

RENEWABLE ENERGY ACT 2011

RENEWABLE ENERGY (FEED-IN APPROVAL) RULES 2011

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ARRANGEMENT OF RULES

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## RENEWABLE ENERGY ACT 2011

### RENEWABLE ENERGY (FEED-IN APPROVAL) RULES 2011

IN exercise of the powers conferred by paragraph 61(a) of the Renewable Energy Act 2011 [Act 725], the Sustainable Energy Development Authority Malaysia makes the following rules:

#### Citation and commencement

1. (1) These rules may be cited as the **Renewable Energy (Feed-In Approval) Rules 2011**.

(2) These Rules come into operation on 1 September 2011.

#### Interpretation

2. In these Rules, unless the context otherwise requires—

“area of supply”, in relation to a distribution licensee, has the meaning assigned to it in the Electricity Supply Act 1990 [Act 447];

“associate”, in relation to a distribution licensee, means—

- (a) a person holding, directly or indirectly, more than forty nine per centum of the voting power or issued share capital (excluding any part thereof which consists of preference shares) of the distribution licensee;
- (b) a person in which a distribution licensee holds, directly or indirectly, more than forty nine per centum of the voting power or issued share capital (excluding any part thereof which consists of preference shares) of the person; or
- (c) a person in which a third person holds, directly or indirectly, more than forty nine per centum of the voting power or issued share capital (excluding any part thereof which consists of preference shares) of both the first-mentioned person and the distribution licensee;

“foreign person” means—

- (a) an individual who is not a Malaysian citizen;
- (b) an individual who is a permanent resident;
- (c) a foreign company as defined in the Companies Act 1965 [Act 125] or any other foreign entity; or
- (d) a Malaysian entity in which the individual, company or entity specified in paragraph (a), (b) or (c) holds more than forty-nine per centum of the voting power or issued share capital (excluding any part thereof which consists of preference shares);

“milestone” means a significant stage or event in the development of a renewable energy installation;

### **Eligibility of individuals**

3. The following individuals shall be eligible to apply for a feed-in approval:
  - (a) a Malaysian citizen of not less than twenty one years of age; and
  - (b) a foreign person of not less than twenty one years of age, in respect of an application for a feed-in approval relating to a renewable energy installation utilising solar photovoltaic technology as its renewable resource and having an installed capacity of up to and including seventy two kilowatts only.

### **Eligibility of companies**

4. A company incorporated in Malaysia shall be eligible to apply for a feed-in approval unless—
  - (a) a foreign person, alone or together with other foreign persons, holds, directly or indirectly, more than forty nine per centum of the voting power or issued share capital (excluding any part thereof which consists of preference shares) of the company;
  - (b) the company is a distribution licensee, and the application for a feed-in approval relates to a renewable energy installation proposed to be located within that distribution licensee’s area of supply; or
  - (c) the company is an associate of a distribution licensee, and the application for a feed-in approval relates to a renewable energy installation proposed to be located within that distribution licensee’s area of supply.

### **Eligibility of other entities**

5. The following other persons shall be eligible to apply for a feed-in approval:
  - (a) a local authority as defined in the Local Government Act 1976 [*Act 171*];
  - (b) a body corporate constituted or established under any written law, including a Joint Management Body established under section 4 of the Building and Common Property (Maintenance and Management) Act 2007 [*Act 663*], but excluding the Authority;
  - (c) a registered society as defined in the Societies Act 1966 [*Act 335*];
  - (d) a co-operative society as defined in the Co-operative Societies Act 1993 [*Act 502*];
  - (e) a firm as defined in section 6 of the Partnership Act 1961 [*Act 135*]; and

- (f) such other persons or classes of persons as may be determined by the Authority from time to time.

### **Application for feed-in approval**

6. (1) Every application for a feed-in approval shall be made using the form provided by the Authority at its offices or at its website at [www.seda.gov.my](http://www.seda.gov.my).

(2) An application may be submitted on behalf of the eligible producer by his duly authorised representative or agent in accordance with any guidelines issued by the Authority provided that every application is duly executed by the eligible producer.

(3) An application shall be submitted to the Authority either in physical form to the Authority's offices or by electronic medium or by way of an electronic transmission in accordance with any guidelines issued by the Authority.

