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03 March 2021

MEMORANDUM

TO : The Directors
Environmental Management Bureau
Policy and Planning Service
Legal Affairs Service

FROM : The Assistant Secretary
Field Operations –Mindanao and Legislative Affairs

SUBJECT : **INVITATION FROM THE COMMITTEE ON ENERGY**

This pertains to the letter dated 2 March 2021, from the office of Senator Sherwin T. Gatchalian, Chairperson, Senate Committee on Energy, inviting DENR to its 6th Technical Working Group (TWG) meeting via Zoom (Video/Teleconference) on **Friday, March 5, 2021 from 9:00 a.m. to 12 noon** to discuss Senate Bill 1819 entitled: “An Act Providing for the National Energy Policy and Framework for the Development and Regulation of the Philippine Midstream Natural Gas Industry, and for other Purposes” or the “Midstream Natural Gas Industry Development Act.”

Kindly inform this office of your attendance before the scheduled date of the meeting and submit presentation, comments and/or position papers in relation to the bill in hard and soft copy at the Legislative Liaison Office at telephone number 8920-1761 and email denrlegislative@yahoo.com for consolidation. Also, you can confirm your participation and position paper prior to the meeting to the Committee Secretariat through atty.graceanns@gmail.com and/or senateenergycommittee@gmail.com or contact them at mobile numbers 0905-5245489 and 0915-8122494, or at telephone number 552-6820 and 551-3746 or at trunk line 552-6601 locals 3301-03.


JOAN A. LAGUNDA D.M./D.P.A.


MEMO NO. 2021 - 199



Republic of the Philippines
SENATE OF THE PHILIPPINES
Pasay City

Committee on Energy

2 March 2021

General Ray Cimatu (Ret.)
Secretary
Department of Environment and Natural Resources

Dear **Secretary Cimatu**:

The Committee on Energy will conduct its 6th Technical Working Group (TWG) meeting via **Zoom** (Video/Teleconference) on **Friday, March 5, 2021** from **9:00 a.m.** to **12 noon** to discuss **SENATE BILL NO. 1819** entitled: "*An Act Providing for the National Energy Policy and Framework for the Development and Regulation of the Philippine Midstream Natural Gas Industry, and for other Purposes*" or the "*Midstream Natural Gas Industry Development Act.*"

For confirmation of your attendance, please contact the Committee on Energy Secretariat at mobile numbers **(0905) 5245489** and **(0915) 8122494** or at telephone numbers **(02) 552-6820** and **(02) 551-3746** (telefax) or at trunk line **(02) 552-6601** locals **3301 to 03**. Kindly provide us with an email address where we can send the link for the video conference and please furnish us with the complete name and email address of your representative in case you cannot participate in the meeting.

Your presence/participation in this Committee undertaking will be highly appreciated.

Very truly yours,

SENATOR SHERWIN T. GATCHALIAN
Chairperson, Senate Committee on Energy

For the Chairperson:

A handwritten signature in black ink, appearing to read "Grace Ann C. Salesa".

Atty. Grace Ann C. Salesa
Legislative Committee Secretary

EIGHTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Second Regular Session)

SENATE

S.B. No. _____

Introduced by SEN. WIN GATCHALIAN

AN ACT
PROVIDING FOR THE NATIONAL ENERGY POLICY AND FRAMEWORK FOR
THE DEVELOPMENT AND REGULATION OF THE PHILIPPINE MIDSTREAM
NATURAL GAS INDUSTRY, AND FOR OTHER PURPOSES

*Be it enacted by the Senate and the House of Representatives of the
Philippines in Congress assembled:*

CHAPTER I
GENERAL PROVISIONS

1
2
3
4 **SECTION 1. Short Title.** – This Act shall be referred to as the “Midstream Natural
5 Gas Industry Development Act.”
6

7 **SECTION 2. Declaration of Policy.**¹ – It is hereby declared the policy of the
8 State to:

¹ **PNOC-EC (21 December 2020):** To include the guiding principle in DC No. 2017-11-0012 (Rules and (Regulations Governing the Philippine Downstream Natural Gas Industry):

- The commercial operations of the activities in the PNRI shall be competitive, transparent and primarily governed by market forces;
- Agreements, decisions and concerted practices by a Person or persons to fix prices and/or fix output are prohibited;
- Other practices and/or conduct by a Person or Persons that undermine, restrict or distort competition are likewise prohibited; and
- Consistent with the applicable provisions of laws, findings and recommendations of the Philippine Competition Commission (PCC), the DOE Secretary shall adopt measures and/or corresponding remedies to maintain competition.

- 1 (a) Ensure the country's energy security by developing diversification of energy
2 sources to supply the various sectors of the economy;
- 3 (b) Promote the role of natural gas as an additional energy source, a
4 complementary fuel source to variable renewable energy, and a more
5 environmentally-friendly fossil fuel by creating a legal framework that would
6 govern the promotion and development of the natural gas industry in the
7 country;
- 8 (c) Encourage the inflow of private capital in the development of the midstream
9 natural gas industry by fostering a ~~an open and fair~~ competitive market;
- 10 (d) Ensure a safe, secure, reliable, ~~competitive,~~ and environmentally
11 responsible operation of the midstream natural gas value chain; and
- 12 (e) Protect midstream end users ~~consumers~~ by mandating transparent and
13 fair ~~competitive~~² rates, fees, and charges.
- 14

15 **SECTION 3. Scope and Application.** – This Act shall apply to the midstream
16 natural gas industry specifically the aggregation, supply, importation, receipt,
17 unloading, loading, processing, storage, regasification, transmission, storage,
18 bunkering,³ and transportation of natural gas, in its original or liquified form, from
19 local or foreign sources, and the systems and facilities utilized for such. It shall also
20 apply to the siting, construction, improvement, operation, utilization, expansion,
21 modification, rehabilitation, repair, maintenance, decommissioning, and
22 abandonment of such systems and facilities.

23

24 **SECTION 4. Definition of Terms.** – For purposes of this Act, the following terms
25 shall be defined as stated below:

- 26 (a) *Affiliate* refers to any natural or juridical person who, alone or together with
27 other natural or juridical persons, directly or indirectly, through one or more
28 intermediaries, controls, is controlled by, or is under common control by the

² PCC (22 January 2021): It would be more prudent to use the term "fair" rather than "competitive" when referring to pricing issues. In theory, market forces determine the competitive price. Theoretically, these "competitive prices" are determined by the traditional "invisible hand" of market forces irrespective of interventions made by the state.

³ DOE (8 January 2021)

owner or operator of a liquefied natural gas terminal or natural gas transmission system. It includes a subsidiary company, a parent company, and the subsidiaries, directly or indirectly, of the owner or operator of an LNG terminal, a dedicated natural gas pipeline, or a natural gas transmission [utility] system;⁴

(b) *Ancillary services* refer to all services necessary to support the transmission of natural gas from resources to midstream end users, while maintaining reliable operation of the natural gas transmission system in accordance with good utility practice and the Natural Gas Transmission Code to be promulgated in accordance with this Act. It shall include load balancing and blending and injection of inert gases;

(c) *Anticompetitive behavior* refers ~~[to anticompetitive pricing, output fixing, and any concerted practices or agreements by persons or association of persons that restricts, prevents, or distorts competition]~~ to any act enumerated under Section 14 and Section 15 of Republic Act No. 10667, otherwise known as the Philippine Competition Act;⁵

⁴ **ERC (25 January 2021):** To ensure free competition, ideally, there should be minimal to no common control between and among LNG terminals, the natural gas transmission utilities and the eventual natural gas transmission system operator. However, such ideal situation is impossible to achieve. Hence, the bill should contain parameters that will guarantee the lack or minimal influence to be exerted by one industry player over the other players in the industry. **The proposed bill should, therefore, contain the percentage ownership of a person or entity in order to determine whether a company is a subsidiary or an affiliate of another company.**

⁵ **PCC (22 January 2021):** PCC recommends revising the definition of "anticompetitive behavior" in Section 4 (c) which as drafted pertains only to anticompetitive agreements and implicitly excludes abuse by an entity of its market power. Anticompetitive behavior is well within the purview of the PCA and is treated substantially by the comprehensiveness of antitrust law.

Sec. 14. Anti-Competitive Agreements. –

- a) The following agreements, between or among competitors, are per se prohibited:
 - 1) Restricting competition as to price, or components thereof, or other terms of trade;
 - 2) Fixing price at an auction or in any form of bidding including cover bidding, bid suppression, bid rotation and market allocation and other analogous practices of bid manipulation;
- b) The following agreements, between or among competitors which have the object or effect of substantially preventing, restricting or lessening competition shall be prohibited:
 - 1) Setting, limiting, or controlling production, markets, technical development, or investment;
 - 2) Dividing or sharing the market, whether by volume of sales or purchases, territory, type of goods or services, buyers or sellers or any other means;
- c) Agreements other than those specified in (a) and (b) of this section which have the object or effect of substantially preventing, restricting or lessening competition shall also be prohibited: Provided, Those which contribute to improving the production or distribution of goods and services or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits, may not necessarily be deemed a violation of this Act.

An entity that controls, is controlled by, or is under common control with another entity or entities, have common economic interests, and are not otherwise able to decide or act independently of each other, shall not be considered competitors for purposes of this section.

Sec. 15. Abuse of Dominant Position. – It shall be prohibited for one or more entities to abuse their dominant position by engaging in conduct that would substantially prevent, restrict or lessen competition:

- a) Selling goods or services below cost with the object of driving competition out of the relevant market: Provided, That in the Commission's evaluation of this fact, it shall consider whether the entity or entities have no such object and

- 1 (d) *Bunkering* refers to
2 (e) *Capacity* refers to either to the volume in cubic meters or the maximum
3 flow, expressed in normal cubic meters per time unit or in energy unit per
4 time, whichever is applicable;⁶
5 (f) *Control* refers to the power to direct or cause the direction of the
6 management policies of a corporation by contract, agency, or otherwise;⁷
7 (g) ~~*End user* refers to any natural or juridical person requiring the supply of~~
8 ~~natural gas, in its original or liquefied form, for resale or its own use. It~~

the price established was in good faith to meet or compete with the lower price of a competitor in the same market selling the same or comparable product or service of like quality;

- b) Imposing barriers to entry or committing acts that prevent competitors from growing within the market in an anti-competitive manner except those that develop in the market as a result of or arising from a superior product or process, business acumen, or legal rights or laws;
- c) Making a transaction subject to acceptance by the other parties of other obligations which, by their nature or according to commercial usage, have no connection with the transaction;
- d) Setting prices or other terms or conditions that discriminate unreasonably between customers or sellers of the same goods or services, where such customers or sellers are contemporaneously trading on similar terms and conditions, where the effect may be to lessen competition substantially: Provided, That the following shall be considered permissible price differentials:
- 1) Socialized pricing for the less fortunate sector of the economy;
 - 2) Price differential which reasonably or approximately reflect differences in the cost of manufacture, sale, or delivery resulting from differing methods, technical conditions, or quantities in which the goods or services are sold or delivered to the buyers or sellers;
 - 3) Price differential or terms of sale offered in response to the competitive price of payments, services or changes in the facilities furnished by a competitor; and
 - 4) Price changes in response to changing market conditions, marketability of goods or services, or volume;
- e) Imposing restrictions on the lease or contract for sale or trade of goods or services concerning where, to whom, or in what forms goods or services may be sold or traded, such as fixing prices, giving preferential discounts or rebate upon such price, or imposing conditions not to deal with competing entities, where the object or effect of the restrictions is to prevent, restrict or lessen competition substantially: Provided, That nothing contained in this Act shall prohibit or render unlawful:
- 1) Permissible franchising, licensing, exclusive merchandising or exclusive distributorship agreements such as those which give each party the right to unilaterally terminate the agreement; or
 - 2) Agreements protecting intellectual property rights, confidential information, or trade secrets;
- f) Making supply of particular goods or services dependent upon the purchase of other goods or services from the supplier which have no direct connection with the main goods or services to be supplied;
- g) Directly or indirectly imposing unfairly low purchase prices for the goods or services of, among others, marginalized agricultural producers, fisherfolk, micro-, small-, medium-scale enterprises, and other marginalized service providers and producers;
- h) Directly or indirectly imposing unfair purchase or selling price on their competitors, customers, suppliers or consumers, provided that prices that develop in the market as a result of or due to a superior product or process, business acumen or legal rights or laws shall not be considered unfair prices; and
- i) Limiting production, markets or technical development to the prejudice of consumers, provided that limitations that develop in the market as a result of or due to a superior product or process, business acumen or legal rights or laws shall not be a violation of this Act:
- Provided, That nothing in this Act shall be construed or interpreted as a prohibition on having a dominant position in a relevant market or on acquiring, maintaining and increasing market share through legitimate means that do not substantially prevent, restrict or lessen competition:
- Provided, further, That any conduct which contributes to improving production or distribution of goods or services within the relevant market, or promoting technical and economic progress while allowing consumers a fair share of the resulting benefit may not necessarily be considered an abuse of dominant position:
- Provided, finally, That the foregoing shall not constrain the Commission or the relevant regulator from pursuing measures that would promote fair competition or more competition as provided in this Act.

⁶ ERC (11 January 2021)

⁷ ERC (11 January 2021): Provide a clearer definition of when there should be control in relation to the definition of "Affiliate." Control may be defined based on existing jurisprudence (i.e. voting rights, shareholdings). How control will be measured, whether on ownership or shareholdings (what happens if there is sale of ownership or shareholding?), actual operation, voting rights, etc.

- 1 includes power generation plants, industrial and commercial establishments,
2 ecozones, marine vessels, and motor vehicles;]
- 3 (h) *Dedicated natural gas pipeline* refers to a pipeline exclusively utilized by a
4 midstream end user or its affiliate for the conveyance of natural gas from an
5 LNG terminal or a natural gas production well to the said midstream end-
6 user or its affiliate;⁸
- 7 ~~(i) [Investment Priorities Plan (IPP) refers to the annual over-all plan prepared
8 by the Board of Investments (BOI) under Article 26 of Executive Order No.
9 226, otherwise known as the Omnibus Investments Code of 1987;]~~
- 10 (j) *Importation* refers to the act of bringing natural gas, in its original or
11 liquefied form, into the Philippines from foreign sources;
- 12 (k) *Gas aggregation* refers to the activity of pooling together various demands
13 for natural gas from midstream end users and supplying them with natural
14 gas from one or more sources;⁹
- 15 (l) *Gas aggregator* refers to any natural or juridical person who engaged in the
16 business of gas aggregation [~~which avails of the services of liquefied natural
17 gas terminals and natural gas transmission systems to engage in the activity
18 of pooling together separate demands for natural gas from end users and
19 supplying them with natural gas from one or more sources;~~];
- 20 (m) *Liquefied natural gas (LNG)* refers to natural gas which has been cooled to a
21 cryogenic temperature, converting it to a liquid state;
- 22 (n) *LNG terminal* refers to all facilities located onshore or offshore, that are used
23 to import, receive, unload, load, process, store, regasify, transmit, or
24 transport natural gas, in its original or liquefied form, from local or foreign
25 sources. It shall include berthing ports, unloading and loading arms, line
26 packs, ~~[own-use]~~ pipelines and facilities,¹⁰ regasification facilities, and

⁸ TWG Agreement 26 January 2021

⁹ First Gen (8 January 2021): To include the term "aggregation", as it is used a number of times in the draft bill.

¹⁰ MARINA (30 January 2021): If ships under the bill are considered as a facility as defined under (o) Natural Gas Industry Participant and (k) LNG terminal as regasification facilities.

