as submitted to the Department for the initial two years of the proposed contract, and a statement that it has the capability to fund the cost of succeeding work program as provided in the OSWC; and (2) such other factors which would substantially establish the financial capability of the applicant.

*SECTION 11. Application for OSWC* — An application for OSWC shall be accomplished in the form prescribed by DOE and submitted to the OSW Service Unit (SU) established in Section 32 of this Circular. Each application shall cover an area located in only one municipality or city.

*SECTION 12. Processing of OSWC Application* — Upon receipt of an application, for OSWC in public domain, the Department shall review the information therein provided and within fifteen (15) days pre-qualify the applicant. Once pre-qualified, the applicant shall submit to the SU within fifteen (15) days upon notice accomplished PCC form (Form 462-A) and PNCC form (Form 462-B) as the case maybe. If the submissions are in order as determined by the Department within fifteen (15) days upon receipt, the applicant shall pay a processing fee of one thousand pesos (P 1000) per application plus five pesos (P 5.00) for every hectare of public domain area in the block/s applied for, and the Contractor shall set aside an amount sufficient to shoulder the costs of consultation with the host municipality or city and the host community.

With the assistance of the Department through a one-stop-shop facilitation scheme, the Contractor shall secure a certification of the status of natural resources right in the area applied for, from Environmental Management Bureau (EMB), National Commission on Indigenous Peoples (NCIP), Forestry Management Bureau (FMB), Land Management Bureau (LMB), Mines and Geosciences Bureau (MGB) and