

Republic of the Philippines
DEPARTMENT OF ENERGY

ENERGY REGULATIONS NO. 1-95

***Rules And Regulations Implementing Executive Order No. 215
On Private Sector Participation In Power Generation***

Pursuant to Section 2 of Executive Order No. 215 (EO 215) allowing private sector participation in power generation activities, and relevant provisions of Republic Act No. 7638 (RA 7638) creating the Department of Energy (DOE), the DOE hereby promulgates the following amended Rules and Regulations to implement the provisions of EO 215.

PART I

GENERAL PROVISIONS OF THE RULES AND REGULATIONS

The succeeding Articles shall include the general provisions to be followed for all types of generating facilities owned by the private sector participating in power generation.

ARTICLE I

**STATEMENT OF POLICY, SCOPE
AND DEFINITION OF TERMS**

SECTION 1. *Statement of Policy.* – Pursuant to the general provisions of RA 7638, it is hereby declared a policy of the state to ensure a continuous, adequate and economic supply of energy with the end in view of ultimately achieving self-reliance in the country's energy requirements through the economic development of indigenous energy resources and through the efficient utilization of energy.

The DOE shall provide policy directions for the formulation of power system expansion plans and programs to achieve the above-stated objectives, following the approved national economic plan and consistent with policies on environmental protection, and conservation and maintenance of ecological balance.

Pursuant to Section I of EO 215, the National Power Corporation (NAPOCOR) shall continue to be responsible for the strategic and rational development of the country's power grids including the construction of associated generating facilities and the setting up of transmission line grids in Luzon, Visayas, and Mindanao. However, private corporations, cooperatives or similar associations shall be allowed to construct and operate electric generating plants and associated transmission facilities.

Furthermore, it is hereby declared the policy of the State to promote competition in generation, and to increase the responsibilities of all utilities to perform their own planning, including the acquisition of an efficient portfolio of generation and demand-side

resources. It is the intent of the State that these rules promote the ability of all utilities to meet these expanded responsibilities, in particular by ensuring transmission access at fair prices and by establishing standard NAPOCOR tariffs for services required by utilities when contracting for other sources of generation.

SECTION. 2. *Scope.* – These Rules and Regulations shall govern the relation between the DOE, NAPOCOR, the National Electrification Administration (NEA), the Energy Regulatory Board (ERB), private electric distribution utilities and cooperatives, and such private corporations, cooperatives or similar associations as may be allowed to own and operate electric generating plants and facilities that will sell all or excess electricity production to the NAPOCOR, other electric utilities, and end-users in areas within and outside the NAPOCOR transmission grids, pursuant to Section 1 of EO 215.

These rules and regulations shall be the interim set of rules that shall be amended, replaced, or repealed in due time as restructuring and privatization efforts for the Philippine power industry moves through ongoing and anticipated phases towards an increasingly competitive and efficient industry structure for the Philippine power sector.

SECTION 3. *Definition of Terms.* – As used in these rules and regulations, the following terms shall have the following respective meanings:

- a. “Avoided Cost” means the incremental cost that an electric utility would incur towards meeting its anticipated power demand if such utility does not buy power from a Private Sector Generation Facility (PSGF).
- b. “Back-up Power” means electricity supplied by NAPOCOR, or an electric utility to replace electricity ordinarily generated by PSGF during unscheduled outages of the latter.
- c. “Block Power Production Facility (BPPF)” means any electric generating facility intended primarily to sell all or the bulk of its power output to the grid, consistent with the development plans formulated by NAPOCOR and/or electric utilities, approved by the DOE.
- d. “Bottoming-cycle Cogeneration Facility” means a cogeneration facility in which the energy input to the system is first applied to a useful thermal energy process, and the reject heat emerging from the process is then used for power production.
- e. “Capacity” means the load for which a generating unit, generating station, or other electrical machine is rated by the manufacturer.
- f. “Cogeneration Facility” means a facility which produces electrical and/or mechanical energy and forms of useful thermal energy (such as heat or steam), used for industrial, commercial, heating, or cooling purposes, through the sequential use of energy.
- g. “Coincident Maximum Demand” means the maximum demand at the instant of greatest load of NAPOCOR.

- h. “Department of Energy or DOE” refers to the government agency created pursuant to RA 7638 promulgated on 9 December 1992.
- i. “Developmental Plans”, refers the Power Development Program or PDP formulated and updated yearly by the NAPOCOR and/or individual electric utilities
- j. “Distribution System”, means the electric system of an electric utility which delivers electricity from transformation points on the transmission system to the consumers or end-users.
- k. “Electric Cooperative” shall mean a corporation under RA 6038 or PD 269 as amended by PD 1645, or a cooperative supplying or empowered to supply electric service.
- l. “Electric Energy”, as commonly used in the electric utility industry, means kilowatt-hours.
- m. “Electric Utility System”, refers to the distribution system of an electric cooperative, local-government-owned and privately-owned electric utility operating within the NAPOCOR and electric utility power grids.
- n. “Electric Utility”, refers to the electric cooperative, local-government-owned and privately-owned electric utility operating within the NAPOCOR grids or other electric systems.
- o. “Energy Industry Administration Bureau or EIAB” refers to the Bureau under the DOE that shall, among others, assist in the formulation of regulatory policies to encourage and guide the operations of both government and private entities involved in energy resource supply activities including independent power production and electricity distribution.
- p. “Energy Planning and Monitoring Bureau or EPMB” refers to the Bureau under the DOE that shall, among others, supervise, coordinate, and integrate the formulation, monitoring, and review of programs and plans for energy supply development such as power development, local energy resource development and production, and energy importation.
- q. “Energy Regulatory Board or ERB” refers to the quasi-judicial agency created under Executive Order 172, dated 8 May 1987, which, among other functions, fixes and regulates the prices of petroleum products and the power rates of electric utilities, now including the NAPOCOR and the electric cooperatives, pursuant to Section 18 of RA 7638.
- r. “Energy Resource Development Bureau or ERDB” refers to the Bureau under the DOE that shall, among others, assist in the formulation and implementation of policies to develop and increase the domestic supply of local energy resources like fossil fuels, nuclear fuels, hydropower and geothermal resources.

- s. “Total Energy Input”, for purposes of calculating thermal efficiencies of cogeneration facilities, is defined as the total kilograms of fuel used multiplied by the Higher Heating Value (HHV) of the fuel input/s as received.
- t. “Franchise Area” shall mean a geographical area franchised to a public service entity such as; electric cooperative, local government or privately-owned electric utility system.
- u. “Grid” means the electrical system of interconnected transmission lines, substations and generating plants of NAPOCOR or the concerned electric utility, as the case may be.
- v. “Host Utility” means the franchised electric utility operating nearest to where, or within whose area a qualified PSGF is located.
- w. “Incremental PSG Power” means electricity supplied by NAPOCOR or an electric utility, regularly used by an owner of a qualified private sector generation facility in addition to that which the latter generates itself. It is the difference between the total electricity requirement of a private sector generator and the amount it generates.
- x. “Interconnection” means the connection of a generating facility or a power distribution facility to an electric utility system or the NAPOCOR grid.
- y. “Interconnection Costs” means the costs of all necessary interconnecting electrical equipment, protective devices and control equipment needed by a private sector generator for its PSGF to permit interconnected operations with NAPOCOR or an electric utility.
- z. “Interruptible Power” means electricity supplied by NAPOCOR or an electric utility to private sector generator subject to interruption by the former.
- a.1 “Maintenance Power” means electricity supplied by NAPOCOR or an electric utility, to a private sector generator whose PSGF is undergoing scheduled maintenance work.
- b.1 “Mini-Hydro Facilities” means hydro facilities with capacities of 101 kilowatts to 10,000 kilowatts.
- c.1 “National Electrification Administration or NEA” means the corporation, wholly-owned or controlled by the government, created under the provisions of Presidential Decree No. 269, as amended of 06 August 1973, and tasked primarily to administer the rural electrification program.
- d.1 “National Power Corporation or NAPOCOR” means the corporation, wholly-owned and controlled by the government, formed under the provisions of Republic Act No. 6395 of 10 September 1971 and tasked primarily to undertake the development of hydroelectric generation of power and the production of electricity from nuclear, geothermal and other sources, as well as the transmission of electric power on a nationwide basis.

- e.1 “Peak Demand” means the maximum integrated load demand occurring for thirty (30) minutes continuously.
- f.1 “Person” means any natural person, firm, association, corporation, business trust and partnership.
- g.1 “Primary Energy Source” means the fuel used for the generation of electricity, except that such terms do not include:
 - 1. The minimum amounts of fuel required for ignition, start up, testing, flame stabilization, and control uses, and
 - 2. The minimum amounts of fuel required to alleviate or prevent:
 - I. unanticipated equipment outages, and
 - II. emergencies, directly affecting the public health, safety or welfare, which would result from electric power outages.
- h.1. “Private Sector Generation Facility, (PSGF)” means:
 - 1. any cogeneration facility meeting the minimum thermal efficiency standards set by the DOE for cogeneration systems, or
 - 2. any renewable resource power production facility, or
 - 3. any electric generating facility that shall use indigenous energy resources as its primary energy source, or
 - 4. any electric generating facility, particularly a Block Power Production Facility, intended primarily to sell all the bulk of its power output to the grid, consistent with the development plans formulated by NAPOCOR and/or electric utilities, and approved by the DOE.
- i.1. “Private Sector Generator” refers to the owner and/or operator of the accredited PSGF.
- j.1. “Purchase” means the purchase of electricity by NAPOCOR or an electric utility from a private sector generator.
- k.1. “Rate” means any price, tariff or charge, as classified by NAPOCOR or the electric utility with respect to sale or purchase and/or wheeling of electricity.
- l.1 “Renewable Energy Sources” means sources of energy that are regenerative or virtually inexhaustible such as biomass, solar, wind, geothermal or hydro, and also means by-product materials that, but for their use as a source of energy would be considered waste.

