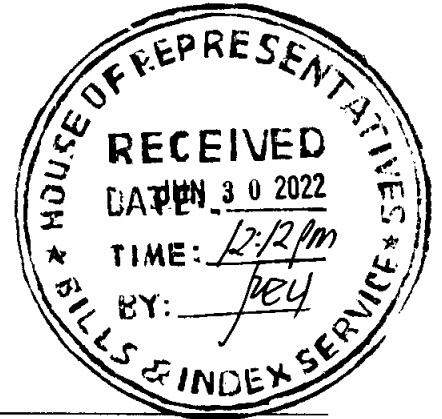




Republic of the Philippines
HOUSE OF REPRESENTATIVES

NINETEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 29



Introduced by Representative Lord Allan Jay Q. Velasco

AN ACT
PROMOTING THE DEVELOPMENT OF THE PHILIPPINE DOWNSTREAM
NATURAL GAS INDUSTRY, CONSOLIDATING FOR THE PURPOSE ALL LAWS
RELATING TO THE TRANSMISSION, DISTRIBUTION AND SUPPLY OF
NATURAL GAS, AND APPROPRIATING FUNDS THEREFOR

EXPLANATORY NOTE

The Malampaya Deep Water Gas-to-Power Project has given hope to many Filipinos that we could benefit from the relatively low prices natural gas offers as an energy resource. The operation of the Malampaya Gas Field has enabled the country to harness and make use of a clean, abundant and- accessible energy resource which has resulted in the reliance of about 30% of Luzon island's energy needs on said energy resource. Natural Gas was also used as alternative fuel to the rather more expensive fossil fuel by some transport companies.

Several other government policies were launched to regulate and optimize the use of natural gas in the country such as (a) Executive Order No. 66 which was signed by President Gloria Macapagal-Arroyo on 18 January 2002 which designated the Department of Energy (DOE) as the primary agency that would push for the development of the country's natural gas industry as well as (b) the issuance of the DOE interim rules and regulations governing the transmission, distribution and supply sub-sectors of the natural gas industry.

Today, the supply of Malampaya's natural gas has been steadily dwindling, thus signifying that we need to find new sources of natural gas either domestically or through importation. Despite the same, the Philippines still lacks a clear, comprehensive and integrated legislative framework that would serve as a pillar towards achieving the rapid development of the country's natural gas sector. The lack of such clear policies is detrimental to the thrust of the DOE to attract foreign

investors to invest in our natural gas potentials or importation or transmission of the same.

In view of the foregoing, immediate passage of this bill is earnestly sought.


LORD ALAN JAY Q. VELASCO



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HOUSE OF REPRESENTATIVES
Quezon City

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

CHAPTER I
TITLE AND DECLARATION OF POLICY

SECTION 1. **Short Title.** – This Act shall be known as the *"Philippine Downstream Natural Gas Industry Development Act"*.

SEC. 2. **Declaration of Policy.** – It is hereby declared the policy of the State to:

- (a) Promote natural gas as a safe, environment-friendly, efficient and cost-effective source of energy, and an indispensable contributor to grid security, especially with the entry of more intermittent renewable energy sources by establishing the Philippine downstream natural gas industry (PDNGI) for the benefit of all segments of the nation's population and all sectors of its economy;
- (b) Promote natural gas as the energy fuel, which has tremendous potential to meet the increasing local demand for fuel, and the development of the Philippines as a liquefied natural gas (LNG) trading and transshipment hub within the Asia-Pacific

Region. In all cases, the State shall ensure the safe, secure, reliable, transparent, competitive and environmentally responsible operation of the PDNGI value chain;

(c) Provide a conducive industry environment through the issuance of policies, regulations, safety code, product quality and facility operational standards, and plans and programs geared towards the promotion and development of the PDNGI;

(d) Promote the conversion of existing fossil fuel-operated machines and facilities to natural gas use, provided it is technically and financially feasible;

(e) Promote access to and the financial viability of the PDNGI by liberalizing the entry of investors under a system of competition, transparency and fair trade and providing responsive policy support, with the end goal of attaining fair price for all stakeholders;

(f) Ensure compliance with International and Philippine health, safety, security, environment (HSSE) standards and best practices under a system of safe, secure, high-quality, environmentally responsible operation and services that afford protection to consumers;

(g) Encourage the inflow of private capital through equity participation by the private sector in the downstream natural gas value chain including gas transmission and distribution utilities;

(h) Ensure transparent and reasonable price of natural gas and rates for its importation, storage and regasification, transmission and distribution in a regime of open and fair competition and full public accountability that shall promote greater operational and economic efficiency and enhanced competitiveness of the Philippine products in the global market;

(i) Develop the necessary trades, technical expertise and skills to support the PDNGI; and

(j) Facilitate the development of end-uses of natural gas including the use of natural gas as fuel for power, commercial, industrial, residential and transport that promote fuel diversity and compliance with existing environmental laws.

