

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

**EIGHTEENTH (18<sup>th</sup>) CONGRESS**  
*1<sup>st</sup> Regular Session*

**HOUSE BILL NO. 3031**



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Introduced by **Hon. LORD ALLAN JAY Q. VELASCO**  
**Hon. WILTER "SHARKY" WEE PALMA II**

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#### **EXPLANATORY NOTE**

The Natural Gas Industry has played a major role in the rise of numerous countries within the international arena. In fact, within an increasingly competitive global economy, the natural gas industry has fuelled the rapid rise of the Gross Domestic Product (GDP) of many countries by enabling their energy intensive industries to have access to an affordable, abundant and accessible energy source to be utilized long-term.

Moreover, with the impending negative effects of climate change as a result of anthropogenic activities such as overreliance on fossil fuels, countries such as the Philippines have begun to openly adopt and utilize its natural gas industry as a means to achieve its sustainable development goals for future development.

As it stands, the launching of the Malampaya Deep Water Gas-to-Power Project has given birth towards the rise of the natural gas industry within the country. As a result, the utilization of the Malampaya Gas Field has enabled the country to harness and make use of a clean, abundant and accessible energy resource which has greatly propelled the country towards greater heights. Moreover, other industries like the transport industry through the Natural Gas Vehicle Program for Public Transportation (NGVPPT) have begun to utilize Natural Gas as an alternative to traditional fuel as a means to integrate other industries within the utilization of natural gas as a primary energy resource.

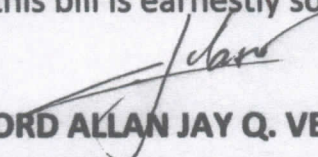


Aside from the launching of the Malampaya Deep Water Gas-to Power Project, various government policies have been initiated to adopt and spearhead the development of the country's downstream natural gas industry. Policies such as (i) Executive Order No. 66 which was signed by President Gloria Macapagal-Arroyo on January 18, 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 (ii) the issuance of the DOE interim rules and regulations governing the transmission, distribution and supply sub-sectors of the natural gas industry.

As it stands, the Malampaya's natural gas supply has been slowly decreasing throughout the years. In light of this, the Philippines is in dire need for solutions that would satisfy the country's needs for energy. However, despite the presence of the abovementioned policies, we are still lacking on 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. As a result, international natural gas companies would tend to shy away from investing within the country which leaves the government with no other available options.

While acknowledging the fact that the natural gas industry is still a relatively young industry, it is vital that we introduce a proper legislative framework that would provide favorable conditions towards establishing a healthy natural gas industry in the country. This would then in turn lead towards rapid economic development while respectfully practicing sustainable development towards a brighter future.

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



**Hon. LORD ALLAN JAY Q. VELASCO**  
Lone District, Marinduque



**ATTY. WILTER "SHARKY" WEE PALMA II**  
1<sup>st</sup> District, Zamboanga Sibugay

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Introduced by **Hon. LORD ALLAN JAY Q. VELASCO**  
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**AN ACT**  
**ORDAINING THE DEVELOPMENT OF THE DOWNSTREAM NATURAL GAS**  
**INDUSTRY, CONSOLIDATING FOR THE PURPOSE ALL LAWS RELATING TO THE**  
**TRANSMISSION, DISTRIBUTION AND SUPPLY OF NATURAL GAS**

**CHAPTER I**  
**TITLE AND DECLARATION OF POLICY**

1       **SECTION 1. *Short Title.*** This Act shall be known as the "Downstream Natural  
2 Gas Industry Development Act. It shall herein after be referred to as the Act.

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4       **SEC. 2. *Declaration of Policy.*** - It is hereby declared the policy of the State:

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6       (a) Promote Natural Gas as the energy fuel which has tremendous potential to  
7 satisfy increasing local fuel demand including the development of the Philippines  
8 as an LNG trading and transshipment hub within the Asia-Pacific Region. In all  
9 cases, the State shall ensure safe, secure, reliable, transparent, competitive and  
10 environmentally responsible operation of the PDNGI Value Chain;

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(b) Provide a conducive environment through the issuance of policies, regulations, safety code, product quality and facility operational standards, plans and programs geared towards the promotion and development of the Philippine Downstream Natural Gas Industry;

(c) Promote the conversion of existing fuel-operated machines and facilities to Natural Gas use, provided it is technically and financially feasible;

(d) Promote access and financial viability of the PDNGI by liberalizing entry under a system of competition, transparency and fair trade with the end goal of attaining fair price for all stakeholders;