1 storage tanks, among others ~~[, but excludes marine vessels used to deliver~~
2 ~~natural gas, in its original or liquefied form, to such terminal]~~,¹¹

3 (o) *LNG Terminal Third Party Access Code* refers to

4 (p) *Midstream end user* refers to any natural or juridical person who directly
5 connects to the LNG terminal or the natural gas transmission system,
6 requiring the supply of natural gas, in its original or liquefied form, for
7 resale or own use. It includes power generation plants, industrial and
8 commercial establishments, ecozones, marine vessels, storage, bunkering
9 facilities, motor vehicles, and virtual pipelines;¹²

10 (q) *Midstream natural gas industry* refers to the importation, transportation,
11 transmission, storage, and marketing of natural gas, in its original or
12 liquefied form, but shall exclude the retail of natural gas.¹³ It utilizes,
13 among others, LNG terminals, dedicated natural gas pipelines, natural gas
14 transmission systems, storage and bunkering facilities, virtual pipelines, and
15 motor vehicles and marine vessels transporting natural gas ~~[marine vessels~~

¹¹ **CLDP (21 Dec 2020):** This definition currently excludes “marine vessels used to deliver natural gas, in its original or liquefied form, to such terminal

- at a technical level, this definition may be troublesome since some LNG regasification facilities rely upon “marine vessels” that can both act as fixed LNG storage or be used to deliver natural gas.
- while drafting definitions both in the positive (i.e., what X is or includes) and the negative (i.e., what X is not or does not include) can add much-needed clarity in any legislation, CLDP wonders whether the Natural Gas Transmission System (as defined in the Draft Law at Section 4(s)) and potentially natural gas transport lorries or other on-shore vehicles should also be expressly excluded from the definition of “LNG Terminal” for added clarity.

¹² **TWG Agreement 26 January 2021**

CLDP (21 Dec 2020): Refer only to power generation plants and industrial and other end users that are directly connected to the transmission infrastructure (rather than retail end users at the end of the distribution network). If this is indeed the Philippines’ intent, it might be helpful to revise this definition accordingly.

ERC (11 January 2021): For clarification

- How does the resale of natural gas operationalized?
- Are the identified end users in the definition exclusive?
- Is an end user who converts natural gas to another form of energy for own use contemplated in this definition? There might be confusion as to the scope of this Bill if said end user will be included in the definition.
- It is observed that the bill might already be impliedly including the downstream sector considering the present definition of an end-user. If the definition includes an end user of natural gas, then this is already downstream, unlike when the end user is just the natural gas transmission system which activity is in midstream. To clarify the same, there is a need to revise the definition to reflect that intent of the bill as to allowable types of end-users in the midstream sector.

ERC (25 January 2021): The ERC believes that the definition of an end-user should be modified to align with the objectives of the bill which is the midstream natural gas industry. The definition should not contain end-users which will ultimately utilize and exhaust the natural gas itself, unless it will be used to produce another product or serve fuel for the generation of electricity. End-User - refers to any natural or juridical person requiring the supply of natural gas, in its original or liquefied form, for resale or its own use AS FUEL FOR THE GENERATION OF ELECTRICITY.

¹³ **ERC (11 January 2021):** Provide an express exclusion of retailing of LNG to avoid confusion with the Downstream House Bill.

1 to deliver natural gas to LNG terminals, storage facilities, and natural gas
2 transmission systems];

3 (r) *Midstream Natural Gas Industry Development Plan* refers to the
4 comprehensive plan for ensuring safe, secure, and reliable supply of natural
5 gas, in its original or liquefied form, while establishing the efficient
6 operations of the country's midstream natural gas infrastructure and
7 managing demand for natural gas through specific government programs
8 and policies. It shall include the various Natural Gas Transmission
9 Development Plans of natural gas transmission utilities~~[]~~ and the Natural
10 Gas Transmission System Operator when applicable, and studies on over-all
11 supply and demand, capacity, and other research necessary in achieving a
12 sound demand and supply projection for natural gas in the country;

13 (s) *Natural gas* refers to gas obtained from boreholes and wells consisting
14 primarily of a mixture of methane, ethane, propane, and butane with small
15 amounts of heavier hydrocarbons and some impurities, notably nitrogen and
16 complex sulfur compounds and water, carbon dioxide, and hydrogen sulfide
17 as well as non-conventional gas including gas from bituminous shale;

18 (t) *Natural gas industry participant* refers to the supplier or importer of natural
19 gas; gas aggregator; owner and operator of LNG terminal, dedicated natural
20 gas pipeline, natural gas transmission system, virtual pipelines, and motor
21 vehicles and marine vessels utilized to transport natural gas; the Natural
22 Gas Transmission System Operator, third parties; and midstream end users
23 ~~[supplier, importer, or aggregator of natural gas; users, owners, or~~
24 ~~operators of LNG terminals; users of natural gas transmission systems and~~
25 ~~natural gas transmission utilities; users, owners, or operators of lorries and~~
26 ~~other specially equipped motor vehicles and marine vessels utilized to~~
27 ~~transport natural gas];¹⁴~~

28 ~~(u) [Natural Gas Sales Purchase Agreement refers to a contract for the supply~~
29 ~~of natural gas, in its original or liquefied form];~~

¹⁴ MARINA (30 January 2021): If ships under the bill are considered as a facility as defined under (o) Natural Gas Industry Participant and (k) LNG terminal as regasification facilities.

- 1 (v) *Natural Gas Transmission Code* refers to the compilation of rules,
2 procedures, requirements, regulations, and minimum technical performance
3 standards governing the safe and reliable operation, maintenance,
4 development, decommissioning, and abandonment of all dedicated natural
5 gas pipelines and natural gas transmission systems in the country. It also
6 defines and establishes the relationship of dedicated natural gas pipelines
7 and natural gas transmission systems with facilities and installations of other
8 natural gas industry participants and midstream end users, if applicable;
- 9 (w) *Natural Gas Transmission Development Plan* refers to the plan of each
10 natural gas transmission utility, or the comprehensive plan of the Natural
11 Gas Transmission System Operator when applicable, for managing the
12 country's transmission system through efficient planning for its location,
13 construction, improvement, expansion, operation, rehabilitation, repair, and
14 maintenance;
- 15 (x) *Natural gas transmission system* refers to a network containing pipelines
16 and other related facilities, owned by a natural gas transmission utility,
17 which convey natural gas, in its original or liquefied form, from an LNG
18 terminal or ~~{domestic}~~ a natural gas production well¹⁵ ~~{supply}~~ to a natural
19 gas industry participant ~~{or a end user}~~, if applicable. ~~It shall be a regulated~~
20 ~~industry subject to the provisions under Chapter IV of this Act;~~
- 21 (y) *Natural gas transmission fee* refers to the ~~{fee}~~ amount paid by natural gas
22 industry participants ~~{or the end user if applicable,}~~ for the use of a natural
23 gas transmission system. It shall consist of amounts used to defray the
24 costs of siting, constructing, improving, expanding, expanding, maintaining,
25 rehabilitating, repairing, modifying, decommissioning, and abandoning the
26 system, and a reasonable return on rate base, as well as the cost of
27 operating the system while there is no Natural Gas Transmission System
28 Operator;
- 29 (z) *Natural Gas Transmission System Operator (NGTSO)* refers to a natural or
30 juridical person responsible for operating, maintaining, and developing the

¹⁵ DOE (8 January 2021): The law should also cover the supply of indigenous natural gas to the transmission system, distribution system or even directly to end users in anticipation of future domestic natural gas discoveries.

1 interconnected natural gas transmission system, ensuring the continuous
2 and reliable delivery of gas to natural gas industry participants ~~[and end~~
3 ~~users]~~, and securing the long-term ability of the system to meet demand for
4 the transmission of gas;

5 ~~(aa) [NGTSO fee refers to the fee paid by natural gas industry participants, or~~
6 ~~the end user if applicable, to the NGTSO for its services in operating and~~
7 ~~managing the interconnected natural gas transmission system;]~~

8 (bb) *Natural gas transmission utility* refers to a natural or juridical person who
9 has a franchise granted by law to construct and operate a natural gas
10 transmission system within a specified area;

11 (cc) *Negotiated third party access (nTPA)* refers to a contractual arrangement
12 between an own use LNG terminal permit holder ~~[or an own use natural gas~~
13 ~~transmission system permit holder,]~~¹⁶ and a third party to allow the latter
14 use and access of a specific capacity covered by the own use permit for a
15 fee agreed upon ~~[negotiated]~~ between the two entities;

16 (dd) *NGTSO fee* refers to the amount paid by natural gas industry participants to
17 the NGTSO for its services in operating and managing the interconnected
18 natural gas transmission system;

19 (ee) *Own use LNG terminal permit holder* refers to an LNG terminal whose owner
20 or operator has been issued an own use permit;

21 ~~(ff) [Own use natural gas transmission system permit holder refers to a natural~~
22 ~~gas transmission utility which has been issued an own use permit;]~~

23 (gg) *Own use permit* refers to an authorization issued by DOE to ~~[in the case of]~~
24 the owner and operator of an LNG terminal~~[, and ERC in the case of a~~
25 ~~natural gas transmission utility,]~~¹⁷ to exclusively use or allow an affiliated
26 party to use a specific capacity of the LNG terminal ~~[or natural gas~~
27 ~~transmission system]~~ for a specified period of time;

28 (hh) *Permit* refers to an authorization issued by the DOE or ERC, whichever is
29 applicable, for the supply, ~~[or]~~ importation, aggregation, storage, or
30 bunkering of natural gas, or the siting, construction, improvement,

¹⁶ TWG Agreement 26 January 2021

¹⁷ TWG Agreement 26 January 2021

1 operation, utilization, expansion, modification, rehabilitation, repair, ~~and~~
2 maintenance, decommissioning, and abandonment of an LNG terminal,
3 natural gas transmission system, or dedicated natural gas pipeline, for a
4 specified period of time;¹⁸

5 (ii) *Permit holder* refers to a natural or juridical person who is granted a permit
6 by the DOE or ERC, whichever is applicable,¹⁹ to engage in the supply, ~~or~~
7 importation, aggregation, storage, or bunkering of natural gas, or the siting,
8 construction, improvement, operation, utilization, expansion, modification,
9 rehabilitation, repair, ~~and~~ maintenance, decommissioning, and
10 abandonment of an LNG terminal, natural gas transmission system, or
11 dedicated natural gas pipeline, for a specified period of time;

12 (jj) *Regulated third party access (rTPA) permit* refers to an authorization issued
13 by the DOE to ~~in the case of~~ the owner and operator of an LNG terminal~~,~~
14 ~~and ERC in the case of a natural gas transmission utility,~~²⁰ to offer to third
15 parties ~~the public~~, the fair, reasonable, and²¹ non-discriminatory use and
16 access of a specific capacity of the LNG terminal ~~for natural gas transmission~~
17 ~~system for a fee~~ for a specified period of time;

18 (kk) *Reserve price* refers to the undisclosed rate determined by ERC using a
19 methodology pursuant to Section 6 of this Act that serves as the price
20 ceiling for the natural gas transmission fee;²²

21 (ll) *rTPA LNG terminal permit holder* refers to an LNG terminal whose owner or
22 operator has an rTPA permit;

23 (mm) ~~[rTPA natural gas transmission system permit holder refers to a natural~~
24 ~~gas transmission utility which has been issued an rTPA permit;]~~

25 (nn) *Standards Developing Organizations* refer to

26 (oo) *Storage* refers to

¹⁸ **ERC (11 January 2021):** Would the definition also cover Permits for aggregator of natural gas, users, owners, or operators of authorized lorries and other specially equipped motor vehicles, ships, and marine vessels utilized to transport natural gas?

¹⁹ **ERC (11 January 2021, 25 January 2021)**

²⁰ **TWG Agreement 26 January 2021)**

²¹ **PCC (22 January 2021)**

²² **ERC (11 January 2021; 25 January 2021):** Reserve Price refers to the undisclosed price for the natural gas transmission fee of rTPA natural gas transmission system permit holders set by the ERC subject to the principles laid down in Section _____, of Chapter IV.

- 1 (pp) *Supplier* refers to any natural or juridical person authorized by the DOE to
2 engage in the business of supply of natural gas as defined in this Act; ~~[and]~~
- 3 (qq) *Supply* refers to the trade of indigenous or imported natural gas, in its
4 original or liquefied form, and its subsequent sale to natural gas industry
5 participants; ~~[, if applicable, and end-users.]~~
- 6 (rr) *Terminal fee* refers to the rates, charges, and other similar considerations
7 imposed upon third parties ~~[in exchange]~~ for the use of an LNG terminal
8 and other related services rendered by an rTPA LNG terminal permit holder;
- 9 (ss) *Third party* refers to a natural gas industry participant ~~[or end-user]~~ who
10 avails of the services of an LNG terminal or natural gas transmission system
11 and is not an affiliate of ~~[its]~~ the owner, ~~[or]~~ operator, affiliate;²³
- 12 (tt) *Third party access* refers to a contractual arrangement between the rTPA
13 LNG terminal permit holder or a natural gas transmission utility ~~[or rTPA
14 natural gas transmission system permit holder,]~~ and a third party to allow
15 the latter transparent and non-discriminatory utilization and access of the
16 capacity available to ~~[the public]~~ third parties of the ~~[rTPA]~~ LNG terminal or
17 the natural gas transmission system, ~~[permit holder or the rTPA natural gas
18 transmission system permit holder,]~~²⁴ whichever is applicable;
- 19 (uu) *Transmission* refers to the conveyance of natural gas either through a
20 dedicated natural gas pipeline or a natural gas transmission system~~[.];~~ and
- 21 (vv) *Transmission Third Party Access Code* refers to
- 22 ~~(ww) [Supplier refers to any natural or juridical person authorized by the DOE to
23 engage in the business of supply of natural gas as defined in this Act; and~~
- 24 ~~(xx) Supply refers to the trade of indigenous or imported natural gas, in its
25 original or liquefied form, and its subsequent sale to natural gas industry
26 participants, if applicable, and end-users.]~~

CHAPTER II

POWERS AND RESPONSIBILITIES OF GOVERNMENT AGENCIES

²³ ERC (11 January 2021)

²⁴ TWG Agreement 26 January 2021

1
2 **SECTION 5. Powers and Responsibilities of the Department of Energy**

3 **(DOE).** – In addition to its functions under Republic Act No. 7638, otherwise known
4 as the Department of Energy Act of 1992, the DOE shall be the lead implementing
5 agency for this Act. Towards this end, it shall:

6 (a) Supervise and monitor the development of the midstream natural gas
7 industry, and ensure the security and sufficiency of supply for local
8 demand;²⁵

9 (b) Prepare a Midstream Natural Gas Industry Development Plan within one (1)
10 year from the effectivity of this Act, upon consultation with public and
11 private stakeholders, which shall be ~~integrated into the Philippine Energy~~
12 ~~Plan, and shall be reviewed and updated annually, and integrated into the~~
13 ~~Philippine Energy Plan;~~

14 (c) Together with the relevant government agencies, ~~[P]~~promulgate or identify
15 and adopt, within six (6) months²⁶ from the effectivity of this Act's
16 implementing rules and regulations, and determine compliance with ~~[the]~~
17 ~~health, safety, security, and environmental standards [of the following,] in~~
18 ~~accordance with [internationally accepted standards] Standards Developing~~
19 ~~Organizations,²⁷ [of the natural gas industry and] of the following [together~~
20 ~~with the relevant government agencies]:~~

²⁵ TWG Agreement 27 January 2021

DOE (8 January 2021): Promulgation and supervision of the implementation of development plans and programs of all operators and suppliers to ensure industry development.

DOE (29 January 2021): To ensure the supply security, include the following:

- That all power plant design using natural gas shall be capable of utilizing alternative fuel to augment the MIR during natural gas supply disruption;
- That all regasification terminal owner/operator shall submit to the DOE an annual supply plan that satisfies its own use and third-party users expected demand and MIR for the year;
- That all regasification terminal owner/operator shall submit to the DOE, for monitoring purposes, a monthly compliance report to supply the actual demand and the MIR; and
- That any unjustifiable non-compliance shall be penalized by fine, suspension, or cancellation of the permit to operate.

²⁶ **DOE (8 January 2021):** DOE views the current provision under Section 5 (c) requiring issuance of standards for Facility installation, system of operation, decommissioning and abandonment of all LNG terminals and natural gas transmission systems within six (6) months from the effectivity of this Act to be too tight, unrealistic and unaligned to the usual practice from other jurisdictions which follows the approach of adoption from standards issued by Standard Setting Bodies, experts and even from actual operators. The DOE in this regard has to conduct through the Committee on Standards the proper study and review of acceptable standards including capacity building so the committee will gain competence in understanding these standards before any formal promulgation can be made.