- m.1. “Renewable Resource Power Production Facility (RRPPF)” means a facility which produces electricity by the use of renewable energy resources as its primary energy source.
- n.1. “Sale” means the sale of electricity by NAPOCOR or an electric utility to a private sector generator.
- o.1. “Spinning Reserve” means generating capacity that is on-line and ready to take load, but in excess of the current load of the electric system.
- p.1. “System Emergency” means a condition on NAPOCOR’s or an electric utility’s system which is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.
- q.1 “Thermal Efficiency”, as it pertains to cogeneration facilities, is defined as the ratio of useful energy output to the total energy input.
- r.1. “Topping-cycle Cogeneration Facility” means a cogeneration facility in which the energy input to the facility is first used to produce useful power with the reject heat recovered from power production then used to provide useful thermal energy.
- s.1 “Uncontrollable Forces” means any occurrence beyond the control of a party which causes that party to be unable to perform its obligations and which the party has been unable to overcome by the exercise of due diligence, including but not limited to flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, action or inaction of legislature, judicial or regulatory agencies, or other proper authority affecting the operation of the PSGFs, failure or sabotage of facilities which have been maintained in accordance with good engineering and operating practices in the Philippines.
- t.1 “Useful Energy Output”, for purposes of calculating thermal efficiencies of cogeneration facilities, is defined as the sum of electricity and/or mechanical power plus the useful heat in the steam or hot exhaust gases and such other thermal energy recovered for useful purposes.
- u.1. “Wheeling” means the provision of electric energy transmission services by NAPOCOR or an electric utility for the purpose of enabling the owner of an accredited PSGF to transmit power to another system or end-user.

ARTICLE II

JURISDICTION OF THE DOE, NAPOCOR, NEA AND ERB

SECTION 1. *Jurisdiction of the DOE.* – The DOE shall have overall jurisdiction in the accreditation of qualified Private Sector Generating Facilities (PSGFs). As part of its rule-making powers granted under RA 7638, the DOE shall have the authority to amend these Rules and Regulations as may be necessary if the common good so requires,

as determined upon public hearing to ascertain the nature of the exigency or cause requiring the introduction of amendments. Pursuant to Section 12(c) of RA 7638, the review, evaluation, and accreditation of qualified private sector proposals shall be undertaken by the EIAB of the DOE, based on the procedures and criteria for accreditation set forth in these Rules and Regulations.

The Director of the EIAB shall have the authority to issue Certificates of Accreditation, as well as denials of requests for accreditations, as the case may be, for and in behalf of the DOE. Decisions of the EIAB as regards applications for accreditations as a qualified PSGF are appealable within a period of thirty (30) days to the Secretary of the DOE, who in turn must decide on the case within sixty (60) days after receipt of the appeal.

SECTION 2. *Jurisdiction of NAPOCOR.* – NAPOCOR shall have responsibility for the formulation and implementation of such programs as are necessary to ensure the reliability of electricity throughout the country's power grids, consistent with the general and specific policies adopted by the DOE. In this regard, NAPOCOR may undertake required generation and transmission projects through private sector participation, subject to the provisions of these Rules and Regulations, and supplemented by Republic Act No. 6957 (An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the private sector and other purposes), the amendments thereto, and its implementing guidelines. Pursuant to NAPOCOR's functions as a bulk power generation and transmission utility, high-voltage wheeling of electricity generated by qualified PSGFs to the concerned electric utility or end-user shall be provided by NAPOCOR, where necessary.

The DOE shall require NAPOCOR and individual electric utilities, to submit power development programs which reflect an efficient portfolio of generation and demand-side resources, for the DOE's review and approval, indicating projects to be undertaken through private sector participation, the justifications for such, and indicative timetables for undertaking competitive procurement of each of the listed projects. NAPOCOR and/or individual electric utilities shall seek the DOE's prior approval to implement generation projects not included in the approved power development plans of the respective electric utilities.

SECTION 3. *Jurisdiction of the NEA.* – Pursuant to the NEA's role as a developmental and financial institution to electric cooperatives, the NEA shall make appropriate recommendations to the DOE regarding applications of electric cooperatives to build and operate power generation facilities for self-generation, as defined and allowed in the relevant provisions of Part IV of these Rules and Regulations, or applications of electric cooperatives for authority to contact their power supply requirements with PSGFs, consistent with the provisions of Part III of these Rules and Regulations.

Such endorsement by the NEA shall consider the impact of an electric cooperative's power generation proposal on the latter's ability to render efficient and reliable service to its existing customers, to expand its service coverage to non-electrified areas, and to continue its debt service to the NEA. In endorsing a cooperative's application, the NEA shall make no representation as to the overall viability of the cooperative's operations.

SECTION 4. *Jurisdiction of the ERB.* – The ERB shall have jurisdiction over the implementation of regulations concerning power rates of investor-owned electric distribution utilities, electric cooperatives, and NAPOCOR. Such authority shall include the review and approval of tariff schedules for wheeling, back-up and maintenance power, incremental PSG power, and reserve capacities carrying fees, as well as the review and approval of power purchase agreements of NAPOCOR and other franchised electric utilities between qualified PSGFs with respect to the reasonableness of power purchase rates and their corresponding impacts on electric utilities’ rates of return, as well as on end-user tariffs.

The ERB shall hear and arbitrate disputes between and/or among franchised electric utilities, NAPOCOR, and qualified PSGFs on matters which have implications on rates of NAPOCOR and/or electric utilities.

ARTICLE III

QUALIFICATIONS OF A PRIVATE SECTOR GENERATION FACILITY AND A PRIVATE SECTOR GENERATOR

SECTION 1. *Ownership.* – Qualifications as to ownership of a PSGF shall be any of the following:

- a. A PSGF may be constructed, owned and operated by private persons, private corporations, cooperatives or other similar associations not primarily engaged in the transmission and/or distribution of electricity, and shall be governed by applicable Philippine Laws on corporations or similar associations as to registration, independent auditing, taxation and other related matters as provided by said laws. Foreign entities may participate in electricity generation subject to applicable Philippine laws.
- b. Private corporations, cooperatives and similar associations primarily engaged in the transmission and/or distribution of electricity, referred to in these Rules and Regulations as electric utilities, may own, construct and operate generating facilities, subject to electric utility regulations concerning rates, financial limitations, taxes and other laws applicable to their operations as electric utilities, and subject to the specific provisions of Part IV for “Electric Utility-Owned Generation Facilities”.
- c. Companies or consortium of companies, whether private or government-owned, primarily engaged in indigenous energy upstream exploration, development and production activities, may own, construct and operate generation facilities to the extent that the primary energy source in power generation shall come from the local production of such companies or consortiums of companies, and subject to limitations provided by relevant legislations, regulations, and/or service contract terms of the DOE, and the specific provisions on Block Power Production Facilities (BPPFs), where applicable.

Majority interest of NAPOCOR and/or any other electric utility on the equity of a PSGF shall be considered as ownership by an electric utility, and shall, thus, be subject to applicable utility regulations. A PSGF in which NAPOCOR and/or any other utility has minority interest, and in which the majority interest is being held by non-utility companies shall be governed by applicable laws other than for electric utilities.

For entities availing of incentives offered under the government's annual Investment Priorities Plan, such entities shall be guided by relevant legislation thereto.

SECTION 2. *Technical and Financial Qualifications.* – Private Sector Generators, more particularly private corporations, cooperatives, and similar associations seeking to construct, own, and operate power generation facilities under these Rules and Regulations, must possess the technical capability (I.e., engineering and management qualifications) and a proven track record in the field of power generation, particularly in the generation technology being proposed. A Private Sector Generator must likewise demonstrate the financial strength and capability to undertake the scale of project being proposed under these Rules and Regulations.

SECTION 3. *Facility Classification.* – A PSGF referred to in this Part of these Rules and Regulations shall include the following electric generating plants:

- a. Electric generating facilities intended primarily to sell all the bulk of its power production to the grid (i.e., to NAPOCOR or to other electric utilities), consistent with the developmental plans formulated by NAPOCOR and/or electric utilities and approved by the DOE;
- b. Cogeneration facilities such as topping-or bottoming-cycle facilities, utilizing fossil fuels or a blend of fossil fuels and renewable energy forms, meeting engineering, operating and efficiency standards as prescribed in Section 5 of this Article;
- c. Renewable Resource Power Production Facilities such as those using biomass, solar, wind, geothermal, hydro or wastes as the primary source of energy; and
- d. Electric generating facilities that shall use indigenous energy resources as their primary fuels.