(e) Ensure compliance with International and Philippine Health, Safety, Security, Environment (HSSE) standards and best practices under a system of safe, high-quality, environmentally responsible and consumer protected operation and service;

(f) Encourage inflow of private capital through equity participation by the private sector in the operations and business activities in the downstream natural gas value chain to include but not limited to gas transmission and distribution utilities;

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

(h) Develop the necessary trades, technical expertise and skills to support the Downstream Natural Gas Industry; and

(i) Facilitate the development of end-uses of natural gas that promotes fuel diversity and compliance with existing environmental laws. (including, but not

limited to, the use of natural gas as a motor vehicle fuel; and) End-uses shall include, but not limited to, power, commercial, industrial and transport;

**SEC. 3. Scope.** This Act shall provide a framework for the development of a Downstream Natural Gas Industry and its transition from an emerging to a mature industry status and 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 Downstream Natural Gas Industry shall be in accordance with this Act.

**SEC. 4. Definition of Terms.** - As used in this Act, the following terms shall have the following meanings:

(a) *Affiliates* refer to any corporation which, alone or together with any other person, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another corporation. as used herein, "control" shall mean the power to direct or cause the direction of the management policies of a corporation by contract, agency or otherwise;

(b) *Anti-Competitive Behavior* refers to price fixing, output fixing and any concerted practices, agreements by Persons or Association of Persons that restricts, prevents or distorts competition;

(c) *Bar* refers to a unit of pressure that is equal to one million dynes per square centimeter;

(d) *Capacity* refers to the maximum flow, expressed in normal cubic meters per time unit or in energy unit per time.

78 (e) *Captive market*:

- 79 • with respect to the transmission of natural gas, refers to natural gas
- 80 end-users who do not have a choice of a gas transmission utility;
- 81 • with respect to the distribution of natural gas, refers to natural gas end-
- 82 users who do not have a choice of a gas distribution utility;
- 83 • with respect to the supply of natural gas, refers to natural gas end-users
- 84 who do not have a choice of supplier of natural gas or other
- 85 economically competitive energy substitute;

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87 (f) *Congress* refers to the Congress of the Republic of the Philippines;

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89 (g) *Contestable market* refers to a market that is not a captive market;

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91 (h) *Containment* refers to safe storage and isolation of LNG;

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93 (i) *Delivery* refers to the transmission or distribution of natural gas and the

94 supply of natural gas at wholesale or retail;

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96 (j) *Deregulation* refers to the removal of Government price control;

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98 (k) *Distribution* refers to the transportation of natural gas through a gas

99 distribution system;

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101 (l) *Distribution System* refers generally to the pipeline and related facilities

102 used to transport Natural Gas extending between the last delivery point of

103 the Transmission System to the last connection point to the Customer;

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105 (m) *End-user* refers to any person that will receive delivery of natural gas for

106 resale of final use;

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108 (n) *Financial Closing* refers generally to the stage of negotiation where a legally

109 binding financial commitment actually exists to provide funding for a

project and all conditions have already been met to permit mobilization of funds;

(o) *Franchise* refers to the right, privilege and authority issued by Congress authorizing a person to engage in the transmission of natural gas and/or distribution of natural gas within a specific geographical area;

(p) *Franchise area* refers to a geographical area assigned or granted under a franchise;

(q) *Force Majeure* shall include Acts of God, storms, typhoons, earthquakes, unavoidable accidents, acts of war or conditions attributable to or arising out of war (declared or undeclared), laws, rules, regulations, and orders by any government or governmental agency, strikes, lockouts, or other labor or political disturbances, insurrections, riots, and other civil disturbances, hostile acts of hostile forces constituting direct and serious threat to life and property, and all other matters or events of a like or comparable nature beyond the control of the Party concerned;

(r) *Gas distribution code* refers to the code to be formulated by the DOE pursuant to Section 5 (g) of this Act that sets the technical performance standards for operating gas distribution utilities and the minimum financial standards for gas distribution systems;

(s) *Gas distribution system* refers to the system of pipelines and related facilities extending from the delivery points where the gas distribution system receives the natural gas to the point of connection to the premises of the end-user;

(t) *Gas distribution utility* refers to any person that has a franchise to operate a gas distribution system;

(u) *Gas Sales and Purchase Agreement* or *GSPA* refers to a contract or agreement for the delivery and sale of indigenous or imported Natural Gas by and between seller and buyer;

(v) *Gas transmission code* refers to the code to be developed by the DOE pursuant to Section 5(g) of this Act that sets the technical performance standards for operating gas transmission systems and the minimum financial standards for gas transmission utilities;