SEC. 3. **Scope.** – This Act shall provide a framework for the development of the PDNGI and its transition from emerging industry into mature industry status within a competitive natural gas market, and define the responsibilities of various government agencies and private entities in furtherance of this national goal.

All activities of the Department of Energy (DOE), Energy Regulatory Commission (ERC) and other concerned government agencies relevant to the development and regulation of the PDNGI shall be in accordance with this Act.

SEC. 4. **Definition of Terms.** – As used in this Act:

(a) *Affiliates* refer to the corporate relationships of two or more persons, one of whom either owns or controls or is being controlled by other persons. As used herein, “control” shall mean the power to direct or cause the direction of management policies as an inherent part of decision-making power;

(b) *Anti-Competitive Behavior* refers to the practices and agreements in violation of the provisions of Republic Act No. 10667, otherwise known as the “*Philippine Competition Act*”;

(c) *Capacity* refers to the maximum flow expressed in normal cubic meters per time unit or in energy unit per time unit;

(d) *Delivery* refers to the transmission or distribution of natural gas and the supply of natural gas at wholesale or retail;

(e) *Distribution* refers to the transportation of natural gas through a gas distribution system to end-users;

(f) *Distribution system* refers generally to the pipeline and related facilities used to transport natural gas extending between the last delivery point of the transmission system to the last connection point to the end-user;

(g) *End-user* refers to any person that will receive delivery of natural gas for resale or final use;

- (h) *Franchise* refers to the right, privilege and authority issued by Congress authorizing a person to engage in the transmission of natural gas or distribution of natural gas within a specific geographical area;
- (i) *Gathering facilities* refer to natural gas pipelines and its ancillary facilities used to gather gas in the field and bring it to a location for processing or for delivery at an interconnection with the gas transmission system. The terms "gather" and "gathering" shall be construed accordingly;
- (j) *Importation* refers to the act of bringing LNG into the Philippines;
- (k) *Insurance* refers generally to a risk-transfer mechanism that ensures full or partial financial compensation for the loss or damage caused by events beyond the control of the insured party wherein compensation is normally proportionate to the loss incurred;
- (l) *Liquefied natural gas or LNG* refers to natural gas which has been liquefied by cooling at a cryogenic temperature;
- (m) *Natural gas* refers to gas obtained from boreholes and wells consisting primarily of a mixture of methane, ethane, propane and butane with small amounts of heavier hydrocarbons and some impurities, consistent with the Philippine National Standards (PNS) or the standards developed by the International Organization for Standardization (ISO);
- (n) *Natural gas distribution code* refers to the code to be formulated by the DOE pursuant to Section 5(g) of this Act that shall set the technical performance standards for operating gas distribution utilities and the minimum financial standards for gas distribution systems;
- (o) *Natural gas distribution system* refers to the system of conventional pipelines and related facilities extending from the delivery points where the gas distribution system receives the natural gas to the point of connection in the premises of the end-user; and any available virtual pipeline that allows alternative modes of transportation;

- (p) *Natural gas distribution utility* refers to any person engaged in the operation of a natural gas distribution system providing services for general public use, which requires a franchise to operate a gas distribution system;
- (q) *Natural gas sales and purchase agreement* or *NGSPA* refers to any contract or agreement for the delivery and sale of indigenous or imported natural gas by and between sellers, suppliers, buyers and end-users;
- (r) *Natural gas transmission code* refers to the code to be developed by the DOE pursuant to Section 5(g) of this Act that shall set the technical performance standards for operating gas transmission systems and the minimum financial standards for gas transmission utilities;
- (s) *Natural gas transmission system* refers to the system of high-pressure pipelines, storage and its ancillary facilities that are used to transport natural gas from the interconnection with gathering facilities, other LNG-related facilities and other gas transmission or distribution systems;
- (t) *Natural gas transmission utility* refers to a natural or juridical person that has a franchise to operate or is intending to operate a gas transmission system except own-use pipelines;
- (u) *Own-use permit* refers to an authorization granted by the DOE to a permit holder or operator for the exclusive use by the operator or its affiliates in the operation of its natural gas facility;
- (v) *Permit* refers to an authorization issued by the DOE for the importation, construction, commercial operation and maintenance of natural gas facilities;
- (w) *Permit holder or operator* refers to a natural or juridical person who is granted a permit by the DOE to engage in the importation, construction, commercial operation and maintenance of natural gas facilities;
- (x) *Person* refers to a natural or juridical person, as the case may be, including the national and local governments of the Republic of the Philippines, its agencies and instrumentalities, and government-owned and controlled corporations;