SECTION 4. *Size of Generating Units.* – The maximum size of a generating unit of a PSGF shall be limited to the existing largest generating unit size or 10% of the coincident maximum demand of the concerned NAPOCOR grid or as allowed by DOE. For areas not covered by the main transmission networks of NAPOCOR, the size of generating units shall be limited by the power demand in the concerned isolated area, island or grid, taking into account reasonable projections of load growth over the period of PSGF commissioning.

SECTION 5. *Engineering, Operating and Efficiency Standards.* – A PSGF shall be guided by internationally-accepted standards in engineering, operations and reliability.

Cogeneration facilities utilizing fossil fuels, or a blend of fossil and renewable energy sources, shall be required to meet the minimum thermal efficiency standard set

forth in Part II of these Rules and Regulations, for purposes of availing incentives offered under the Investment Priorities Plan of the Board of Investments and/or securing a DOE accreditation as a qualified Cogeneration facility under these Rules and Regulations.

SECTION 6. *Economic Criteria.* – Any proposed electric generating facility should be able to demonstrate its potential for providing net foreign exchange savings to the country, by virtue of:

- a. generating electric energy more efficiently or cheaper than can otherwise be generated by existing or programmed generation facilities under the power development plans of NAPOCOR and/or other electric utilities;
- b. using indigenous and/or renewable energy sources; and
- c. accessing lower costs of capital, cheaper plant investment, and/or locally manufactured equipment..

ARTICLE IV

GENERAL PROCEDURES FOR APPLYING FOR ACCREDITATION AS A PRIVATE SECTOR GENERATION FACILITY

SECTION 1. *Contents of Application.* – The contents of application for accreditation as a qualified PSGF should generally contain the following information:

- a. Name and address of the applicant and location of the proposed facility;
- b. Project organizational setup;
- c. Names of cooperating/participating companies, equity participation, incorporation documents, audited financial statements for the last two fiscal years, and records of successful experience in similar activities in the last five (5) years;
- d. Project financing plans;
- e. Administrative and technical manpower complement;
- f. Facility classification and general plant description
- g. Sale of PSGF generation (whether generation is solely for sale to the grid, dedicated to an electric utility, or for internal use with provision for sale of excess power to the grid);
- h. Projected mode of operation (baseload or peaking);
- i. Power and annual energy production capacity in (kW and kWh, respectively) of the proposed facility;
- j. Primary energy source (fuel) of the facility, heating value, and net plant heat rate;
- k. Projected forced outage rate, maintenance days, dependable capacity, and station energy use;
- l. Projected economic life of project and proposed duration of interconnection/cooperation period;
- m. Interconnection plans with NAPOCOR or other electric utility;
- n. Detailed project timetable, including target periods for financial closing, groundbreaking, installation of major plant equipment, testing and commissioning of the facility;

- o. Any other information as may be required under the specific provisions of Parts II, III and IV, or as may be deemed necessary by the EIAB for evaluation purposes.

SECTION 2. *Facilities Qualified for Accreditation.* – A Private Sector Generation Facility (PSGF) which meets the qualifications for accreditation set forth in Sections 1 through 6 of Article III is a qualified PSGF.

SECTION 3. *Accreditation by the EIAB.* – The owner or operator of a proposed PSGF intending to sell all or its excess power production to the grid, and whether the facility is existing or shall be constructed, and whose generating unit is subject to the limitations under Article III hereof, shall apply for accreditation as a qualified PSGF to the EIAB.

Provided that all the information requirements shall have been complied with, the EIAB shall approve or deny any application for accreditation as a qualified PSGF, based on the foregoing qualifications for accreditation in Article III, within two (2) months from the date of application, unless EIAB shall have required the submission of additional information, or postponement of final action on an application for reasonable grounds. Any order postponing final action on application shall state specifically the grounds for postponement, and the date on which a final ruling shall be issued.

The EIAB shall issue Certificates of Accreditation to PSGFs which are found to have qualified under these Rules and Regulations.

SECTION 4. *EIAB Issuance of Provisional Accreditations.* – The EIAB may issue provisional accreditations to PSGFs qualifying under Sections 1,3,4,5 and 6 of Article III of this Part of the Rules and Regulations if the Private Sector Generator is able to demonstrate in its formal application sound, reasonable, and time bound development plans, consistent with overall timetables for project commissioning, for the formation of a technically and financially qualified consortium or collaborative of corporations to undertake the proposed PSGF.

In all cases, notwithstanding compliance with Sections 1 through 6 of Article III, the EIAB may impose the timebound achievement of specific project milestones with the end in view of ensuring the timely of the timely completion of the proposed facility, as well as for monitoring the progress of the provisionally-accredited PSGF.

Provisional accreditations issued by EIAB shall have a maximum validity period of one (1) year. The EIAB may decide on the extension or non-extension of the provisional accreditation on the basis of progress made by the proponent towards complying with the conditions of the provisional accreditation, ensuring timely completion of the project, and EIAB's evaluation of the continued viability of the proposed generation project.

SECTION 5. *Non-transferability of Accreditation.* – Accreditation issued by the EIAB shall not be transferable or assignable except to subsidiaries, affiliated companies and/or partners, determined to be technically and financially-qualified by the EIAB, of the originally-accredited owners/proponents of the qualified PSGFs.

Transferability of accreditation issued to electric utilities shall be governed by the relevant provisions of Part IV on “Electric Utility-Owned Generation Facilities”.

SECTION 6. *Representation During Accreditation and Negotiation.* – Where proposals for PSGFs are submitted by persons or entities, foreign or local, other than the organization which is or will be set up to construct, own and operate the facilities, agreement made during any negotiation after accreditation shall not legally bind parties involved thereto until such time when a contract for the sale of power is agreed upon and signed. Preparation of such contract between NAPOCOR or the electric utility and the organization, existing or newly created, owning the PSGF shall be based on documentary support such as Letters of Intent and Memorandum of Agreement made and signed during any negotiation.

SECTION 7. *Action on Modification of a PSGF.* – Prior to undertaking any substantial alteration or modification of a PSGF which has been certified under these Rules and Regulations, the owner or operator of such qualified PSGF shall apply to the EIAB for a ruling that the proposed alteration would not result in a revocation of the facility's qualified status. The term "substantial alteration or modification of a qualified PSGF" means such alteration, modification or other changes as will materially affect the accuracy of the information submitted pursuant to Article III and Section 1 of this Article under this Part of the Rules and Regulations.

SECTION 8. *Revocation of Qualified Status.* – The EIAB may revoke the qualified status of a PSGF which has been accredited under this Article if such facility fails to comply with the requirements of these Rules and Regulations, or any of the conditions contained in the Certificate of Accreditation, whether provisional or not, issued by the EIAB. The EIAB shall advise relevant parties of its decision to revoke the qualified status of a PSGF, citing the reasons for such revocation.

SECTION 9. *EIAB Monitoring of Accredited PSGFs.* – Owners/proponents of accredited PSGFs shall submit quarterly status reports on the progress of each accredited project to the EIAB, and shall immediately inform the EIAB of any substantial changes in the project that may have an impact on the PSGF's qualified status. The PSGF shall likewise urgently advise the EIAB on the attainment of project milestones (e.g., site groundbreaking, issuance of environmental clearances and other permits, financial closing, etc.) for monitoring purposes.

The EIAB shall render quarterly reports to the DOE Secretary on the progress of accredited projects. Copies of these reports shall be regularly furnished to concerned bureaus and agencies of the DOE for information and coordination.

SECTION 10. *Generation by Cogeneration and Renewable Resource Power Production Facilities (RRPPFs).* – Proponents/owners of Cogeneration and Renewable Resource Power Production Facilities (RRPPFs) shall be further guided by the specific provisions under Part II of these Rules and Regulations.

SECTION 11. *Generation by Block Power Production Facilities (BPPFs).* – Generation projects under any power development plan approved by the DOE, more particularly referred to as Block Power Production Facilities (BPPFs), shall be further guided by the specific provisions under Part III of these Rules and Regulations.

SECTION 12. *Generation by Companies or Consortiums Primarily Engaged in Energy Upstream Operations.* – Construction and operation of PSGFs by energy upstream companies or consortiums shall be further guided by the relevant provisions of Part II or Part III of these Rules and Regulations, as applicable.

SECTION 13. *Generation by Electric Utilities.* – PSGFs owned by electric utilities whose facilities are intended for self- generation shall be further guided by the specific provisions under Part IV of these Rules and Regulations.

SECTION 14. *Generation by Non-utilities Primarily for Internal Use.* – A non-utility PSGF whose generation is solely for the owner's internal use need not apply for accreditation with the EIAB, but shall inform the EIAB in writing of its power generation plans. If in the future there is a likelihood that sale to NAPOCOR or electric utilities would occur, the PSGF shall apply for accreditation with the EIAB following the provisions of these Rules and Regulations.

ARTICLE V

RIGHTS OF NAPOCOR AND THE CONCERNED ELECTRIC UTILITY ON THE DESIGN AND OPERATION OF THE PRIVATE SECTOR GENERATION FACILITY

SECTION 1. *Right to Review.* – NAPOCOR and/or the concerned electric utility shall have the right to review the design of the qualified PSGF and its interconnection and fuel storage facilities. Any flaws perceived by NAPOCOR and/or the concerned electric utility in the design of the PSGF shall be described and communicated in writing to the owner of the PSGF, with a copy furnished to the EIAB. Internationally-accepted engineering standards shall be utilized as reference in this review process.