(w) *Gas transmission system* refers to the system of high-pressure pipelines, storage and related facilities that are used to transport natural gas from the interconnection with gathering facilities, LNG-related facilities or other gas transmission systems to gas distribution systems, other gas transmission systems or end-users other than affiliates or own-users;

(x) *Gas transmission utility* refers to any person that has a franchise to operate or intending to operate a gas transmission system except own-use pipelines;

(y) *Gathering facilities* refers to natural gas pipelines and related 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;

(z) *Insurance* refers generally to a risk-transfer mechanism that ensures full or partial financial compensation for the loss or damage caused by event(s) beyond the control of the insured party wherein, compensation is normally proportionate to the loss incurred;

(aa) *Importation* refers to the act of bringing LNG into the Philippines;

(bb) *Infrastructure development period* refers to the period prescribed in Chapter IV of this Act;



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- (cc) *Joule* refers to the unit of energy or work done when the point of application of a force of one Newton is displaced a distance of one meter in the direction of the force. It is also equal to one watt-second;
- (dd) *Large end-user* refers to an end-user whose aggregate annual natural gas consumption is one thousand (1,000) gigajoules (gross heating value) or greater, as may be determined by the ERC;
- (ee) *Landed Cost* refers to the cost of imported product upon delivery to the Philippines, which consist generally of the total of FOB, insurance, freight cost, currency conversion, custom duties and other applicable fees;
- (ff) *Liquefied Natural Gas or LNG* refers to Natural Gas which has been liquefied by cooling at a cryogenic temperature;
- (gg) *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, notably nitrogen and complex sulfur compounds and water, carbon dioxide and hydrogen sulfide which may exist in the feed gas but are removed before liquefaction;
- (hh) *Own-use Permit* refers to an authorization granted by the DOE to the Permit Holder/Operator for the exclusive use in the operation of its facility;
- (ii) *Permit* refers to an authorization issued by the DOE for the importation, construction, commercial operation and maintenance Natural Gas facilities;
- (jj) *Permit Holder/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;

(jj) *Person* refers to a natural or juridical person, as the case may be, including the national and local government of the Republic of the Philippines, its agencies and instrumentalities, and government-owned and -controlled corporations;

(kk) *Philippine Downstream Natural Gas Industry* or *PDNGI* refers to the sectors of transmission, distribution and supply of natural gas and their related activities, such as, but not limited to, importation, storing, regasification, transmission and distribution of Natural Gas to End-users;

(ll) *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, as amended;

(mm) *Rates* refer to the payment on the utilization of the capacity and use of other services offered by the Permit Holder/ Operator of the LNG- related facilities, Transmission and Distribution pipeline;

(nn) *Supplier* refers to any Person engaged and registered with the DOE to trade on indigenous or imported LNG and their subsequent supply to Customers;

(oo) *Supply* refers to the trade and/or sale of indigenous or imported natural gas and their subsequent sale to End-users;

(pp) *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, transmission and/or distribution pipeline and their related facilities;

(qq) *Transmission* refers to the transportation of natural gas through a gas transmission system; and

(rr) *Unbundled service* refers to the pricing of the energy value of natural gas separately from the rates charged for natural gas transmission or distribution

## CHAPTER II

### POWERS AND RESPONSIBILITIES OF THE DOE AND THE ERC

**SEC. 5. Powers and Functions 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 Downstream Natural Gas Industry and regulation of the construction and operation of LNG-related facilities for the transmission, distribution and supply of natural gas. Towards this end, the DOE shall have the following-powers and functions:

- (a) Issue in coordination with ERC and, in consultation with the other concerned Government Agencies and the Downstream Natural Gas Industry participants, the implementing rules and regulations of this Act within six (6) months from the promulgation of this Act;
- (b) Prepare and issue the PDNGI Development Plan within two (2) years from the effectivity of this Act and integrate the same into the PEP. The plan shall consider and integrate the individual or joint development plans of the Downstream Natural Gas Industry participants pursuant to this Act, which are submitted to the DOE. Appropriate mechanisms shall be provided to protect the confidentiality of any information that is commercially or competitively sensitive. Review and update of the plan shall be made every three (3) years thereafter. Public consultation shall be made prior to the issuance of the plan or any update thereof;
- (c) Evaluate applications for the issuance of permits and/or authority to Operate, namely 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/or Facilities including among

others, Accreditation to Import, Supply and Transport Natural Gas, Acknowledgement to Import (ATI) LNG and Acknowledgement to Supply and Transport (AST) Natural Gas;

