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MALACAÑANG
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

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

WHEREAS, Section 2 of Article 12 of the Constitution provides that "all lands of the public domain, waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, forest or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development and utilization of natural resources shall under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture or production-sharing agreements with Filipino citizens or corporations or associations at least sixty per centum of whose capital is owned by such citizens";

WHEREAS, Presidential Decree No. 1068 issued on January 12, 1977 directed the "acceleration of research, development and utilization of nonconventional energy resources" and Republic Act 7638 of December 9, 1992 mandated the Department of Energy (DOE) to "formulate and implement a program for the accelerated development of nonconventional energy systems and the promotion and commercialization of its application";

WHEREAS, ocean, solar and wind (OSW) energy resources are forces of potential energy which are nonconventional, indigenous, renewable, environment-friendly and of such abundance that could provide the Philippines self-sufficiency in energy and possibly surpluses for export in the future despite high energy demand due to rapid economic growth;

WHEREAS, it is in the national interest to accelerate the development and utilization of OSW energy resources by enabling private sector participation.

NOW, THEREFORE, I, FIDEL V. RAMOS, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

IN REPLYING, PLEASE CITE:
PFVR Letter # L972488



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SECTION 1. Exploration, Development and Utilization of OSW Energy Resources. - Subject to existing rights, the government, through the DOE, shall engage in the assessment, exploration, extraction, harnessing, development and utilization of ocean, solar and wind (OSW) energy resources, preferably with the participation of the private sector under a production-sharing contract awarded by the Secretary of the DOE, after due consultation with the host community/ies and local government unit/s concerned, through public bidding or negotiation. The production-sharing contractor must be technically and financially capable of undertaking the operations required in the contract.

SEC. 2. Scope of Production-sharing Contracts. - Production-sharing contracts, as herein authorized, shall be limited to lands of the public domain and offshore waters within the Philippine territory, contiguous zone and exclusive economic zone. All lands or offshore waters covered by contracts granted under this Order shall be subject to public easements established or recognized by existing laws.

SEC. 3. OSW Energy Projects in Private Domain. - Energy generation of more than one (1) megawatt from OSW resources in private lands as well as in privately-held offshore areas shall be regulated by the DOE through the existing accreditation system for power plants. Generation projects of one (1) megawatt or less shall be regulated by the local government unit/s concerned in accordance with pertinent local energy plan/s, coordinated with the national energy plan and approved by the DOE.

SEC. 4. Exclusive Privilege. - A production-sharing contract under this Order shall bestow exclusive privilege to the contractor for the exploration, development and utilization of the OSW energy resources in the contract area during the term of the contract. Such privilege shall be transferable to another qualified person only upon approval of the Secretary of the DOE.

SEC. 5. Resource-use Conflicts. - In case other natural resources are present in the contract area, the multiple-use concept shall be applied insofar as practicable subject to RA 7586 otherwise known as National Integrated Protected Area System law (NIPAS). If a natural resource-use conflict is not resolved by multiple use, the first-come-first-serve principle shall prevail.

SEC. 6. OSW Energy Resources in Government Reservations. - OSW energy resources in government reservations, except in areas that have been established and specifically delineated as protected areas

under the procedures prescribed by the NIPAS law, shall be availed of only through the production-sharing contract system under this Order.

SEC. 7. Qualification of Contractor. A contractor under this Order shall be a qualified natural or juridical person seeking to explore, develop, utilize and harness OSW energy resources in the Philippines for purposes of producing power and/or types of energy. Details of financial, technical and other qualifications of a contractor shall be specified by the Secretary of the DOE in the implementing rules and regulations of this Order.

SEC. 8. Production-sharing Contract Components. A production-sharing contract under this Order shall include a "Pre-Commercial Contract" and a "Pre-Negotiated Commercial Contract". The Pre-Commercial Contract shall involve exploration, resource assessment, piloting, feasibility studies, environment impact studies and all other studies prior to commercial production. The Pre-Negotiated Commercial Contract shall provide in terms and conditions for the commercial phase of the project which shall be negotiated at the same time as the Pre-Commercial Contract.

SEC. 9. Declaration of Commerciality. Upon determination of the commercial feasibility of the project within or at the end of the "Pre-commercial Contract", the contractor shall submit to the Secretary of the DOE a written declaration that the project is commercially feasible. The Secretary, upon review of the facts supporting such declaration and after due public consultation with the host community and local government unit/s concerned, shall issue a "Letter of Confirmation" which shall automatically bring into force the "Pre-Negotiated Commercial Contract".

SEC. 10. Contract Area. For purposes of the delineation of OSW energy contract areas under this Order, the Philippine territory, its contiguous zone and its exclusive economic zone shall be divided into meridional blocks of one-half (1/2) minute of latitude and one-half (1/2) minute of longitude, each with an area of about eighty-one (81) hectares. The minimum size of a contract area for ocean, solar or wind or any combination thereof shall be one meridional block (about 81 hectares) whether on land or offshore. The maximum area that can be awarded to a qualified person shall be 100 blocks (about 8,100 hectares) for wind or solar or their combination and 1,000 blocks (about 81,000 hectares) for ocean or a combination of ocean and wind and/or solar, all over the Philippines.

