

**ACHIEVING PARITY BETWEEN ROYALTIES ON THE EXPLOITATION OF INDIGENOUS ENERGY SOURCES AND DUTIES ON IMPORTED ENERGY FUELS PURSUANT TO SECTION 35 OF REPUBLIC ACT NO. 9136 OTHERWISE KNOWN AS THE "ELECTRIC POWER INDUSTRY REFORM ACT OF 2001"**

**WHEREAS**, it is a policy of the State to promote the utilization of indigenous energy resources in power generation in order to reduce the country's dependence on imported energy;

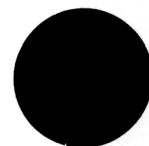
**WHEREAS**, Presidential Decrees No. 87, 972 and 1442 were issued to promote the discovery and development of the country's indigenous energy resources through the utilization of government and private resources, local and foreign, under the arrangements embodied under said Presidential Decrees;

**WHEREAS**, under existing service contracts for the exploitation of geothermal and petroleum resources, a production sharing scheme has been provided whereby the Service Contractor is entitled to 40% of the net proceeds from the sale of the energy resource and the government is entitled to receive 60% of the net proceeds;

**WHEREAS**, the aforementioned production sharing scheme under a service contract arrangement has created inequalities between the rate of Royalty on the exploitation of indigenous energy sources and the duties on imported energy sources thereby affecting the competitiveness of energy from indigenous sources with imported energy fuels;

**WHEREAS**, under existing service contracts for the exploitation of coal, a production sharing scheme has been provided whereby the Service Contractor is entitled to 70% of the net proceeds from the sale of the energy resource and the government is entitled to receive 30% of the net proceeds. Thus, the existing Royalty on local coal is lower than the duty on imported coal;

**WHEREAS**, Section 35 of Republic Act No. 9136 (RA 9136) mandates the President of the Philippines to reduce the royalties, returns and taxes collected for the exploitation of all indigenous energy sources, including but not limited to, natural gas and geothermal steam, so as to



VSP

effect parity of tax treatment with the existing rates for imported coal, crude oil, bunker fuel and other imported fuels;

**WHEREAS**, under existing laws, the rates of taxes on the exploitation of indigenous energy sources and imported energy fuels on a per fuel type basis are equal;

**WHEREAS**, paragraph 2 of Section 35 of RA 9136 mandates that the reduction of Royalty shall ultimately benefit the end-users using indigenous energy sources and toward this end, the Energy Regulatory Commission (ERC) shall reduce the rates of electricity from all indigenous energy sources;

**WHEREAS**, the Department of Finance (DOF) and the Department of Energy (DOE) recommend the issuance of this Executive Order;

**NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO**, President of the Philippines, by virtue of the powers vested in me by law, do hereby order:

**Section 1. Reduction of Royalty.** – For purposes of this Executive Order, “Royalty” shall refer to government share net of income tax under service contract arrangements pursuant to Presidential Decrees No. 87, 972 and 1442.

**Section 2. Effective Reduction of Royalty.** – To achieve parity between the Royalty on indigenous energy sources and duties on imported energy fuels, the Royalty on the exploitation and development of indigenous energy sources shall effectively be reduced for natural gas and geothermal energy in accordance with the following formula:

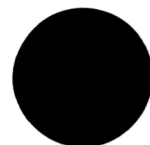
Tax Equalization = [Tax Burden per kWh on Indigenous] – [Tax Burden per kWh on Imported Energy Fuel]

Where:

Tax Burden (P/kWh) on Indigenous = [Royalty in pesos + Excise Tax in pesos] divided by  $\Sigma$  of Electricity Sales per plant in kWh;

Tax Burden (P/kWh) on Imported Fuel = [Duty in pesos per kWh] + [Excise Tax in pesos per kWh];

Provided, That [Tax Burden per kWh on Indigenous] > [Tax Burden per kWh on Imported Fuel].



✓

Indigenous Natural Gas and Geothermal Energy shall be benchmarked with the appropriate imported energy source as determined by the DOF and the DOE.

Considering that the existing Royalty on local coal is lower than the duty on imported coal, the Royalty on the development and utilization of coal shall remain.

**Section 3. Reduction in the Price of Indigenous Energy Used for Electricity.** - Pursuant to Section 35 of RA 9136, the ERC shall reduce the rates of power from all indigenous energy sources to reflect the reduction in Royalty, thus ensuring lower rates for end-users of indigenous energy sources.

**Section 4. Universal Charge for Tax Equalization.** - The Universal Charge collected pursuant to Section 34(c) of RA 9136 shall be used to achieve parity between the Royalty on indigenous energy sources and duties on imported energy fuels. Service contractors shall continue to pay to the government the full amount of Royalty under their existing service contracts. If the cost of Royalty is passed on by the Service Contractor to the Qualified Generation Company, the Qualified Generation Company shall be entitled to claim from the Universal Charge the amount not exceeding the Tax Equalization; Provided, however, That the cost of power passed on by the Qualified Generation Company to the Distribution Utilities shall be reduced by the amount of Tax Equalization; Provided further, That the claim for reimbursement shall pertain only to indigenous energy sources actually used for power generation.

The administrative guidelines for this Executive Order shall provide the details for its implementation.

**Section 5. Monitoring and Compliance.** - The Qualified Generation Companies and Distribution Utilities shall implement the effective rate reduction mandated by the ERC. For this purpose, the ERC shall strictly monitor the sale of electricity by generation companies and distribution companies. The ERC shall require generation companies and distribution utilities to submit all information necessary for ERC and DOE to undertake its monitoring function including information on the sales to distributors/suppliers of power from all indigenous energy sources and the amount of reduction in the cost of power attributable to the Tax Equalization.

**Section 6. Periodic Review and Evaluation.** - The DOF and the DOE shall conduct a periodic review and evaluation of the price of fuel, electricity sales, Royalty, tariff rates, and other relevant factors for the purpose of periodic adjustment of Tax Equalization, if such periodic



vsf 3

adjustment is necessary. The result of the review shall be submitted to the ERC.

**Section 7. Administrative Guidelines.** - The DOF and the DOE, in consultation with the ERC and other concerned agencies, shall adopt administrative guidelines for this Executive Order.

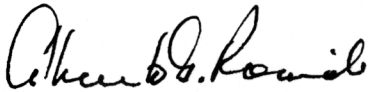
**Section 8. Repealing Clause.** - All orders, issuances, rules and regulations or parts thereof, which are inconsistent with this Executive Order, are hereby repealed or modified accordingly.

**Section 9. Effectivity.** - This Executive Order shall take effect fifteen (15) days from the date of its publication in two (2) newspapers of general circulation.

DONE in the City of Manila, this 3<sup>rd</sup> day of May, in the year of Our Lord, Two Thousand and Two.



By the President:



**ALBERTO G. ROMULO**  
Executive Secretary



PMS LIBRARY BCODE001924



PGMA Outgoing # 10961

PMS LIBRARY

MAY 2002