(d) 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 from representatives of the private industry and concerned government agencies. 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 of established standards;

(e) Issue directives to qualified Government Agencies, in their capacities as investing arms, to spearhead the development of the PDNGI Value Chain when the DOE deems it imperative to catalyze its development within a given timeline;

(f) Ensure the safety, quality, reliability, security, competitive and environmentally responsible supply of natural gas consistent with the established standards of the Downstream Natural Gas Industry, the DOE shall, among others:

(i) Encourage private sector investments in the Downstream Natural Gas Industry and promote the development of domestic markets for natural gas;

(ii) In consultation with the Downstream Natural Gas Industry participants and other government agencies, promote a system of incentives to encourage industry participants, including new producers and end-users, to provide adequate and reliable supply of natural gas; and

(iii) Undertake, in coordination with other governmental agencies, as appropriate, an information campaign to educate the public on the

benefits of developing the Downstream Natural Gas Industry and the potential for utilizing natural gas as a source of energy fuel.

(g) Issue in coordination with ERC and, in consultation with the other concerned Government agencies and the Downstream Natural Gas Industry participants, the Gas Transmission and Distribution Codes within two (2) years from the effectivity of this Act which shall contain, among others, but not limited to 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) Issue in coordination with ERC, upon due notice and public consultation, rules and regulations to promote competition and prohibit/penalize abuse of market power, cartelization and any anti-competitive or discriminatory-behavior, in order to further the intent of this Act and protect the public interest within one (1) year from the effectivity of this Act. Such rules and regulations shall:

(i) Define the relevant product and geographic markets for purposes of establishing anti-competitive conduct;

(ii) Provide criteria to determine the relevant market structure; and

(iii) Establish the periodic reportorial requirements of the Downstream Natural Gas Industry participants as may be necessary to enforce the provisions stipulated in Section 5 (h).

(i) Authorize to revoke or suspend, after due notice and hearing, the permit and operation of any person that fails to comply with the rules and regulations promulgated pursuant to this Act, or any requirement of this Act. The DOE shall proceed with the due process in accordance with a duly issued rules of procedure and regulations; Within three (3) months from the effectivity of this Act, issue rules and guidelines on LNG-related operations and the supply sector of the Downstream Natural Gas Industry.



- 339 (j) Exercise original and exclusive jurisdiction over all cases contesting permits,  
340 non-price regulation, abuse of market power, cartelization, any anti-  
341 competitive or discriminatory behavior, fees, fines and penalties imposed  
342 by it in the exercise of the abovementioned powers and functions;  
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- 344 (k) Organize a Task Force with the Department of Justice (DOJ), ERC and  
345 Philippine Competition Commission (PCC) to conduct investigations  
346 involving anti-competitive behavior;  
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- 348 (l) Require any downstream natural gas players and/or Permittee to furnish,  
349 within a reasonable period specified, all information and documents  
350 relating to all such matters as to the permit and operation of business and  
351 natural gas facilities and provide explanation of the information or  
352 document. The DOE shall have the power to impose appropriate penalty if  
353 that downstream player and/or Permittee fails to provide the required  
354 information or document, without valid reason; and  
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- 356 (m) Exercise such other powers and functions as may be necessary or  
357 incidental to attain the objectives of this Act. Subject to existing rules and  
358 regulations, the DOE is hereby authorized to create offices and appoint  
359 personnel thereto as may be necessary to efficiently and effectively  
360 perform its functions as stipulated in this Act.  
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362 **SEC. 6. Powers and Functions of the ERC.** - In addition to its existing powers  
363 and functions, the ERC shall have the sole regulatory responsibility for  
364 establishing the rates and related terms and conditions of service for the  
365 transmission, distribution and supply of natural gas to the extent that such  
366 activities are regulated pursuant to the requirements set forth in this Act. It shall:  
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- 368 (a) In the public interest, establish and enforce a methodology for setting  
369 transmission, distribution and supply rates, taking into account all relevant  
370 considerations, including the efficiency or inefficiency of the regulated  
371 entities. The rates must be such as 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. The rates prescribed shall be non-discriminatory;

(b) Apply administrative procedures that will ensure the constitutional right to due process;

(c) 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 and its decision or resolution in each case. The ERC shall make copies of such report available to any interested party upon payment of a charge which reflects the printing costs;

(d) Publish in newspapers of general circulation all its cases and decisions involving rates; and

(e) Exercise such other powers as may be necessary or incidental to attain the objectives of this Act. Subject to existing rules and regulations, the ERC is hereby authorized to create offices and appoint personnel thereto as may be necessary to efficiently and effectively perform its functions as stipulated in this Act.

