



MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("Agreement"), dated 11 June 2019, is entered into by and between:

The **DEPARTMENT OF ENERGY** ("DOE"), a government agency duly created by virtue of Republic Act No. 7638, as amended, with principal office address at Energy Center, 34th Street cor. Rizal Drive, Bonifacio Global City, Taguig, represented herein by its Secretary, **Alfonso G. Cusi**,

- and -

The **PHILIPPINE COMPETITION COMMISSION** ("PCC"), with office address at 25/F Vertis North Corporate Center 1, North Avenue, Quezon City, represented herein by its Chairperson, **Arsenio M. Balisacan**.

(The DOE and the PCC are individually referred to in this Agreement as a "Party" and collectively, as the "Parties".)

WITNESSETH: That-

Whereas, the DOE pursuant to Republic Act No. 7638, is mandated to prepare, integrate, coordinate, supervise and control all plans, programs, projects, and activities of the Government relative to energy exploration, development, utilization, distribution and conservation;

Whereas, the DOE, in partnership with their stakeholders, aims to improve the quality of life of Filipinos by formulating and implementing policies and programs to ensure sustainable, stable, secure, sufficient and accessible supply of electric power, including the monitoring of private sector activities relative to energy projects in order to attain the goals of the restructuring, privatization and modernization of the electric power sector as provided for under the existing laws, provided that the Department shall endeavor to provide for an environment conducive to free and active private sector participation and investment in all energy activities;

Whereas, the PCC was organized and created under the Philippine Competition Act (the "PCA") as an independent quasi-judicial body vested with the original and primary jurisdiction over the enforcement of the PCA, which includes, among others, the power to conduct inquiries, investigate, and hear and decide cases involving anti-competitive conduct, abuse of dominant position, anti-competitive agreements, and other violations of the PCA; and

Whereas, in recognition of the significant synergies and complementarity of working together towards a harmonized approach in performing their respective duties and functions, the Parties have agreed to formalize their understanding on the acceptable modes of coordination and cooperation between them.

NOW THEREFORE, for and in consideration of the foregoing premises, the Parties hereby agree as follows:

Section 1. Coordination and Cooperation

- 1.1. *Notification of Matters.* – Where one Party (“Notifying Party”) receives or otherwise becomes aware of any matter¹ that falls within the jurisdiction of the other Party or the mandate of both Parties, as the case may be, the Notifying Party shall promptly inform the other Party of such matter (the “Notified Matter”), with a view to coordinating, as appropriate, on the actions or measures to be taken by each Party in relation to the Notified Matter. A notification under this Section 1.1 shall be transmitted together with copies of all documents and records pertaining to the Notified Matter that are within the custody or control of the Notifying Party.
- 1.2. *Investigation and Enforcement Support.* – Subject to resource and other operational considerations, each Party shall provide investigation and enforcement support to the other on matters relating to the enforcement of the PCA and other competition laws.
- 1.3. *Joint Task Forces.* – Whenever appropriate, the Parties may organize joint task forces charged with implementing the coordination and cooperation efforts of the Parties under this Agreement. The Parties shall mutually agree in writing on the purpose, composition, and operational requirements of each joint task force.
- 1.4. *Capacity-Building.* – Subject to resource and operational considerations, the Parties may agree to organize joint capacity-building activities for the purpose of promoting coordination and cooperation under this Agreement.
- 1.5. *Consultative Meetings.* – The Parties may conduct consultative meetings regarding matters of common concern, including the effective implementation of this Agreement and the Parties’ respective mandates.
- 1.6. *Continuing Review.* – The Parties undertake to keep the operation of this Agreement under review and, in light of experience, execute amendments or supplements to this Agreement for purposes of improving its operation and resolving any issue that may arise during its implementation.

Section 2. Access to and Use of Information

- 2.1. *Access to Information and Documents.* – Each Party, upon the request of the other, shall promptly provide access to information and documents, such as, but not limited to reports, data sets, analyses, papers, assessments, notices, opinions, and guidelines within the custody or control of the requested Party and which are relevant and

¹ Reference to a “matter” or “matters” under this Section 1.1 includes complaints or queries received by a Party, matters which come to the attention of a Party as a result of inquiries, investigations, examinations, or audits made by a Party, and matters that are otherwise brought to the attention of a Party. Issues may include, such as but not limited to, anti-competitive behavior on power related issues, energy resource development or exploration.

necessary to the requesting Party for the effective enforcement of this Agreement, the PCA, and other competition-related laws. Whenever permissible, the Parties shall be granted, free of any fees and charges, access to information and documents obtained by the requested Party from other sources, which are relevant, pertinent or related to, or in connection with the undertakings being performed or to be performed by the Parties in compliance with and pursuant to its legal mandate, *provided, however*, that should the requested information and/or documents be deemed classified by the requested Party, the requesting Party shall obtain written approval of the same from the Head of Agency of the requested Party. Access to information and documents under this Section shall be subject to applicable rules on confidentiality, data privacy, and privilege under relevant laws, rules, and regulations.

