

Republic of the Philippines
ENERGY REGULATORY COMMISSION
 Pasig City

**IN THE MATTER OF THE
 ADOPTION OF THE FEED-IN
 TARIFF (FIT) PURSUANT TO
 SECTION 1.4 OF THE FIT
 RULES SPECIFIC TO THE
 EXISTING RENEWABLE
 ENERGY PLANTS**

ERC CASE NO. 2021-104 RC

**ALTERPOWER DIGOS
 SOLAR, INC. (ADSI),**
Applicant.

**Promulgated:
 December 31, 2021**

NOTICE OF VIRTUAL HEARING

TO ALL INTERESTED PARTIES:

Notice is hereby given that on 14 December 2021, Alterpower Digos Solar, Inc. (ADSI) filed an *Application* dated 10 November 2021, seeking the Commission's approval for the adoption of the Feed-In Tariff (FIT) pursuant to Section 1.4 of the FIT Rules' specific to the existing Renewable Energy Plants.

The pertinent allegations of the *Application* are hereunder quoted, as follows:

- ADSI² is a corporation duly organized and existing under the laws of the Republic of the Philippines, with office address at Unit A2 4th Floor, Green Sun Hotel, 2285 Don Chino Roces Ave. Ext., Magallanes, Makati City. It may be served pleadings, orders, and other legal processes through counsel at the address indicated below.
- This *Application* is filed pursuant to the Feed-In-Tariff (FIT) Rules adopted by the Honorable Commission in its Resolution No. 16, Series of 2010, issued pursuant to Section 7 of Republic Act No. 9513 (RA 9513), otherwise known as the "Renewable Energy Act of 2008".
- ADSI, previously known as "Enfinity Philippines Renewable Resources Fourth, Inc." or "EPRRI4", owns and operates the Digos Solar Plant ("DSPP") with a 28.59MW capacity located in Digos City, Davao del Sur. Copies of the *Certificate of Filing of Amended Articles of Incorporation, Amended Articles of Incorporation of Alterpower Digos Solar, Inc., Certificate of Incorporation of Enfinity Philippines Renewable Resources Fourth Inc.*, and the Articles of Incorporation of *Enfinity Philippines Renewable Resources Fourth Inc.* are attached as Annexes "B", "B-1", "B-2", and "B-3", respectively, hereof.
- ADSI is registered with the Department of Energy (DOE) as Renewable Energy (RE) Developer of DSPP, is covered by Solar Energy Service Contract (SESC) No. 2015-02-100, pursuant to R.A. 9513. A copy of SESC No. 2015-02-100 is attached as Annex "C".
- Section 7 of RA 9513 mandated ERC to "formulate and promulgate feed-in tariff system rules".
- The Commission promulgated the FIT Rules (ERC Resolution No. 16, series of 2010), and the Guidelines on the Collection of the Feed-in Tariff Allowance and Disbursement of the FIT-All Fund [hereinafter, FIT-All Payment and Collection Guidelines] (ERC Resolution No. 24, series of 2013).
- DSPP started commercial operations after the effectivity of RA 9513, on 06 March 2016.
- On 07 November 2016, the Honorable Commission issued a Certificate of Compliance (COC) No. 16-11-M-0086M in favor of ADSI covering DSPP with a capacity of 28.59MW, a copy of which is hereto attached as Annex "D".
- ADSI is an "Eligible RE Plant" as defined under the FIT Rules, and the FIT-All Payment and Collection Guidelines.
- Section 1.4 of the FIT Rules provides for several mechanisms for an Eligible RE Plant to be entitled to FIT, among them, the amendment of COC.
- This *Application* is in accordance with the FIT Rules, specifically paragraph 3, Section 1.4 thereof (i.e., amendment of COC), which reads:

Subject to paragraph 3 hereof, the FITs to be established and approved pursuant to these Rules shall be specific for each emerging renewable energy technology and to be applied only to generation facilities which enter into commercial operation after effectivity of the FITs or to such parts of such existing facilities which have been substantially modified or expanded as described in Section 3. All eligible RE Plants shall be entitled to the appropriate FITs as established and such FITs shall be paid by all On-Grid electricity consumers according to the FIT system established in these Rules. All such RE Plants shall be deemed eligible upon issuance of a COC authorizing them to operate as FIT-eligible RE Plants, subject to the terms and conditions attached to it, among them, compliance with the Philippine Grid Code (PGC) and other pertinent laws, rules and regulations of the ERC. The ERC shall issue appropriate rules or amendments to its COC Rules, PGC, and other existing rules, if necessary, to reflect any additional eligibility, technical, or other special requirements that shall be imposed on RE Plants for them to qualify as Eligible RE Plants.