### **CHAPTER III**

#### **STRUCTURE, OPERATION AND REGULATIONS OF THE DOWNSTREAM NATURAL GAS INDUSTRY**

**SEC. 7. Structure.** - For purposes of this Act, the structure of the PDNGI Value Chain shall consists of 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. 8. *Permits.*** - The DOE shall have the power to review and issue, including their suspension and revocation for a cause, the necessary permits for the construction, expansion, rehabilitation, modification, operation and maintenance of any Downstream Natural Gas Facility or activity. Own-Use Permit for Natural Gas facilities shall be allowed for the Operator's exclusive use in the operation of its facilities. The Holder of Own-Use Permit shall still comply with the requirements in this Act.

Own-Use Permit for Transmission, Distribution and Spur line Pipelines shall be exempted from Franchise requirement.

**SEC. 9. *Rate Regulation.*** - Rate of charges and fees for the services of Transmission and/or Distribution pipeline and their related facilities when they function as Public Utilities shall be subject to the review and approval of 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 that is consistent with the encouragement of private investment and goal of developing a Downstream Natural Gas Industry infrastructure, or such other principles that will promote the determination of just and reasonable rates.

**SEC. 10. *Compliance to Philippine Laws, Rules and Regulations.*** - Operators and/or Permit Holders of Downstream Natural Gas Facilities shall comply with all Philippine laws, rules and regulations implemented by the different agencies of the Government;

**SEC 11. *Compliance to Standards.*** - The DOE shall ensure that the Downstream Natural Gas Product and Facilities must be predicated on their high quality and efficient service, stringent safety systems and overall attention to detail in design, solid construction and best safety operational and maintenance

practices. Regulations shall focus on its consistency to both applicable Philippine and Internationally Accepted Standards in the Natural Gas industry.

**SEC. 12. 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 law, rules and regulations.

**SEC. 13. Authority to Obtain Information.** - The DOE, ERC and other concerned Government Agencies may require any downstream natural gas players and/or Permittee 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 explanation of the information or document subject to Section 12 hereof. If that downstream player and/or Permittee fails to provide the required information or document, without valid reason shall be guilty of an offense.

**SEC. 14. Supply of Natural Gas.** - The existing laws and rules governing the Upstream Natural Gas Sector shall allow the Government the option to sell directly or otherwise authorize a Service Contractor to sell its share of the Indigenous Production. For this purpose, the DOE Secretary shall, if warranted based on the appropriate criteria, direct the supply of the share to the downstream Natural Gas sector.

The Operator of the LNG-Related Facilities shall likewise ensure the accommodation of both indigenous and imported supply of Natural Gas. The DOE shall support and ensure the implementation of any plans to upgrade the terminal and its ancillary facilities into a hub for International trading and Transshipment;

**SEC. 15. 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 and/or project without obtaining prior authorization from the DOE.

**SEC. 16. Registration and Reportorial Requirements of Natural Gas Participants, Facilities, Import, Export and Supply.** - Holders of a permit for the construction, installation, operation or maintenance of a downstream natural gas facility including importers, exporters and Supplier and Transporter of natural gas/LNG shall be registered. Appropriate reportorial requirements shall likewise be required for proper supervision and monitoring in accordance to the implementing rule to be subsequently issued.

**SEC. 17. 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 suppletory manner.

**SEC. 18. Fees.** - All concerned Government agencies shall have the authority to prescribe and collect fees and charges relating to the issuance and/or review of permits, supervision and regulation of the downstream natural gas industry.

#### CHAPTER IV FRANCHISE REQUIREMENT

**SEC. 19. Transmission and Distribution Pipeline and Related Facility as Public Utility.** - Transmission and Distribution Pipelines including their related facilities considered as Public Utility are those actually used in the transport of Natural Gas and operating regularly as a business to serve the general public. Pipelines and their related facilities functioning as Public Utility shall require a Congressional Franchise. Excluded are those used exclusively under a dedicated use agreement or for Own-Use.

**SEC. 20. Philippine Ownership Requirement.** - As required under Article XII, Section 11 of the Constitution of the Republic of the Philippines, 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.