²⁷ **CLDP (21 Dec 2020):** Explicitly authorize agencies to identify and adopt international standards set by "Standards Developing Organizations" (SDOs)

- 1 (i) Natural gas, in its original or liquefied form, ~~[and]~~
2 (ii) ~~[Facility installation, system of operation,]~~ Siting, construction,
3 operation, expansion, modification, rehabilitation, repair,
4 maintenance, decommissioning, and abandonment of all LNG
5 terminals ~~[and natural gas transmission systems],~~²⁸
6 (iii) Storage and bunkering of natural gas,
7 (iv) Virtual pipelines, and
8 (v) Motor vehicles and marine vessels transporting natural gas;
9 (d) Convene, within one (1) month from the effectivity of this Act, a technical
10 working group comprised of relevant government agencies to include the
11 Department of Environment and Natural Resources, Department of Health,
12 Department of Trade and Industry, Maritime Industry Authority, Department
13 of Labor and Employment, Department of Interior and Local Government,²⁹
14 and Department of Transportation to ensure consistent and streamlined
15 standards and regulations in the midstream natural gas industry;³⁰
16 (e) Evaluate and act on applications for the siting, construction, operation,
17 expansion, ~~[maintenance,]~~ modification, rehabilitation, repair, maintenance,
18 ~~[expansion,]~~ decommissioning, and abandonment of all LNG terminals as

DTI-BPS (8 January 2021): DTI-BPS (8 January 2021): DTI-BPS agrees to the statement of Atty. Badissy on the importance of the SDOs and this is applicable to the standardization activities of DTI-BPS. DTI-BPS has institutionalized the recognition of SDOs with the goal to cohere all the standardization activities in the country and optimize the use of resources, as well as to prevent the duplication of work in the development of Philippine National Standards, as per the DTI Department Administrative Order (DAO) No. 19-08, Series of 2019 or the National Recognition for Standards Development Organizations (SDOs). With regard to the adoption of industry standards, it is in the BPS Directives for conducting standardization work to involve the industry in standards development, as one of the sectors represented which also include the academe, professional, research, testing, government, and consumer sectors. DOE-OIMB follows the BPS Directive for the standardization of petroleum products through the DOE/ Technical Committee on Petroleum Products and Additives (TCPPA) and DOE/ Technical Committee on Petroleum Processes and Facilities (TCPPF). DTI-BPS and DOE-OIMB are on the process of finalization and implementation of the Memorandum of Agreement (MOA) on the development of Philippine National Standards related to natural gas, as an imperative need for a closer coordination and collaboration between the two agencies related to the subject of the MOA. This MOA is pursuant to DTI DAO No. 19-08. The outputs of this MOA are expected to:

- Strengthen the capabilities and foster the growth of natural gas companies, dealer, distributors, industries and other stakeholders of natural gas products and facilities;
- Improve the productivity, quality, and competitiveness of these products and services for both domestic and foreign markets; and
- Facilitate the exchange of natural gas products and facilities through the elimination of technical barriers to trade.

²⁸ TWG Agreement 3 February 2021

²⁹ GPDP (5 January 2021 and TSN 12 January 2021): Suggest to include agencies under the Philippine Inter-Agency – Health, Safety, Security, Environment Inspection and Monitoring Team (i.e. DOLE – Bureau of Working Conditions; DILG – Bureau of Fire Protection; DOTr – Philippine Coast Guard, among others)

CLDP (21 Dec 2020): Should the PCC be listed in Section 5(d) as well?

³⁰ DOE (8 January 2021): Chair of the technical committee on standards for the promulgation of standards respectively on product quality, facility, and safety practice.

1 well as storage and bunkering facilities [~~and natural gas transmission~~
2 ~~systems~~];³¹

3 (f) Issue permits for the supply, aggregation, importation, storage, bunkering,³²
4 and transportation[~~, transmission~~]³³ of natural gas, in its original or liquefied
5 form in accordance with Sections 5(c) and 5(e) hereto: *Provided*, That in
6 the case of transportation, the permit shall be issued together with the
7 Maritime Industry Authority and Department of Transportation pursuant to
8 Sections 10 and [~~of this Act, and the Department of Transportation in~~
9 ~~accordance with Section~~] 11 hereto, whichever is applicable;³⁴

10 (g) Issue own use and rTPA permits to owners and operators of LNG terminals;

11 (h) Issue a written approval on the sale,³⁵ assignment, or transfer of interests,
12 rights, or participation³⁶ on any permit issued, after a finding that the
13 purchaser,³⁷ assignee, or transferee has met all the legal, technical, and
14 financial qualifications and has committed itself to assume all existing
15 obligations of the permit holder, and such sale,³⁸ assignment, or transfer is
16 in accordance with existing laws, rules, and regulations[~~: *Provided*, That~~
17 ~~permits requiring the prior issuance of a legislative franchise shall not be~~
18 ~~subject to assignment or transfer of interest~~];³⁹

³¹ TWG Agreement 3 February 2021

³² DOE (8 January 2021): Bunkering system likewise shall not be considered public utility and not subject to TPA Service.

³³ ERC (11 January 2021)

³⁴ DOE (8 January 2021):

- Review and issue DOE permits on all applications for construction, operation, maintenance, decommissioning, and abandonment of both midstream facilities;
- Based on the issued DOE permit, enforce the responsibilities of all operators to observe standards and proper management of facilities.

³⁵ PHILRECA (5 January 2021)

³⁶ PHILRECA (5 January 2021)

³⁷ PHILRECA (5 January 2021)

³⁸ PHILRECA (5 January 2021)

³⁹ DOE (8 January 2021): "The DOE shall evaluate the submission and issue the approval for the transfer of interest of an existing Operator, after a finding that the transferee- Operator has met all the legal, technical and financial qualifications to serve as the new Operator, and has committed itself to assume all existing obligations of the transferor Operator, and the transfer is in accordance with existing laws, rules, and regulations: *Provided*, that any existing Congressional Franchise of the transferor-Operator shall be cancelled and a new Congressional Franchise shall be required from the transferee-Operator: **Provided further, that if the transfer pertains only to the share of a member of an unincorporated Permit Holder who is not the designated Operator, no DOE approval or new Congressional Franchise shall be required. The DOE shall issue the specific guideline to implement this responsibility.**"

First Gen (8 January 2021): Clarification: What is the rationale for this prohibition?

- 1 (i) Ensure compliance with the publication and unbundling of the terminal fee
2 ~~[imposed by an rTPA LNG terminal permit holder]~~ in accordance with
3 Section 25 of this Act;
- 4 (j) Review and approve the Natural Gas Transmission Development Plans⁴⁰ of
5 ~~[owners and operators of]~~ natural gas transmission utilities ~~[systems]~~, and
6 the NGTSO when applicable, and integrate the same into the Midstream Gas
7 Industry Development Plan ~~[Philippine Energy Plan]~~;⁴¹
- 8 (k) Determine the necessity of and then direct the interconnection of natural
9 gas transmission systems based on the Philippine Energy Plan, Midstream
10 Natural Gas Development Plan, and the Natural Gas Transmission
11 Development Plans, taking into consideration the maturity of the industry
12 and the cost efficiency of interconnection,⁴² and upon consultation with
13 stakeholders;⁴³
- 14 (l) Determine the qualifications of and procedure for the ~~[establishment or]~~
15 competitive selection of a single independent NGTSO taking into
16 consideration Section 24 of this Act, and undertake its selection upon the
17 interconnection of the natural gas transmission systems;⁴⁴
- 18 ~~(m) [Establish or select an NGTSO upon the interconnection of natural gas~~
19 ~~transmission systems;]~~

⁴⁰ **GPDP (5 January 2021):** The draft Bill requires all NGT Utilities to submit its Natural Gas Transmission Development Plan [Plan] to DOE for review and approval. [Sections 5(j) and 14(a)]. Meanwhile, the draft Bill states that the ERC shall promulgate the National Gas Transmission Code [Code], and shall ensure that NGT Utilities comply with the Code. [Section 6 (a) and (d)]. Since the ERC regulates NGT Utilities, it will be more administratively convenient if the Plan is submitted by the NGT Utilities to the ERC, instead of the DOE, for review and approval.

Engr. De Leon – GPDP (TSN, 2nd hearing, 12 January 2021): “for administrative convenience and probably efficiency regarding the submission of the National Gas Transmission plan as well as the selection of the NGTSO that this be submitted to the ERC instead”

⁴¹ **ERC (11 January 2021)**

⁴² **TWG Agreement 3 February 2021**

⁴³ **DOE (8 January 2021):** DOE views that this power should be performed in coordination between DOE and ERC hence both agencies will be directly involved on any changes to the industry structure. Hence, stated below is the proposed revision: “The DOE together with ERC are given the powers to jointly order, subject to consultation, technical compatibility and commercial coordination of parties involved, the synchronization and interconnection of several or all upstream, Midstream and Downstream Natural Gas Industry Infrastructures and their corresponding Ancillary Facilities including any Dedicated Pipeline Network for the safe, secure, reliable, environmentally responsible, personnel and user protective operation of the entire system.”

⁴⁴ **TWG Agreement 3 February 2021**

1 (n) Require the submission of the following information from suppliers,
2 importers, aggregators, and owners and operators of LNG terminals, and
3 storage and bunkering facilities, whichever is applicable, subject to Section
4 32 of this Act:

5 (i) Progress and status reports on siting, construction, improvement,
6 operation, utilization, expansion, modification, rehabilitation, repair,
7 maintenance, decommissioning, and abandonment of LNG terminals
8 and storage and bunkering facilities,

9 (ii) Regular reports on the compliance with health, safety, security, and
10 environmental standards,

11 (iii) Supply and demand of natural gas,

12 (iv) Volumes of specific inventories to include levels of importation and
13 emergency reserve,

14 (v) Progress and status reports on mitigation measures and responses in
15 relation to accidents and other emergency incidents,

16 (vi) Mode of competitive selection of third parties for rTPA LNG terminal
17 permit holders, reports on competitive selection processes undertaken,
18 and status of utilization by third parties of the LNG terminal with an
19 rTPA permit: *Provided*, That the mode for each competitive selection
20 process shall be determined by each rTPA LNG terminal permit holder:
21 *Provided further*, That each competitive selection process shall be
22 transparent, fair, reasonable, and non-discriminatory, and

23 (vii) Other data and information necessary to the performance of the duties
24 and functions of DOE;⁴⁵

25 ~~[(i) Regular reports on the compliance with health, safety, security, and
26 environmental standards, and activities in relation thereto,~~

27 ~~(ii) All contracts entered into, including Natural Gas Sales Purchase
28 Agreements, and regular reports on actions and activities relative to these
29 contracts: *Provided*, That in the case of natural gas transmission utilities and
30 the NGTSO, the contracts and regular reports shall be submitted to the ERC
31 pursuant to Section 6(c) hereto,~~

⁴⁵ TWG Agreement 3 February 2021

1 ~~(iv) Other documents, information, and data as may be necessary in the~~
2 ~~exercise of its functions to achieve the overall objectives of this Act.]~~

3 (o) Promulgate, within six months from the effectivity of this Act's implementing
4 rules and regulations, an LNG Terminal Third Party Access Code and ensure
5 compliance therewith;

6 (p) Investigate, motu proprio or upon complaint, any failure to comply with this
7 Act, its rules and regulations, and any issuance promulgated pursuant to
8 DOE's powers under this Act, except those under the jurisdiction of the ERC
9 as provided under Section 6 of this Act;⁴⁶

10 (q) Review, and suspend or revoke, after due notice and hearing, permits
11 issued by the DOE,⁴⁷ after a finding of non-compliance with this Act, its
12 implementing rules and regulations, and related issuances promulgated
13 pursuant to DOE's powers under this Act, except those under the
14 jurisdiction of the ERC as provided under Section 6 of this Act;⁴⁸

15 (r) Initiate and institute⁴⁹ actions against any natural gas industry participant,
16 except those under the jurisdiction of the ERC as provided under Section 6
17 of this Act, for any of the following:

18 (i) Anticompetitive behavior before the Philippine Competition Commission
19 (PCC) ~~[of an rTPA LNG terminal permit holder and rTPA natural gas~~
20 ~~transmission system permit holder], or~~

21 (ii) ~~[and against v]~~Violations of the provisions of this Act and other
22 applicable laws, rules, and regulations before the ERC, ~~[Philippine~~
23 ~~Competition Commission (PCC),]~~ other quasi-judicial agencies, or the
24 courts;⁵⁰

⁴⁶ TWG Agreement 3 February 2021

⁴⁷ ERC (25 January 2021)

⁴⁸ TWG Agreement 3 February 2021

⁴⁹ PHILRECA (5 January 2020): The word "initiate" should include "initiate and institute" the word "initiate" merely means to "start a process" while the word "Institute" means to "file an action or proceedings".

⁵⁰ CLDP (21 Dec 2020): While DOE (and possibly ERC) should have the responsibility to initiate actions as a general matter, any such action would be subject to PCC's jurisdiction under Section 12. If this is the case, Section 5(q) (and any equivalent subsection of Section 6, as applicable), should be revised accordingly.

PCC (22 January 2021): The proposed text of Section 5 (q) of the bill, by enumerating alternative venues rather than referring exclusively to the jurisdiction of the PCC in the adjudication of anticompetitive behavior, may give rise to confusion. It could, for instance, result in forum-shopping. We respectfully note that the most recent judicial pronouncement (from the Court of Appeals) in the case of Therma Mobile vs. ERC ruled that with the passage of the PCA, only the PCC has jurisdiction over

- 1 (s) Initiate actions against the NGTSO for failure to comply with its functions as
2 provided under Section 24 of this Act~~[, and issuances of the DOE and ERC,]~~
3 before the ERC~~[, other quasi-judicial agencies, or the courts]~~,⁵¹ and
4 (t) Perform all other acts that are analogous to the aforementioned and in
5 furtherance of the implementation of this Act.⁵²
6

7 **SECTION 6. Powers and Responsibilities of the Energy Regulatory**
8 **Commission (ERC).** – In addition to its functions under Republic Act No. 9136,
9 otherwise known as the Electric Power Industry Reform Act of 2001, the ERC shall
10 have the authority to:

- 11 (a) Promulgate the Natural Gas Transmission Code⁵³ and Transmission Third
12 Party Access Code⁵⁴ within one (1) year from this Act's effectivity, which shall

anti-competition cases. Although the case is on appeal with the Supreme Court, the CA decision nonetheless provides indicative guidance.

⁵¹ ERC (11 January 2021): For clarification

- What other applicable laws, rules and regulations are contemplated in this paragraph?
- Is this an exclusive power by the DOE or can this also be exercised by regular consumers, interested parties, ERC, PCC and other related quasi-judicial agencies?
- In relation to Section 6 (d), how will DOE initiate actions before the ERC?

⁵² CLDP (21 Dec 2020):

- Section 5 enumerates the powers and responsibilities of DOE in respect of the midstream natural gas industry, while Section 6 enumerates the powers and responsibilities of ERC in respect of the same. Generally, Sections 5 and 6 mirror each other, to the extent applicable. Section 6(h) and 6(j), however, allocate to ERC the following responsibilities, in respect of natural gas transmission systems: (i) reviewing performance of rTPA natural gas transmission system permit holders and (ii) exercising primary jurisdiction over disputes over the rules promulgated by it. Philippines to confirm whether DOE should also be allocated these responsibilities, in respect of LNG terminals.
- Empower the regulators – the DOE and ERC – to identify and adjust to changes in circumstances as the Philippines' natural gas market evolves. one of the enduring challenges to a well-regulated open market for LNG and natural gas is striking the balance between incentivizing competition with respect to the commodity (i.e., LNG, natural gas) while at the same time incentivizing investment in the infrastructure (i.e., the LNG terminal, gas pipelines). This balance is likely to shift over time, with a preference for facilitating (or even need to facilitate) infrastructure investment early on in market development, while later stages of market development tend to focus more closely on market competition amongst gas sources.