SECTION 2. *Right to Monitor.* – NAPOCOR and/or the concerned electric utility shall have the right to monitor the construction work and construction schedule, start-up, operation and maintenance, and fuel inventory practices of the PSGF, and shall have the right to consult with and make recommendations to the owner of the PSGF.

ARTICLE VI

OBLIGATIONS OF NAPOCOR, ELECTRIC UTILITIES, AND OWNERS OF QUALIFIED PRIVATE SECTOR GENERATION FACILITIES

SECTION 1. *Interconnection of Accredited PSGFs.* – NAPOCOR and franchised electric utilities with transmission and/or distribution facilities of 69 KV or above shall file with the ERB standard interconnection policies and procedures, and wheeling tariffs for the ERB's approval.

NAPOCOR, privately-owned electric utilities, and electric cooperatives connecting with a PSGF shall submit to the ERB a copy of any interconnection agreement

for its review and approval, in line with ERB's rate-setting function. The interconnection agreement shall include the agreements reached on matters pertaining to rates of purchase and sales, operating and maintenance schedules, procedures for dispatch, protective and metering devices and other items that are important to both parties. Copies of such interconnection agreements shall be submitted to the EIAB for monitoring purposes.

SECTION 2. *Transmission to Electric Utilities (Wheeling).* – Wheeling of power shall be guided by standard interconnection policies, procedures, and tariffs submitted to and approved by the ERB. Wheeling rates, charges, terms, and conditions shall permit the recovery by such utility of all the costs incurred in connection with the transmission and necessary associated services, and the costs of any required expansion of transmission facilities. The appropriate share, if any, of legitimate, verifiable, economic costs associated with the provision of transmission services may be included in these charges, while taking into account any benefits of providing such services to the transmission system.

Such rates, charges, terms, and conditions should promote the economic and efficient transmission and generation of electricity, and shall be just and reasonable, and not unduly discriminatory or preferential. Rates, charges, terms, and conditions for transmission services provided shall ensure that, to the extent possible, costs incurred in providing wholesale transmission services, as well as property allocated to the provision of such services, are recovered from the concerned PSGF, and not from a transmitting utility's existing wholesale, retail, and transmission customers. Utility regulations concerning rates, financial limitations, and taxes shall apply to wheeling tariffs of NAPOCOR and other electric utilities.

SECTION 3. *Provision on Spinning Reserve.* – The owner of the PSGF shall maintain a continuous spinning reserve at all times to the extent possible and under terms to be agreed upon with NAPOCOR or the concerned electric utility.

SECTION 4. *Safety Requirements.* – The owner of the PSGF shall provide and install protective devices in their facilities as a safeguard from any NAPOCOR or electric utility system disturbances.

SECTION 5. *Periodic Reporting to the EIAB and the Concerned Electric Utility.* – The owner of the PSGF shall regularly submit to the concerned electric utility and the EIAB in a prescribed form, operating, and other information as may be required by the utility and the EIAB for monitoring and planning purposes. The EIAB shall furnish copies of such reports to other relevant units and line agencies of the DOE.

ARTICLE VII

PURCHASE OF POWER

SECTION 1. *General Provision.* – NAPOCOR and/or the concerned electric utilities shall purchase that power (electric energy and/or capacity) needed to serve its anticipated demand (including reasonable reserve requirements) at rates that shall not be more than their “avoided cost”. “Avoided cost” as herein defined shall mean the least

incremental cost that an electric utility would incur towards meeting its anticipated power demand, if such utility does not buy power from a PSGF.

SECTION 2. *Purchase Rates Qualification.* – Rates for purchase shall:

- a. Be just and reasonable to the electric customers of NAPOCOR and/or other concerned electric utilities, and in the public interest; and
- b. Be in accordance with guidelines set by the EIAB on this matter where full and/or excess energy production shall be sold to the systems of concerned electric utilities. An acceptable competitive procurement scheme (e.g., bidding) is one means of setting avoided cost as well as reasonable purchase rates.

SECTION 3. *Adjustments in Financial Accounting.* – NAPOCOR and the concerned electric utilities shall accordingly adjust their financial accounting systems and procedures resulting from purchases of electricity from private sector generators. The rate of return on rate base levels shall then be determined after all adjustments have been made and set in place.

SECTION 4. *Determination of Avoided Cost.* – The EIAB, in coordination with the ERB and in consultation with NAPOCOR, electric utilities and other relevant private sector entities, shall formulate and adopt a standard methodology for the calculation of NAPOCOR's and electric utilities' avoided costs. Criteria for competitive procurement schemes (e.g., bidding) shall also be formulated to define acceptable means of solicitation that can also provide the basis for determining an electric utility's avoided costs and reasonable purchase rates. Said methodology and criteria shall be formulated by the EIAB within three (3) months from the effectivity of these Rules and Regulations, and disseminated to relevant agencies, including ERB, NAPOCOR, and concerned electric utilities for information and immediate adoption.

The EIAB, to the extent possible, shall take into account the following factors in its formulation of a standard methodology for the calculation of avoided cost:

- a. The structure of the incremental costs that would have been incurred by NAPOCOR and/or other electric utilities had they built the required generation facilities and/or generated electric power themselves to serve its anticipated demand (including reasonable reserve requirements);
- b. The availability of capacity and energy from n qualified PSGF during the system daily and seasonal peak periods, including, but not limited to:
 1. The ability of the NAPOCOR or the concerned electric utility to dispatch the qualified PSGF;
 2. The expected or demonstrated reliability of the qualified PSGF, and the corresponding value of reserve capacity required to be carried by NAPOCOR and/or other electric utilities;

3. The extent to which scheduled outages of the qualified PSGF can be usefully coordinated with scheduled outages of the NAPOCOR or the electric utility's facilities;
 4. The individual and aggregate value of energy and capacity from qualified PSGFs on NAPOCOR's or the electric utility's system;
- c. The ability of NAPOCOR or the affected electric utility to avoid costs, including the deferral of capacity additions and the reduction of fossil fuel use;
 - d. The costs of saving resulting from variations in line losses from those that would have existed in the absence of purchases from a qualified PSGF; and
 - e. The costs of environmental mitigation measures necessary to ensure compliance with regulations and standards on environmental management. For purposes of promoting the economic utilization of specific indigenous and renewable energy forms, the DOE may, in line with its rule-making powers, fix power purchase rates for electricity generated from such resources after due consultation with relevant private and government entities.

ARTICLE VIII

RATES FOR SALES

SECTION 1. *General Rules.* – NAPOCOR or any concerned electric utility shall sell to any owner of a qualified PSGF electricity requested by the latter. Except for back-up power, rates for sales of NAPOCOR and/or the concerned electric utility to the qualified PSGF shall be based on the net interchange of energy between the said qualified PSGF and NAPOCOR or the concerned electric utility. If said interchange of energy results in requiring the PSGF to pay for electricity used, the applicable rates in this case shall be the rates stipulated in a contract between the qualified PSGF and NAPOCOR or the concerned electric utility.

SECTION 2. *Services to be Provided to any Qualified PSGF.* – As contracted with the owner of a qualified PSGF, NAPOCOR or the concerned electric utility shall provide:

1. Incremental PSG power;
2. Back-up power;
3. Maintenance power; and
4. Interruptible power.

SECTION 3. *Rates for Back-up and Maintenance Power,* – NAPOCOR and the individual electric utilities shall submit to the ERB, for the latter's review and approval, rates for sales of back-up and/or maintenance power to qualified PSGFs.

ARTICLE IX

OPERATING STANDARDS, ENVIRONMENTAL CONCERNS AND OTHER MATTERS

SECTION 1. *Standards for Operations and Reliability.* – Qualified PSGFs, NAPOCOR, and other electric utilities shall follow established internationally-accepted engineering standards to ensure safety, system security, and reliability for interconnected system operations. NAPOCOR and the concerned electric utilities shall have the right to physically inspect the power installations and witness the testing and commissioning of the PSGF that will be interconnected to its system to ensure that all necessary equipment are in place and functioning properly.

SECTION 2. *Operating Structure.* – The qualified PSGF directly connected to the NAPOCOR grid shall be operated by its owner in accordance with the terms of the interconnection agreement with NAPOCOR and/or the concerned electric utility with respect to the wheeling and/or purchase of electricity generated by said PSGF.

SECTION 3. *Environmental Concerns.* – Qualified PSGFs shall meet standards on environmental management, including, among others, those on air quality, noise levels, water quality, solid waste, emission balances and controls, land use and aesthetics as required by law through appropriate government agencies.