(4) Every application for a feed-in approval shall submit, wherever applicable, the following information:

- (a) the particulars of the eligible producer;
- (b) a description of the renewable energy installation which will be owned by the eligible producer, including but not limited to—
  - (i) the renewable resource to be used for the operation of the renewable energy installation;
  - (ii) the proposed installed capacity of the renewable energy installation and the capability level of the renewable energy installation to provide renewable energy;
  - (iii) the proposed location of the renewable energy installation;
  - (iv) the proposed feed-in tariff commencement date; and
  - (v) the proposed milestones and dates by which such milestones are to be achieved;
- (c) the identity of the distribution licensee whose area of supply the renewable energy installation is proposed to be located in;
- (d) the location and other details and specifications of the proposed connection between the renewable energy installation and the connection point and, in the case of a medium renewable energy installation, accompanied by a copy of the report of the power system study conducted in accordance with rule 3 of the T&O Rules;
- (e) particulars of any feed-in approval currently or previously held by the eligible producer;

(f) evidence of the eligible producer's ownership of, or other conditional or unconditional rights to utilise, the site or building on which the renewable energy installation will be located; and

(g) such other information or document as the Authority may require in writing or pursuant to any guidelines issued by the Authority.

(5) In addition to the requirements in subrule (4), every application by an eligible producer that is a company shall submit, where applicable, the following information:

(a) corporate information of the eligible producer including the ultimate beneficial shareholders of the eligible producer; and

(b) the audited accounts, memorandum and articles of association and certified true copies of Forms 24, 44 and 49 under the Companies Regulations 1966 [P.U. 173/1966] of the eligible producer which have been filed with the Companies Commission of Malaysia.

### **Grant of feed-in approval**

7. A feed-in approval granted shall be in a form as determined by the Authority.

### **Duration of feed-in approval**

8. The duration of a feed-in approval shall not extend beyond the effective period applicable to the feed-in approval holder.

### **Change in particulars of feed-in approval holder**

9. A feed-in approval holder shall notify the Authority in writing, as soon as possible, of any change in the particulars of the feed-in approval holder.

### **Replacement of feed-in approval**

10. (1) Where a feed-in approval is lost or destroyed, a feed-in approval holder shall lodge a report to the Authority in respect of the loss or destruction.

(2) An application for a replacement of a feed-in approval shall be made in writing to the Authority and shall be accompanied by any information as required by the Authority.

(3) If the Authority is satisfied that the loss or destruction of a feed-in approval was not the result of any fraud, the Authority may issue a replacement feed-in approval in the same form as the original but with the word "DUPLICATE" endorsed on the feed-in approval.

(4) The duplicate feed-in approval issued under subrule (3) shall have the same effect as the original feed-in approval.

### **Application to assign or transfer feed-in approval**

11. (1) A feed-in approval holder may apply to assign or transfer its feed-in approval by submitting a written application to the Authority and such application shall be accompanied by the relevant particulars of the proposed assignment or transfer, including the particulars of the proposed assignee or transferee.

(2) The Authority may, at any time after the receipt of an application under subrule (1), request the feed-in approval holder to give to the Authority within specified time further information or other document on the application.

(3) If any further information or other document required under subrule (2) is not provided by the feed-in approval holder within the time specified in the request or any extension of time granted by the Authority, the application shall be deemed to be withdrawn and shall not be further proceeded with, but without affecting the right of the feed-in approval holder to make a fresh application.

(4) Subject to subrule (7), the Authority may, after considering the application under subrule (1) and the further information or other document provided under subrule (2)—

(a) approve the application, with or without conditions, provided that the applicant has furnished sufficient evidence to the Authority's satisfaction that the proposed assignment or transfer—

(i) could not have been reasonably foreseeable at the time of the application for the grant of the feed-in approval;

(ii) is just and reasonable; and

(iii) is not inconsistent with the matters set out in subsection 3(3) of the Act;  
or

(b) refuse the application.

(5) The Authority shall communicate to the feed-in approval holder by written notice and as soon as practicable the decision of the Authority to approve or refuse the application.

(6) The written notice by the Authority under subrule (5) shall specify—

(a) in the case where the application is approved, the fact of such approval and, where conditions are imposed, the conditions imposed; and

(b) in the case of a refusal, the fact of such refusal and the reason for such refusal.