DOE (8 January 2021): Duty to Extend Assistance to DOE, ERC or other Government Agency - The other departments, agencies or instrumentalities of the Government, including Government Owned and Controlled Corporations, are hereby directed to extend assistance and support to the DOE, ERC or other Government agency involved in the discharge of its function in this Act.

⁵³ DOE (8 January 2021): Promulgate and implement the Utility Service Fee Setting and Gas Delivery code both for the Transmission System and the Distribution system to govern the rate setting but review likewise the gas delivery performance of these facilities intended to protect captive end users

⁵⁴ MERALCO (22 December 2020): The proposed bill should provide guidance on:

- how pipeline capacity will be allocated if there are physical constraints;
- how contracted but unused pipeline capacity can be offered again for use of other players to spread payment of fixed costs; and
- how regulated prices will be set (e.g. no cross subsidy, allow regulated entity to operate viable, rate of return regulation vs. performance-based regulation, etc.).

The proposed bill should address the following: (i) criteria for approving "own use only" and Regulated Third Party Access (rTPA) permits, and (ii) whether "own use only" permits can be converted to rTPA and, in the case of pipelines, be interconnected to the system.

1 be reviewed and updated every three (3) years. The following principles shall
2 govern the creation of these codes:⁵⁵

3 (i) Reliable and continuous supply of natural gas, and

4 (ii) Transparent, fair, reasonable, and non-discriminatory use and access;⁵⁶

5 (b) Promulgate or identify and adopt, within six (6) months from the effectivity of
6 this Act's implementing rules and regulations, and determine compliance with
7 the health, safety, security, and environmental standards in accordance with
8 Standards Developing Organizations of the following:

9 (i) Dedicated natural gas pipelines,

10 (ii) Natural gas transmission systems, and

11 (iii) The NGTSO;⁵⁷

12 (c) Evaluate and act on applications for the siting, construction, operation,
13 maintenance, modification, rehabilitation, repair, expansion,

DOE (8 January 2021): The law should likewise provide for guiding principles to ERC on how to design the TPA Service and Gas Delivery Code

- The TPA and Gas Delivery Code shall consider, but not limited to, the following principles:
 - The Code shall refer to the use and access to the excess Capacity and service including the setting of Service Fee of an LNG Storage and Regasification Terminal, its corresponding Ancillary Facilities and Dedicated Pipeline Network;
 - The Operator shall comply with an open and sufficient consultation process with the TPA Users to arrive with a transparent competitive and non-discriminatory use and access;
 - Allows diverse and sustainable uses of Natural Gas;
 - Uses measurable standards of setting the Service Fee, which basically covers the recovery of cost plus premium on the use of the infrastructure and ancillary facilities, and its performance assessment standards of a safe, secure, reliable, environmentally responsible personnel and user protective delivery of Natural Gas;
 - Considers a defined infrastructure development period for Operators to prepare for the TPA access;
 - Comply with ERC review, release and publication of the available and uncommitted excess capacity, access terms and conditions for the information of all interested TPA User;
 - Comply with ERC review, release and publication of the unbundled TPA Service Fee for the protection of both the Operator and all its TPA Users;
 - Comply with ERC's TPA User accreditation qualifications, such as but not limited to, financial worthiness, capability and reliability of its off- take facility, ability to meet the Natural Gas supply specifications of the LNG Storage and Regasification Terminal and other factors that affect the spontaneous flow of Supply for the protection of both the Operator and all its TPA Users;
 - Promotes the ability of the system for resale and change the delivery destination in case the TPA User is not able to consume to avoid banked Supply;
 - Provides for specific prohibited acts and corresponding fines and penalties; and
 - All other factors that enhances the success of TPA access.

⁵⁵ **HSF (5 January 2021):** EU network codes have taken much longer than 12 months for each of these codes, the same is true for the British Uniform Network Code. Amendments to the UNC can take several months.

⁵⁶ **HSF (5 January 2021):** The bill does not currently foresee a framework on which the ERC could rely in drawing up the transmission code. Based on experience in the EU, it may be helpful to include some basic parameters for the transmission code in the bill (eg in relation to transparency, nondiscrimination) By way of example, the EU network codes have each been preceded by detailed preparatory works on guidelines for the future code with consultations of the relevant stakeholders before work on the actual codes began. The mechanism for these framework guidelines was set out in the relevant EU regulations.

⁵⁷ **TWG Agreement 3 February 2021**

DOE (8 January 2021): ERC should specifically deal with the following:

- Serve as a permanent member of the technical Committee on standards;

1 decommissioning, and abandonment of dedicated natural gas pipelines and
2 natural gas transmission systems;⁵⁸

3 ~~(d) Issue own use and TPA permits to natural gas transmission utilities;~~⁵⁹

4 (e) Issue certificates of public convenience and necessity to natural gas
5 transmission utilities;⁶⁰

6 (f) Require the submission of the following information from the dedicated
7 natural gas pipeline, natural gas transmission utility, and the NGTSO,
8 whichever is applicable, subject to Section 32 of this Act:

9 (i) Progress and status reports on construction, improvement, operation,
10 utilization, expansion, modification, rehabilitation, repair, maintenance,
11 or abandonment of dedicated natural gas pipelines, natural gas
12 transmission systems, and the interconnected natural gas transmission
13 system,

14 (ii) Supply and demand of natural gas,

15 (iii) Volumes of specific inventories to include levels of ancillary reserve,

16 (iv) Compliance with health, safety, security, and environmental standards,
17 and activities in relation thereto,

18 (v) Progress and status reports on mitigation measures and responses in
19 relation to accidents and other emergency incidents;

20 (vi) Mode of competitive selection⁶¹ of third parties for natural gas
21 transmission utilities, reports on competitive selection processes
22 undertaken to include the natural gas transmission fee, and status of
23 utilization by third parties: *Provided*, That the mode for each
24 competitive selection process shall be determined by each natural gas

⁵⁸ TWG Agreement 3 February 2021

⁵⁹ TWG Agreement 26 January 2021

⁶⁰ ERC (11 January 2021)

⁶¹ ERC (25 January 2021): NEW SECTION. COMPETITIVE SELECTION PROCESS BY NATURAL GAS TRANSMISSION UTILITIES – IN THE CONDUCT OF ITS COMPETITIVE SELECTION PROCESS (CSP), A NATURAL GAS TRANSMISSION UTILITY (NGTU) SHALL COMPLY WITH THE CSP RULES TO BE PROMULGATED BY THE ERC.

WITHIN SIX (6) MONTHS FROM THE EFFECTIVITY OF THIS ACT, IN CONSULTATION WITH THE INDUSTRY STAKEHOLDERS AND RELEVANT GOVERNMENT AGENCIES, THE ERC SHALL ADOPT AN INTERNATIONALLY-ACCEPTED FORM OF CSP, WHICH INCLUDES AMONG OTHER COMPETITIVE BIDDING, PRICE CHALLENGE AND DIRECT NEGOTIATION AFTER TWO FAILURES OF BIDDING, WHICH SHALL GOVERN THE CSP FOR PURPOSES OF AWARDED THE CAPACITY AVAILABLE FOR THIRD PARTIES. FOR PURPOSES OF PROMULGATING THE CSP RULES, THE ERC MAY ENGAGE THE SERVICES OF A FOREIGN CONSULTANT.

1 transmission utility: *Provided further*, That each competitive selection
2 process shall be transparent, fair, reasonable, and non-
3 discriminatory,⁶²

4 (vii) Other documents, data, and information necessary to the performance
5 by ERC of its rate setting functions under this Act;⁶³

6 (g) ~~[Require from natural gas transmission utilities, and the NGTSO when
7 applicable, the submission of the following subject to Section 32 of this
8 Act:~~

9 ~~(i) All contracts entered into, and regular reports on actions and activities
10 relative to these contracts,~~

11 ~~(iii) Other documents, information, and data as may be necessary in the
12 exercise of its functions to achieve the overall objectives of this Act;]~~

13 (h) Initiate and institute actions against anticompetitive behavior of dedicated
14 natural gas pipelines, natural gas transmission utilities, and the NGTSO before
15 the PCC;⁶⁴

16 (i) Investigate, motu proprio or upon complaint, any failure of dedicated natural
17 gas pipelines, natural gas transmission utilities, and the NGTSO to comply
18 with the Natural Gas Transmission Code, Transmission Third Party Access
19 Code, ~~[own use permit, rTPA permit,]~~ or any other issuance promulgated
20 pursuant to ERC's powers under this Act, whichever is applicable;⁶⁵

⁶² **ERC (11 January 2021):** Is it the intent of this bill to let rTPA permit holder use any mode of CSP, as long as it is internationally acceptable? Or should the ERC prescribe a methodology for the conduct of CSP for the natural gas transmission utility? The proposed bill should clarify this? **ERC (25 January 2021):** PROMULGATE RULES ON COMPETITIVE SELECTION PROCESS FOR THE AWARD OF NATURAL GAS TRANSMISSION CAPACITY FOR THIRD PARTIES BY AN RTPA NATURAL GAS TRANSMISSION SYSTEM HOLDER

⁶³ **TWG Agreement 3 February 2021**

⁶⁴ **DOE (8 January 2021):** ERC should specifically deal with the following:

- Investigate any anti-competitive behavior of all operators and TPA Users and endorse for formal prosecution by the PCC;

⁶⁵ **ERC (11 January 2021):** How will this be reconciled with Section 5 (o) in terms of the investigating powers of the DOE and with Section 5 (q) in terms of initiating actions

- Section 5(o). Investigate, motu proprio or upon complaint, any failure to comply with this Act, its rules and regulations, and any issuance promulgated pursuant to DOE's powers under this Act, **except those under the jurisdiction of the ERC as provided under Section 6 (d) of this Act;**
- Section 5(q). Initiate **and institute** actions against anticompetitive behavior of an rTPA LNG terminal permit holder and rTPA natural gas transmission system permit holder, and against violations of the provisions of this Act and other applicable laws, rules, and regulations before the ERC, Philippine Competition Commission (PCC), other quasi-judicial agencies, or the courts;

DOE (8 January 2021): ERC should Enforce the proper rate imposition of the utilities to protect the end users

1 (j) Review, penalize, suspend, or revoke, after due notice and hearing, permits
2 issued to dedicated natural gas pipeline, natural gas transmission utilities, and
3 the NGTSO [~~natural gas transmission systems~~], after a finding of non-
4 compliance with the Natural Gas Transmission Code, Transmission Third
5 party Access Code, [~~own use permit, rTPA permit,~~] or any other issuance
6 promulgated pursuant to ERC's powers under this Act, whichever is
7 applicable[~~: Provided, That due notice and hearing shall be required before~~
8 ~~any order of suspension or revocation~~];

9 (k) Ensure compliance with the publication and unbundling of the [~~terminal~~]
10 natural gas transmission⁶⁶ fee and the NGTSO imposed by [~~owners and~~
11 ~~operators of~~] the natural gas transmission utilities [~~systems~~], and the NGTSO
12 respectively [~~when applicable~~], in accordance with Section [~~24~~]23 of this Act;

13 (l) Exercise its rate-setting power through the determination and regular
14 [~~Determine, set, and regularly~~] review⁶⁷ of the following:

15 (i) Reserve price for the natural gas transmission fee. It shall remain
16 undisclosed until the winning bidder is declared, [~~of rTPA natural gas~~
17 ~~transmission system permit holders~~]⁶⁸ and

18 (ii) NGTSO fee [~~of the NGTSO~~].⁶⁹

⁶⁶ ERC (11 January 2021)

⁶⁷ ERC (11 January 2021): For confirmation – The rate setting covers the reserve price for the natural gas transmission fee of rTPA natural gas transmission system permit holders and NGTSO fee of the NGTSO only. This does NOT cover Terminal Fee which refers to the rates, charges, and other similar considerations imposed upon third parties in exchange for the use of and other services rendered by an rTPA LNG terminal permit holder.

⁶⁸ ERC (25 January 2021): NEW SECTION. RESERVE PRICE – THE ERC SHALL SET THE RESERVE PRICE BASED ON THE PRINCIPLE OF FULL RECOVERY OF PRUDENT AND REASONABLE ECONOMIC COST INCURRED, OR SUCH OTHER PRINCIPLES THAT WILL PROMOTE EFFICIENCY.

⁶⁹ DOE (8 January 2021): Promulgate and implement the Utility Service Fee Setting and Gas Delivery code both for the Transmission System and the Distribution system to govern the rate setting but review likewise the gas delivery performance of these facilities intended to protect captive end users. The Utility Service Fee Setting and Gas Delivery Code shall consider, but not limited to, the following principles:

- o The Code shall refer to measurable standards of setting the Service Fee, which basically covers the recovery of cost plus premium of operating and maintaining a Natural Gas Utility Transmission System or a Natural Gas Utility Distribution System including their performance assessment standards of a safe, secure, reliable, environmentally responsible personnel and user protective delivery of Natural Gas
- o The Operator shall comply with an open and sufficient consultation process with the End Users to arrive with a transparent, competitive and non-discriminatory service;
- o Allows diverse and sustainable uses of Natural Gas;
- o Comply with ERC review, release and publication of the unbundled Service Fee for the protection of both the Operator and all its End Users;
- o Observe the conduct of an open, transparent and competitive procurement of LNG by the LNG Storage and Regasification Terminal or Indigenous Natural Gas Supply when supplied to Natural Gas Utility Distribution System;
- o Comply with ERC's Natural Gas Transmission and Natural Gas Distribution accreditation qualifications, such as but not limited to, financial worthiness, capability and reliability of its off- take facility, ability to meet

1 The ERC shall notify and afford relevant stakeholders the opportunity to be
2 heard in the following:

3 (1) Methodology for the determination of the reserve price,⁷⁰ and

4 (2) Determination of the NGTSO fee;

5 (m) Review regularly the performance of natural gas transmission utilities
6 and the NGTSO [~~each rTPA natural gas transmission system permit holder~~],
7 including the quality of its service and compliance with its powers and
8 functions pursuant to Chapter V of this Act [~~to third parties~~];

9 (n) [~~Upon the establishment of the NGTSO, regularly review its performance~~
10 ~~including the quality of its service and compliance with its powers and~~
11 ~~functions pursuant to Section 24 of this Act, rules, regulations, and issuances~~
12 ~~of the DOE and ERC;~~]

13 (o) Exercise primary jurisdiction over disputes that may arise from rules and
14 regulations issued in the exercise of its functions in order to achieve the
15 overall objectives of this Act;

16 (p) Exercise exclusive jurisdiction over all matters pertaining to rate setting in this
17 Act taking into consideration the policy of full recovery of prudent and
18 reasonable costs with a reasonable return on rate base;⁷¹ [~~and~~]

19 (q) Exercise overall regulatory supervision over dedicated natural gas pipelines,
20 natural gas transmission utilities, and the NGTSO; and

the Natural Gas supply specifications of the LNG Storage and Regasification Terminal and other factors that affect the spontaneous flow of Supply for the protection of both the Operator and all its End Users;

- o Promotes the ability of the system for resale and change the delivery destination in case the natural gas utilities are not able to consume to avoid banked Supply;
- o Provides for specific prohibited acts and corresponding fines and penalties; and
- o All other factors that enhances the success of the facility's operations.

⁷⁰ **ERC (11 January 2021):** In the matter of reserve prices' relationship with the CSP that will be conducted, if the Transmission System Owner bids out capacity of its transmission system to third party, naturally, the TSO will choose the highest bidder. In the light of the reserve price where the bids should be within the reserve price, prospective bidder will bid at the highest so as to be chosen by the TSO (which is already the reserve price). In effect, all bidders will bid at the reserve price. This is true if the reserve price is published and made known to the public. The only way that we will achieve the intent of the CSP is if the reserve price is undisclosed, which the ERC could not do since rate-setting mandate of ERC should be transparent and required publication, as well as public hearings. **ERC (25 January 2021):** If the intention is to have an undisclosed reserve price for an effective CSP, it is suggested that a special rate-setting/price methodology principle for the implementation of the ERC different from the rate-setting principle under the EPIRA which requires public hearings be provided in this bill.

Citizen Watch (10 January 2021): How prices will be regulated as envisioned by this proposed Act?

