

**IN THE MATTER OF THE PROPOSED
ACQUISITION BY MERALCO
POWERGEN CORPORATION [IN
SUBSTITUTION OF METRO PACIFIC
INVESTMENT CORPORATION] OF
SHARES IN SP NEW ENERGY
CORPORATION**

MAO Case No. M-2023-017

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COMMISSION DECISION NO. 18-M-017/2023

This refers to the proposed acquisition by MERALCO PowerGen (MGen) Corporation [in substitution of Metro Pacific Investment Corporation (MPIC)] of shares in SP New Energy Corporation (SPNEC) and Solar Philippines Power Project Holdings, Inc. (SP Holdings) (hereinafter shall be collectively referred to as Parties). The Parties submit this acquisition (the Transaction) to the Philippine Competition Commission (the Commission) for review.¹

Upon careful review of the existing market conditions, various submissions and representations of the Parties to the Commission, the application of the Philippine Competition Act (PCA) and its Implementing Rules and Regulations, related issuances and regulatory frameworks, and based on the findings and recommendation of the Mergers and Acquisitions Office (MAO), the Commission finds that the Transaction will not likely result in substantial prevention, restriction, or lessening of competition in the relevant markets for the reasons discussed below.

The Parties

MGen is a wholly owned subsidiary and is the power generation arm of Manila Electric Co. (MERALCO). Under MGen's portfolio are power generation facilities, such as:

- a. San Buenaventura Power Ltd. Co., a 500-megawatt (MW) coal-fired power plant in Mauban, Quezon;²

¹ The Philippine Competition Commission conducts review of mergers and acquisitions, including joint ventures, pursuant to Sections 16 and 17 of Republic Act No. 10667, otherwise known as the Philippine Competition Act (PCA), and Section 1, Rule 4 of the Implementing Rules and Regulations of the PCA.

² San Buenaventura Power Ltd. Co. is a partnership between MGen and New Growth B.V. of Electricity Generating Public Company Limited (EGCO) of Thailand. MGen owns 51%, while EGCO owns the remaining 49%.



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- b. Global Business Power Corporation, an independent power producer based in Visayas and Mindanao with a gross capacity of 2,446 MW;³ and
- c. MGEN Renewable Energy, Inc. (MGreen), a wholly owned subsidiary of MGen, which acts as its investment vehicle for renewable power generation projects.⁴

MPIC owns the majority of voting shares in MERALCO. MPIC is a domestic company with investments in real estate, infrastructure projects, water, toll roads, power, health, logistics and storage, rail, and other industries.⁵ In its power portfolio, MPIC has a combined effective interest of 47.46% in MERALCO.⁶ Notably, MPIC is the largest shareholder of MERALCO.

MGen and MPIC's Ultimate Parent Entity (UPE) is Pilipinas Enterprise Management Holdings, Inc. (PEMHI), a domestic corporation engaged in the purchase, acquisition, or investment in the shares of stock and interests in partnerships or corporations.