SECTION 4. *Content of Contract.* – Consistent with these Rules and Regulations, all contracts between the owners of PSGFs, and NAPOCOR or the concerned electric utility shall include, among others, the following:

- a. Identification of Parties;
- b. Recitals (rationale of contract);
- c. Considerations (general agreements);
- d. Purchase and Sale (stipulation of power purchase and sale);
- c. Conditions of Delivery:
 1. Point of Delivery
 2. Character of Service ((technical specifications for expected power output)
 3. Power Factor
 4. Continuity/reliability
- f. Rates for Purchase from Facility and Adjustment clauses;
- g. Rates for Sale to Facility and Adjustment clauses;
- h. Billing Periods and Payment Terms;
- i. Penalty and Discount Clauses;
- j. Rights and Obligations of NAPOCOR/Electric Utility and PSGF as to:
 1. Ownership, Design, Operation and Maintenance
 2. Construction Requirements
 3. Plans and Specifications
 4. Inspection and Tests
 5. Change of Equipment
 6. Costs
 7. Control and Protective Apparatus

- 8. Location
 - 9. Deliveries and Amount of Production
 - 10 Notices
 - 11. Land Rights
 - 12. Regulatory Approvals
 - 13. Codes and Standards
 - 14. Removal of Equipment
 - 15. Provisions for Contract Violation
- k. Operations;
 - 1. Date of Operation
 - 2. Operating Procedure
 - 3. Sell-back Conditions
 - l. Safety Requirements;
 - m. Force Majeure;
 - n. Meter Provisions and Metering Arrangements;
 - o. Right to Access for Inspection, etc.;
 - p. Liability of Each Party with Respect to Operations;
 - q. Duration of Contract and Conditions for Contract Cancellation;
 - r. Provision for Security; and
 - s. Additional Provisions.

SECTION 5. *Force Majeure*. – Neither party to a contract shall be in default if failure of performance of the terms of the contract is caused by factors due to acts of God, nature, or uncontrollable forces.

PART II

SPECIFIC PROVISIONS FOR COGENERATION AND RENEWABLE RESOURCE POWER PRODUCTION FACILITIES

In addition to the provisions of Part I of these Rules and Regulations, the following Articles shall guide proponents/owners of Cogeneration or Renewable Resource Power Production Facilities (RRPPFs).

ARTICLE I

DEFINITIONS OF COGENERATION AND RENEWABLE RESOURCE POWER PRODUCTION FACILITIES

SECTION 1. *Definition of Cogeneration Facilities*. – Cogeneration facilities, as defined in these Rules and Regulations, means a facility which produces electrical and/or mechanical energy and forms of useful thermal energy (such as heat or steam), used for industrial, commercial, heating, or cooling purposes, through the sequential use of energy.

A cogeneration facility may either be a topping-cycle or bottoming-cycle facility. A topping-cycle cogeneration facility means a cogeneration facility in which the energy input to the facility is first used to produce useful power with the reject heat recovered

from power production then used to provide useful thermal energy, while a bottoming-cycle facility refers to a cogeneration facility in which the energy input to the system is first applied to a useful thermal energy process, and the reject heat emerging from the process is then used for power production.

SECTION 2. *Definition of Renewable Resource Power Production Facilities (RRPPFs)*. – RRPPFs, as defined in these Rules and Regulations, refers to any facility which produces electricity by the use of renewable energy resources as its primary energy source. Renewable energy sources means sources of energy that regenerative or virtually inexhaustible such as biomass, solar, wind, geothermal or hydro, and also means by-product materials that, but for their use as a source of energy, would be considered waste.

Primary energy source, on the other hand, means the fuel/s used for the generation of electricity, except that such terms do not include:

- a. The minimum amounts of fuel required for ignition, start up, testing, flame stabilization and control uses, and
- b. The minimum amounts of fuel required to alleviate or prevent:
 - i. unanticipated equipment outages, and
 - ii. emergencies, directly affecting the public health, safety or welfare, which would result from electric power outages.

ARTICLE II

QUALIFICATIONS OF RRPPFs AND COGENERATION FACILITIES

SECTION 1. *Accreditation of RRPPFs and Cogeneration Facilities*. – An RRPPF meeting the general qualifications under Article III of Part I of these Rules and Regulations is a qualified PSGF. A cogeneration facility is a qualified PSGF under these Rules and Regulations if it meets the general qualifications under Article III of Part I, and the thermal efficiency standard for cogeneration projects, as defined in Section 2 of this Article.

SECTION 2. *Thermal Efficiency Standards for Cogeneration Facilities*. – In addition to the general qualifications for accreditation under Article III of Part I of these Rules and Regulations, cogeneration facilities should be able to achieve a minimum thermal efficiency of sixty (60) percent for purposes of availing incentives offered under the Investment Priorities Plan of the Board of Investments and/or securing accreditation from the EIAB as a qualified PSGF. The DOE shall review the applicability of such thermal efficiency standard for cogeneration from time to time, considering the viability of efficiency advances in generation technologies, boilers, and heat recovery systems.

Thermal efficiency, as herein defined, means the ratio of useful energy output to the total energy input, calculated on an annual basis.

Useful energy output, for purposes of calculating thermal efficiencies of cogeneration facilities, is defined as the sum of electricity and/or mechanical power plus the useful heat in the steam or hot exhaust gases, and such other thermal energy recovered for useful purposes.

Total energy input, on the other hand, is defined as the total kilograms of fuel used multiplied by the Higher Heating Value (HHV) of the fuel input/s as received.

SECTION 3. *Cogeneration Facilities Utilizing Renewable Energy Sources.* – Cogeneration facilities utilizing renewable energy forms as its primary energy source shall be classified as Renewable Resource Cogeneration Facilities for purposes of accreditation as qualified PSGFs. Cogeneration facilities utilizing renewable energy sources and fossil fuels, either through a blend, combination, or alternating use of such fuels, shall be treated and evaluated as Cogeneration Facilities. By virtue of this distinction, Renewable Resource Cogeneration Facilities shall not be subject to minimum thermal efficiency standards required for cogeneration facilities under Section 2 of this Article.

SECTION 4. *Ownership of Cogeneration Facilities.* – Any private corporation, cooperative, or similar associations requiring thermal and electric energy for industrial, commercial, heating, or cooling purposes (thermal host) may own and operate cogeneration facilities intended to supply their internal requirements for thermal and electric energy, and to sell any excess power generation to the grid.

Private corporations, cooperatives, or similar associations, other than the thermal hosts described above, shall be allowed to own and operate cogeneration facilities, and to sell electric and thermal energy directly to the concerned thermal hosts, as well as to sell any excess power generation to the grid, under exclusive contracts with the thermal host and/or concerned electric utility, and subject to the provisions and limitations of the Public Service Law.

ARTICLE III

PROCEDURES FOR APPLYING FOR ACCREDITATION AS A COGENERATION OR RENEWABLE RESOURCE POWER PRODUCTION FACILITY

SECTION 1. *Period of Processing.* – All Cogeneration and RRPPFs intending to sell the excess or all its power production to NAPOCOR or any electric utility and/or thermal host shall apply for accreditation with the EIAB. Provided all requirements shall have been complied with, the EIAB shall approve or deny any application for accreditation for qualified PSGF status within one (1) month from the date of the application, unless the EIAB shall have required the submission of additional information, or ordered the postponement of final action on an application for reasonable grounds.

SECTION 2. *Accreditation of Mini-Hydro Projects.* – Applications concerning the construction and operation of mini-hydro facilities shall be governed by the implementing rules and regulations of Republic Act No. 7156 (Mini-hydro Act of 1991), promulgated

by the Office of Energy Affairs in August 1992. Such applications shall be referred by the EIAB to the Energy Resource Development Bureau (ERDB) of the DOE.

Evaluation and processing of such applications shall be undertaken by the Mini-Hydro Division of the ERDB. The ERDB shall inform the proponents and the EIAB of its decision to issue or deny a license to construct and operate mini-hydro facilities within a period of four (4) months, provided all information requirements to process the application have been submitted to the Mini-Hydro Division. The EIAB shall thereafter prepare and issue the appropriate accreditation certificates for mini-hydro projects approved by the ERDB.

SECTION 3. *Accreditation of Waste-to-Energy Facilities.* – Prior to filing an application with the EIAB for accreditation as a qualified PSGF under these Rules and Regulations, RRPPFs utilizing fuels derived from municipal solid wastes, or by-product materials that, but for their use as a source of energy, would be considered waste, shall first seek an endorsement from the appropriate government authority (i.e., the Presidential Task Force on Solid Waste Management, the Department of Environment and Natural Resources) certifying that the proposed Waste-to-Energy facility is consistent with the overall country framework for solid waste management. Such requirement may be waived by the EIAB for agricultural and industrial wastes not generally classified as municipal solid wastes.

Notwithstanding any endorsement or certification from the appropriate government authorities on environmental/waste management, qualified Waste-to-Energy facilities shall meet standards on environmental management in accordance with the provision of Section 3, Article IX, Part I of these Rules and Regulations.

SECTION 4. *Contents of Applications for Cogeneration Facilities.* – In addition to the general information requirements listed in Section 1, Article IV, Part I of these Rules and Regulations, applications for accreditation as a qualified Cogeneration Facility shall contain the following information:

- a. Minimum, maximum, and average volumes of steam and/or thermal energy required for industrial, commercial, heating or cooling purposes, on a monthly and annual basis, together with the required temperatures, pressures, and conditions of such volumes;
- b. Minimum, maximum, and average requirements of power and electric energy on a monthly and annual basis;
- c. A description of the basic industrial, commercial, heating, or cooling processes requiring any amounts of thermal and/or electric energy;
- d. Single-line mass-balance and energy flow diagrams indicating volumes and conditions of exhaust gases, steam, heat, and electric energy produced and utilized at various points of the cogeneration cycle;
- e. Detailed calculation of the overall thermal efficiency of the cogeneration system, including assumptions used for ambient temperature, fuel heating values, and other parameters; and

- f. Other information that may be required by the EIAB in evaluating a cogeneration proposal.