- (y) *Philippine downstream natural gas industry* or *PDNGI* refers to the sectors of transmission, distribution, supply, and use of natural gas and their related activities, such as importation, storing, regasification, transmission and distribution of natural gas to end-users;
- (z) *Philippine Energy Plan* or *PEP* refers to the overall energy program formulated and updated yearly by the DOE and submitted to Congress pursuant to Republic Act No. 7638, otherwise known as the "*Department of Energy Act of 1992*", as amended;
- (aa) *Rates* refer to the payment on the utilization of the capacity and use of other services offered by the permit holder or operator of the transmission and distribution pipeline;
- (bb) *Supplier* refers to any person engaged and registered with the DOE to trade on indigenous or imported LNG and their subsequent supply to end-users;
- (cc) *Supply* refers to the trade or sale of indigenous or imported natural gas and their subsequent sale to end-users;
- (dd) *Third-party access or TPA* refers to a transparent and non-discriminatory access and utilization by a third-party user of the excess capacity of the LNG terminal and its related facilities;
- (ee) *Transmission* refers to the transportation of natural gas through a natural gas transmission system;
- (ff) *Virtual Pipeline* refers to alternative methods of transporting natural gas to places where there is no pipeline network available. It is based on a modular system of compression or liquefaction, transport and decompression and regasification of natural gas, which communities, industries, gas stations and others may use.

CHAPTER II

POWERS AND RESPONSIBILITIES OF THE DOE AND THE ERC

SEC. 5. Powers and Responsibilities of the DOE. – In addition to its existing powers and functions, the DOE shall have the overall responsibility of supervising and monitoring the development of the Philippine downstream natural gas industry. Towards this end, the DOE shall perform the following powers and functions:

- (a) Prepare the Natural Gas Industry Development Plan (NGIDP) within two (2) years from the effectivity of this Act, incorporating therein the plans submitted by public and private stakeholders after open discussions and consultations with them. The NGIDP shall consist of approved regasification, transmission and distribution development plans which shall be integrated into the Philippine Energy Plan (PEP), and reviewed and updated every three (3) years after its adoption;
- (b) Establish standards on gas quality, facility installation and safety of operation. For this purpose, a Philippine Inter-Agency Technical Committee (PIA-TC) shall be created by the Bureau of Philippine Standards (BPS) to be chaired by the DOE. The PIA-TC shall have as members the representatives of concerned government agencies and private industries. A Philippine Inter-Agency Health, Safety, Security and Environment Inspection and Monitoring Team (PIA-HSSE IMT) shall likewise be created to monitor and enforce compliance with established standards;
- (c) Evaluate applications and issue permits on the importation, exportation, receipt, unloading, loading, storage, regasification of liquefied natural gas; transmission, distribution, marketing, utilization, aggregation of natural gas; and the safe, secure, reliable and efficient planning, construction, operation, expansion, modification, maintenance, decommissioning and abandonment of the downstream natural gas industry infrastructure and facilities;
- (d) Evaluate applications for permits or authorities to operate, including a Notice to Proceed (NTP), a Permit to Construct, Expand, Rehabilitate and Modify (PCERM), and a Permit to Operate and Maintain (POM) downstream natural gas projects and facilities, accreditation to import, supply and transport natural gas, Acknowledgement to Import (ATI) LNG and Acknowledgement to Supply and Transport (AST) natural gas;

- (e) Review, suspend or revoke, after due notice and hearing, permits issued in accordance with the preceding paragraphs (c) and (d) herein, and Section 12 of this Act after a finding of non-compliance with the provisions of this Act, rules and regulations that shall be issued to implement it, and related issuances;
- (f) Issue a written approval on the assignment or transfer of interest on any permits issued in accordance with Section 50 of this Act, after finding that the assignee or transferee has met all the legal, technical, and financial qualifications and has committed itself to assume all existing obligations of the permit holder, and such assignment or transfer is in accordance with existing laws, rules, and regulations: *Provided*, That permits requiring the prior issuance of a legislative franchise shall not be subject to assignment or transfer of interest;
- (g) Issue, in coordination with the ERC and in consultation with other concerned government agencies and the PDNGI participants, the Gas Transmission and Distribution Codes, which shall contain the standards and best practices on safe, high-quality, environmentally responsible and consumer protected operation and service, competitive practices and reasonable rates of service;
- (h) Endorse requests for investigation to the Philippine Competition Commission (PCC) of any anti-competitive behavior in the conduct of any business under the downstream natural gas industry;
- (i) Issue directives to qualified government agencies, in their capacities as investing arms, to spearhead the development of the PDNGI value chain as the DOE may deem imperative to catalyze its development within a given timeline;
- (j) Determine the qualifications and detailed responsibilities of the Natural Gas Transmission System Operator (NGTSO) and Natural Gas Distribution Utilities (NGDUs) pursuant to their responsibilities provided in this Act;
- (k) Initiate actions against the NGTSO or NGDUs for failure to comply with the qualifications and detailed responsibilities specified in this Act;

(l) Review and approve the natural gas supply and regasification development plan of the regasification terminal owner or operator, natural gas transmission development plan of the NGTSO, and the natural gas distribution development plans of the NGDUs, and integrate the same into the PEP;

(m) Require the PDNGI participants to submit the regasification, transmission and distribution development plans, and regular and special reports regarding the organization, business, conduct, practices, and management of any business entity duly registered as part of the downstream natural gas industry, subject to Section 20 hereof; and

(n) Exercise such other powers and functions as may be necessary or incidental to attain the objectives of this Act. Subject to existing laws, rules and regulations, the DOE is hereby authorized to create offices and appoint personnel as may be necessary to efficiently and effectively implement this Act.