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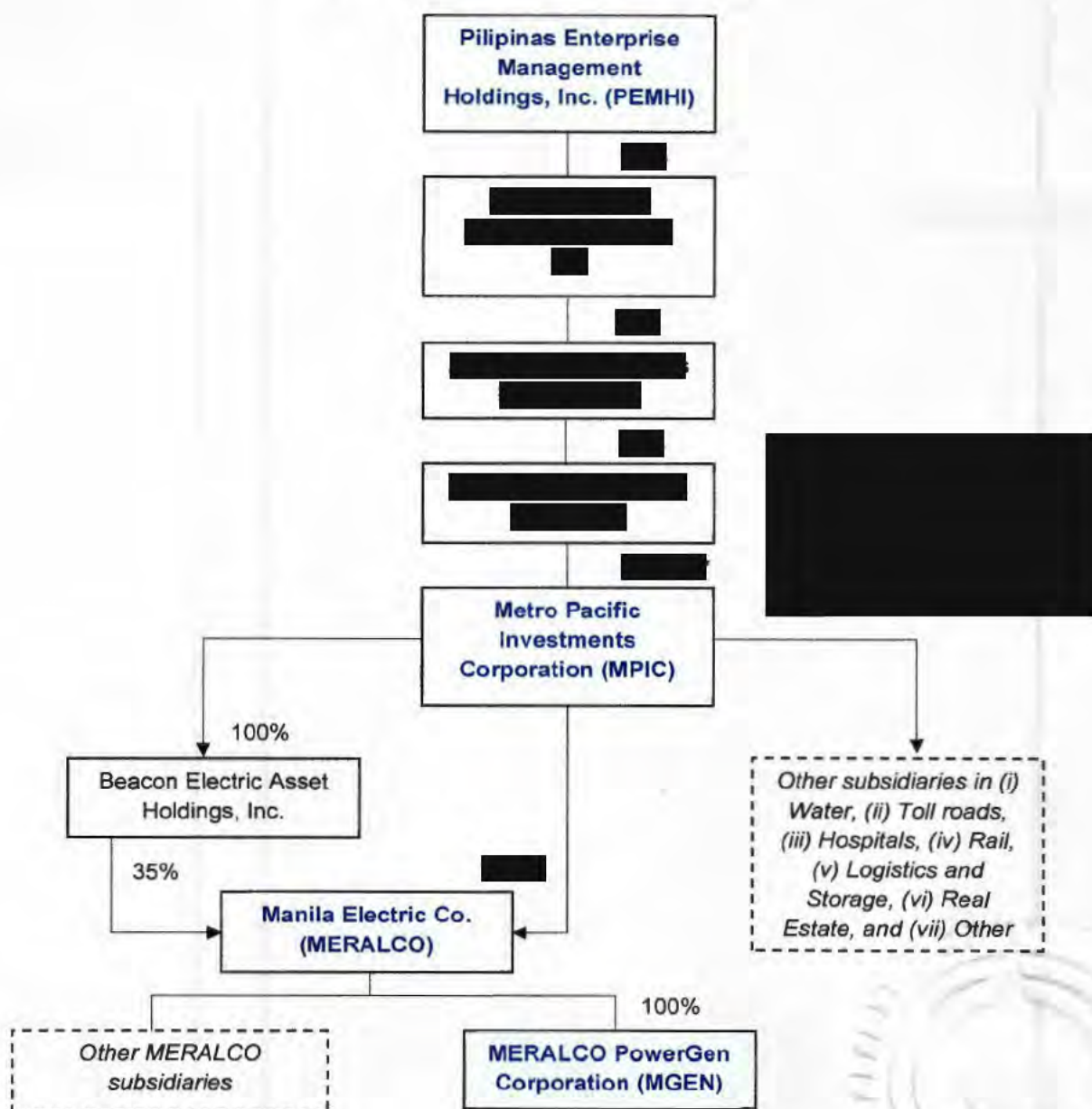
³ Subsidiaries of Global Business Power Corporation are: (1) Cebu Energy Development Corporation, (2) Toledo Power Co., (3) Panay Energy Development Corporation, (4) Panay Power Corporation, and (5) GBH Power Resources.

⁴ MGreen's subsidiaries include PowerSource First Bulacan Solar, Inc. and MSpectrum, Inc.

⁵ Notifying Party's submission to the MAO.

⁶ *Id.*

Figure 1. PEMHI's Notifying Group.⁷



⁷ Notifying Parties' submissions to the MAO.

For purposes of analyzing the effects of the Transaction, both MPIC and MERALCO are considered part of PEMHI's Notifying Group.