Mr. Cainglet – First Gen (TSN, 2nd hearing, 12 January 2021): How this reserve price is to be determined if only to understand that such pricing mechanisms will further the development of a natural gas industry into a thriving and mature sector.

⁷¹ **Laban Konsyumer (17 December 2020):** Limit the power of the Energy Regulatory Commission on rate fixing to adopt the Return on Rate Based or RORB methodology

1 (r) Perform all other acts that are analogous to the foregoing and in furtherance
2 of the implementation of this Act.

3
4 **SECTION 7. Powers and Responsibilities of the Department of**
5 **Environment and Natural Resources (DENR).** – In addition to its functions
6 under Executive Order No. 192, otherwise known as the Reorganization Act of the
7 Department of Environment and Natural Resources, the DENR, together with the
8 DOE, shall determine and monitor compliance with the environmental standards for
9 the location, construction, improvement, expansion, operation, rehabilitation, repair,
10 maintenance, decommissioning, and abandonment of LNG terminals, natural gas
11 transmission systems, dedicated natural gas pipelines, storage and bunkering
12 facilities, and all related equipment and facilities.

13
14 **SECTION 8. Powers and Responsibilities of the Department of Health**
15 **(DOH).** – In addition to its functions under Executive Order No. 317, Series of 1941,
16 entitled Organizing the Department of Health and Public Welfare, as amended, and
17 Republic Act No. 11223, otherwise known as the Universal Health Care Act,⁷² the
18 DOH, together with the DOE, shall:

19 (a) ~~{}Determine and monitor compliance with the health standards for the~~
20 ~~location, construction, improvement, expansion, operation, rehabilitation,~~
21 ~~repair, maintenance, decommissioning, and abandonment of LNG terminals,~~
22 ~~natural gas transmission systems, dedicated natural gas pipelines, storage~~
23 ~~and bunkering facilities, and all related equipment and facilities;{-}~~

24 (b) Recommend standards, rules, and regulations in the conduct of health risk
25 assessment studies in cases of natural gas accidents;⁷³

26 (c) Develop guidelines, policies, and health standards on the treatment and
27 management of patients affected by natural gas accidents;⁷⁴

⁷² **DOH (8 January 2021):** Recommend guidelines in the conduct of Environmental Health Impact Assessment (EHIA) activities to evaluate the potential health risks to the communities including workers of new and existing Liquefied Natural Gas (LNG) pipelines;

⁷³ **DOH (8 January 2021):** Recommend standards, rules and regulations in the conduct of health human risk assessment studies in cases of natural gas incidents/accidents;

⁷⁴ **DOH (8 January 2021):** Develop guidelines, policies and health standards on the treatment and management of patients/victims affected by natural gas incidents involving LNG pipelines;

1 (d) Require health data and information from LNG terminal, natural gas
2 transmission systems, dedicated natural gas pipelines, and storage and
3 bunkering facilities;⁷⁵
4

5 **SECTION 9. Powers and Responsibilities of the Department of Trade and**
6 **Industry – Bureau of Philippine Standards (DTI-BPS).** – In addition to its
7 functions under Republic Act No. 4109, otherwise known as An Act to Convert the
8 Division of Standards Under the Bureau of Commerce into a Bureau of Standards, to
9 Provide for the Standardization and/or Inspection of Products and Imports of the
10 Philippines and for Other Purposes, the DTI-BPS, together with the DOE, shall
11 determine, develop, formulate, promulgate, and revise^[7] the Philippine National
12 Standards, and identify and adopt international standards set by Standards
13 Developing Organizations,⁷⁶ for natural gas, in its original or liquefied form, LNG
14 terminals, dedicated natural gas pipelines, natural gas transmission systems, storage
15 and bunkering facilities, and all related equipment and facilities.
16

⁷⁵ **DOH (8 January 2021):** Require the following health programs from the proponents/operators of the project:

- Baseline health data/information to include not just morbidity and mortality data among the host-communities but also secondary and indirect impact on communities;
- Epidemiological study and health surveillance activities in the host-communities, secondary impact areas and indirectly impacted areas for existing projects/activities including proposed natural gas projects; and
- Include the Department of Health and its Centers for Health Development (CHDs) as a member of the multi-partite monitoring team as well as local health officials.

⁷⁶ **CLDP (21 Dec 2020):** Explicitly authorize agencies to identify and adopt international standards set by “Standards Developing Organizations” (SDOs)

DTI-BPS (8 January 2021): DTI-BPS agrees to the statement of Atty. Badissy on the importance of the SDOs and this is applicable to the standardization activities of DTI-BPS. DTI-BPS has institutionalized the recognition of SDOs with the goal to cohere all the standardization activities in the country and optimize the use of resources, as well as to prevent the duplication of work in the development of Philippine National Standards, as per the DTI Department Administrative Order (DAO) No. 19-08, Series of 2019 or the National Recognition for Standards Development Organizations (SDOs). With regard to the adoption of industry standards, it is in the BPS Directives for conducting standardization work to involve the industry in standards development, as one of the sectors represented which also include the academe, professional, research, testing, government, and consumer sectors. DOE-OIMB follows the BPS Directive for the standardization of petroleum products through the DOE/ Technical Committee on Petroleum Products and Additives (TCPPA) and DOE/ Technical Committee on Petroleum Processes and Facilities (TCPPF). DTI-BPS and DOE-OIMB are on the process of finalization and implementation of the Memorandum of Agreement (MOA) on the development of Philippine National Standards related to natural gas, as an imperative need for a closer coordination and collaboration between the two agencies related to the subject of the MOA. This MOA is pursuant to DTI DAO No. 19-08. The outputs of this MOA are expected to:

- Strengthen the capabilities and foster the growth of natural gas companies, dealer, distributors, industries and other stakeholders of natural gas products and facilities;
- Improve the productivity, quality, and competitiveness of these products and services for both domestic and foreign markets; and
- Facilitate the exchange of natural gas products and facilities through the elimination of technical barriers to trade.

DTI (20January2021): Agrees with the provision that provides the DT-BPS the power and function of determining, developing, formulating, promulgating, and revising the Philippine National Standards for natural gas, in its original or liquefied form, LNG terminals, natural gas transmission systems, and related equipment and facilities.

1 **SECTION 10. Powers and Responsibilities of the Maritime Industry**

2 **Authority (MARINA).** – In addition to its functions under Presidential Decree No.
3 474 series of 1974, otherwise known as Marina Industry Decree of 1974 [~~Providing~~
4 ~~for the Reorganization of Maritime Functions in the Philippines, Creating the Maritime~~
5 ~~Industry Authority, and For Other Purposes~~],⁷⁷ as amended, the MARINA, together
6 with the DOE, shall regulate all [~~ships and~~] marine vessels used to import, receive,
7 unload, load, transport, process, or store natural gas, in its original or liquefied form,
8 including those utilized as offshore LNG terminals.⁷⁸

9
10 **SECTION 11. Powers and Responsibilities of the Department of**

11 **Transportation (DOTr).** – In addition to its functions under Executive Order No.
12 125, series of 1987 otherwise known as the Reorganization Act of the Ministry of
13 Transportation and Communications, as amended, the DOTr, in coordination with
14 the DOE, DTI-BPS, Bureau of Fire Protection (BFP), and other relevant agencies,
15 shall issue the appropriate guidelines and regulations and monitor compliance
16 thereof [~~with regulations~~] governing the [~~transport~~] transportation of natural gas, in
17 its original state or liquefied form through [~~through authorized lorries or specially~~
18 ~~equipped~~] motor vehicles.⁷⁹

19
20 **SECTION 12. Powers and Responsibilities of the Philippine Competition**

21 **Commission (PCC).** – In addition to its functions under Republic Act No. 10667,
22 otherwise known as the Philippine Competition Act, the PCC shall exercise primary
23 and exclusive jurisdiction⁸⁰ over any anticompetitive behavior of natural gas industry
24 participants.

⁷⁷ MARINA (30 January 2021)

⁷⁸ MARINA (30 January 2021)

- **Query:** on the intent on whether the DOE shall be regulating the technical aspects of the ship with MARINA or the transport of natural gas policy.
- **Recommendation:** "... the MARINA shall coordinate with the DOE, relative to the DOE's authority on the transport of natural gas on ships and marine vessels used to import, receive, unload..."

⁷⁹ DOTr (15 January 2021): Whether the guidelines to be followed by vehicles will emanate from a single entity (e.g. the DOE) and shall be adopted by transport agencies such as the LTO and LTFRB in their registration/franchising processes. It is suggested to provide clarification on various aspects, such as, environmental, safety, and technical matters related to the transportation of natural gas that may be the subject of guidelines/standards in order to properly delineate the tasks of various concerned agencies.

⁸⁰ ERC (11 January 2021): For clarification - How will this be reconciled with Section 5 (q) which includes ERC as one of the agencies with whom the DOE may lodge its complaint? Is it primary jurisdiction or exclusive jurisdiction? The nature of jurisdiction be specific as to its exclusivity so that all anti-competitive cases in the natural gas industry be filed within the same

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CHAPTER III NATURAL GAS INDUSTRY PARTICIPANTS

SECTION 13. Responsibilities of Natural Gas Industry Participants. – All natural gas industry participants shall:

- (a) Adhere to all health, safety, security, and environmental standards and all codes, rules, regulations, and issuances promulgated pursuant to Chapter II of this Act;
- (b) Comply with all obligations and responsibilities under this Act to include reportorial requirements and submissions pursuant to Sections 5~~[(a)]~~ and 6~~[(e)]~~ hereof, whichever is applicable;
- (c) Unbundle their respective fees, if applicable, pursuant to Sections 5~~[(i)]~~, 6~~[(f)]~~, and ~~[25]~~ 23 of this Act; and
- (d) Not engage in any anticompetitive behavior, or any act that curtails market competition or is detrimental to midstream end users ~~[consumers]~~.⁸¹

agency. The term primary jurisdiction allows the agency initiating the complaint to choose the agency with which the case will be filed. If there are more than one agency conducting hearings and issuing resolutions, we might end up with conflicting decisions over cases that are similar to each other

DOE (8 January 2021): The PCC shall exercise primary jurisdiction in the investigation and prosecution of anti-competitive behavior complained of and/or noted during any DOE or ERC investigations.

PCC (22 January 2021). "Section 12. Powers and Responsibilities of the Philippine Competition Commission (PCC). – Consistent with its functions under Republic Act No. 10667, otherwise known as the Philippine Competition Act, the PCC shall exercise **original** and primary jurisdiction over any anticompetitive behavior of natural gas industry participants. To ensure that no ambiguity arises in the jurisdiction over competition-related cases, the Commission respectfully suggests that the original language under the PCA be reflected

⁸¹ **DOE (8 January 2021):** Responsibilities of the operators of midstream and downstream natural gas players:

- Comply with the adopted International Standards or the Philippine National Standards on the siting, construction, expansion, modification, operation, maintenance, decommissioning and abandonment;
- Comply with the submission of development plans;
- Participate as a permanent member of the technical committee on standards;
- Comply with the application for approval and issuance of a DOE permit before any actual construction, operation, expansion, modification, maintenance and decommissioning;
- Comply with ERC accreditation responsibilities, qualifications and standards;
- Comply with the rules under TPA Service and Gas Delivery Code and the Utility Service Fee Setting and Gas Delivery Code;
- Submit to the DOE an application for approval of any transfer of interest of an operator;
- Comply with the submission of Government prescribed reports including their supporting documents pertaining to the activities of all operators, suppliers and TPA users;
- Comply with any directive of the Government pursuant to a lawful order; and
- Comply with other responsibilities and requirements as maybe prescribed by the DOE, ERC and other relevant Government Agencies pursuant to laws, rules and regulations.

Citizen Watch (10 January 2021): Failing to fulfill this responsibility subjects the natural gas industry participant to penalties, as aptly provided in Sections 27 and 28 of the proposed Act. While we agree to said provisions insofar as they protect consumer interests, we ask for more clarifications as to what constitutes "anti-competitive behavior" as intended by this proposed Act. We suggest to enumerate some of the "anti-competitive behaviors" which are very peculiar to this industry. In

1
2 ~~[SECTION 14. Responsibilities of Natural Gas Transmission Utilities. In~~
3 ~~addition to the responsibilities under Section 13 hereof, all natural gas transmission~~
4 ~~utilities shall:~~

5 ~~(a) Submit its Natural Gas Transmission Development Plan to DOE for review~~
6 ~~and approval pursuant to Section 5(j) of this Act prior to the establishment or~~
7 ~~selection of an NGTSO;~~

8 ~~(b) When applicable, submits its Natural Gas Transmission Development Plan to~~
9 ~~the NGTSO pursuant to Section 24(g) hereof; and~~

10 ~~(c) When applicable, inform and coordinate with the NGTSO for the construction,~~
11 ~~maintenance, modification, rehabilitation, expansion, decommissioning, and~~
12 ~~abandonment of any part of the natural gas transmission system to be~~
13 ~~undertaken in accordance with its submitted National Gas Transmission~~
14 ~~Development Plan.]~~

15
16 **CHAPTER IV**
17 **TERMINALS**

18
19 **SECTION 14 [15]. Importation and Receipt of Natural Gas through LNG**
20 **Terminals.** – Imported [N]natural gas, in its [original or] liquefied form, shall only
21 be received, unloaded, loaded, processed, stored, and regasified in, and then
22 transmitted, transported, and conveyed from [duly authorized] LNG terminals⁸² in
23 accordance with this Act.

24
25 **SECTION 15 [16]. Use and Access of LNG Terminals.** – The use and access of
26 LNG terminals shall be regulated pursuant to this Act, while the terminal fee shall be

its absence, the Philippine Competition Act (PCA) or R.A. 10667, the primary competition policy of the Philippines for promoting and protecting competitive market, can act suppletorily.

Mr. Panga – BOI (TSN, 2nd hearing, 12 January 2021): "Support assigning the natural gas industry participants the responsibility of not engaging in any uncompetitive behavior or any act that curtails market competition or is detrimental to consumers"

DTI (20 January 2021): DTI supports the policy of assigning the natgas industry participants the responsibility of not engaging in any anticompetitive behavior, or any act that curtails market competition or is detrimental to consumers.

⁸² **First Gen (8 January 2021): Clarification:** What is contemplated by "duly authorized LNG Terminals"? How they would relate to the permitting processes provided for in SECTION 30 (Permits and Licenses).

1 unregulated.⁸³ The DOE shall issue own use and rTPA permits to owners and
2 operators of LNG terminals. The owner and operator of an LNG terminal shall have
3 the option to apply for both permits and simultaneously perform the functions of an
4 own use LNG terminal permit holder pursuant to Section 16 ~~[17]~~ of this Act, and an
5 rTPA LNG terminal permit holder pursuant to Section 17 ~~[18]~~ of this Act, to the
6 extent of the capacity allowed by and during the length of the time specified in each
7 type of permit, and in accordance with the Terminal Third Party Access Code.⁸⁴

8
9 **SECTION 16 ~~[17]~~. Own Use LNG Terminal.** – An own use LNG terminal permit
10 holder shall:

11 (a) Exclusively utilize the capacity allowed by and during the length of time
12 specified in the permit, and may allow its affiliates to do so the same;

13 (b) Not enter into an nTPA or any similar arrangement to the extent of the
14 capacity allowed and during the length of time specified in the permit; and

15 ~~(c) Not grant use and access of its facilities to third parties [through an nTPA or~~
16 ~~any similar arrangement] to the extent of the capacity allowed and during the~~
17 ~~length of time specified in the permit.]; and~~

18 ~~(d) Comply with all reportorial requirements pursuant to Section 5(n) of this Act.]~~

19
20 **SECTION 17 ~~[18]~~. Regulated Third Party Access LNG Terminal.** – The
21 issuance of an rTPA permit to an owner and operator of an LNG terminal shall take

⁸³ TWG Agreement 26 January 2021

⁸⁴ CLDP (21 Dec 2020): The Draft Law could make clear what the timeline is for permit expiration and/or revision. As drafted now, the Draft Law can be read into two different ways: (1) it appears to allow an investor to apply for an own use permit for 100% of the capacity of a terminal, which appears to involve a lower level of regulatory review, and quickly seek an rTPA permit for that same 100% capacity after the terminal is constructed, so that the terminal owner may be permitted to negotiate capacity sales (since this type of third-party sale is illegal for own-use terminals), or (2) an investor who applies for an own use permit for 100% of the capacity of a terminal is locked into that decision for the life of the project, even if its circumstances change and it has excess capacity it could put on the market (e.g., an affiliate seeks to divest from a downstream natural gas-fired power plant serviced by the terminal or an additional phase of power project development is abandoned by an affiliate). To be clear, for both changes in permit status and compulsory third party access, the authority for such actions must be included in the Draft Law but the criteria for these regulatory actions can (and, perhaps, even should) be left to be detailed as part of the implementing regulations or in a separately developed Third Party Access Code. Third party access provisions are complicated, and they must be clear and concise, to give investors in the market a good sense of what will be required of them, as they decide whether to invest in the Philippines.