SEC. 6. Powers and Responsibilities of the ERC. – In addition to its existing powers and functions, the ERC shall have the sole regulatory responsibility for establishing the rates and related terms and conditions of service for the transmission and distribution, regasification and supply of natural gas to the extent that such activities are regulated pursuant to the requirements set forth in this Act.

It shall:

(a) In the public interest, establish and enforce a methodology for setting transmission, distribution, and supply rates, taking into account all relevant considerations, including the efficiency or inefficiency of the regulated entities. The rates shall be to allow the recovery of just and reasonable costs and a reasonable return to enable the entity to operate viably. The ERC may, upon due notice and public consultation, adopt internationally accepted rate setting methodology. The rate setting methodology so adopted and applied shall promote efficiency and ensure a reasonable price or tariff, and the rates to be prescribed shall be non-discriminatory. For this purpose, the ERC is hereby authorized to require from all participants in the natural gas supply chain all necessary and appropriate records

- and documents relevant to the determination of just and reasonable fuel cost used in power generation as recoverable component of electricity cost to end-users;
- (b) Regasification services and supply services shall be subjected to rate regulation when there is no competing regasification operators;
 - (c) Apply administrative procedures that will ensure the constitutional right to due process;
 - (d) Before the end of April of each year, submit to the Office of the President of the Philippines and Congress, copy furnished the DOE, an annual report containing such matters or cases, which have been filed before or referred to it during the preceding year, the actions and proceedings undertaken thereon and its decision or resolution on each case. The ERC shall make copies of such report available to any interested party upon payment of a charge, which shall reflect the printing costs;
 - (e) Publish in newspapers of general circulation all its cases and decisions involving rates;
 - (f) Create offices and appoint personnel thereto as may be necessary to efficiently and effectively perform its functions as stipulated in this Act, subject to existing laws, rules and regulations; and
 - (g) Exercise such other powers as may be necessary or incidental to attain the objectives of this Act.

CHAPTER III

POWERS AND RESPONSONSIBILITIES OF GOVERNMENT AGENCIES

Sec. 7. Powers and Responsibilities of the Department of Environment and Natural Resources (DENR). – In addition to its functions under Executive Order No. 192, otherwise known as the "*Reorganization Act of the Department of Environment and Natural Resources*", the DENR shall, together with the DOE, determine and monitor compliance with the environmental standards for the location, construction, improvement, expansion, operation, rehabilitation, repair,

maintenance, decommissioning, and abandonment of LNG terminals, natural gas transmission systems, and all related equipment and facilities.

Sec. 8. Powers and Responsibilities of the Department of Health (DOH). –

In addition to its functions under Executive Order No. 317, Series of 1941, entitled, *"Organizing the Department of Health and Public Welfare"*, as amended, the DOH shall, together with the DOE, determine and monitor compliance with the health standards for the location, construction, improvement, expansion, operation, rehabilitation, repair, maintenance, decommissioning, and abandonment of LNG terminals, natural gas transmission systems, and all related equipment and facilities.

Sec. 9. Powers and Responsibilities of the Department of Trade and Industry-Bureau of Philippine Standards (DTI-BPS). –

In addition to its functions under Republic Act No. 4109, entitled, *"An Act to Convert the Division of Standards under the Bureau of Commerce into a Bureau of Standards, to Provide for the Standardization and/or Inspection of Products and Imports of the Philippines and for other Purposes"*, the DTI-BPS shall, together with the DOE, determine, develop, formulate, promulgate, and revise, the Philippine National Standards for natural gas transmission systems, and for natural gas, in its original or liquefied form, LNG terminals, all related equipment and facilities.

SEC. 10. Powers and Responsibilities of the Philippine Competition Commission (PCC). –

All matters concerning abuse of market power, cartelization, and any anti-competitive or discriminatory behavior shall be subject to the quasi-judicial powers of the PCC as provided for under Republic Act No. 10667, otherwise known as the *"Philippine Competition Act"*.

CHAPTER IV

STRUCTURE, OPERATION AND REGULATIONS OF THE DOWNSTREAM NATURAL GAS INDUSTRY

SEC. 11. **Structure.** – For purposes of this Act, the structure of the PDNGI value chain shall consist of an LNG terminal and its related facilities, transmission, distribution pipelines and their related facilities, storage and distribution-related facilities, and supply and transport of natural gas.

SEC. 12. **Permits.** – The DOE shall have the power to issue, review, suspend and revoke for cause, the permits necessary for the construction, expansion, rehabilitation, modification, operation and maintenance of any PDNGI facility or activity. Own-use permit for natural gas facilities shall be allowed for the exclusive use of the operator and its affiliates in the operation of its facilities. The holder of an own-use permit shall still comply with the requirements in this Act. Transmission and distribution of natural gas shall be exempted from franchise requirement.