SPNEC is a domestic company engaged in the construction, operation, and maintenance of power-generating plants, warehouses, terminals, and related facilities for the conversion of renewable energy into usable form fit for electricity generation and distribution.⁸ SPNEC's UPE is SP Holdings, the holding company of the Solar Philippines Group. SP Holdings owns 80.58% of shares in SPNEC, along with other subsidiaries that are incorporated for power generation, retail electricity supply, and construction services. Based on the submissions of the Parties, only two of the power generation corporations of SP Holdings are currently operational: (1) Solar Philippines Tarlac Corporation and (2) Solar Philippines Calatagan Corporation.

The Transaction

On 5 May 2023, MPIC, SPNEC, and SP Holdings executed an Option Agreement (the Agreement) which granted MPIC an option of acquiring [REDACTED] primary shares from SPNEC, and (ii) secondary shares [REDACTED] from SP Holdings.⁹ MPIC's option will enable it to acquire an additional [REDACTED] outstanding capital stock of SPNEC, increasing its shareholdings in SPNEC to 43%.¹⁰

During the pendency of the review, MPIC informed the MAO of the changes in the proposed Transaction. Instead of MPIC, MGen will be the acquiring entity, and it will subscribe to [REDACTED] common shares and [REDACTED] voting and redeemable preferred shares from the projected increase in the authorized capital stock (ACS) of SPNEC.¹¹ The option will enable MGen to own approximately [REDACTED] of the total issued and outstanding capital stock of SPNEC after the increase in ACS.¹² Considering, however, that MPIC and MGEN are part of the same Notifying Group and that the market definition and competition assessment would remain the same, the Commission, upon the recommendation of the MAO, proceeded with the review of the Transaction.

⁸ As of date of the Commission's decision, SPNEC has yet to commence commercial operations.

⁹ Notifying Parties' submission to the MAO.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

The Relevant Markets

In identifying the candidate relevant markets,¹³ the Commission considered the overlapping lines of business and vertical relationships between the Parties' Notifying groups.

MERALCO is a notable subsidiary in PEMHI's Notifying Group. It has fourteen (14) subsidiaries that operate power generation facilities. Under MERALCO's power generation portfolio, MGen is linked to twenty-five (25) power generation companies. On the other hand, SP Holdings operate utility-scale power generation facilities that also supply electricity to Distribution Utilities (DUs) and Retail Energy Suppliers (RES), such as the MERALCO Group.

Based on the Parties' operations, there exists a horizontal overlap in the market for the development, construction, and operation of power generation facilities. In addition, the Parties also have a vertical relationship in the (i) provision of renewable energy (RE) to DUs and RES and in the (ii) provision of construction and engineering services to power generation facilities.

A. Generation and Sale of Energy from Renewable Sources through Non-FIT/GEAP Generation Facilities Nationwide

Power generation plants generate energy, regardless of whether the input used in its production are sourced from renewable or conventional sources. From the perspective of consumers as end-users, energy is a homogenous product. However, in assessing demand-side substitution, the functionality of energy sources as inputs to power generation companies and their prevailing regulatory regime were considered.

¹³ Philippine Competition Act, Section 4(k). *Definition of Terms.* – Relevant market refers to the market in which a particular good or service is sold and which is a combination of the relevant product market and the relevant geographic market, defined as follows:

- (1) A relevant product market comprises all those goods and/or services which are regarded as interchangeable or substitutable by the consumer or the customer, by reason of the goods and/or services' characteristics, their prices, and their intended use; and
- (2) The relevant geographic market comprises the area in which the entity concerned is involved in the supply and demand of goods and services, in which the conditions of competition are sufficiently homogenous and which can be distinguished from neighboring areas because the conditions of competition are different in those areas.

Power generation plants operate based on three (3) load ranges: (i) baseload power plants, (ii) intermediate or mid-merit load power plants, and (iii) peaking power plants.¹⁴ Base load power plants can generate consistent power to meet daily energy needs and continuously produce power, enabling the plant to operate throughout the year.¹⁵ Usual energy sources of base load power plants are coal, biomass, and geothermal power plants.¹⁶ Intermediate load power plants seek to fill the gap between base load and peaking plants and are typically natural gas power plants.¹⁷ Peaking power plants provide power during peak system demand periods, such as dam-type hydro and oil-based power plants.¹⁸

Conventional and RE sources appear to serve different types of demands. Conventional sources of energy cater to both base and peak load demand, with coal plants typically serving base load, and diesel plants addressing peak load demand. In contrast, the intermittent nature of RE makes it less suitable for baseload demand and markets.