HSF (5 January 2021): The mechanics of section 16 regarding the simultaneous holding of rTPA and own use licenses are not clear. It is unclear in particular whether the dual permit refers to separate LNG Terminals or whether the idea is that capacity in an LNG Terminal can be partially reserved for the use of the operator with the remainder of the capacity being made available for public use. This approach has been used in European regulatory practice - and if this approach were to be chosen and would require further elaboration and detail in the context of the Act. I understand that it is the practice in the Philippines to set out such detail in secondary legislation, it might be helpful to set out the guiding principles for such secondary legislation in the bill, eg, transparency, non-discrimination of users and license holders

1 into consideration the capacity and utilization of the LNG terminal, current ~~and~~
2 ~~future~~ midstream end users, existing ~~and future~~⁸⁵ market conditions, and other
3 relevant information with the end in view of enabling competition in the natural gas
4 industry. The use and access of the capacity covered by an rTPA permit shall be
5 open to all third parties ~~[natural gas industry participants]~~ subject to the payment of
6 ~~for~~ a terminal fee. An rTPA LNG terminal permit holder shall:

7 (a) Publicly disclose the capacity available to and utilization by third parties;

8 (b) Determine the mode of competitive selection of third parties ~~[who shall utilize~~
9 ~~the capacity available]~~ which may include negotiated contracts *Provided*, That
10 each LNG terminal shall determine its own competitive selection process
11 which shall be fair, reasonable, and non-discriminatory and shall be submitted
12 to the DOE;

13 (c) Provide fair, reasonable, and⁸⁶ non-discriminatory use and access to third
14 parties, to the extent of the capacity allowed by and during the length of time
15 specified in its permit; and

16 (d) Not give any undue preference or advantage to any third party, whether in
17 rates, terms, conditions, or special privileges~~[.]~~.

18 ~~(e) [Comply with all reportorial requirements pursuant to Section 5(n) of this Act;~~
19 ~~and]~~

20 ~~(f) [Publish and unbundle its terminal fee pursuant to Section 25 of this Act.]~~

22 CHAPTER V

23 TRANSPORT AND TRANSMISSION OF NATURAL GAS

24

⁸⁵ HSF (5 January 2021):

- It is not clear how this can be done at present, given the limited nature of the gas industry. Also, it will need to be further considered and understood whether the utilization can cater for expected future utilization given the LNG terminal owners plans.
- Issues pertaining to the capacity and utilization of the LNG terminal will be critical to any investor as this will determine the core of any commercial plans for and returns on their investment. A clear and stable regulatory regime is of particular importance for this. Failure to clarify the rules from the outset may act as a barrier to investment and ultimately hinder the successful development of the gas sector in the Philippines.
- This provision has the potential to inhibit investors as the class of stakeholders that are included in the assessment are not clearly defined. It might lead to a situation where the decision to issue an rTPA permit is subject to possible future competitors' views without such competitors having to invest anything but with the potential to stifle the investment and damage the development of the gas sector as a result.

⁸⁶ PCC (22 January 2021)

1 **SECTION 18 [19]. Transport of Natural Gas.** – Natural gas, in its original or
2 liquefied form, may be transported within the country through virtual pipelines,
3 ~~[authorized lorries⁸⁷ and other specially equipped]~~ motor vehicles, ~~[ships,]~~ and
4 marine vessels in accordance with ~~[Sections 5, 10, and 11 of]~~ this Act.

5
6 **SECTION 19 [20]. Transmission⁸⁸ of Natural Gas.** – Natural gas may be
7 transmitted ~~[conveyed]~~ through dedicated natural gas pipelines or natural gas
8 transmission systems either from an LNG terminal or a natural gas production well.⁸⁹
9 The transmission of natural gas shall be a regulated activity as provided under this
10 Chapter.⁹⁰ ~~[The ownership and operation of a natural gas transmission system shall
11 be considered a public utility and shall require a legislative franchise. All natural gas
12 transmission utilities shall apply and acquire from the ERC an own use permit or
13 [rTPA] permit, or a combination of both pursuant to Sections 21, 22, and 23 of this
14 Act.]~~

15
16 ~~[SECTION 21. Use and Access of Natural Gas Transmission Systems. The ERC shall
17 issue own use and rTPA permits to natural gas transmission utilities. The natural gas
18 transmission utility shall have the option to apply for both permits and
19 simultaneously perform the functions of an own use natural gas transmission system
20 permit holder pursuant to Section 22 of this Act, and an rTPA natural gas
21 transmission system permit holder pursuant to Section 23 of this Act, to the extent
22 of the capacity allowed and during the length of the time specified under each type
23 of permit.]⁹¹~~

⁸⁷ **First Gen (8 January 2021):** What is contemplated by “authorized lorries”? How they would relate to the permitting processes provided for in SECTION 30 (Permits and Licenses)?

⁸⁸ **ERC (11 January 2021):** When does transmission of natural gas begin and end? The boundary between transmission and distribution of gas should be clearly delineated to avoid confusion.

⁸⁹ **DOE (8 January 2021):** The law should also cover the supply of indigenous natural gas to the transmission system, distribution system or even directly to end users in anticipation of future domestic natural gas discoveries.

⁹⁰ **TWG Agreement 26 January 2021**

⁹¹ **TWG Agreement 26 January 2021**

1 **SECTION 20 [22]. Dedicated [Own—Use] Natural Gas Pipelines**
2 **[Transmission Systems].** – The ownership and operation of a dedicated natural

3 gas pipeline system shall not be considered a public utility and shall not require a
4 legislative franchise, but shall require a permit in accordance with Section 6 of this
5 Act.⁹² Its use, access, and price for use shall be unregulated. The owner and
6 operator of a [An own-use] dedicated natural gas pipeline [transmission system
7 permit holder] shall:

8 (a) Exclusively utilize the capacity of its dedicated natural gas pipeline or allow
9 [the capacity allowed and during the length of time specified in the permit,
10 and may allow] its affiliates to do the same[: *Provided*, That the fees
11 charged, if any, to affiliates, shall not be subject to the reserve price set by
12 the ERC pursuant to Section 6(g) of this Act];⁹³

13 (b) Not enter into an nTPA or any similar arrangement [to the extent of the
14 capacity allowed and during the length of time specified in the permit];⁹⁴

15 (c) Not grant use and access of its facilities to third parties [through an nTPA or
16 any similar arrangement to the extent of the capacity allowed and during the
17 length of time specified in the permit];⁹⁵ and

18 (d) Inform the ERC of its intent to convert its facilities to a natural gas
19 transmission system simultaneous with its application for a legislative
20 franchise as a natural gas transmission utility.

21 (e) [Comply with all health, safety, security, and environmental standards, all
22 reportorial requirements, and other applicable codes, rules, regulations, and
23 issuances pursuant [to Section 6(c)] of this Act.]

24
25 **SECTION 21 [23]. [nTPA]⁹⁶ Natural Gas Transmission Systems.** – The use,
26 access, and terminal fee of a natural gas transmission system shall be regulated.
27 The ownership and operation of a natural gas transmission system shall be

⁹² TWG Agreement 26 January 2021

⁹³ TWG Agreement 26 January 2021

⁹⁴ TWG Agreement 26 January 2021

⁹⁵ TWG Agreement 26 January 2021

⁹⁶ TWG Agreement 26 January 2021

1 considered a public utility and shall require a legislative franchise.⁹⁷ The issuance of
2 a ~~[rTPA permit]~~ CPCN to a natural gas transmission utility shall take into
3 consideration its legal, technical, and financial capability~~[, the capacity and utilization~~
4 ~~of the natural gas transmission system, current and future midstream end users,~~
5 ~~existing and future market conditions, and other relevant information with the end in~~
6 ~~view of enabling competition in the natural gas industry].~~

7 The use and access to the natural gas transmission system ~~[of the capacity~~
8 ~~covered by the an rTPA permit]~~ shall be open to all third parties ~~[natural gas~~
9 ~~industry participants]~~ for a natural gas transmission fee, subject to the reserve price
10 of the ERC in accordance with Section 6~~[(g)]~~ of this Act. ~~[The natural gas~~
11 ~~transmission fee shall consist of amounts used to defray the costs of planning,~~
12 ~~constructing, improving, expanding, maintaining, and abandoning the system, as~~
13 ~~well as the cost of operating and performing the functions of a natural gas~~
14 ~~transmission system operator while there is no established or selected NGTSO.] A~~
15 ~~[rTPA] natural gas transmission utility [system permit holder] shall:~~

16 (a) Regularly ~~[Publicly]~~ disclose to the public the capacity available for and
17 utilization by ~~[for]~~ third parties in accordance with the Transmission Third
18 Party Access Code;

19 (b) Determine the mode of and conduct a competitive selection of third parties,
20 and submit regular reports on the mode of competitive selection chosen, its
21 conduct, and results to the ERC: *Provided*, That each natural gas transmission
22 utility shall determine its own competitive selection process which shall be
23 fair, reasonable, and non-discriminatory;⁹⁸

24 ~~(c) [Conduct a competitive selection process in awarding the capacity available~~
25 ~~for third parties;]~~

26 (d) Ensure that the winning bid does not go beyond the reserve price determined
27 by ERC pursuant to Section 6~~[(g)]~~ of this Act: *Provided*, That the reserve
28 price shall only be disclosed upon the opening of the submitted bids;⁹⁹

⁹⁷ **ERC (25 January 2021): Grant of the Power of Eminent Domain.** This is a common power among public utilities. This guarantees that, subject to the payment of just compensation, they are able to take possession and ownership over public and private property necessary for the construction, operation and maintenance of the natural gas pipelines.

⁹⁸ **ERC (11 January 2021):** whether it will be prescribed by the ERC or the rTPA holder can utilize any internationally acceptable CSP methodologies.

⁹⁹ **ERC (25 January 2021)**

- 1 (e) Provide fair, reasonable, and non-discriminatory use and access to third
2 parties ~~[, to the extent of the capacity allowed by its permit];~~
- 3 (f) Not give any undue preference or advantage to any third party, whether in
4 rates, terms, conditions, or special privileges;
- 5 ~~(g) [Comply with all reportorial requirements subject to Section 6(c) of this Act;~~
6 ~~and~~
- 7 ~~(h) Publish and unbundle its transmission fee pursuant to Section 25 of this Act;.]~~
- 8 (i) Submit its Natural Gas Transmission Development Plan to DOE for review and
9 approval, or the NGTSO, whichever is applicable, pursuant to Sections 5 and
10 24 of this Act; and
- 11 (j) When applicable, inform and coordinate with the NGTSO for the construction,
12 improvement, expansion, modification, rehabilitation, repair, maintenance,
13 decommissioning, and abandonment of any part of the natural gas
14 transmission system to be undertaken in accordance with its submitted
15 National Gas Transmission Development Plan.¹⁰⁰
- 16

17 **SECTION 22 [24]. Natural Gas Transmission System Operator.¹⁰¹** – The
18 DOE,¹⁰² based on the Philippine Energy Plan, the Midstream Natural Gas Industry
19 Development Plan, and the various Natural Gas Transmission Development Plans
20 shall determine the necessity of and then direct the interconnection of natural gas
21 transmission systems pursuant to Section 5~~[(k)]~~ of this Act. The DOE shall thereafter

¹⁰⁰ **CLDP (21 Dec 2020):**

- The interconnected natural gas transmission system will actually be owned by a series of natural gas transmission utilities.
- The Draft Law does not seem to require natural gas transmission utilities to assign to the NGTSO the right to operate and maintain their natural gas transmission systems.
- The Draft Law should probably require natural gas transmission utilities to enter into such an agreement in the first instance (or otherwise assign operational control over their assets to the NGTSO), so that the NGTSO can fulfill its obligations under the Draft Law.

ERC (11 January 2021): The transmission systems owned and operated by the individual NGTUs will now be operated by the NGTSO? Or is it just the interconnection points that will be operated and managed by the NGTSO? Who will determine the asset boundary between the NGTU and NGTSO?

¹⁰¹ **ERC (25 January 2021):** The ERC interposes no objection to the eventual creation of a Natural Gas Transmission System Operator (NGTSO) that will operate and manage the interconnected natural gas transmission systems. To ensure free competition and non-discriminatory access, the NGTSO should be separate and unaffiliated with any natural gas transmission utility and its owners. Its independence from any NGTU will guarantee that there will be no conflict of interest that may influence the operations and maintenance of the said system

¹⁰² **GDPD (5 January 2021):** Since the ERC regulates the operation of natural gas transmission systems through the issuance to NGT Utilities of own use permits, rTPA permits, or both [Sections 20, 21, 22 and 23], its interconnection, the selection of an NGTSO, and other related activities all be combined and given to the ERC.

1 select a single independent¹⁰³ NGTSO.¹⁰⁴ The NGTSO shall not be affiliated with or
2 have any interest in any owner and operator of LNG terminal or natural gas
3 transmission utility. The NGTSO shall adhere to the following principles: [which
4 shall:]

5 (a) Operate and manage the interconnected natural gas transmission system in
6 accordance with the Natural Gas Transmission Code and Transmission Third
7 Party Access Code;

8 (b) Operate and maintain a secure, reliable, and efficient system for the
9 transmission of natural gas to natural gas industry participants [~~and end~~
10 ~~users, whichever is applicable~~];

11 (c) Coordinate with natural gas transmission utilities for construction,
12 improvement, expansion, [~~maintenance,~~] modification, rehabilitation, repair,
13 maintenance, [~~expansion,~~] decommissioning, and abandonment of any part
14 of the natural gas transmission system in accordance with their submitted
15 Natural Gas Transmission Development Plan;

16 ~~(d) [Provide third party access and non-discriminatory service among natural gas~~
17 ~~industry participants based on the results of the competitive selection~~
18 ~~processes of the natural gas transmission utilities, and to the extent of the~~
19 ~~capacity allowed by and during the length of time specified in the rTPA~~
20 ~~permit;]~~

21 (e) Furnish natural gas industry participants with sufficient information for
22 efficient access to the interconnected natural gas transmission system, and
23 to ensure that the transmission of natural gas may take place in a manner
24 compatible with the secure and efficient operation of the interconnected
25 natural gas transmission system;

26 (f) Secure ancillary services necessary to support the reliable and secure flow of
27 natural gas through the interconnected natural gas transmission system;

28 (g) Regularly prepare a comprehensive Natural Gas Transmission Development
29 Plan based on the submitted Natural Gas Transmission Development Plans of

¹⁰³ Sen. Hontiveros: (TSN, 5January2021, hearing)

¹⁰⁴ TWG Agreement 3 February 2021

- 1 natural gas transmission utilities, upon consultation with public and private
2 stakeholders, and submit the same for review and approval of the DOE;
3 (h) Collect an NGTSO fee, subject to the approval of the ERC; and
4 (i) Other functions and responsibilities determined by the DOE and ERC
5 pursuant to Sections 5 and 6 of this Act.