SECTION 5. *Contents of Applications for RRPPFs.* – In addition to the general information requirements listed in Section 1, Article IV, Part I of these Rules and Regulations, applications for accreditation as a qualified RRPPF shall include detailed information on fuel supply, collection, and delivery systems in the form of a feasibility or pre-feasibility study. The EIAB may require the submission of any other information that may be necessary for the exhaustive evaluation of RRPPF proposals.

ARTICLE IV

OBLIGATIONS OF NAPOCOR, ELECTRIC UTILITIES, AND OWNERS OF Qualified RRPPFs AND COGENERATION FACILITIES

SECTION 1. *Purchase of Electric Energy from Qualified RRPPFs and Cogeneration.* –For facilities whose power production is also intended for sale to the grid, the qualified RRPPF or Cogeneration shall apply and negotiate for the sale of its power with the franchised electric utility within whose area said facility is located (host utility). If sale is hindered by any disagreement, the owner of the facility may negotiate with NAPOCOR or any other electric utility for the latter to purchase its generation. If after further negotiation NAPOCOR or the concerned electric utility shall not purchase the generation, the owner of the RRPPF or Cogeneration shall apply to the EIAB for a ruling that said facility shall sell to NAPOCOR.

SECTION 2. *Interconnection and Transmission (Wheeling).* – The host utility shall be obligated to interconnect the qualified RRPPF or Cogeneration facility and wheel the electricity generated to a third party (electric utility or end-user) through the former's transmission and/or distribution lines of 69 KV or higher. The rate for purchase by the third party (electric utility or end-user) to which such electricity is transmitted shall be accordingly adjusted to reflect line losses and the corresponding wheeling charges of the host utility.

SECTION 3. *Interconnection Costs.* – Upon effectivity of an agreement for interconnection by the owner of the qualified RRPPFs or Cogeneration facilities and NAPOCOR or the concerned electric utility, NAPOCOR or the electric utility may issue an order requiring the owner of said RRPPF or Cogeneration facility to advance investments for the necessary interconnecting electrical equipment and devices in accordance with appropriate electrical plans approved by NAPOCOR and/or the concerned electric utility. Repayment for the investment on these facilities shall be done following arrangements mutually agreed upon by contracting parties. Maintenance costs for the interconnection facilities shall be borne by the concerned electric utility.

For RRPPFs and cogeneration facilities with capacities of less than 10,000 kilowatts, however, NAPOCOR or the concerned electric utility shall shoulder all costs needed for the realization of the physical connection of the PSGF to the former's

transmission facilities. Maintenance costs for the interconnection facilities shall also be borne by NAPOCOR or the concerned electric utility.

SECTION 4. *System Emergencies*. – RRPPFs and cogeneration facilities shall be obligated to provide power to NAPOCOR or the concerned electric utility during system emergencies to the extent provided under their agreement.

ARTICLE V

RATES FOR PURCHASES

SECTION 1. *Rate Satisfaction*. – Rates for purchases from qualified RRPPFs or Cogeneration facilities must satisfy the requirements set forth under Sections 2 and 4 of Article VII, Part I of these Rules and Regulations. In the case in which the rates for purchases are based upon estimates of NAPOCOR and/or the concerned electric utility's "avoided cost" over the specific period of a contract, the rates for such purchases do not violate this Article if these rates differ from NAPOCOR's or the concerned electric utility's "avoided cost" at the time of delivery.

SECTION 2. *Purchases "as available"*. – The rates for purchases of energy and capacity on an "as available" basis shall be based on NAPOCOR's and/or the purchasing electric utility's costs calculated *at the time of delivery* and stipulated in a contract to purchase. Energy and capacity on an "as available" basis shall mean electricity supplied by RRPPFs or Cogeneration facilities to NAPOCOR and/or an electric utility following a schedule provided by the RRPPF or Cogeneration owner as to time and period and agreed to by NAPOCOR or concerned electric utility.

SECTION 3. *Rates for Purchases of Power Generated by RRPPFs and Cogeneration Facilities with Capacities of less than 10,000 kilowatts*. – NAPOCOR shall formulate and adopt, subject to ERB's review and approval, a schedule of power purchase rates which reflects the structure of capacity and energy costs of NAPOCOR for varying levels of power availability and dispatchability. Such power purchase rates shall be adopted as standard power purchase rates for RRPPFs and Cogeneration facilities less than 10,000 kilowatts upon ERB approval of such rates to facilitate price negotiations with NAPOCOR and/or other electric utilities and qualified RRPPFs or Cogeneration facilities.

PART III

SPECIFIC PROVISIONS ON BLOCK POWER PRODUCTION FACILITIES

The following Articles shall further guide proponents/owners of Block Power Production Facilities (BPPFs), in addition to the general provisions of Part I of these Rules and Regulations.

ARTICLE I

DEFINITIONS AND QUALIFICATIONS OF A BLOCK POWER PRODUCTION FACILITY AS A QUALIFIED PSGF

SECTION 1. *Definition of Block Power Production Facilities.* – Block Power Production Facilities, or BPPFs, refer to power generation facilities forming part of the approved power development plans of NAPOCOR and/or other electric utilities, and which shall be implemented through private sector participation via the Build-Own-Operate, Build-Operate-Transfer, Build-Transfer-Operate, or other variants of the aforementioned private power schemes.

Renewable energy-based power generation facilities forming part of NAPOCOR's and/or electric utilities' development plans are BPPFs.

SECTION 2. *Formulation and Submission of Power Development Plans of NAPOCOR and/or Other Electric Utilities.* – Pursuant to Section 1 of Article I, and Sections 1 and 2 of Article II, Part I, the DOE shall require NAPOCOR and/or individual electric utilities to submit power development programs, for the DOE's review and approval. NAPOCOR shall submit to the DOE an annual update of its Power Development Program (PDP) on or before the first day of June beginning 1995 and every year thereafter.

Such submissions should include NAPOCOR's system load forecasts and generation requirements, resource and technology assessments and evaluations, cost assumptions and other technical parameters, and the resulting system expansion plans for NAPOCOR's major and small-island power grids. NAPOCOR submissions should identify power generation projects to be undertaken through private sector participation, the justifications for such, and the indicative timetables for undertaking prequalification of interested private sector entities, tendering of bids, evaluation, and award of private power contracts for each of the projects identified.

Individual electric utilities seeking to implement or contract the implementation of generation projects shall be required to enter into long-term (ten-year) power supply agreements with NAPOCOR to facilitate NAPOCOR's system planning activities. Such electric utilities shall submit to the DOE their individual or combined long-term power development plans which shall contain an efficient portfolio of generation (including projected power purchases from NAPOCOR and qualified PSGFs) and demand-side resources on or before 15 January 1996 and every year thereafter, for the DOE's review and approval.

SECTION 3. *DOE Review of Power Development Plans.* – The DOE, through its Energy Planning and Monitoring Bureau (EPMB), shall review the power development plans of NAPOCOR and other electric utilities for consistency with the general and specific policies for the sector, validate the assumptions used in formulation of such plans, and check the consistency of such plans with national and regional resource

assessments, development programs, and project timetables of various energy upstream activities.

The EPMB shall likewise review the list of power generation projects for private sector implementation and the indicative timetables towards ensuring sufficient lead times for undertaking information dissemination, project organization, and preparation of competitive proposals. The EPMB may also recommend in its approval of the individual development plans of NAPOCOR and/or electric utilities the scaling down or integration of proposed generation projects to ensure the generation of more competitive proposals, with due consideration of cost advantages from economies of scale.

NAPOCOR and/or other electric utilities shall inform and seek the DOE's prior approval to implement generation projects not included in the approved power development plans.

ARTICLE II

PROCEDURES FOR APPLYING FOR ACCREDITATION AS A BLOCK POWER PRODUCTION FACILITY

SECTION 1. *DOE Announcement of Generation Projects for Private Sector Implementation.* – Upon the DOE's approval of the power development plans of NAPOCOR and/or electric utilities, the EIAB shall cause the publication of the list of projects for private sector implementation, together with the target commissioning dates and indicative timetables for commencement of competitive procurement procedures. Such announcements shall be published in at least three (3) newspapers of general circulation, once a week for two (2) consecutive weeks.

SECTION 2. *BPPF Solicitation by NAPOCOR and other Electric Utilities.* – Following announcement of generation projects for private sector implementation, electric utilities, more particularly investor-owned distribution utilities and electric cooperatives, may express their interest to the EIAB to undertake competitive procurement for certain blocks of capacity included in said announcements.

The EIAB shall allow an electric utility or groups of electric utilities to conduct competitive procurement for certain blocks of programmed BPPF capacity, subject to the following conditions:

1. That power to be generated by the block of capacity to be solicited by an electric utility or groups of electric utilities shall not exceed the electric utilities' anticipated demand (including the provision of reasonable reserve requirements);
2. That such blocks of capacity are sufficient in size to generate competitive proposals, and that the remaining block of capacity can still be competitively bided or contracted out; and
3. For electric cooperatives, that the cooperative first obtain NEA's endorsement of the cooperative's plan to solicit BPPF proposals and to purchase power from qualified BPPFs.

The EIAB shall then issue an order authorizing the concerned electric utilities to undertake competitive procurement for BPPF proposals. Such competitive procurement activities shall meet the criteria set by the EIAB, or follow the procedures detailed in Section 6 of this Article.