RE Plants that have been in commercial operation before that FITs are established by the ERC pursuant to these Rules are not qualified for such FITs: Provided, however, that RE Plants, which have started commercial operations after the effectivity of the R.A. No. 9513 and are not bound under any contract to supply the energy they generate to any DU or consumer, may avail of FITs from the time they are certified by the ERC as eligible through an amendment of the COC issued to them and for a period of twenty (20) years less the number of years they have been in operation x x x. (Emphasis Supplied)

- ADSI is qualified under the aforesaid provision, in that—
 - Its DSPP with a capacity of 28.59MW was constructed and started commercial operations after the effectivity of R.A. No. 9513.
- The Honorable Commission's records establish that DSPP commenced commercial operations on 06 March 2016 or after effectivity of R.A. No. 9513. This is evidenced no less by COC No. 16-11-M-0086M issued by the Honorable Commission to ADSI.
 - ADSI is not bound under any contract to supply the energy it generates to any DU or consumer.
- Considering that the plant is located in Mindanao where the Wholesale Electricity Spot Market (WESM) is not yet operational, ADSI executed a Renewable Energy Supply Agreement (RESA) in accordance with the FIT-All Payment and Collection Guidelines and the ERC-issued RESA template, with Zamboanga City Electric Cooperative, Inc. (ZAMCELCO), which acts as its Host DU. Hereto attached as Annex "E" is the RESA between ADSI and ZAMCELCO dated 8 March 2016.
- A RESA, however, is not a bilateral supply contract pursuant to Section 2.2, 5th paragraph of the ERC's FIT-All Guidelines, to wit: "For avoidance of doubt, the RESA shall not be considered a bilateral agreement for the sale and purchase of electricity which would disqualify the Eligible RE Plant-Non-WESM from availing of the FIT, and is merely a mechanism for the collection of ACRR."

- The RESA is sui generis, according to the Honorable Commission. It is not the usual power supply agreement (PSA) or "a bilateral agreement between a Generation Company and a Distribution Utility for the purchase and supply of power".
- In ERC Case No. 2014-048, the Honorable Commission GRANTED FIT eligibility to nVOGT Philippines Solar Energy One, Inc. (SE1) through an amendment of its COC. The pertinent portion of the Decision dated 01 December 2016, reads:

Section 1.4 of the FIT Rules provides that any RE Plant that enter into commercial operation after the effectivity of the rules shall be deemed eligible to receive the FIT upon issuance of a COC authorizing it to operate as FIT-eligible RE Plant, provided that it is not bound by any contract with a Distribution Utility or consumer or there is no legal impediment for it to be allowed such FITs.

Section 2(xi), Article 1 of the Amended COC Guidelines further provides that:

"A Generation Company operating an RE Plant which applied for the amendment of its COC to avail of the FIT System and which previously suffered from a legal impediment to avail of the FIT shall be entitled to the FIT on the date indicated under the FIT-Eligible COC."

It is clear in the above provisions that an RE Plant that is free of bilateral supply agreements, or an RE Plant that is able to terminate its previous Power Supply Agreement, can apply for FIT eligibility provided that its eligibility period will be twenty (20) years less that number of years in operation.

x x x

WHEREFORE, x x x. The Commission resolves to:

x x x

- GRANT FIT Eligibility to SE 1 for a period of twenty (20) years less the number of years it has been in operation, with the eligibility period starting from the date of this Decision.

SO ORDERED.

A copy of the Honorable Commission's Decision dated 25 October 2016 is hereto attached as Annex "F".

- SE1 and ADSI are similarly situated as they both started commercial operations after the effectivity of RA 9513 and that both are not bound by any bilateral supply agreement.
- In view of the foregoing, ADSI is also entitled to the amendment of its COC, COC No. 16-11-M-0086M, to reflect its eligibility for the applicable base FIT of PhP8.69/kWh, which is the approved 2016 FIT for solar power plants, as FIT-adjusted to 2020, for a period of 20 years less the number of years ADSI has been in operation.
- It is worthy to note also that FIT is indispensable for ADSI's continued operation. In the absence of a FIT-COC, ZAMCELCO has refused to recognize the RESA and to pay ADSI's ACRR.
- ADSI is now on the brink of shutting down its plant as it could no longer cover the expenses for the day-to-day operations and maintenance of DSPP. In fact, ADSI's unpaid ACRR has now reached PhP325,907,398.82, and PhP16,828,949.22 as Late Payment Interests as of 31 December 2020 computed based on the applicable Late Payment Interest Rate.
- Expectedly, ADSI's operations have been dismal and in the red right from the start. Based on ADSI's Audited Financial Statements (AFS), it sustained net losses for the following consecutive years:

YEAR	NET LOSS
2016	(PhP131,692,660)
2017	(PhP304,270,027)
2018	(PhP277,915,037)
2019	(PhP287,115,370)

Copies of the AFS are hereto attached as Annexes "G" to "J".