6
7 **CHAPTER VI**
8 **RATES, FEES, AND OTHER CHARGES**

9
10 **SECTION 23 [25]. Publication and Unbundling of Fees.** – rTPA LNG terminal
11 permit holders, natural gas transmission utilities [~~rTPA natural gas transmission~~
12 ~~system permit holders~~], and the NGTSO shall publish on their website their
13 unbundled terminal fees¹⁰⁵, natural gas transmission fees, and NGTSO fee
14 respectively: *Provided*, That natural gas transmission utilities shall only charge
15 natural gas transmission fees as a result of the conducted competitive selection
16 process, which should not be higher than the reserve price set by the ERC.¹⁰⁶ Each
17 cost component shall be segregated and identified separately.

18
19 **SECTION 24 [26]. Other Fees and Charges.** – The DOE, ERC, and other
20 relevant government agencies may impose reasonable fees for processing
21 applications and permits as may be necessary pursuant to the provisions of this
22 Act.¹⁰⁷

23

¹⁰⁵ **Laban Konsumer (17 December 2020):** Define and specify the breakdown and components of rates, fees and charges unbundling. The Committee may consider the breakdown and components of the unbundled terminal fee and rates based on DOE Circular on unbundling of fuel prices, as and when applicable.

ERC (11 January 2021): What are the respective components of unbundled terminal and transmission fees?

DTI (20 January 2021): The Department commends the provision that requires permit holders of the natgas transmission system to report unbundled terminal fees, natural gas transmission fee, for easy monitoring and transparency.

¹⁰⁶ **ERC (11 January 2021)**

¹⁰⁷ **DOF (19 January 2021):** Sec. 54, Chapter 12, Book IV of EO 292, already authorizes heads of bureaus, offices and agencies, upon approval of the department head, to charge and collect the cost of the services rendered to direct recipients of public goods and services in the exercise of the mandated regulatory and service delivery functions. Such functions may include processing of applications and permits related to the implementation of the proposed Midstream Natural Gas Industry Development Act which would entail cost.

1 **CHAPTER VII**

2 **PROHIBITED ACTS AND PENALTIES**

3
4 **SECTION 25 [27]. Prohibited Acts.**¹⁰⁸ – Without prejudice to civil and criminal
5 liability, the following acts shall be prohibited:

6 (a) For government agencies: failing to comply with the responsibilities and within
7 the timeframe, if applicable, under Chapter II of this Act on Powers and
8 Responsibilities of Government Agencies;¹⁰⁹

¹⁰⁸ **DOE (8 January 2021):** DOE views the current provision is too general when referred to the numerous prohibited acts which may result to difficulty in implementation. For effective implementation, the fines and penalties must be at least clearly calibrated to the violation of specific prohibited acts. Hence the DOE proposes an enumeration of prohibited acts and their equivalent fines and penalties.

- Failure to comply with the adopted International Standards or the Philippine National Standards on the siting, construction, expansion, modification, operation, maintenance, decommissioning and abandonment shall be penalized by DOE and/or ERC administrative fine of not less than Php50,000.00 but not more than Php500,000.00 per standard with suspension cancellation/closure of operation, DOE Permit, ERC Accreditation and Business Permit;
- Failure, late or incomplete submission to DOE of the Development Plans shall be penalized by DOE and/or ERC administrative fine of not less than Php50,000.00 but not more than Php500,000.00 per report with suspension or cancellation/closure of operation, DOE Permit, ERC Accreditation and Business Permit;
- Failure to participate as a permanent member of the technical committee on standards or attend its meetings thereafter shall be penalized by a DOE administrative fine of not less than Php5,000.00 but not more than Php20,000.00 per act of refusal, non-attendance or non-participation with suspension or cancellation/closure of operation, DOE Permit, ERC Accreditation and Business Permit
- Failure or late compliance with the application and approval of a DOE Permit before any actual construction, operation, expansion, modification, maintenance, and decommissioning shall be penalized by DOE and/or ERC administrative fine of not less than Php1,000,000.00 but not more than Php5,000,000.00 with suspension of operation and Business Permit until issued with DOE Permit and ERC Accreditation. Continued non-compliance shall result to the issuance of DOE cancellation/closure of operation and request for cancellation of Business Permit;
- Failure or late compliance with the application and approval of any transfer of interest of an operator shall be penalized by DOE and ERC administrative fine of not less than Php1,000,000.00 but not more than Php5,000,000.00 with suspension of operation and Business Permit until issued with DOE Permit and ERC Accreditation. Continued noncompliance shall result to the cancellation/closure of operation and request for cancellation of Business Permit;
- Failure or late compliance with the application and approval of a DOE permit as supplier before any actual LNG importation or transport to the system of any indigenous natural gas shall be penalized by DOE administrative fine of not less than Php5,000.00 but not more than Php20,000.00 with suspension of operation and Business permit until issued with DoE Permit and ERC Accreditation. continued non-compliance shall result to the issuance of DoE cancellation/closure of operation and request for cancellation of Business Permit;
- Failure, late or incomplete submission of DoE and ERC prescribed reports and required supporting documents shall be penalized by DoE and ERC administrative fine of not less than Php5,000 00 but not more than Php20,000.00 per report with suspension or cancellation/closure of operation, DoE Permit, ERC Accreditation and Business permit;
- Failure to cooperate with any DoE or ERC investigation and comply with the imposition of administrative fines and penalties shall be penalized by DoE and ERC administrative fine of not less than Php1,000,000.00 but not more than Php5,000,000 00 per act of refusal, non-attendance or non-participation with suspension or cancellation/closure of operation, DOE Permit, ERC Accreditation and Business permit;
- Failure or late compliance with the application for approval of the ERC accreditation requirement shall be penalized by an ERC administrative fine of not less than Php1,000,000.00 but not more than Php5,000,000.00 with suspension or cancellation/closure of operation, DOE Permit and Business Permit;
 - Failure or late compliance with ERC accreditation responsibilities, qualifications and standards shall be penalized by an ERC administrative fine of not less than Php1,000,000.00 but not more than Php5,000,000.00 with suspension or cancellation/closure of operation, ERC Accreditation, DOE Permit and Business Permit;
 - Failure, late or incomplete compliance with any directive of the DOE Secretary or the ERC Commissioner in the discharge of their powers and functions in this Act shall be penalized with suspension or cancellation/closure of operation, ERC Accreditation, DOE Permit and Business Permit; and
 - Failure, late or incomplete compliance with other responsibilities and requirements as maybe prescribed by the DOE, ERC and other relevant Government Agencies pursuant to laws, rules and regulations shall be penalized with suspension or cancellation/closure of operation, ERC Accreditation, DOE Permit and Business Permit including any other applicable administrative fines and penalties

¹⁰⁹ **ERC (11 January 2021): Clarification:** How will Sections 27 (a) and 28 (a) be operationalized and who will be liable? Will this be different from the current civil service rules?

1 (b) For natural gas industry participants:

2 (i) Engaging in any activity as a natural gas participant without the required
3 permits, ~~{Siting, constructing, operating, maintaining, modifying,~~
4 ~~rehabilitating, expanding decommissioning, and abandoning of LNG terminals,~~
5 ~~and natural gas transmission systems without the required permits,~~

6 ~~(ii) Receiving, unloading, loading, storing, regasifying, transmitting,~~
7 ~~transporting, and conveying natural gas from LNG terminals without the~~
8 ~~required permits,~~

9 ~~(iii) Transporting natural gas within the country through, lorries, specially~~
10 ~~equipped motor vehicles, ships, and marine vessels without the required~~
11 ~~permits,~~

12 ~~(iv) Engaging in the business of aggregation, supply, and importation of~~
13 ~~natural gas without the required permits,]~~

14 (v) Failing to comply with the health, safety, security, environmental, and
15 other standards as determined by DOE, DENR, DOH, DTI-BPS, MARINA,
16 DOTr, and other relevant government agencies,

17 (vi) Failing to comply with documentary and reportorial requirements and
18 submissions,

19 (vii) Engaging in any anticompetitive behavior, or any act that curtails market
20 competition, or is detrimental to midstream end users [consumers], and

21 (viii) Failing to perform other duties and responsibilities determined by the
22 DOE, the ERC, and other government agencies pursuant to their powers
23 under this Act;

24 (c) For LNG terminals:

25 (i) Operating as an own use LNG terminal without an own use permit,

26 (ii) Operating as an rTPA LNG terminal without an rTPA permit,

27 (iii) Selling, ~~{A}~~assigning, or transferring the interest, rights, or participation in
28 ~~{øf}~~ any permits issued without a written approval from DOE,

29 (iv) Entering into nTPA agreements or similar arrangements to the extent
30 covered by an own use permit,

1 (v) Allowing a third party to use the capacity covered by an rTPA permit
2 ~~[through an nTPA agreement or similar arrangement];~~

3 (vi) Utilizing or allowing an affiliated party to utilize the capacity or for the
4 duration of time over and beyond the capacity or duration of time specified in
5 an own use permit;

6 (vii) Utilizing or allowing a third party to utilize the capacity or for the duration
7 of time over and beyond the capacity or duration of time specified in an rTPA
8 permit;

9 (ix) Failing to publicly disclose the capacity available to third parties to the
10 extent covered by an rTPA permit,

11 (x) Giving any undue preference or advantage to any party to the extent
12 covered by an rTPA permit,

13 (xi) Failing to provide non-discriminatory use and access to third parties to
14 the extent covered by an rTPA permit,

15 (xii) Failing to publish and unbundle the terminal fee for rTPA LNG terminal
16 permit holders, and

17 (xiii) Failure to comply with the Terminal Third Party Access Code; ~~[and~~

18 ~~(ix) Failing to perform other duties and responsibilities determined by DOE~~
19 ~~and other government agencies pursuant to their powers under this Act;]~~

20 (e) For dedicated natural gas pipelines:

21 (i) Operating a dedicated natural gas pipeline without a permit,

22 (ii) Entering into nTPA agreements or similar arrangements; and

23 (iii) Allowing a third party to utilize its pipeline;

24 (f) For natural gas transmission utilities:

25 (i) Constructing, owning, and operating a natural gas transmission system
26 without a legislative franchise,

27 ~~[(ii) Operating as an own use natural gas transmission system without an own~~
28 ~~use permit,]~~

29 ~~[(iii) Operating as an rTPA natural gas transmission system without an rTPA~~
30 ~~permit,]~~

31 ~~[(iv) Entering into nTPA agreements or similar arrangements to the extent~~
32 ~~covered by an own use permit,~~

1 ~~(v) Allowing a third party to use the capacity covered by an rTPA permit~~
2 ~~through an nTPA agreement or similar arrangement;]~~

3 ~~[(vi) Utilizing or allowing an affiliated party to utilize the capacity or for the~~
4 ~~duration of time over and beyond the capacity or duration of time specified in~~
5 ~~an own-use permit;~~

6 ~~(vii) Utilizing or allowing a third party to utilize the capacity or for the duration~~
7 ~~of time over and beyond the capacity or duration of time specified in an rTPA~~
8 ~~permit;]~~

9 (viii) Failing to undertake a competitive selection process for third parties [the
10 capacity covered by an rTPA permit],

11 (ix) Failing to inform and coordinate with the NGTSO for the construction,
12 maintenance, modification, rehabilitation, expansion, decommissioning, and
13 abandonment of any part of the natural gas transmission system,

14 (x) Failing to publicly disclose the capacity available for third parties [to the
15 extent covered by an rTPA permit],

16 (xi) Awarding a winning bid beyond the reserve price determined by ERC,

17 (xii) Failing to provide non-discriminatory use and access to third parties [to
18 the extent covered by an rTPA permit],

19 (xiii) Giving undue preference or advantage to any third party [to the extent
20 covered by an rTPA permit],

21 (xiv) Failing to submit the Natural Gas Transmission Development Plan to the
22 DOE and the NGTSO when applicable,

23 (xv) Failing to comply with the Natural Gas Transmission Code and
24 Transmission Third Party Access Code, and

25 (xvi) Failing to publish and unbundle the natural gas transmission fee [for
26 rTPA natural gas transmission system permit holders];

27 ~~[(xvii) Failing to perform other duties and responsibilities determined by DOE~~
28 ~~and other government agencies pursuant to their powers under this Act;]~~

29 (e) For the NGTSO:

30 (i) Failing to operate and manage the interconnected natural gas transmission
31 system in accordance with the Natural Gas Transmission Code and the
32 Transmission Third Party Access Code,

- 1 (ii) Failure to operate and maintain a secure, reliable, and efficient system,
2 (iii) Failure to coordinate with natural gas transmission utilities for
3 construction, improvement, maintenance, modification, rehabilitation, repair,
4 expansion, decommissioning, and abandonment of any part of the natural gas
5 transmission system,
6 ~~[(iv) Failure to provide third party access and non-discriminatory service
7 among natural gas industry participants to the extent covered by the rTPA
8 permits of natural gas transmission utilities],~~
9 (v) Failing to furnish natural gas industry participants with sufficient
10 information for efficient access to the interconnected natural gas transmission
11 system,
12 (vi) Failure to secure ancillary services,
13 (vii) Failing to submit a comprehensive Natural Gas Transmission
14 Development Plan based on the submitted Natural Gas Transmission
15 Development Plans of natural gas transmission utilities,
16 (viii) Submitting a comprehensive Natural Gas Transmission Development
17 Plan that is not based on the submitted Natural Gas Transmission
18 Development Plans of natural gas transmission utilities,
19 (ix) Collecting an NGTSO fee without the approval of the ERC, and
20 (x) Failing to publish and unbundle the NGTSO fee. ~~[and
21 (xi) Failing to perform other functions and responsibilities determined by the
22 DOE and ERC pursuant to their powers under this Act.]~~

23
24 **SECTION 26 [28]. Penalties.**¹¹⁰ – Without prejudice to civil and criminal liability,
25 the following administrative penalties shall be imposed upon any natural or juridical
26 person for every prohibited act enumerated below:

- 27 (a) Section 27 (a): Fine not exceeding the equivalent of six (6) months' salary or
28 suspension not exceeding one (1) year, or removal depending on the gravity of the
29 offense;
30 (b) Section 27 (b), (c), ~~[and]~~ (d), and (e):

¹¹⁰ **Citizen Watch (10 January 2021):** Provide a strong level of penalties to deter natural gas industry participants from committing acts detrimental to consumer interests and anti-competitive behavior.

1 (i) First Offense: Fine of not less than Ten million pesos (P10,000,000) for
2 every day of non-compliance, and if applicable, suspension of permits until
3 the violation is corrected,

4 (ii) Second Offense: Fine of not less than Fifty million pesos (P50,000,000) for
5 every day of non-compliance, and if applicable, suspension of permits until
6 the violation is corrected, and

7 (iii) Third Offense: Fine of not less than One hundred million pesos
8 (P100,000,000), revocation of permit, and disqualification from applying for
9 future permits. In the case of natural gas transmission utilities, DOE and ERC
10 shall recommend the revocation of their respective franchises to Congress. In
11 the case of the NGTSO, it shall be replaced.

12 13 CHAPTER VIII

14 FINAL PROVISIONS¹¹¹

15
16 **SECTION 27 [29]. Incentives.**¹¹² – LNG terminals, storage and bunkering
17 facilities, and natural gas transmission systems, shall be included in the Strategic

¹¹¹ **DOE (8 January 2021):**

- **Consultation and Arbitration** - All parties shall make their best efforts to amicably settle any dispute arising from the performance or interpretation of any provision of this Act.
- **Cross Ownership** - The operator of the regas terminal shall not be allowed to own and operate a natural gas utility transmission system or a natural gas utility distribution system. Likewise the operator of a natural gas utility transmission system shall not be allowed to own and operate a natural gas utility distribution system.
- **Mandatory Participation of the Philippine National Oil Company (PNOC).** This mandate to PNOC is geared towards ensuring not only the active participation of the Government in the entry and development of this industry to enhance competition but likewise a deliberate strategy to ensure and enhance the energy security of the country. Within one (1) year from the issuance of the implementing rules and regulations of this Act, the PNOC shall submit to the DOE and JCEC, a comprehensive study on its entry and participation to the midstream and/or downstream natural gas industry.

PNOC-EC (21 December 2020): Cross-Ownership – Cross-ownership from the natural Gas facilities, their operations, importation and supply of Natural Gas to Customers, shall be allowed for operational and financial feasibility considerations. In all cases, the State shall apply the provisions of this Circular and other applicable laws and regulations concerning the ownership and operation of businesses affected with public interest and prohibition of monopolies and combinations in restraint of trade.

