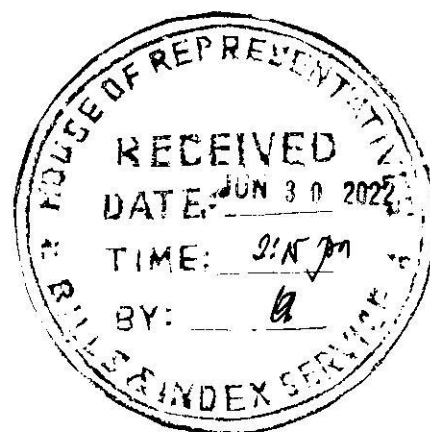


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

NINETEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 173



Introduced by Rep. Caroline L. Tanchay and Rep. Rodante D. Marcoleta

EXPLANATORY NOTE

The Malampaya Deep Water Gas-To-Power Project is a vital national energy asset. It supplies up to thirty percent (30%) of Luzon's electricity needs or about twenty percent (20%) of the country's entire energy requirements.

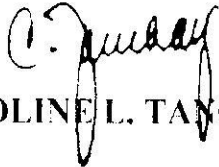
Malampaya currently supplies five (5) gas sales and purchase agreements (GSPA) for a total of 3200+ MW: (1) Ilijan Power Plant, (2) Sta. Rita Power Plant, (3) San Lorenzo Power Plant, (4) San Gabriel Power Plant, and (5) Avion Power Plant.

It is worth noting that the Malampaya concessions will all expire by 2024. Despite the nearing expiration, we still do not have any alternative to Malampaya—either in imported or indigenous sources. The depletion of Malampaya will greatly affect the country's needs for energy supply. The supply can go as far as 2027 but it does not have enough gas for further expansion to provide the future natural gas requirements, particularly on the plan to expand the application of natural gas in industrial, commercial, residential, and transport sectors. In fact, the supply will start to be significantly reduced starting, this year, 2022. This is putting at risk 3,200 MW of natural gas power plants installed capacity in the Luzon Grid.

There is no existing indigenous replacement for natural gas to supply Malampaya's current gas requirements. There are several prospective basins for potential domestic natural gas supply but exploration has not been a government priority. An alternative to this would be to import Liquefied Natural Gas (LNG) as alternate fuel for the existing gas-powered plants in the Luzon Grid. However, the Philippines today cannot yet access the LNG Market as there are no existing or operational import facilities.

Hence, the need to develop the Philippines' downstream natural gas industry, and to appropriate funds for this purpose.

In view of the foregoing, the immediate approval of this measure is earnestly sought.


CAROLINE L. TANCHAY


RODANTE D. MARCOLETA

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AN ACT
DEVELOPING THE PHILIPPINES' NATURAL GAS INDUSTRY, AND
APPROPRIATING FUNDS FOR THIS PURPOSE

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

SECTION 1. This Act shall be known as “*Development of the Downstream Natural Gas Act*”.

SECTION 2. *Declaration of Policies and Objectives* – It is hereby declared as the policy of the State to:

- (a) Ensure reliable and sustainable clean and environmentally responsible sources of energy;
- (b) Develop policies, regulations, operational manuals, plans, and programs prioritizing the promotion of the downstream natural gas industry;
- (c) Ensure a transparent, competitive, operation of the downstream natural gas;
- (d) Declare the business of transporting and selling natural gas for ultimate distribution to the public as affected with public interest, and that State regulation is necessary for the protection thereof;
- (e) To ensure transparent and reasonable rates of natural gas transmission, distribution, and supply in the spirit of fair and open competition; and
- (f) To develop the necessary skills, trade, and industry necessary to support the development of downstream natural gas.

SECTION 3. *Definition of Terms* –

- (a) *DOE* shall refer to the Department of Energy;

- (b) *ERC* shall refer to the Energy Regulatory Commission created by virtue of Republic Act No. 9136;
- (c) *Downstream Natural Gas Industry* shall refer to the business of importing, exporting, re-exporting, shipping, transporting, processing, refining, storing, distributing, marketing, and/or selling natural gas;
- (d) *Joint Congressional Power Commission* has the same meaning as that of Section 62 of Republic Act No. 9136;
- (e) *Liquefied Natural Gas or "LNG"* is a fossil energy source that formed deep beneath the earth's surface. When it is transported to areas other than its source, it becomes liquified;
- (f) *LNG Terminal* includes all natural gas facilities located onshore or in State waters that are used to receive, unload, load, store, transport, gasify, liquefy, or process natural gas that is imported to the Philippines from a foreign country, exported to a foreign country from the Philippines, or transported in areas within the State by waterborne vessel, but does not include waterborne vessels used to deliver natural gas to or from any such facility;
- (g) *Philippine Energy Plan or "PEP"* refers to the overall energy program formulated yearly by the DOE and submitted to the congress pursuant to Republic Act No. 7838;
- (h) *Power Development Program or "PDP"* refers to the indicative plan for managing electricity demand through energy-efficient programs and for the upgrading, expansion, rehabilitation, repair and maintenance of power generation and transmission facilities, formulated and updated yearly by the DOE in coordination with the generation, transmission and distribution utility companies.