- ADSI's application to participate to the FIT System is its last resort to avert total shutdown of its DSPP Plant. This lifeline is indispensable for its continued existence.
- As for the supposed non-inclusion of the DSPP Plant in the solar installation target set by DOE, while it maintains to being fully compliant to all pre-requisites for inclusion therein, ADSI submits that this is not one of the requirements under the Honorable Commission's FIT Rules (Par. 3, Section 1.4) for an RE Plant to participate in the FIT System and be entitled to the FIT.
- As designed and intended by the Honorable Commission in its FIT Rules, the purpose of linking the FITs to the installation targets is for there to be a trigger for the Commission's review and re-adjustment of the FITs. Thus, Section 7 of the FIT Rules provides that "[t]he ERC may review and re-adjust the FITs x x x when the installation target per technology as defined by NREB is achieved." Inclusion in the DOE's installation target is not a pre-requirement for an RE Plant to become an Eligible Plant under the FIT Rules and to participate in the FIT System. Otherwise, this should have been clearly provided for in the FIT Rules, which implements Section 7 of RA 9513.
- Further, limiting the number of RE Plants entitled to participate in the FIT System is in contravention of objectives of Section 7 of RA 9513. Said limitation runs counter to the Renewable Energy Act, that seeks to accomplish the following:
 - Accelerate the exploration and development of renewable energy resources such as, but not limited to, biomass, solar, wind, hydro, geothermal and ocean energy sources, including hybrid systems, to achieve energy self-reliance, through the adoption of sustainable energy development strategies to reduce the country's dependence on fossil fuels and thereby minimize the country's exposure to price fluctuations in the international markets, the effects of which spiral down to almost all sectors of the economy;
 - Increase the utilization of renewable energy by institutionalizing the development of national and local capabilities in the use of renewable energy systems, and promoting its efficient and cost-effective commercial application by providing fiscal and nonfiscal incentives;
 - Encourage the development and utilization of renewable energy resources as tools to effectively prevent or reduce harmful emissions and thereby balance the goals of economic growth and development with the protection of health and the environment; and
 - Establish the necessary infrastructure and mechanism to carry out the mandates specified in this Act and other existing laws.

- The DOE's issuances cannot amend, modify, or supplant the ERC's FIT Rules, which was issued pursuant to Section 7 of RA 9513 that vests in ERC, and ERC alone, the power to formulate and promulgate the feed-in tariff system rules.
- In *Trade and Investment Development Corporation of the Philippines vs. Civil Service Commission*,⁴ the Supreme Court held that "[t]he function of promulgating rules and regulations may be legitimately exercised only for the purpose of carrying the provisions of the law into effect. x x x Administrative regulations cannot extend the law nor amend a legislative enactment; x x x administrative regulations must be in harmony with the provisions of the law, and in a conflict between the basic law and an implementing rule or regulation, the former must prevail."
- Moreover, in *Commissioner vs. San Roque Power Corp.*,⁵ the Supreme Court ruled that an "[a]dministrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution".
- Considering that in the ERC-promulgated FIT Rules, it is an Eligible RE Plant that is qualified to participate in the FIT System, ADSI is entitled to the amendment of the COC as prayed for herein in accordance with Section 1.4 of the FIT Rules.
- (sic) In support of this *Application*, the following documents are also attached and made as integral parts hereof:

Annexes	Description of Document
"K"	Company Profile
"L"	DOE Registration as RE Developer
"M"	Connection Agreement
"N"	Transmission Service Agreement
"O"	Metering Service Agreement
"P"	Previous Monthly Operation Data
"Q"	Projected FIT Revenue Computation

COMPLIANCE WITH PRE-FILING REQUIREMENTS

- In compliance with the Commission's pre-filing requirements, the following documents are herein attached and made integral parts hereof, to wit:

Annexes	Description of Document
"R", series	Proof of receipt of copies of the <i>Application</i> from the concerned Offices of the Mayor/Governor and the Sangguniang Panlungsod/Panglulawigan.
"S"	Newspaper where the <i>Application</i> was published
"T"	Affidavit of Publication

PRAYER

WHEREFORE, ADSI prays for the Honorable Commission that the instant *Application* be APPROVED, and that:

- ADSI's DSPP covered by COC No. 16-11-M-0086M, which was constructed and commercially operated on 06 March 2016, be confirmed to be a FIT-Eligible Plant; and
- ADSI be authorized to recover its FIT revenues in accordance with the FIT Rules and FIT-All Guidelines, and/or any other applicable ERC Resolution/s, for a period of 20 years less the number of years ADSI has been in operation.