## CHAPTER V THIRD PARTY ACCESS

**SEC. 21. *Third Party Access Obligation.*** - Available and uncommitted excess capacity shall be available relating to the use of LNG Terminal and its related facilities, Transmission and/or Distribution and their related facilities but excluding those constructed and operated for own use on a transparent and non-discriminatory access to third party users. The DOE shall ensure the full implementation of the TPA and shall issue the TPA Code within one (1) year from the effectivity of this Act.

**SEC. 22. *Available Capacity.*** - TPA shall apply only to the available and uncommitted excess capacity of LNG Terminal and its related facilities, Transmission and/or Distribution and their related facilities but excluding those constructed and operated under a dedicated use agreement or for own use. The Operators thereof, shall comply with an open and sufficient consultation process on 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 of 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, but not limited to, the following criteria as they pertain to the Third-Party User:

- (a) Proposed contract price and terms;
- (b) Credit-worthiness;

- (c) Existence of 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-availment 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 Circular.

**SEC. 23. *Third Party Access Principles.*** - The following shall be considered:

- (a) Encourages competition which drives efficiencies and lower costs and prices for the benefit of the end-users;
- (b) Supports foreign and local investments in Natural Gas supply and infrastructure which are otherwise prevented by actions of incumbent monopolistic companies;
- (c) Promotes diverse and sustainable uses of Natural Gas;
- (d) Introduces safe and measurable standards of service and practices;
- (e) That the Permit Holder or Operator of the facility shall comply with an open and sufficient consultation process with the Third-Party Users to discuss the available and uncommitted excess capacity; and
- (f) That for the purpose of transparency, the Permit Holder or Operator shall comply with the release, publication, inspection and review of the available and uncommitted excess capacity, access terms and conditions.

**SEC. 24. *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.

**SEC. 25. *Approved Access Conditions and TPA Contracts.*** - Prior to the conduct of negotiations with third parties, the Permit Holder or the 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 26. *Infrastructure Development Period.*** - To develop the TPA, the TPA Code shall allow a development period and TPA shall become obligatory only against the Permit Holder or Operator if it can already 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 for the validity of supply and demand outlook of natural gas.

## **CHAPTER VI**

### **STANDARDS ON FACILITIES, PRODUCT AND SAFETY PRACTICE**

**SEC. 27. *Standards on LNG Ships and LNG Facility.*** - Downstream Natural Gas Facilities must be predicated on their high quality and efficient service, stringent safety systems and overall attention to detail in design, solid construction and best operational practices. Regulations shall focus on its consistency to both applicable Philippine and Internationally Accepted Standards in the Natural Gas Industry. The DOE shall ensure compliance on this requirement.

**SEC. 28. *Standards on Product Quality.*** - The Permit Holder or Operator shall maintain the quality of gas supply to Customers in accordance with the Philippine or Internationally Accepted Standards and ensure that delivery of indigenous or imported LNG must always pass the purification requirements from associated compounds unnecessary or damaging to the LNG regasification facility and other related natural gas facilities used for storage, distribution and transportation of natural gas supply. The DOE shall ensure compliance on this requirement.

**SEC. 29. *Standards on Safety Practice.*** - The Permit Holder or Operator shall implement an acceptable health, safety, security and environment

management system in accordance to applicable Philippine or Internationally Accepted Standards. The DOE shall ensure compliance on this requirement.

## **CHAPTER VII**

### **RESPONSIBILITIES OF THE PERMIT HOLDER OR OPERATOR**

#### **SEC. 30. *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 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, health, safety, indigenous people's rights, environment and specially protected areas and ecology;

(d) Comply with the regulatory obligations, maintenance of complete records and submission of all reportorial requirements and other documents as maybe required by the DOE, ERC and other Government agencies under the authority of this Act and its implementing rules;

(e) Implement the LNG Project strictly adhering to the scope and limits of the Permit and Operate in accordance to the Philippine and International Standards;

(f) Allow and facilitate the necessary preparations based on a valid order, Examiners of the Bureau of Internal Revenue and Bureau of Customs entry, to the facility premises and full access to accounts, books, and records for tax and other fiscal purposes;

(g) Allow and facilitate the necessary preparations, based on a valid order, for DOE, ERC, PIA-HSSE IMT and other Government agencies entry to facility premises and full access to operational records for inspection and monitoring activities;

(h) Give preference to qualified local talents for hiring and local companies/agencies in entering into subcontracts on projects or services which are required in the constructions or operations;

(i) Hold the DOE, ERC, PIA-HSSE IMT and other Government agencies free from all claims, demands or actions arising out of its failure to comply with laws, regulations, standards, contracts, and permits in connection but not limited to accidents, damages or injuries; and

(j) Participate in regular operational meeting with the DNG-REC and in the development, issuance and review of plans, protocols, standards and codes applicable to the Natural Gas project.