The owner and operator of an LNG terminal shall have the option to apply for both permits and simultaneously perform the functions of an own-use LNG terminal permit holder, pursuant to Section 35 of this Act, and a third-party access (TPA) LNG terminal permit holder pursuant to Section 26 of this Act, to the extent of the capacity allowed by and during the period specified in each type of permit.

SEC. 13. **Rate Regulation.** – The rate of charges and fees for the services of transmission or distribution pipelines and their related facilities shall, when they function as public utilities, be subject to the review and approval by the ERC. The rate methodology to be applied by the ERC shall be based on the principle of full recovery of prudent and reasonable costs incurred, including a reasonable return on rate base, or such other principles that will promote the determination of just and reasonable rates that is consistent with the encouragement of private investments and goal of developing a PDNGI infrastructure.

SEC. 14. **Compliance with Philippine Laws, Rules and Regulations.** – Operators or permit holders of PDNGI facilities shall comply with all Philippine laws, rules and regulations implemented by the different agencies of the government.

SEC 15. **Compliance with Standards.** – The DOE shall ensure that downstream natural gas products are of high quality, and natural gas facilities provide efficient service, observe stringent safety systems, accord attention to design details and structural integrity and employ operational and maintenance best practices. Regulations shall be consistent with applicable Philippine and internationally-accepted natural gas industry standards.

SEC. 16. **Confidential Information.** – The government shall not use confidential or commercially sensitive information for purposes other than those provided herein and shall protect and limit the disclosure of confidential or commercially sensitive information, unless allowed by the operator or when required by laws, rules and regulations.

SEC. 17. **Authority to Obtain Information.** – The DOE, ERC and other concerned government agencies may require any downstream natural gas player or permit holder, through a valid order and with due regard to confidential information, proprietary data and trade secrets, to furnish, within a reasonable period specified, all information and documents relating to all such matters as to the permit, rates and operation of business and natural gas facilities, and provide explanations on the information or document submitted, subject to Section 16 of this Act. The failure of a PDNGI participant or permittee to provide the required information or document without valid reason shall be punishable under this Act.

SEC. 18. **Supply of Natural Gas.** – Existing laws and rules governing the upstream natural gas sector shall provide the government the option to sell directly or otherwise authorize a service contractor to sell its share of the indigenous production. Accordingly, the Secretary of Energy may, when natural gas supply conditions so require, direct the supply of such share of indigenous production to the downstream natural gas sector.

The operator of an LNG-related facility shall likewise ensure the accommodation of both indigenous and imported supply of natural gas. The DOE shall support and ensure the implementation of any plan to upgrade an LNG terminal and its ancillary facilities into a hub for international trading and trans-shipment.

Any entity engaged in the distribution of natural gas may engage in the supply of the same.

SEC. 19. Abandonment of Downstream Natural Gas Facility. – No holder of a permit for the construction, installation, operation or maintenance of a downstream natural gas facility shall abandon or withdraw from service any portion of said downstream natural gas facility or project without obtaining prior authorization from the DOE. The DOE shall, in coordination with the DENR, provide the guidelines and regulations for decommissioning and abandonment of natural gas infrastructures and facilities.

SEC. 20. Registration and Reportorial Requirements of Natural Gas Participants, Facilities, Import, Export and Supply. – Holders of permits for the construction, installation, operation or maintenance of a downstream natural gas facility, including importers, exporters and supplier and transporter of natural gas or LNG, shall be registered with the DOE. Appropriate reportorial requirements shall likewise be required for proper supervision and monitoring in accordance with the implementing rules to be issued subsequently.

SEC. 21. Rules of Practice. – All concerned government agencies shall issue the appropriate rules of procedure to serve as guideline for administrative legal proceedings. The Rules of Court shall apply in a suppletory manner.

SEC. 22. Fees. – All concerned government agencies shall have the authority to prescribe and collect fees and charges relating to the issuance or review of permits, and the supervision and regulation of the PDNGI.

CHAPTER V

FRANCHISE REQUIREMENT

SEC. 23. Transmission and Distribution Pipeline and Related Facility as Public Utility. – Operators of transmission and distribution pipelines and their related facilities considered as public utility shall be required to obtain a legislative franchise and a Certificate of Public Convenience and Necessity (CPCN) from the ERC.

Operators of virtual pipelines and their related facilities, which are likewise considered as public utilities, shall no longer be required a legislative franchise. However, such operators shall be required to secure a CPCN from the concerned agency having appropriate jurisdiction over them, in accordance with the provisions of Commonwealth Act. No. 146, otherwise known as the "*Public Service Act*", as amended.

SEC. 24. Philippine Ownership Requirement. – As required under Article XII, Section 11 of the Constitution, no franchise, certificate, or any other form of authorization of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least sixty percent (60%) of whose capital is owned by such citizens.