NAPOCOR shall undertake competitive solicitation procedures for the remaining blocks of BPPF capacities within the corresponding timeframe indicated for each of the projects for private sector implementation if, within such timeframes, no other electric utility has expressed interest in undertaking competitive procurement for the remaining blocks of BPPF capacity.

Solicitation schemes other than tender procedures which meet the criteria set forth by the EIAB for competitive procurement, pursuant to Section 4, Article VII, Part I shall be allowed by the EIAB under this Part of the Rules and Regulations.

In case no award is made following conduct of tender procedures, NAPOCOR and/or other electric utilities shall inform and seek the EIAB's prior approval to either negotiate for the implementation of BPPF capacities or to undertake pre-construction and construction activities themselves. Actual incremental investments, fuel, operating, maintenance and overhead costs of NAPOCOR or the concerned electric utility shall be benchmarked against avoided cost figures of NAPOCOR or the concerned electric utility, determined on the basis of the standard methodology adopted by the EIAB.

SECTION 3. Participation of Corporations or Consortiums Primarily Engaged in Energy Upstream Operations. – Pursuant to ownership qualifications provided in Section 1, Article III, Part I, companies or consortiums primarily engaged in indigenous energy exploration, development, and production may undertake the construction and operation of associated generation facilities to the extent that the primary fuel sources for power generation shall come from the local production of such companies or consortiums, and subject to demonstrating the technical and financial qualifications in undertaking the scale and type of generation facility proposed.

Government-owned and controlled corporations involved in energy upstream operations shall be required to seek accreditation for associated generation facilities owned and operated by the same. Private corporations engaged in energy upstream operations intending to generate electricity for sale to the grid, either directly or in joint venture or under contract with state-owned energy upstream companies, shall likewise apply for accreditation with the EIAB.

In all cases, rates for purchase of power generated from such facilities shall be governed by limitations provided in Section 1 of Article V of this Part of the Rules and Regulations.

SECTION 4. Implementation of BPPFs by Electric Utilities. – Electric utilities seeking to implement blocks of BPPF capacity shall be governed by the specific provisions of Part IV on "Electric Utility-Owned Generating Facilities".

SECTION 5. Facilities not in conformity with Power Development Plans. – A facility not in conformity with the approved power development plans of NAPOCOR

and/or other electric utilities may be proposed and its feasibility be submitted to the EIAB for consideration as a BPPF. The proponent of a facility not in conformity with the approved development plans should include in its application with the EIAB the block of BPPF capacity that the proposed BPPF can displace with regard to capacity, availability, and commissioning schedule.

The EIAB shall subject such proposals to a thorough evaluation and shall compare its reliability, cost-competitiveness, and potential generation of net foreign exchange savings against programmed BPPFs, as basis for issuing or denying accreditation as a qualified BPPF. Only Provisional Accreditations shall be issued by the EIAB in such instances.

A facility not in conformity with NAPOCOR's development plans but which has been provisionally accredited by the EIAB as a qualified PSGF under these Rules and Regulations shall be allowed to participate in competitive procurements being undertaken by NAPOCOR and/or any other electric utilities.

SECTION 6. BPPF Solicitation Procedures. – The following procedure and provisions shall guide the solicitation of proposals or bids for BPPFs by the NAPOCOR, electric utilities, and government-owned and controlled energy upstream companies, in lieu of procurement schemes meeting the EIAB's criteria for competitive requirement.

1. Announcement of request for proposals for required BPPF capacities, together with information on the availability of prequalification documents, as well as schedules, venues, and procedures for prequalification and tendering of bids. Publication should be made in three (3) newspapers of general circulation, at least once a week for three (3) consecutive weeks, with the last date of publication at least one (1) month before the deadline for the submission of pre-qualification documents.
2. Conduct of pre-bid conference for prequalified proponents to present the project concept and timetables, government taxes and incentives applicable to proponents, basic criteria for bid evaluation, the negotiable and non-negotiable specifications or requirements of NAPOCOR or the concerned electric utility, bid evaluation procedures, and other information vital for the preparation of competitive technical and financial proposals.
3. Tendering of bids must be scheduled so as to allow proponents a reasonable length of time for the preparation of implementable and competitive technical and financial proposals. In setting the date for the submission of bids, the scale of the solicitation, the type of technology and fuel to be employed, and the risks involved on the part of the Private Sector Generator must be considered by NAPOCOR and/or the concerned electric utility.
4. To maintain the transparency of the whole solicitation and bidding process, representatives of BPPF proponents must be allowed to witness the receipt, opening, tabulation, and final certification of the contents of the bids received by duly-authorized officials of NAPOCOR and/or electric utilities.

SECTION 7. *EIAB Accreditation of BPPFs.* – Following the conduct of competitive procurement for BPPFs, NAPOCOR and/or the concerned electric utility shall submit to the EIAB a complete copy of the records pertaining to the solicitation, evaluation, selection, and award of a BPPF contract.

Electric utilities which have successfully conducted competitive procurement activities for BPPF facilities shall be required to enter into and submit to the EIAB a long-term, preferably ten-year, power purchase agreement with NAPOCOR for any existing, incremental, and/or back-up power supply requirements. Should interconnection of an electric utility with NAPOCOR may no longer be necessary, the concerned electric utility shall furnish NAPOCOR and the EIAB a copy of its board's resolution/decision to disconnect from the service of NAPOCOR.

Upon submission of the required documents (i.e., long-term power purchase agreement or board resolution) from the concerned electric utility, the EIAB shall issue the required accreditation documents for the utility-solicited BPPF project upon verification of the BPPF's compliance with the general qualifications for accreditation as a PSGF, and NAPOCOR's and/or the concerned electric utility's compliance with the criteria for competitive procurement or with the recommended solicitation procedure provided in Section 6 above. The EIAB shall issue the required accreditation documents within one (1) month from receipt of all requirements.

For BPPF proposals not in conformity with the power development plans of NAPOCOR and/or individual electric utilities, the EIAB shall take action to approve or deny any application for accreditation as a qualified PSGF within two (2) months from receipt of an application, provided that all necessary information have been submitted to the EIAB. Such accreditation shall be a provisional accreditation which shall be cancelled by the EIAB upon conclusion of competitive procurement procedures and the non-selection of the provisionally-accredited BPPF in the competitive procurement.

ARTICLE III

OBLIGATIONS OF NAPOCOR, ELECTRIC UTILITIES, AND OWNERS OF BLOCK POWER PRODUCTION FACILITIES

SECTION 1. *Obligation to Purchase Electric Energy from the Qualified BPPF.* – The NAPOCOR and/or the concerned electric utility shall purchase, at rates in accordance with the succeeding Article hereof, electric energy and capacity which is made available by the owners of the qualified BPPF.

SECTION 2. *Obligation to Sell to a Qualified BPPF.* – NAPOCOR shall sell to the owner of a qualified BPPF maintenance and/or back-up power. In cases of electric utilities contracting to purchase power from a qualified BPPF, NAPOCOR and the concerned electric utilities may include in their long-term power purchase agreements BPPF requirements for back-up and maintenance power.

SECTION 3. *Obligation to Interconnect.* – NAPOCOR and/or the concerned electric utility shall interconnect with qualified BPPFs to accomplish purchases or sales

under these Rules and Regulations and following stipulations in the contract between NAPOCOR or the concerned electric utility and the owner of the BPPF on this matter.

Upon effectivity of an agreement for interconnection between the owner of a qualified BPPF and NAPOCOR or any concerned electric utility, NAPOCOR or the concerned electric utility shall issue an order allowing the physical connection of the qualified BPPF to the transmission facilities of NAPOCOR or to the distribution system of the concerned electric utility.

SECTION 4. *Interconnection Costs.* – The owner of a BPPF shall advance investments needed in interconnecting the BPPF with the NAPOCOR grid or the concerned electric utility system. Repayment shall be made in accordance with mutually agreed upon arrangements of the contracting parties. Maintenance costs for the interconnection facilities shall also be agreed upon by the NAPOCOR and the owner of the BPPF.

SECTION 5. *Transmission to Other Electric Utilities (Wheeling).* – NAPOCOR and/or any host utility shall be obligated to transmit or wheel the electricity generated by a qualified BPPF to an electric utility or to NAPOCOR through the former's transmission and/or distribution lines of 69 KV or higher. NAPOCOR and/or any third party electric utility to which such electricity is transmitted shall purchase the same under this Section. The rate for purchases by the third party electric utility to which such electricity is transmitted shall be accordingly adjusted to reflect line losses and the corresponding wheeling charges.

ARTICLE IV

RATES FOR PURCHASES AND SALES

SECTION 1. *Purchase Rate.* – The purchase rate from a BPPF shall not exceed the "avoided cost" of NAPOCOR and/or the concerned electric utility, as determined thru the conduct of competitive procurement schemes meeting EIAB's criteria for BPPF solicitation or using the standard methodology adopted by the EIAB, pursuant to Section 4, Article VII, Part I of these Rules and Regulations.

SECTION 2. *Rates for Sales.* – NAPOCOR shall sell maintenance power and/or back-up power during unscheduled outages, as available, to BPPFs or to electric utilities contracting power supply with qualified BPPFs, at rates approved by the ERB. Back-up power for capacity unserved by BPPFs due to their unscheduled outages shall be provided by NAPOCOR's reserve units. Penalty due to the inability of the BPPF to provide contracted power during its unscheduled outage shall be stipulated in the contract between the owner of the BPPF and NAPOCOR or the concerned electric utility.