## **CHAPTER VIII**

### **INCENTIVES**

**SEC. 31. *BOI Incentives.*** - In recognition of the substantial investments needed for the construction, operation and maintenance, the PDNGI value chain shall be part of Investment Priority Plan and be entitled to income tax holiday and such other incentives granted to pioneer enterprises under the Omnibus Investment Code, as amended.

The price of natural gas used in PDNGI value chain shall be exempted from duties and excise tax.

**SEC. 32. *Withdrawal of Exemptions.*** - Any law to the contrary notwithstanding, 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 Downstream Natural Gas Industry 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.



**SEC. 33. *Natural Gas Share in the Philippine Energy Plan.*** - To achieve the declared policies of this Act, the DOE shall ensure that the required share of Natural Gas, consistent with the PDNGI Development Plan as integrated into the PEP, be fully implemented. For this purpose, necessary implementing rules shall be issued to support the full implementation.

## **CHAPTER IX PROMOTION OF COMPETITION**

**SEC. 34. *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 including, but not limited to:

- (a) Cartelization which means any agreements, combination, or concerted action by permit holders or operators to fix prices, restrict outputs or divide markets, either by product or by areas, or allocate markets, either by product or areas in restraint of trade or free competition, including any contractual stipulation which prescribes pricing levels and profit margins;
- (b) Predatory pricing which means selling or offering to sell natural gas at a price below the seller's average variable cost for the purpose of destroying competition or eliminating a competitor from entering the market. For this purpose, the intent to destroy or eliminate competition must be clearly proven as opposed to merely setting the price as a business decision; and
- (c) Unreasonable rise in price which means sudden and unexpected rise in price imposed without clear justification. For this purpose, analysis of the submission and result of investigation as required under Section 35 shall be the basis for the determination of any violation of this provision.

**SEC. 35. *Functional and Structural Unbundling.*** - Downstream Natural Gas Industry participant shall functionally and structurally unbundle its business activities and rates in accordance with the particular sector as identified in Section 7 hereof. The ERC shall issue the implementing guideline to ensure full compliance of this provision.

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**SEC. 36. *Complaint and Investigation Procedures.*** - The ERC shall, within one year from the effectively of this Act, promulgate rules and regulations providing for a complaint and investigation procedure that, without limitation provides the party alleged to have engaged in anti-competitive or abusive activities with notice and an opportunity to be heard.

**SEC. 37. *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 business as follows:

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

As used herein, “affiliate” refers to any person or entity which, alone or together with any other person or entity, directly or indirectly, through one or more intermediaries, controls, or is controlled by another person or entity. As used herein, “control” shall mean the power to direct or cause the direction of the management policies of a person by- contract agency or otherwise.

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**CHAPTER X**  
**FINES AND PENALTIES**

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**SEC. 38. *Administrative Fines and Penalties.* -**

735 (a) The permit/ authority issued by the DOE under Chapter III Section 9 may be  
736 suspended or revoked and/or the operator be imposed by a fine of Ten Thousand  
737 Pesos (Php 10,000.00) by the DOE, per violation, of any provision under Chapter  
738 VII Section 31 pursuant to the powers given to DOE under Chapter II Section 5 of  
739 this Act. This is without prejudice as to other appropriate administrative fines and  
740 penalties that the other relevant government agencies may impose to the  
741 operator.

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743 (b) The permit/ authority issued by the DOE under Chapter III Section 9 may be  
744 suspended or revoked upon the recommendation by the ERC, and/or the  
745 operator be imposed by a fine of Five Hundred Thousand Pesos (Php 500,000.00)  
746 by the ERC per violation, of any provision under Chapter III Section 10 pursuant to  
747 the powers given to ERC under Chapter II Section 6 of this Act. This is without  
748 prejudice as to other appropriate administrative fines and penalties that the other  
749 relevant government agencies may impose to the operator.

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

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755 **SEC. 39. *Criminal Fines and Penalties.* –** Appropriate fines and penalties  
756 under existing penal laws shall apply to any criminal violation associated in the  
757 implementation of this Act.

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**CHAPTER XI**  
**TRANSITORY PROVISIONS**

765       **SEC. 40. Existing Systems.** - Natural Gas Facilities that have been  
766 constructed prior to the Effectivity of this Act shall continue to be operated under  
767 their existing Permits and comply only with additional requirements, if applicable.