The Renewable Portfolio Standards (RPS) further distinguish conventional and RE sources by requiring mandated customers, such as DUs and RES, to source a portion of their electricity from RE sources.¹⁹ This creates differentiation as to compliance between conventional and RE.

From the supply-side, power generation operators are unable to readily switch operations between conventional energy and RE. This is due to high switching costs since conventional plants and RE plants cannot be easily converted from one type to another because of the difference in technology.²⁰

The Commission also considered the regulatory framework that distinguishes Feed-in-Tariff (FIT) and Green Energy Auction Program (GEAP) eligible plants from Non-FIT/GEAP eligible plants, thus, supporting a narrower market definition that is limited to non-FIT/GEAP eligible plants.²¹

FIT-eligible plants, covered by 20-year contracts, are required to sell power outputs to the National Transmission Corporation, which is later aggregated and sold on the Wholesale

¹⁴ Department of Energy, *Power 101*, (10 October 2018), available at: <https://doe.gov.ph/sites/default/files/pdf/announcements/iloilo-energy-101-05-power-101.pdf> (last accessed on 19 September 2023).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Rule 3, Section 12, DOE Department Circular No. DC 2017-0015.

²⁰ MAO's Interview with Stakeholders.

²¹ Republic Act No. 9513, or the Renewable Energy Act of 2008.

Electricity Spot Market (WESM). These eligible power plants are guaranteed a FIT rate, shielding them from competition in the market until their contract expires. Meanwhile, the GEAP, a new round of FIT system, promotes RE sources through a competitive auction process to select RE power generation developers based on the lowest bids.²²

In contrast, non-FIT/GEAP eligible plants operate at prevailing market price and hold 1 to 5 year contracts with DUs or RES.²³

The geographic market is nationwide. The Mindanao-Visayas Interconnection Project (MVIP) has partially linked the Mindanao-Visayas grids with the Luzon-Visayas grids. From the demand-side, customers can access electricity from power generation facilities within the same grid without incurring significant costs.²⁴ In addition, from the supply-side, power generation companies are now able to sell their capacities nationwide regardless of where their facilities are located. According to market players, due to the MVIP, they have existing Power Supply Agreements (PSAs) with distributors located in Mindanao.²⁵

In view of the foregoing discussions, the relevant market is defined as the **Generation and Sale of Energy from Renewable Sources through Non-FIT/GEAP Generation Facilities Nationwide.**

B. Sale of Renewable Energy to DUs and RES Nationwide

The Commission also considered whether the sale of RE to DUs and RES constitute separate markets. Based on market investigation, the relevant product market is broadly defined as the sale of RE to both DUs and RES due to the RPS and the similar terms in their PSAs.

While the RPS distinguishes conventional from RE sources, it does not differentiate DUs from RES because both are required to purchase a portion of their energy demand from renewable sources.

While PSAs with DUs are subject to Competitive Selection Process (CSP), PSAs with RES remain unregulated.²⁶ DUs are also restricted from sourcing more than 50% of their total demand through PSAs with an affiliated or associated firm, while such restriction do

²² Revised Guidelines for the Green Energy Auction Program in the Philippines (GEAP Guidelines), Department of Energy Department Circular No. DC2021-11-0036 (4 December 2021).

²³ MAO's Interview with Stakeholders.

²⁴ *Id.*

²⁵ *Id.*

²⁶ MAO's Interview with Stakeholders.

not apply to RES.²⁷ Despite these differences, power generation companies have no difficulty switching between selling to DUs or RES and vice versa once their contracts expire.