SECTION 3. *Adjustments in Financial Accounting.* – NAPOCOR and the concerned electric utilities shall accordingly adjust its financial accounting systems and procedures resulting from purchases of electricity from a BPPF. The rate of return on rate base levels shall then be determined after all adjustments have been made and set in place.

ARTICLE V

OPERATING PROCEDURES AND ENVIRONMENTAL CONCERNS

SECTION 1. *Security of BPPF.* – For national emergency situations, NAPOCOR, with the assistance of the military, shall provide on-site coordination of BPPF operations to prevent brownouts and ensure the continuity of electric service.

SECTION 2. *Environmental Concerns.* – The BPPF shall consider the environmental impact/effect of its operations. The owner of the BPPF shall ascertain that environmental management standards as required by law through appropriate governmental agencies are met in the construction, operation and maintenance of the BPPF.

PART IV

SPECIFIC PROVISIONS ON ELECTRIC UTILITY-OWNED GENERATING FACILITIES

The following Articles shall further guide electric utilities seeking to engage in self-generation for direct sale to their customers and/or utility plant maintenance.

ARTICLE I

QUALIFICATIONS AS A PRIVATE SECTOR GENERATION FACILITY

SECTION 1. *Ownership.* – Electric utilities shall be allowed to construct, operate and maintain existing or new generating facilities for their self-generation subject to financial limitations provided in Section 4 below. Majority interest by an electric utility on the equity of a PSGF shall be considered as ownership by an electric utility, and shall thus be subject to electric utility regulations concerning rates, financial limitations, taxes and other laws applicable to their operations as electric utilities.

SECTION 4. *Financial Limitations on Electric Utilities.* – An electric utility shall be allowed to own and operate new generation facilities meeting the qualifications set forth in this Article, provided that the electric utility's ratio of long-term debt to equity is maintained at or below 1.5.

The above financial limitations on electric utilities shall be waived by the EIAB for purposes of accrediting existing generation facilities of electric utilities and for already accredited PSGFs for the internal use of electric utilities as of the effectivity of these Rules and Regulations.

SECTION 3. *Facility Classification.* – Facility classifications allowed under Section 3, Article III, Part I shall apply to PSGFs seeking accreditation under this Part of the Rules and Regulations.

SECTION 4. *Size of Generating Units.* – The limitation on maximum size of generating units as stipulated in Section 4 of Article II, Part I of these Rules and Regulations shall be encouraged in order to facilitate possible NAPOCOR service to these generating plants during forced outages or maintenance periods.

ARTICLE II

PROCEDURES FOR APPLYING FOR ACCREDITATION AS A PRIVATE SECTOR GENERATION FACILITY

SECTION 1. *Contents of Application.* – In addition to the requirements of Section 1, Article IV, Part I, an electric utility seeking accreditation for a facility which qualifies under the preceding Article shall submit to the EIAB a copy of its long-term power purchase agreement with NAPOCOR for any incremental, maintenance, or back-up power requirements. Adjustments in the long-term power purchase agreement between NAPOCOR and the concerned electric utility shall be considered to the extent that NAPOCOR may still adjust its Power Development Program.

In cases where an electric utility has opted or is opting to no longer connect with NAPOCOR for any incremental or back-up power supply, the electric utility shall present to NAPOCOR and the EIAB a copy of the relevant Board Resolution/s stating such decisions, and releasing NAPOCOR from any obligation to supply the electric utility's power requirements.

SECTION 2. *Accreditation.* – An electric utility's generating facility which meets the criteria for accreditation set forth in the preceding Article, and the conditions of Section 1 of this Article is a qualified PSGF.

Pursuant to the provisions of Section 4, Article IV, Part I, the EIAB may issue a provisional accreditation to a PSGF which meets the criteria for accreditation set forth in the preceding Article, to give the concerned electric utility a reasonable period of time to either finalize a long-term power purchase agreement with NAPOCOR, or issue a Board Resolution releasing NAPOCOR from any further obligation to serve the power requirements of the concerned electric utility.

SECTION 3. *Period of Processing.* – Provided all requirements shall have been complied with, the EIAB shall take action to approve or deny any application for accreditation within two (2) months from the date of the application, unless the EIAB shall have required the submission of additional information, or postponement of final action on an application or for other reasonable grounds. Any order postponing final action on an application shall state specifically the grounds for postponement, and the date on which a final ruling shall be issued.

SECTION 4. *Non-transferability of Accreditation.* – Accreditations issued by the EIAB to electric utilities owning and operating qualified PSGFs shall not be transferable or assignable except to an electric utility subsidiary determined to be technically and financially-qualified by the EIAB. For purposes of this Section, an electric utility subsidiary shall mean any company wherein the concerned electric utility holds a majority equity interest.

SECTION 5. *Assumption on Interconnection.* – It shall be assumed that electric utilities owning generating units for their self-generation are already interconnected with the NAPOCOR grid. Any possible interchange of electricity to and from NAPOCOR shall be coursed through said interconnection facilities.

Should a qualified electric utility-owned PSGF, however, require the transmission of any amount of power generated to the owner-electric utility, NAPOCOR and/or the host utility shall be obligated to interconnect such qualified facilities and provide the required wheeling services, pursuant to the provisions of Section 2, Article VI, Part 1.

ARTICLE III

NAPOCOR’S RELATIONSHIP WITH ELECTRIC UTILITIES OWNING FACILITIES FOR SELF-GENERATION

SECTION 1. *Provision on Reserve Capacity.* – NAPOCOR shall maintain a reserve capacity in the NAPOCOR grid system considering all generating facilities existing and operating therein. A reasonable annual reserve capacity carrying fee, as determined by NAPOCOR and approved by the ERB, shall be paid by all generating electric utilities requiring maintenance and/or back-up power from NAPOCOR. Such payment shall make NAPOCOR obligated to provide maintenance and back-up power requirements of affected electric utilities on an “as-available” basis.

SECTION 2. *Provision of Incremental PSG Power.* – NAPOCOR shall supply incremental PSG power to the electric utility owning facilities for self-generation to the extent provided in a long-term contract for this purpose. The selling rate of NAPOCOR for incremental PSG power shall be at rates approved by the ERB.

SECTION 3. *Provision for System Emergencies.* – NAPOCOR and electric utilities with self-generation may mutually agree on the provision of power during system emergencies in their respective systems to the extent possible and under terms to be agreed upon by both parties.

SECTION 4. *Dispatchability.* – Electric utilities with self-generation shall conform with policies pertaining to the Dispatch Management System (DMS) of NAPOCOR.

SECTION 5. *Production Cost Higher than NAPOCOR’s.* – At a time when production cost from the generating units solely for internal use of an electric utility is higher than buying from NAPOCOR, and the electric utility decides to get power from NAPOCOR to replace its own generation, NAPOCOR shall sell to said electric utility provided that: NAPOCOR’s unit production cost would remain the same with the added load; NAPOCOR’s system operations would not be hampered; NAPOCOR’s service to other customers would not be unduly affected; and NAPOCOR would not be pressured to add new capacities to meet the new load. NAPOCOR shall not be obligated to purchase the generating facilities of the electric utility as such action may be detrimental to the interest of NAPOCOR’s regular customers.

SECTION 6. *Excess Production of PSGF.* – In instances when the generating units of the electric utilities are capable of producing electricity in excess of their requirement, NAPOCOR shall not be obligated to purchase such excess power.

In instances when NAPOCOR may opt to purchase power from said electric utility, purchase rate shall not exceed the “avoided cost” of NAPOCOR at the time of delivery.

SECTION 7. *Change of Status.* – An electric utility with an accredited facility for self-generation may decide to sell excess production on a regular basis to NAPOCOR or to another electric utility. Terms and conditions of purchase by NAPOCOR shall be consistent with the applicable provisions given in Parts I and III of these Rules and Regulations and shall be stipulated in a Contract.

SECTION 8. *Periodic Reporting to the EIAB.* – The electric utility owning facility for self-generation shall regularly submit to the DOE, thru the EIAB, operating and other information as may be required by the DOE for monitoring and planning purposes.

SECTION 9. *Formulation of Power Development Plans.* – Electric utilities owning and operating facilities for self-generation shall submit to the DOE, for review and approval, their individual or combined long-term power development plans which shall contain an efficient portfolio of generation (including projected power purchases from NAPOCOR and other qualified PSGFs) and demand-side resources on or before 15 January 1996 and every year thereafter.

PART V

OTHER PROVISIONS

SECTION 1. *Implementation of the Rules and Regulations.* – The EIAB shall take all necessary and reasonable measures to ensure that the provisions of these Rules and Regulations are made effective.

SECTION 2. *DOE Revision of the Rules and Regulations.* – The DOE shall prescribe and, from time to time thereafter, revise such Rules as it determines necessary to encourage private sector participation in power production. Such Rules shall be prescribed after consultation with the private sector and appropriate government agencies

SECTION 3. *Publication.* – These Rules and Regulations shall take effect fifteen (15) days after the date of publication in one (1) newspaper of general circulation.

(Sgd.) **FRANCISCO L. VIRAY**
Acting Secretary

Fort Bonifacio, Metro Manila, 2 January 1995.