SEC. 25. LNG Terminals Not a Public Utility. – The operation of an LNG terminal shall not be considered as a public utility operation. Hence, it shall be exempted from securing a legislative franchise and a Certificate of Public Convenience and Necessity.

CHAPTER VI

THIRD-PARTY ACCESS

SEC. 26. Third-party Access (TPA) Obligation. – Available and uncommitted excess capacity of an LNG terminal, transmission and distribution pipelines and related facilities shall be made accessible to third-party users. The ERC shall, in coordination with the DOE and in consultation with the PDNGI participants, ensure the full implementation of the TPA and shall issue the TPA Code within one (1) year from the effectivity of this Act.

The DOE is hereby authorized to synchronize activities to optimize and stabilize the utilization of existing infrastructure for the extraction, storage, and delivery of natural gas, such as the Malampaya natural gas facilities, which shall be subject to the third-party access provision in order to integrate the same with the PDNGI.

SEC. 27. Available Capacity. – A TPA shall apply only to the available and uncommitted excess capacity of LNG terminal, transmission or distribution pipelines and their related facilities, but excluding those constructed and operated under a dedicated use agreement or for own use. The operators thereof shall conduct an open and sufficient consultation process with both existing and potential third-party users to discuss the available capacity and other available services.

To ensure safe and reliable operation, the operator shall determine, subject to the review and recommendation by the DOE, the available and uncommitted excess capacity of the natural gas facilities offered to third parties. The operator shall likewise allocate such excess capacity based on the following criteria as they pertain to the third-party user:

- (a) Proposed contract price and terms;
- (b) Credit-worthiness;
- (c) Availability of a functioning off-take facility;
- (d) Ability to meet fuel specification parameters of the LNG facility; and

- (e) Other relevant factors that may directly affect the allocation.

Non-avilment by any third-party user of the excess capacity so allocated and offered shall not be a ground for the denial or cancellation of any permit under this Act.

SEC. 28. Third-party Access (TPA) Principles. – Adherence to the principles of transparency, fair competition, and safe practices is the key to the beneficial participation of third-party users. In line with this, the following guiding principles shall be observed:

- (a) Competition in the downstream natural gas industry must be encouraged because it promotes efficiency and lowers costs and prices to the benefit of end-users;
- (b) Investments in natural gas supply and infrastructure from both local and foreign sources, which are otherwise prevented by actions of incumbent monopolistic companies shall be earnestly pursued and supported;
- (c) Benefits to be derived from the diverse and sustainable use of natural gas make it an ideal tool of development;
- (d) Participation of third parties in the downstream natural gas industry shall be anchored on safe and measurable standards of service and practice;
- (e) Open and sufficient consultation between permit holders or facility operators on the available and excess capacity of natural gas is essential in the formulation of supply agreements between permit holders or facility operators and third-party users;
- (f) Transparency in business activities shall consistently be observed to spur confidence. Pursuant thereto, permit holders or facility operators shall publish their available and uncommitted excess capacity, access terms, and conditions, and allow the review and inspection of their facilities and records to verify the same.

SEC. 29. Congestion Management. – Whenever the holder of a capacity is no longer able to use or has not released the capacity without justifiable reason, the

permit holder or the operator of the facility shall have the authority to release and market the same. The procedure and criteria of the release shall be part of the TPA Code. The government agency which shall have an oversight function on this matter shall be designated in the TPA Code.

SEC. 30. **Approved Access Conditions and TPA Contracts.** – Prior to the conduct of negotiations with third parties, the permit holder or the facility operator shall request the DOE for the review and recommendation of its access conditions in accordance with the TPA Code. All subsequent access contracts shall be reviewed and approved by the DOE.

SEC 31. **Infrastructure Development Period.** – To develop the TPA, the TPA Code shall provide an infrastructure development period and the TPA shall become obligatory only against the permit holder or facility operator if it can be demonstrated that there is already sufficient demand necessary to justify the investment and sustain the additional operational requirement. For this purpose, the DOE shall review and attest to the validity of supply and demand outlook for natural gas.

CHAPTER VII

STANDARDS ON FACILITIES, PRODUCT AND SAFETY PRACTICE

SEC. 32. **Standards on LNG Ships and LNG Facility.** – All PDNGI facilities shall be predicated to be of high quality and efficient service, observe stringent safety systems, accord attention to design details and structural integrity and employ operational and maintenance best practices. Regulations shall be consistent with both applicable Philippine and internationally-accepted natural gas industry standards. The DOE shall ensure compliance with this requirement.

SEC. 33. **Standards on Product Quality.** – The permit holder or operator shall maintain the quality of gas supply to end-users in accordance with the Philippine and internationally accepted standards and ensure that delivery of indigenous or

imported LNG comply with the purification requirements to ensure that associated compounds that are unnecessary or damaging to the LNG regasification facility and other related natural gas facilities used for storage, distribution and transportation of natural gas supply are eliminated. The DOE shall ensure compliance with this requirement.