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769 Suppliers who have entered into GSPA with Customers and have delivered  
770 indigenous or imported Natural Gas prior to the Effectivity of this Circular shall  
771 continue to operate under said contracts subject to compliance to the additional  
772 requirements in this Act.

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774       **SEC. 41. Pending Application.** - All pending applications on any activity in  
775 the Natural Gas Value Chain before the DOE shall be covered by this Act.

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778                   **CHAPTER XII**  
779                   **FINAL PROVISIONS**

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781       **SEC. 42. Implementing Rules and Regulations.** - The DOE shall, in consultation  
782 with the ERC, appropriate RELEVANT government agencies such as the ERC,  
783 DENR, DOTR, PPA, BOI and BOC, the Downstream Natural Gas Industry  
784 participants, nongovernmental organizations and end-users, promulgate the  
785 implementing rules and regulations (IRR) within six months from the effectivity of  
786 this Act.

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788       **SEC. 43. Natural Gas Oversight Commission.** - Upon the effectivity of this Act.  
789 A congressional commission, hereinafter referred to as the "Natural Gas Oversight  
790 Commission", is hereby constituted. The Natural Gas Oversight Commission shall  
791 be composed of ten (10) members, with the chairmen of the Committee on  
792 Energy of the Senate and the House of Representatives and four additional  
793 members from each House, to be designated by the Senate President and the  
794 Speaker of the House of Representatives, respectively. The minority shall be

entitled to pro rata representation but shall have at least one representative in the Natural Gas Oversight Commission.

- (a) The Natural Gas Oversight Commission shall, in aid of legislation, perform the following functions, among others;
- (b) Set the guidelines and overall framework to monitor the proper implementation of this Act;
- (c) Look into the appropriateness of creating a single independent regulatory body when the conditions prevailing so require;
- (d) Conduct a periodic review of this Act at least once every three years;
- (e) Determine inherent weaknesses in the law and recommend necessary remedial legislation or executive measures;
- (f) Approve the budget for the programs of the Natural Gas;
- (g) Oversight Commission and all disbursements therefrom, including compensation of all personnel;
- (h) Submit periodic reports to the President of the Philippines and Congress; and
- (i) Perform such other powers and functions as may be necessary to attain its objectives.

To carry out its powers and functions, expenses shall be charged against the current appropriations of the Senate and shall thereafter be included in the annual General Appropriations Act.

The Natural Gas Oversight Commission shall adopt its internal rules of procedure; conduct hearings and receive testimonies, reports and technical advice; invite or summon by subpoena ad testificandum any public official, private individual or any other person to testify before it, or require any person by subpoena duces tecum to produce before it such records, reports, documents or other materials as it may require; and generally require all the powers necessary to attain the purposes for which it is created. The Natural Gas Oversight Commission 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. The secretariat shall be headed by an executive director who has sufficient



background and competence on the policies and issues relating to the Downstream Natural Gas Industry reforms as provided in this Act.

**SEC. 44. Appropriations.** — The initial amount of Ten Million pesos (Php 10,000,000) annually for the first five (5) years of the implementation of this Act is hereby appropriated out of the Malampaya Fund to support the organizational strengthening and capacity building of the DOE Oil Industry Management Bureau, Natural Gas Management Division (DOE OIMB-NGMD). Thereafter, the same shall be included in the regular budget based on the existing requirements of the unit implementing the Act. Furthermore, and subject to existing rules and regulations, the DOE is hereby authorized to create offices and appoint personnel thereto as may be necessary to efficiently and effectively perform its functions as stipulated in this Act.

**SEC. 45. Assignment/Transfer of Interest.** - Assignment or transfer of interest of the Permit shall be allowed only upon prior written approval of the DOE based on acceptable reasons and compliance by the Operator and/ or assumption by the assignee of all obligations and upon meeting the minimum legal, technical and financial qualifications of the transferee;

**SEC. 46. 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. 47. 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. 48. Non-retroactivity, Applicability and Repealing Clause.** - The provisions of Republic Act No. 387, otherwise known as the "Petroleum Act of 1949", as amended, Presidential Decree No. 87, Republic Act No. 8997, and all other laws, decrees, executive orders, rules and regulations, circulars and other

860 issuances inconsistent with the provisions of this Act are hereby- repealed or  
861 modified accordingly.

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863       **SEC. 49. *Effectivity Clause.*** - This Act shall take effect on the fifteenth (15th)  
864 day following its publication in the Official Gazette and in at least two national  
865 newspapers of general circulation.

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