(7) Notwithstanding the provisions of subrule (4)—

(a) upon the purchase by a distribution licensee of a renewable energy installation under the circumstances permitted or required by the terms of a

renewable energy power purchase agreement registered under the Act, the Authority may approve an application to assign or transfer the applicable feed-in approval to the distribution licensee with the condition that the distribution licensee shall within twelve months thereafter sell its rights, titles and interests in the renewable energy installation so that distribution licensee's direct or indirect ownership of such renewable energy installation shall not exceed forty nine per centum; and

- (b) the Authority may approve an application to assign or transfer a feed-in approval relating to a renewable energy installation utilising solar photovoltaic technology as its renewable resource and having an installed capacity of up to and including seventy two kilowatts upon the applicant furnishing evidence of:
  - (i) the sale of the building to which such renewable energy installation relates; and
  - (ii) the novation of the applicable renewable energy power purchase agreement in such form as may be required pursuant to any guidelines issued by the Authority,

to the proposed assignee or transferee of such feed-in approval.

### **Standard conditions of feed-in approvals**

12. A feed-in approval holder shall be subject to the following standard conditions:

- (a) the feed-in approval holder shall continue to comply with the eligibility criteria described in rule 3, 4 or 5, whichever applicable, with the exception that the restrictions contained in paragraphs (b) and (c) of rule 4 shall not apply during the twelve-month period referred to in subrule 11(7);
- (b) the feed-in approval holder shall meet such milestones by such dates as may be determined by the Authority;
- (c) the feed-in approval holder shall observe and comply with the terms of its feed-in approval, the provisions of the Act and any subsidiary legislation made or other instruments issued under the Act, and all other applicable laws;
- (d) the feed-in approval holder shall provide information, in such format and at such intervals, as may be required by the Authority in accordance with the Act and its subsidiary legislation;
- (e) the feed-in approval holder shall obtain the prior written approval of the Authority in respect of any change in circumstances—
  - (i) which would result in the feed-in approval holder not complying with the eligibility criteria described in rule 3, 4 or 5, whichever applicable, with the exception that the restrictions contained in paragraphs (b) and (c) of rule 4

shall not apply during the twelve-month period referred to in subrule 11(7);  
or

- (ii) which would otherwise result in the feed-in approval holder being no longer entitled to be granted a feed-in approval under the Act and its subsidiary legislation; and
- (f) the feed-in approval holder shall comply with such other conditions as may be decided by the Authority from time to time.

### **Application fees**

13. (1) An application fee shall be chargeable in respect of each application for a feed-in approval which has been approved by the Authority in respect of a proposed renewable energy installation with an installed capacity exceeding seventy two kilowatts.

(2) The application fee shall be calculated at the rate of one ringgit for each kilowatt of installed capacity of the proposed renewable energy installation.

(3) The application fee shall only be payable upon notification by the Authority under section 7 that the application has been approved.

(4) The payment of the applicable application fee shall be a condition precedent to the grant of a feed-in approval by the Authority.

(5) The application fee shall be paid to the Authority by such means as the Authority may decide from time to time.

### **Extension of time**

14. (1) Notwithstanding anything contained in these Rules, in any condition of feed-in approval or in any request by the Authority, where a time period is specified thereunder for an act to be done or a condition to be fulfilled, the person affected may request for an extension of such time in writing.

(2) The Authority may, upon receipt of a request made under subrule (2), grant such extension of time as it deems fit, provided that such person has furnished sufficient evidence to the Authority's satisfaction that the proposed extension of time—

- (a) is not required as a result of such person's act, omission or negligence;
- (b) could not have been reasonably foreseeable at the time of the application for the grant of the feed-in approval;
- (c) is just and reasonable; and
- (d) is not inconsistent with the matters set out in subsection 3(3) of the Act.



**Giving false or misleading information or document**

15. A person who fails to disclose or omits to give any relevant information or document to the Authority under these Rules, or provides to the Authority under these Rules any information or document that he knows or has reason to believe is false or misleading, commits an offence and shall, on conviction, be liable to a fine not exceeding three hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Made [\*\*\*] 2011

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*Chairman*

*Sustainable Energy Development Authority Malaysia*