Other just and equitable relief under the premises are likewise prayed for.

The Commission has set the instant *Application* for hearing for the determination of compliance with the jurisdictional requirements, expository presentation, Pre-trial Conference, and presentation of evidence on the following dates and online platform for the conduct thereof, pursuant to Resolution No. 09, Series of 2020⁶ dated 24 September 2020, and Resolution No. 01, Series of 2021 dated 17 December 2020 (ERC Revised Rules of Practice and Procedure):⁷

Date	Platform	Activity
04 February 2022 (Friday) at nine o'clock in the morning (9:00 A.M.)	Microsoft Teams	Determination of compliance with the jurisdictional requirements and expository presentation
11 February 2022 (Friday) at nine o'clock in the morning (9:00 A.M.)	Microsoft Teams	Pre-trial Conference and presentation of evidence

Any interested stakeholder may submit its comments and/or clarifications at least one (1) calendar day prior to the scheduled virtual hearing, via electronic mail (e-mail) at doCKET@erc.ph, copy furnish the Legal Service through legal@erc.ph. The Commission shall give priority to the stakeholders who have duly submitted their respective comments and/or clarifications, to discuss the same and propound questions during the course of the expository presentation.

Moreover, all persons who have an interest in the subject matter of the instant case may become a party by filing with the Commission via e-mail at doCKET@erc.ph, copy furnish the Legal Service through legal@erc.ph, a verified Petition to Intervene at least five (5) calendar days prior to the date of the initial virtual hearing and subject to the requirements under Rule 9 of the ERC Revised Rules of Practice and Procedure, indicating therein the docket number and title of the case and stating the following:

- The petitioner's name, mailing address, and e-mail address;
- The nature of petitioner's interest in the subject matter of the proceeding and the way and manner in which such interest is affected by the issues involved in the proceeding; and
- A statement of the relief desired.

Likewise, all other persons who may want their views known to the Commission with respect to the subject matter of the case may file through e-mail at doCKET@erc.ph, copy furnish the Legal Service through legal@erc.ph, their Opposition or Comment thereon at least five (5) calendar days prior to the initial virtual hearing and subject to the requirements under Rule 9 of the ERC Revised Rules of Practice and Procedure. No particular form of Opposition or Comment is required, but the document, letter, or writing should contain the following:

- The name, mailing address, and e-mail address of such person;
- A concise statement of the Opposition or Comment; and
- The grounds relied upon.

Any of the persons mentioned in the preceding paragraphs may access the copy of the *Application* on the Commission's official website at www.erc.gov.ph.

Finally, all interested persons may be allowed to join the scheduled virtual hearings by providing the Commission, thru legal.virtualhearings@erc.ph, with their respective e-mail addresses and indicating therein the case number of the instant *Application*. The Commission will send the access link/s to the aforementioned hearing platform within five (5) working days prior to the scheduled hearings.

WITNESS, the Honorable Commissioners **ALEXIS M. LUMBATAN, CATHERINE P. MACEDA, FLORESINDA G. BALDO-DIGAL and MARKO ROMEO L. FUENTES**, Energy Regulatory Commission, this 27th day of December 2021 in Pasig City.


AGNES VST DEVANADERA
 Chairperson and CEO



¹ Resolution No. 16, Series of 2010, entitled "Resolution Adopting the Feed-In Tariff Rules".
² A copy of the Secretary's Certificates dated 24 March 2021 and 09 November 2021 authorizing the filing of the instant *Application* are hereto attached as Annexes "A" to "A-1", respectively, hereof.
³ https://www.doe.gov.ph/sites/default/files/pdf/e_ipo/3_erc_regulatory_framework.pdf.
⁴ G.R. No. 182249, March 5, 2013.
⁵ G.R. No. 187485, October 8, 2013.
⁶ A Resolution Adopting the Guidelines Governing Electronic Applications, Filings and Virtual Hearings Before the Energy Regulatory Commission.
⁷ A Resolution Adopting the Revised Rules of Practice and Procedure of the Energy Regulatory Commission.