SEC. 34. Standards on Safety Practice. – The permit holder or operator shall implement an acceptable health, safety, security and environment management system in accordance with applicable Philippine and internationally accepted standards. The DOE shall ensure compliance with this requirement.

CHAPTER VIII

RESPONSIBILITIES OF THE PERMIT HOLDER OR OPERATOR

SEC. 35. Responsibilities of the Permit Holder or Operator. – A permit holder or operator shall have the following responsibilities:

- (a) Align all its goals and objectives to the accomplishment of the declared policies of this Act;
- (b) Be directly responsible for the construction and operation of LNG facilities by providing the necessary services, technology and financing, either by itself or through its duly authorized subcontractors, without entitlement from the Philippine government to any reimbursement of any expense incurred;
- (c) Comply with applicable Philippine laws and regulations relating to tax, labor and employment, health, safety, indigenous people's rights, environmental protection and ecological preservation;
- (d) Comply with the regulatory obligations, maintenance of complete records and submission of all reportorial requirements and other documents as may be required by the DOE, ERC and other government agencies pursuant to this Act and its implementing rules;

- (e) Implement the natural gas project strictly adhering to the scope and limits of the permit and operate in accordance with Philippine and international standards;
- (f) Allow and facilitate, based on a valid order, the entry to the facility of the examiners of the Bureau of Internal Revenue and the Bureau of Customs and allow them full access to accounts, books, and records for tax and other fiscal purposes;
- (g) Allow, based on a valid order, the entry of personnel of the DOE, ERC, PIA-HSSE IMT and other government agencies to the facility and grant them full access to operational records for inspection and monitoring activities;
- (h) Give preference to qualified local talents for hiring and local companies or agencies in entering into subcontracts on projects or services, which are required in the construction or operation of the LNG facility;
- (i) Hold the DOE, ERC, PIA-HSSE IMT and other government agencies or other affected individuals free from all claims, demands or actions arising out of its failure to comply with laws, regulations, standards, contracts, and permits in connection with accidents, damages, or injuries which are beyond their control; and
- (j) Observe in the regular operational meeting of the DNG-REC and in the development, issuance and review of plans, protocols, standards and codes applicable to the natural gas project.

CHAPTER IX

INCENTIVES

SEC. 36. **Fiscal Incentives.** – In recognition of the substantial investments needed for the construction of, operation and maintenance of, and conversion to natural gas facilities, the PDNGI value chain projects, as certified by the DOE, shall be included in the Strategic Investment Priorities Plan (SIPP) for the next ten (10) years from the effectivity of this Act. Entities engaged in said projects that are duly registered by any Investment Promotion Agency (IPA) shall be entitled to all the incentives under Title XIII (Tax Incentives) of the National Internal Revenue Code of 1997, as amended.

The sale of natural gas to locators inside the ecozone shall be subject to zero percent (0%) Value-Added Tax (VAT), pursuant to the National Internal Revenue Code of 1997, as amended.

SEC. 37. **Streamlined Regulatory Process.** – The operation of LNG terminals, natural gas transmission systems, natural gas distribution systems, own-use LNG terminals, own-use natural gas transmission systems, and own-use natural gas distribution systems shall be considered as energy projects of national significance (EPNS) whose implementation shall not be subject to unnecessary administrative processing delays pursuant to Executive Order No. 30, series of 2017. To be considered an EPNS, a project has to be endorsed by the DOE.

SEC. 38. **Withdrawal of Exemptions.** – To achieve the declared policies of this Act, particularly in relation to the promotion of fair and non-discriminatory treatment of public and private sector entities in the development of the PDNGI infrastructure, all existing tax exemptions applicable to persons engaged in the transmission or the distribution of natural gas, insofar as such exemptions relate to revenues derived from the transmission or the distribution of natural gas, shall be deemed revoked upon the effectivity of this Act, any law to the contrary notwithstanding.

CHAPTER X

PROMOTION OF COMPETITION

SEC. 39. **Anti-Competitive Behavior.** – No gas transmission utility, gas distribution utility or supplier, or affiliate thereof, may engage in any anti-competitive behavior or abuse of market power, specifically the prohibition against monopolies and combinations in restraint of trade under Article 186 of the Revised Penal Code and Chapter III of the Philippine Competition Act.

SEC. 40. **Functional and Structural Unbundling.** – All PDNGI participants shall functionally and structurally unbundle their business activities and rates in

accordance with the particular sector. The ERC shall, within nine (9) months from the effectivity of this Act, promulgate the unbundling rules and regulations.

SEC. 41. **Complaint and Investigation Procedures.** – The ERC shall, within nine (9) months AFTER the effectivity of this Act, promulgate rules and regulations providing for a complaint and investigation procedure that shall, without limitation, provide the party alleged to have engaged in anti-competitive or abusive activities with notice and an opportunity to be heard.