SECTION 4. Powers and Functions of the DOE – Aside from its existing powers and functions, the DOE shall exercise oversight and monitoring of the development of the downstream natural gas industry, and the regulation of the construction and establishment of natural gas terminals and other natural gas-related facilities. In order to achieve this purpose, the DOE shall have the following authority:

- (a) To create and promulgate the rules and regulations to implement this Act within six (6) months from effectivity, in coordination with the ERC, DENR, and other concerned Government Agencies and natural gas participants.
- (b) Jointly with the natural gas industry participants and the Joint Congressional Power Commission, to formulate the *Natural Gas Supply, Transmission, and Distribution Code* which shall contain the detailed rules for the sale and purchase of natural gas. Said rules shall provide the mechanism for determining the price of electricity covered by bilateral contracts between sellers and purchasers of natural gas. The price determination methodology shall be subject to the approval of the ERC and shall reflect accepted economic principles and provide a level playing field to all natural gas industry participants. Said rules shall likewise establish standards on gas quality, facility installation, and safety of operation.
- (c) To prepare a Philippine Natural Gas Industry Development Plan and integrate the same into the PEP.
- (d) To establish the rules of procedure for the application for permits for the construction and maintenance of LNG generation facilities and regasification units, including terminals, pipelines, and other related facilities for the transmission and distribution of natural gas, which include, among others: (1) Notice to Proceed (NTP), (2) Permit to Operate and Maintain a downstream natural gas project/facility (POM), (3) Permit to Construct, Expand, Rehabilitate, and Modify a downstream natural gas project/facility (PCERM), (4) Accreditation to Import, Supply, and Transport Natural Gas, (5) Acknowledgement to Import LNG, (6) Acknowledgment to Supply and Transport Natural Gas, (7) Certificate of Public Convenience and Necessity.
- (e) To evaluate the applications for permits for the construction and maintenance of LNG generation facilities and regasification units, including terminals, pipelines, and other related facilities for the transmission and distribution of natural gas, which include, among others: (1) Notice to Proceed (NTP), (2) Permit to Operate and Maintain a downstream natural gas project/facility (POM), (3) Permit to Construct, Expand, Rehabilitate, and Modify a downstream natural gas project/facility (PCERM), (4) Accreditation to Import, Supply, and

Transport Natural Gas, (5) Acknowledgement to Import LNG, (6) Acknowledgment to Supply and Transport Natural Gas, (7) Certificate of Public Convenience and Necessity.

- (f) To revoke or suspend, after due notice and hearing, any permits issued in pursuance of a natural gas project/facility of any person that fails to comply with the rules and regulations of this act, the *Natural Gas Supply, Transmission, and Distribution Code*, and any other requirement issued by the DOE in compliance with this Act. For this purpose, the DOE shall, within six (6) months from the issuance of the IRR and the Natural Gas Supply, Transmission, and Distribution Code, issue the corresponding rules of procedure in relation to this Act.
- (g) To issue rules and regulations for the importation, storage, regasification, and transport of LNG in accordance with the PEP.
- (h) Original and exclusive jurisdiction over all cases of contesting permits, non-price regulation, abuse of market power, any anti-competitive behavior, and other penalized acts in accordance with this Act.
- (i) To establish a set of fiscal incentives to promote and encourage the further exploration of potential supplies of indigenous natural gas, in consultation with the natural gas industry participants and the approval of the Joint Congressional Power Commission;
- (j) To undertake an information campaign, to educate the public on the benefits of developing the downstream natural gas industry, in coordination with other government agencies, and as may be appropriate.
- (k) To issue rules and regulations to promote competition and prohibit/penalize abuse of market power, market manipulation, and any other anti-competitive behavior, within one (1) year from the effectivity of this Act, in coordination with the ERC, and upon due notice and public consultation.
- (l) To exercise such other powers and functions as may be necessary or incidental to obtain the objectives of this Act.

SECTION 5. *Powers and Functions of the ERC* – Aside from its existing powers and functions, the ERC shall exercise regulatory responsibility for the implementation

of this Act. In order to achieve this purpose, the ERC shall have the authority for the following:

- (a) Establish the rate-setting methodology of the sale and purchase of natural gas, including the supply, transmission, and distribution of natural gas. The rates must provide a level playing field to all natural gas industry participants. Said rules shall likewise establish standards on gas quality, facility installation, and safety of operation.
- (b) Exercise such other powers and functions as may be necessary or incidental to obtain the objectives of this Act.