SEC. 11. Occupation Fee. For contract areas on land, an occupation fee of fifty pesos (P50.00) per hectare, or a fraction thereof,

shall be paid by the Contractor immediately upon award of the contract and yearly thereafter at the date of award. Such payment shall be made to the treasurer of the Municipality or City where the contract area is located. For contract areas offshore, the occupation fee of fifty pesos (P50.00) per hectare per year shall be paid by the contractor to the Treasurer of the Municipality or City that has jurisdiction over the offshore area immediately upon issuance of the "Letter of Confirmation" as prescribed in Section 9 of this order. For offshore areas beyond the territorial jurisdiction of any Municipality or City, as defined in the Local Government Code, the occupation fee of fifty pesos (P50.00) per hectare per year shall be paid by the contractor to the DOE immediately upon issuance of said "Letter of Confirmation".

This fee shall be allocated to the local government units in accordance with Section 292 of R.A. 7160, otherwise known as the Local Government Code of 1991. The Secretary of the DOE is authorized to increase the fee when public interest so requires.

SEC. 12. Relinquishment. During the pre-commercial phase of the contract, at least fifty percent (50%) of the Contract Area held shall be relinquished at the end of every two years subject to the approval of the Secretary of the DOE. The relinquished area shall be of a regular shape consisting of contiguous meridional blocks. The contractor shall specify the final area that will be retained for the commercial phase of the project in the "declaration of commerciality".

SEC. 13. Duration of Contract. The Pre-Commercial Contract shall have a maximum period of five (5) years of solar and/or wind and seven (7) years for ocean or in combination with solar and/or wind. The Commercial Contract, involving any of the energy resource or their combination, shall have a maximum duration of twenty-five (25) years, renewable once for the same number of years.

SEC. 14. Government Share. Considering the prospectivity of generating profit from the operation of the contract, a government share (GS) shall be determined through bidding or negotiation between the DOE and the contractor. The GS shall include a signature bonus and production bonus. The signature bonus shall be given to DOE at the date of signing of the Pre-Negotiated Commercial Contract upon the issuance of a "Letter of Confirmation" of the commercial feasibility of the project by the Secretary of the DOE. The production bonus shall be paid to the DOE at the end of each calendar year during the commercial phase of the project. To protect the welfare of electricity consumers, the GS shall be limited to values that shall not result in electricity prices higher than

the contracted selling rates to electric utility in the area where the project is located.

SEC. 15. Allocation of Government Share. The Government Share as referred to in the preceding section shall be allocated in accordance with Section 290 and 292 of Republic Act No. 7160, otherwise known as the Local Government Code of 1991.

SEC. 16. Incentives for Production-sharing Contractor. The contractor shall be granted incentives and privileges that are allowed in existing laws; and the government will further assist, if necessary, pioneering projects in OSW energy development and commercialization to make them viable.

SEC. 17. Termination and Abandonment. Termination and abandonment procedures, primarily for the purpose of environmental rehabilitation, shall be spelled out in the production-sharing contract. Commencing from the year of commercial production, the contractor shall open a "trust account" jointly in the name of contractor, the DOE and the concerned municipality/ies or city/ies wherein an amount equivalent to at least one centavo (P0.01) per kwh of electricity sold shall be deposited in a commercial bank on a quarterly basis to cover the cost of environmental assurance and rehabilitation during termination and abandonment. This amount shall be determined by the Secretary of DOE in consultation with the concerned host community/ies and local government unit/s based on environmental assurance requirement per project.

SEC. 18. Environmental Impact Assessment. The work program for the pre-commercial phase of a production-sharing contract shall include environmental impact assessment in accordance with P.D. 1586, otherwise known as the "Philippine Environmental Impact Statement (EIS) System", and its implementing rules and regulations. The Environmental Compliance Certificate arising from such environmental impact assessment shall be a supporting document to the "Declaration of Commerciality".

SEC. 19. Implementing Unit. In accordance with Section 8(d) of RA 7638, the Secretary of DOE shall create a service unit that will provide necessary ancillary services for the implementation of this Order. Funds for the operations of this unit shall be defrayed from the appropriate funds of the Office of the President in 1997 and 1998. Thereafter, the required funds for the operations of this unit may be included in the budget of the DOE in the General Appropriations Act.

SEC. 20. Implementing Rules and Regulations. The Department of Energy, in coordination with concerned government agencies shall formulate and issue the necessary implementing rules and regulations within sixty (60) days after the effectivity of this Order.

SEC. 21. Effectivity. This Executive Order shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

DONE in the City of Manila, this 29th day of Dec. in the year of Our Lord, Nineteen Hundred and Ninety-Seven.



By the President:



RUBEN D. TORRES
Executive Secretary

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