The geographic market is also nationwide due to the interconnection of the Mindanao-Visayas grids with the Luzon-Visayas grids, which enables DUs or RES to access electricity from power generation facilities connected to the grid.

C. Provision of Construction and Engineering Services to Power Generation Facilities Nationwide

Within PEMHI's Notifying Group, Meralco Industrial Engineering Services Corporation (MIESCOR) is engaged in industrial construction and engineering services.

The Commission finds that the provision of construction and engineering services to power generation facilities constitutes a relevant market. MIESCOR's main customers operate in the business of generation and distribution of energy. Customers are found likely to switch between different construction companies based on their proficiencies while construction service providers can generally switch between various types of construction projects for different companies.

The geographic market is nationwide. There appears to be no regulatory barriers that limit operations of construction companies to specific regions or provinces. Further, construction companies have the capacity to service clients, regardless of their location. A client's consideration to switch to a different supplier will depend on the supplier's capability to provide the most competitive price while maintaining high quality service.

Competition Assessment

The Commission finds that the Transaction will not result in any significant change in the structure of the RE power generation market considering MERALCO's temporary increase in market shares, sufficient regulatory mechanisms that deter exercise of market power, existence of competitive constraints post-Transaction, and the renewable energy sector's expansion for entry of potential competitors. With respect to the vertical relationships, it also appears that the Parties lack the ability and incentive to engage in foreclosure strategies in the sale of RE to DUs and RES, and provision of construction

²⁷ Section 45, Republic Act No. 9136.

services to power generation companies post-Transaction. The Transaction's impact on competition in each relevant market is further discussed below.

***No Loss of Competition in
 Generation and Sale of Energy
 from Renewable Sources
 through Non-FIT/GEAP
 Generation Facilities Nationwide***

Based on the Installed Generating Capacity (IGC) of notable competitors in the market, the Parties' combined market share will be the highest in RE power generation.²⁸

Table 1. Market Shares in RE Power Generation (2023).²⁹

Competitor	Pre-Transaction Market Shares	Post-Transaction Market Shares
PSALM		
AboitizPower		
FirstGen Corporation		
SPNEC		
MERALCO		
Ayala Corporation		
San Miguel Corporation		
Millenium Group		
Others	11.04%	11.04%

However, the Commission considers that the Parties' combined market shares would, in any event, be temporary in nature and are unlikely to strengthen MERALCO's market power. This is due to the existence of other players that will remain in the market, upcoming projects of other market players, and the prevailing regulatory framework in the energy sector.

Post-Transaction, there remains significant competitors in the market, such as the Aboitiz Group and FirstGen Corporation, which own over [REDACTED] and [REDACTED] of the market's IGC, respectively. In addition, the Parties' market position appears temporary as PSALM

²⁸ Based on the currently operational RE power generation facilities scheduled for completion by 2026 not eligible under the FIT or GEAP schemes.

²⁹ DOE, List of Existing Power Plants, available at: <https://doe.gov.ph/list-existing-power-plants> (last accessed on 14 August 2023); DOE, Private Sector Initiated Power Projects, available at: <https://doe.gov.ph/electric-power?q=private-sector-initiated-power-projects> (last accessed on 14 August 2023).

continues to divest its remaining power assets, which are likely to be absorbed by other competitors and will be subject to ERC and DOE's regulatory oversight.

Further, SPNEC's upcoming projects are under FIT and GEAP schemes, which are contracted for a fixed period. Thus, despite expansion efforts, SPNEC's upcoming FIT/GEAP facilities would not be able to compete with other facilities in the relevant market for Non-FIT/GEAP within a given period.

***No Ability and Incentive to Engage
in Customer Foreclosure in the
Sale of RE to DUs and RES
Nationwide***

The MERALCO Group, as a DU and RES, is a significant customer of RE demand. In this context, the Commission assessed the likelihood that the Parties will engage in customer foreclosure strategies in the sale of RE to (i) DUs and (ii) RES.