SECTION 6. *Importation of natural gas; LNG Terminals* - The importation of natural gas and the maintenance and operation of LNG terminals shall be governed by the following:

- (a) Starting six (6) months from the effectivity of this Act, no person, juridical or natural, shall be allowed to import natural gas without having first secured an order by the DOE authorizing it to do so. The DOE shall issue such order upon application, unless, after due notice and hearing, it finds that the proposed importation will not be consistent with the public interest. The approval of the DOE for the construction, establishment, maintenance, and operation of any such LNG terminal shall not automatically mean approval to import natural gas.
- (b) LNG Terminals – the DOE shall have the exclusive authority to approve or deny applications for the siting, construction, expansion, or operation of an LNG terminal. Upon filing of the application to site, construct, expand, or operate an LNG terminal, the DOE shall:
 - i. Set the matter for hearing;
 - ii. Give reasonable notice of hearing to all interested persons, including the Local Government Unit in which the LNG terminal is located;
 - iii. Decide the matter in accordance with this subsection; and
 - iv. Issue or deny the appropriate order.

SECTION 7. *Exploration of natural gas* – The DOE shall include the exploration of indigenous sources of natural gas in accordance with the PEP. Such amounts necessary to finance the initial implementation of this Act shall be sourced from the unprogrammed funds in the current General Appropriations Act (GAA).

Thereafter, such amounts necessary for its continued implementation shall be included in the annual GAA. There shall also be appropriated amounts for the following:

- (a) Upon application and approval, the DOE shall grant fiscal support for qualified persons, juridical or natural, for the exploration of natural gas.
- (b) Jointly with the DENR, the DOE shall provide for a streamlined process for the application for permit to explore natural gas.

SECTION 8. *Construction, extension, or abandonment of natural gas facilities*

- (a) *Construction* – No person, natural or juridical, may be allowed to site or construct a natural gas facility without the approval of the DOE. The DOE shall issue a Certificate of Public Convenience and Necessity to any person who is approved to construct and operate a natural gas facility.
- (b) *Extension or improvement* – No person, natural or juridical, may be allowed to extend a natural gas facility without the approval of the DOE. Who shall have the exclusive authority to approve or deny an application thereof. This shall include the extension of its transportation facilities and physical connection of transportation facilities.
- (c) *Abandonment* – No natural gas company, granted with a permit to operate as such, shall abandon all or any portion of its facilities, or any service rendered by means of such facilities, without the permission or approval of the DOE, after hearing and finding by the DOE that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessary permit such abandonment.

SECTION 9. *Determination of service area; jurisdiction of transportation to ultimate consumers* – The DOE, after due notice and hearing, may determine the service area to which each authorization under this section is to be limited. Within such service area, as determined by the DOE, a natural-gas company may enlarge or extend its facilities for the purpose of supplying increased market demands in such service area without further authorization.

Nothing contained in this section shall be construed as a limitation upon the power of the DOE to grant certificates of public convenience and necessity for service of an area already being served by another natural-gas company.

SECTION 10. *Prohibition on market manipulation* – It shall be unlawful for any entity, directly or indirectly, to employ, in connection with the purchase and sale of natural gas or the purchase or sale of transportation services, ~~or~~ any manipulative or deceptive device or contrivance, in contravention to the rules and regulations established by the DOE, as may be prescribed as necessary in the public interest for the protection of natural gas players. Any person that violates the prohibition on market manipulation shall be subject to a civil penalty of not more than Ten Million Pesos (PhP10,000,000.00) per day per violation for as long as the violation continues.

No penalty shall be assessed without due notice and hearing. The DOE shall have original jurisdiction to hear cases on market manipulation or any complaints on abuse of market position.

SECTION 11. *Access to accounts, records, and other data*

- (a) Every natural-gas company shall make, keep, and preserve for such periods, such accounts, records of cost-accounting procedures, correspondence, memoranda, papers, books, and other records as the DOE may by rules and regulations prescribe as necessary or appropriate for purposes of the administration of this Act: *Provided, however,* That nothing in this Act shall relieve any such natural-gas company from keeping any accounts, memoranda, or records which such natural-gas company may be required to keep by or under the authority of any law. The DOE may prescribe a system of accounts to be kept by such natural-gas companies, and may classify such natural-gas companies and prescribe a system of accounts for each class.
- (b) The ERC shall at all times have access to and the right to inspect and examine all accounts, records, and memoranda of natural-gas companies; and it shall be the duty of such natural-gas companies to furnish to the ERC, within such reasonable time as the ERC may order, any information with respect thereto which the ERC may by order require, including copies of maps, contracts, reports of engineers, and other data, records, and papers, and to grant to all agents of the ERC free access to its property and its accounts, records, and memoranda when requested so to do. No member, officer, or employee of the ERC shall divulge any fact or

information which may come to his knowledge during the course of examination of books, records, data, or accounts, except insofar as he may be directed by the ERC or by a court.

SECTION 12. *Separability Clause* - If, for any reason, any provision of this Act or any part thereof shall be held unconstitutional and invalid, the other parts or provisions of this Act, which are not affected thereby, shall remain in full force and effect.

SECTION 13. *Repealing Clause* - All laws, decrees, orders, rules and regulations or parts thereof inconsistent with any of the provisions of this Act are hereby repealed, amended, or modified accordingly.

SECTION 14. *Effectivity* - This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.

Approved,