¹¹² **Freedom from Debt Coalition (22 January 2021):** Do not incentivize the development of terminals and infrastructures that will encourage the country's dependence on imported natural gas.

DOE (8 January 2021): Supports the provision.

DTI (20 January 2021): Supports provision. No objection in allowing foreign ownership of a natural gas project, provided the said project is not included in the Foreign Investments Negative List under Art. 32(1) of EO 226.

Mr. Panga – BOI (TSN, 2nd hearing, 12 January 2021): The BOI supports the general intentions of the bill and the inclusion of LNG terminals and natural gas transmission systems in the annual investment priorities plan for purposes of incentives under E.O. No. 226 in order to support the development of the midstream natural gas industry, subject to consultation of the guidelines and criteria with the DOE as the lead implementing agency for energy sector and other relevant

1 Investment Priority Plan subject to an evaluation process [~~annual IPP of the BOI~~]
2 and shall be entitled to the incentives and for the length of time provided under
3 Executive Order No. 226, otherwise known as the Omnibus Investments Code of
4 1987, as amended, and [~~any~~] other applicable laws [~~for six (6) years¹¹³ from the~~
5 ~~effectivity of this Act: *Provided*, That after the aforementioned period, the inclusion~~
6 ~~of LNG terminals and natural gas transmission systems in the annual IPP shall be~~
7 ~~reviewed and may be extended by the BOI:¹¹⁴ *Provided further*, That LNG terminals~~
8 ~~shall be exempt from Article 32 (1) of Executive Order No 226].¹¹⁵~~

parties. The BOI interposes no objection to allowing foreign ownership of natural gas projects as specified in the bill, provided they are not included in the Foreign Investment Negative List and endorsed by the DOE.

HSF (5 January 2021): In case of the EU, in order to encourage more LNG terminals and gas interconnectors being built, various stimuli are available for new infrastructure projects in the energy sector. In the EU, the concept of legislative franchises for gas infrastructure is not used and the incentives I have described in this paper is not predicated on such a mechanism. For certain types of regulated European Projects of Common Interest:

- Enhanced tariffs which are intended to provide incentives for projects with a particular risk profile.
- Other incentives, which are available on application and subject to review by the relevant national regulatory authorities and the European Commission, include an authorization to use for long-term primary capacity contracts for anchor clients or shareholders.

First Gen (8 January 2021): Additional suggested incentives:

- Off-Take Security and Support specifically securing PSAs to underpin the terminal's off-take
- Fuel Mix or Portfolio Standards
- Taxation and Tax-Related incentives:
 - Limiting excise taxes on LNG
 - VAT rebates on LNG imports
 - Exemption from import listing and tariffs
- Philippine Ports Authority (PPA) and Port Incentives: Exemption from port fees, including arrastre, wharfage, terminal handling charges, customs clearance, processing, handling, and documentation fees.

PIPPA (21 December 2020):

- No undue preference to the natural gas industry such as prescribed quotas since it will run counter to the intent and spirit of competitiveness in the energy industry.
- No additional subsidies be given to the natural gas industry such that it will create an advantage to this specific resource over all other resources.

Meralco (22 December 2020): Fiscal incentives go towards reduction of regulated fees to be charged by operators.

¹¹³ **HSF (5 January 2021):** Experiences in the EU with comparable regimes have shown that 6 years is not a long period of time, in particular if this is to cover the development and construction phase of the relevant LNG Terminal. The conditions for the availability of certain stimuli are that construction has to commence within 2 years of the relevant decision and operation has to commence within 5 years. Projects regularly have to request extensions as it often takes longer to complete such large projects. A mechanism to extend these time scales might assist in the development of the gas industry.

¹¹⁴ **DOF (19 January 2021):** The proposal negates the 2nd tax reform package of the DOF or the Corporate Recovery and Tax Incentives for Enterprises (CREATE) Act, which rationalizes the incentives system in the country and provides for a set of tax incentives that are performance-based, targeted, time-bound, and transparent. The reform aims to institute a more judicious grant of incentives by ensuring that the incentives are supported by the economic benefits in exchange for the revenues that the government will give up. We note that any activity or project should undergo the same cost-benefit analysis and industry study that will dictate the type of government support that the industry requires. Under the CREATE, in order to qualify in the Strategic Investment Priority Plan (SIPP)⁴ and the applicable incentives, the investment must:

- Be covered by the Philippine Development Plan (PDP) or its equivalent and other government programs; and
- Take into account any of the following:
 - Substantial amount of investments;
 - Considerable generation of employment;
 - Adoption of inclusive business activities and value-adding production by micro, small, and medium-sized enterprises;
 - Use of modern or new technology;
 - Adoption of adequate environmental protection systems;
 - Addressing the missing gaps in the supply/value chain or moving up the value chain or product ladder; and
 - Promotion of market competitiveness

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SECTION 28 [30]. Permits and Licenses. – All government agencies including local government units shall provide for a uniform and streamlined permitting process for the siting, construction, operation, maintenance, modification, rehabilitation, expansion, decommissioning, and abandonment of LNG terminals, natural gas transmission systems, as well as the supply, aggregation, importation, transportation, and transmission, of natural gas, in its original or liquefied form: *Provided*, That the process shall be covered by the provisions of Republic Act No. 11234, otherwise known as the Energy Virtual One-Stop Shop Act.¹¹⁶

SECTION 29 [31]. Public Access to Information. – The DOE, ERC, and other relevant government agencies shall allow public access, through its website, to all data and information submitted in the implementation of this Act: *Provided*, That such access is compliant with Section 32 of this Act.

SECTION 30 [32]. Treatment of Confidential Information [Confidentiality].
– The DOE, ERC, and other relevant government agencies shall not disclose any proprietary and confidential information to the public and to other natural gas industry participants unless prior consent of the source or owner of such information

The proposal undermines the value of evaluating the potential contribution of the activity and industry to create quality jobs, move up the value chain, diversify the country's industrial base, generate "spillover effects," and engender a more competitive environment. **Suggestion:** To assess the tax incentives appropriate for the sector/s or activities in order to determine its suitability and potential in promoting long-term growth

PCC (22 January 2021)

- How these tax holidays are to be streamlined in relation to the proposed Corporate Recovery and Tax Incentives for Enterprises ("CREATE") Act, which intends to streamline the grant of incentives in the country?
- Whether LNG terminals should also be subject to such incentive?
- PCC respectfully requests clarification on what types of incentives will be offered, particularly because the degree of distortion to the market is also dependent on the type of aid. This would allow us to determine the possible impact that these subsidies may have on the market and its participants.
- Other experienced and well-established jurisdictions yields that a balancing test may be applied to determine the competition effects that a subsidy may produce. Under the European Union's State Aid Modernization ("SAM") program, the European Commission utilizes a "balancing test" when assessing various forms of state aid.
 - PCC finds that it may be prudent to adopt these criteria and tailor it specifically for the Philippine context when ascertaining the allotment of these incentives to minimize possible distortions in the market.

¹¹⁵ **DOF (19 January 2021):** Exempting the industry from the 60% Filipino ownership requirement violates the provisions of Republic Act (RA) No. 7042 or the "Foreign Investment Act11, as amended which sets that shares belonging to corporations or partnerships be at least 60% owned by Filipino citizens. Furthermore, EO 98 (s. 2012)⁵ provides that the "exploration/development/ and utilization of natural resources" can only have a foreign equity participation of up to 40%. We would like to note that these safeguards were crafted to protect the rights of Filipino citizens to utilize our natural resources and to engage in nationalized activities.

¹¹⁶ **PIPPA (21 December 2020):** Will the permits from DOE and ERC for these terminals and systems be part of the EVOSS

1 has been obtained by the requesting party:~~[]~~ *Provided*, That prior consent shall not
2 be required if the proprietary and confidential information is requested by a
3 government agency and the request is made in performance of its functions:
4 *Provided further*, That the requesting government agency shall not disclose the
5 proprietary and confidential information to the public and to other natural gas
6 industry participants.¹¹⁷

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8 **SECTION 31 ~~[33]~~. Establishment of Dedicated Offices.** – The DOE and the
9 ERC shall establish dedicated bureaus or¹¹⁸ offices for the effective implementation
10 of this Act. The organizational structure and staffing complement shall be
11 determined by the DOE Secretary and ERC Chairperson respectively, in consultation
12 with the Department of Budget and Management, and in accordance with existing
13 civil service rules and regulations.

14
15 **SECTION 32 ~~[34]~~. Appropriations.** – The amount of Seventy five million pesos
16 (P75,000,000.00) shall be charged against the current year’s appropriations of the
17 DOE and the amount of Seventy ~~[Fifty]~~ million pesos (P~~[5]~~70,000,000.00) shall be
18 charged against the current year’s appropriations of the ERC, all for the initial
19 implementation of this Act. Thereafter, such amounts necessary for the sustainable
20 implementation of this Act shall be included in the annual General Appropriated
21 Act.¹¹⁹

¹¹⁷ TWG Agreement 3 February 2021

ERC (4 February 2021): The ERC has no objections as to the propriety of sharing confidential documents or information with pertinent government agencies provided that the same be made for specific and lawful purpose, its use be confined within the said purpose, and that utmost confidentiality be strictly observed.

¹¹⁸ DOE (8 January 2021)

¹¹⁹ **ERC (11 January 2021):** For purposes of determining if the initial PhP50million budget for the ERC is enough, the ERC initially developed an organizational structure (subject to further review, study and finalization) to perform ERC’s mandate under the said Act, attached as Annex A. It is composed of four (4) Divisions, namely: (1) Compliance Monitoring & Standards Division; (2) Adjudication Division; (3) Rate Setting Division; and (4) Licensing & Permitting Division, for a total staff complement of forty-four (44). Given the current level of salaries of the ERC staff (with last salary increase in April 2018) and the current prices, the ERC estimated the additional Personnel Services (PS), Maintenance & Other Operating Expenses (MOOE) and Capital Outlay (CO) for this 44 staff complement at PhP41,930,070.90 It should be noted, however, that the above cost does not take into account the following:

- Updated salaries since there is a pending request with the Office of the President for the salary adjustment of ERC personnel, given that it was last adjusted in 2018;
- Inflationary increase in the costs in MOOE and CO;
- Additional staff complement, if necessary, after going through a thorough organizational study to set-up the ERC-LNG Operations Service; and
- Rigid Training requirements and its attendant cost.

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SECTION 33 [35]. Congressional Oversight. – The Joint Congressional Energy Commission (JCEC) shall exercise oversight powers over the implementation of this Act. The DOE, ERC, and other relevant government agencies shall submit annual reports to the JCEC not later than the fifteenth day of September, which shall include the latest relevant data, implementation review and reports, and policy and regulatory issuances.

SECTION 34 [36]. Transitory Period.– The rights and obligations acquired under relevant laws and regulations issued prior to this Act shall remain effective for five (5) years from effectivity of this Act. Thereafter, the DOE or the ERC, as the case may be,¹²⁰ shall ensure that all natural gas industry participants [~~LNG terminals, natural gas transmission systems, specially equipped motor vehicles, ships, and marine vessels~~] are compliant with the provisions of this Act: *Provided*, That natural gas transmission systems operating under an existing franchise at the time of the effectivity of this Act shall be allowed to continue pursuant to the terms and conditions indicated in their franchise and until the lapse of the period accorded to them in the franchise.¹²¹

SECTION 35 [37]. Implementing Rules and Regulations. – The DOE, in consultation with the relevant government agencies and energy industry

For training cost alone, based on our initial study of the trainings that the staff needs to undergo (see Annex C), the cost of trainings ranges from PhP117,500 to PhP247,500 per staff, for an average of PhP157,164.29 per training, per staff. For all the 44 staff complement initially identified, this is a total of PhP6,915,228.57, for one training each staff only. Worthy of note is that most of the staff will need to undergo several trainings, not just one, especially at the start of the operations of the LNG Operations Service. In line with the above, and given the initial cost identified to operationalize and capacitate the LNG Operations Service, the ERC proposes for an increase in the initial budget allocation of ERC from PhP50 million to PhP70 million.

¹²⁰ ERC (11 January 2021)

¹²¹ DOE (8 January 2021): The rights and obligations acquired under relevant laws and regulations issued prior to this Act shall remain effective for five (5) years from effectivity of this Act. Thereafter, the DOE and ERC shall ensure that all Operators of the Midstream and Downstream Natural Gas Infrastructures, their Ancillary Facilities and Dedicated Pipeline Network are compliant with the provisions of this Act: *Provided*, That all Natural Gas Utility Transmission System and Natural Gas Utility Distribution System operating under an existing Congressional Franchise shall be allowed to continue pursuant to the terms and conditions indicated therein subject to appropriate amendments for any inconsistency.

First Gen (8 January 2021): Suggestion - Include a provision recognizing the ongoing activities authorized under DOE circular 2017-11-0012 or the Rules and Regulations Governing the Philippine Downstream Natural Gas Industry, which is currently the framework in place for the emerging natural gas industry.

1 stakeholders, shall issue the implementing rules and regulations (IRR) of this Act
2 within six (6) months from its promulgation.¹²²

3

4 **SECTION 36 [38]. Separability Clause.** – Any provision of this Act, which may
5 be declared unconstitutional or invalid shall not have the effect of nullifying other
6 portions or provisions hereof.

7

8 **SECTION 37 [39]. Amendatory and Repealing Clause.** – The specific
9 provisions of Republic Act No. 387, otherwise known as the Petroleum Act of 1949,
10 and Presidential Decree No. 334, Creating the Philippine National Oil Company,
11 Defining its Powers and Functions, Providing Funds Therefor, and For Other
12 Purposes, that are inconsistent with this Act are hereby amended or repealed
13 accordingly.

14

15 All other laws, ordinances, rules, regulations and issuance or parts thereof, that are
16 inconsistent with this Act, are likewise amended or repealed accordingly.

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¹²² **DOE (8 January 2021):** DOE shall promulgate:

- Within six (6) months from the effectivity of this Act, promulgate its implementing rules and regulations
- Within ninety (90) days from the issuance of the implementing rules and regulations of this Act and in coordination with relevant Government agencies, create and convene the inter-agency Technical Committee on Standards, chaired by the DOE and co-chaired by the DTI-BPS, with ERC, DILG-BFP, DENR, DOLE, MARINA, PCG, representatives from the academe and all Operators as permanent members. Other relevant Government agencies maybe invited as additional members.
The identified Government agency and academe are mandated to fully support and perform the functions assigned to the technical committee on standards. Likewise, the representatives from all operators shall participate as part of their DOE permit responsibilities;
- Within one hundred eighty (180) days from the issuance of the implementing rules and regulations of this Act, and in coordination with relevant Government agencies, create and convene the Philippine Midstream and Downstream Natural Gas Inter-Agency Inspection and Monitoring Team (PMDNG- IAIMT) chaired by the DOE with DILG-BFP, DENR, DOLE, MARINA, PCG and other relevant Government agencies with applicable regulatory powers as members.
- The identified Government agencies are mandated to fully support and perform the functions assigned to the inspection and monitoring team.
- Within ninety (90) days from the issuance of the implementing rules and regulations of this Act, the DOE shall promulgate and issue the rules and procedures of investigation, notice and heading to carry out the legal proceeding pursuant to this provision; and
- Within one (1) year from the issuances of the implementing rules and regulations of this Act, promulgate the midstream and downstream natural gas industry development plan;

ERC shall promulgate:

- Within one (1) year from the issuance of the implementing rules and regulations of this Act in coordination and consultation with the Technical committee on Standards, public and the private stakeholders, promulgate the TPA and Gas Delivery Code and Utility Service Fee Setting and Gas Delivery Code; and
- Within ninety (90) days from the issuance of the implementing rules and regulations of this Act, the ERC shall promulgate and issue the rules and procedures of investigation, notice and hearing to carry out the legal proceeding pursuant to this provision;

1 **SECTION 38 [40]. Effectivity Clause.** – This Act shall take effect fifteen (15)
2 days after its publication in the Official Gazette or one (1) newspaper of general
3 circulation.

Approved,