- 2.2. *Confidentiality.* – Except as may otherwise be required or allowed by law, the Parties shall keep confidential and shall not, without the prior written consent of the other, divulge or provide to any third party any documents, records, data, or other information of a confidential and/or classified, private, or privileged nature, arising from or in any way related to this Agreement, that have been furnished, directly or indirectly, by one Party to the other.

For purposes of this Agreement, information of a confidential and/or classified, private, or privileged nature shall refer to information disclosed and/or provided by one Party to the other which is labeled or designated as confidential and/or classified, private, or privileged by the disclosing Party, or is determined confidential and/or classified, private, or privileged pursuant to applicable rules on confidentiality, privacy, and privilege under relevant laws, rules, and regulations.

- 2.3. *Communications to the Public.* – The Parties, where appropriate, shall liaise with each other in preparing statements and responses relating to matters of media interest and as regards arrangements for the publication of information for and consultations with relevant stakeholders.
- 2.4. *Use of Information and Documents.* – The Parties agree to limit and restrict the use of any and all information and documents obtained pursuant to this Agreement to purposes deemed consistent with the objectives of this Agreement as well as the respective mandates of the Parties.

Section 3. Notices and Authorized Representatives

- 3.1. *Notices.* – Any notice, request, or other communication given under, or in connection with the implementation or enforcement of this Agreement shall be in writing and sent by the concerned Party's Authorized Representative(s) through any of the following modes:

- a) By courier or personal delivery to the addresses stated in this Agreement;
- b) By electronic mail to the following email addresses:

For DOE: [REDACTED] with a copy to the email address of the relevant Authorized Representative(s) specified in Section 3.2, if applicable.

For PCC: [REDACTED] and [REDACTED] with a copy to the email address of the relevant Authorized Representative(s) specified in Section 3.2, if applicable.

A notice is deemed to have been received at the time of delivery if such notice is given by courier or personal delivery. If written notice is given by electronic mail, the notice is deemed to have been received at the time of its transmission on a business day.

- 3.2. *Authorized Representatives.* – The Parties hereby designate the following officers as their respective Authorized Representatives, who shall be responsible for the implementation or enforcement of this Agreement:

For DOE:

Subject	Authorized Representatives	Email Address
<i>For Electric Power and Renewable Energy-related concerns</i>	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]

For PCC:

Subject	Authorized Representative	Email Address
<i>For merger review, policy, and enforcement-related concerns</i>	Executive Director	[REDACTED]
<i>For MOA, administration and general legal concerns</i>	Chief, Legal Services Division	[REDACTED]

Each Party may appoint additional Authorized Representative(s), as may be necessary for the efficient implementation of this Agreement. Any change in the designated Authorized Representative(s) of each Party shall be notified, in writing, immediately to the other Party and shall be deemed effective upon the other Party's receipt of said notice.

Section 4. General Provisions

- 4.1. *Effectivity.* – This Agreement shall become effective upon execution by the Parties and shall remain and continue to be in force and effect until otherwise amended or revised in writing by the herein Parties.

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- 4.1. *Effectivity.* – This Agreement shall become effective upon execution by the Parties and shall remain and continue to be in force and effect until otherwise amended or revised in writing by the herein Parties.
- 4.2. *Legal Effect.* – For the avoidance of doubt, nothing in this Agreement shall limit the powers or shall constitute a waiver of the statutory functions or powers of either Party.
- 4.3. *Amendments.* – Any subsequent revisions, amendments, repeals, and supplements to this Agreement shall be made upon mutual written agreement by the Parties.
- 4.4. *Separability.* – If any one of the provisions contained in this Agreement shall be declared invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.
- 4.5. *Counterparts.* – This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original and all of which, taken together, shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement shall be effective as delivery of a manually executed counterpart of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized representatives on the date and place first above written.

For the Department of Energy:

[Redacted Signature]

Secretary

Witnessed By:

[Redacted Signature]

Undersecretary

**For the Philippine Competition
Commission:**

[Redacted Signature]

Chairperson

[Redacted Signature]

Commissioner