SEC. 42. **Affiliated Suppliers.** – In order to prevent anti-competitive conduct, service contractors, gas transmission utilities and gas distribution utilities that own or control affiliates that are suppliers shall conduct their businesses, as follows:

- (a) No preference shall be given to the affiliate supplier over other persons in contracting, scheduling and balancing of available capacity, as well as curtailment, or the imposition of tariffs;
- (b) Marketing information provided to the affiliate supplier shall be provided to any non-affiliated supplier that is a competitor or potential competitor;
- (c) Employees of the affiliate supplier shall, to the maximum extent possible, function independently in making business decisions; and
- (d) Books of accounts and records of the affiliate supplier shall be maintained separately.

CHAPTER XI

FINES AND PENALTIES

SEC. 43. **Administrative Fines and Penalties.** - The following administrative fines and penalties shall be imposed on any industry participant who violates the provisions of this Act:

(a) The permit issued by the DOE under Chapter IV, Section 12 of this Act, may be suspended or revoked and the DOE shall impose upon the operator a fine of Fifty thousand pesos (Php50,000.00) per violation of any provision under Chapter VIII, Section 35 of this Act, without prejudice to other appropriate administrative fines and penalties that other relevant government agencies may impose on the operator: *Provided,* That the schedule of fines provided for in this Section shall be increased by the DOE every five (5) years.

(b) The permit issued by the DOE under Chapter IV, Section 12, may be suspended or revoked upon the recommendation by the ERC and the operator may be charged by the ERC a fine of Five hundred thousand pesos (Php500,000.00) per violation of any provision under Chapter IV, Section 13 of this Act. This is without prejudice to other appropriate administrative fines and penalties that other relevant government agencies may impose against the operator.

(c) Congress may, upon the recommendation of the DOE, ERC or other government agencies, as the case may be, revoke such franchise or privilege granted to the party found in violation of the provisions of this Act.

SEC. 44. **Criminal Fines and Penalties.** – Appropriate fines and penalties under existing penal laws shall apply to any criminal violation associated in the implementation of this Act.

CHAPTER XII

TRANSITORY PROVISIONS

SEC. 45. **Existing Systems.** – Natural gas facilities that have been constructed prior to the effectivity of this Act shall continue to be operated under their existing permits and shall comply with additional requirements as may be applicable.

Suppliers who have entered into an NGSPA with end-users and have delivered indigenous or imported natural gas prior to the effectivity of this Act shall continue to operate under the said contracts, subject to compliance with the additional requirements in this Act.

SEC. 46. **Pending Application.** – All applications on any activity in the natural gas value chain pending before the DOE upon the effectivity hereof shall be covered by this Act.

CHAPTER XIII

FINAL PROVISIONS

SEC. 47. **Assignment or Transfer of Interest.** – Assignment or transfer of interest of the permit shall be allowed only upon prior written approval by the DOE based on acceptable reasons and compliance by the operator, the assumption by the assignee of all obligations of the former permit holder, and upon meeting the minimum legal, technical, and financial qualifications of the transferee.

SEC. 48. **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.

SEC. 49. **Joint Congressional Energy Commission.** - Upon the effectivity of this Act, the oversight function shall be exercised by the Joint Congressional Energy Commission (JCEC), as provided for by law.

The said Oversight Commission shall, in aid of legislation, perform the following functions:

(a) Set the guidelines and overall framework to monitor the proper implementation of this Act;

- (b) Look into the appropriateness of creating a single independent regulatory body when the conditions prevailing so require;
- (c) Conduct a periodic review of this Act at least once every three (3) years;
- (d) Determine inherent weaknesses in the law and recommend necessary remedial administrative or legislative measures;
- (e) Approve the budget for the programs of the said Oversight Commission and all disbursements therefrom;
- (f) Submit periodic reports to the President of the Philippines and Congress; and
- (g) Perform such other powers and functions as may be necessary to attain its objectives.

The JCEC shall be assisted by a secretariat to be composed of personnel who may be seconded from the Senate and the House of Representatives and may retain consultants who possess sufficient background and competence on policies and issues relating to the downstream natural gas industry.

SEC. 50. Appropriations. – The amount necessary for the implementation of this Act shall be included in the annual General Appropriations Act.

SEC. 51. Implementing Rules and Regulations. – The DOE shall, in consultation with the ERC, relevant government agencies such as the DENR, DOH, Department of Transportation (DOTr), Philippine Ports Authority (PPA), DTI and Department of Finance (DOF), the PDNGI participants, non-governmental organizations and end-users, promulgate rules and regulations for the effective implementation of this Act within twelve (12) months AFTER the effectivity of this Act.

SEC. 52. Separability Clause. – If for any reason, any provision of this Act is declared unconstitutional or invalid, the other parts or provisions hereof, which are not affected thereby, shall continue to be in full force and effect.

SEC. 53. **Repealing Clause.** – Any law, presidential decree or issuance, executive order, letter of instruction, rule or regulation inconsistent with the provisions of this Act is hereby repealed or modified accordingly.

SEC. 54. **Effectivity.** – This Act shall take effect fifteen (15) days after its publication in the *Official Gazette* or in a newspaper of general circulation.

Approved,