(i) Sale of RE to DUs

As a DU, MERALCO's franchise area covers Metro Manila and certain cities and municipalities in Bulacan, Cavite, Rizal, and Batangas. MERALCO has one of the largest franchise areas, along with Visayan Electric Company and Davao Light and Power Co.³⁰ It is considered a significant DU considering that it provides ~75% of the entire demand of Luzon, accounting for ~54% of the Philippines' total demand.³¹ MERALCO has a monthly peak demand of 8157.73 Megawatts (MW) and its average peak demand is expected to further increase to 8945.20 MW by 2026.³² Currently, MERALCO sources [REDACTED] and [REDACTED] upon its Phase 1 completion in 2026.³³

The Commission evaluated the likelihood of customer foreclosure strategy post-Transaction.

At the outset, there appears to be a potential for MERALCO to exclusively source its RE requirements from SPNEC pursuant to the RPS. By 2026, the RPS mandates that ~16.42% of energy demands of customers should be sourced from RE power generation

³⁰ MERALCO, Corporate Profile, available at: <https://company.meralco.com.ph/corporate-profile> (last accessed on 19 September 2023).

³¹ Energy Regulatory Commission submissions to the MAO.

³² MERALCO, Power Supply Procurement Plan (2022).

³³ Notifying Parties submissions to the MAO.

plants. It is estimated that MERALCO needs around 1468.80 MW to meet the RPS mandate, which can be supplied by SPNEC and MGreen with their combined capacity by 2026.

However, there are regulatory considerations that may constrain MERALCO from exclusively sourcing its RE requirements from SPNEC.

DUs, such as MERALCO, are subject to the CSP and the limitation on affiliate supply contracts under Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA). Under the CSP, bidders are required to provide nominated capacity with its corresponding price.³⁴ Bid proposals are selected by the DU and the ERC through a transparent and competitive bidding in the least costly manner.³⁵ The ERC also exercises the power to disapprove a decision during the CSP or conditionally approve it if the pricing will negatively affect the DU's captive market.³⁶

In addition, the EPIRA provides for a limitation on affiliate supply contracts for associated firms engaged in energy generation and distribution.³⁷ Under the said limitation, no DU shall be allowed to source more than 50% of its total demand from bilateral power supply contracts with associated firm engaged in generation. In effect, SP Holdings is restricted from supplying more than 50% of MERALCO's DU demand.

(ii) Sale of RE to RES

Further, the Commission assessed the likelihood of the Parties' ability and incentive to foreclose sales of other power generation companies to MERALCO as a RES.

The Competitive Retail Electricity Market (CREM) Report³⁸ estimates that MERALCO's RES has a total capacity allocation of 1279.11 MW, translating to a total renewable energy demand of 113 MW nationwide.³⁹

148 MW out of SPNEC's total installed generating capacity of 154 MW has already been contracted to its three (3) major customers: [REDACTED]

³⁴ Department of Energy (DOE) Department Circular No. 2018-02-0003 Policy for CSP in the Procurement by the DU of PSA for Captive Market, as amended. See Section 8 on the Competitive Selection Process.

³⁵ *Id.*

³⁶ MAO's Interview with the ERC.

³⁷ Section 45 on Cross Ownership, Market Power Abuse and Anti-Competitive Behavior, Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001.

³⁸ As of March 2023.

³⁹ Estimate is based on the RPS demand of 8.86%.

[REDACTED]⁴⁰ The remaining generating capacity of SPNEC would be insufficient to meet MERALCO's required demand.

Table 2. Market Shares of Participants on the CREM (as of March 2023).⁴¹

Entity	Contracted MW	Market Share in %
Aboitiz Group	1,362.94	
Ayala Group	322.73	
San Miguel Group	663.02	
MERALCO Group	1,189.65	
EDC Group	178.86	
Yuchengco Group	19.21	
<i>Others</i>	438	10.50%

In view of the insufficiency of SPNEC's generating capacity vis-à-vis MERALCO Group's requirements for renewable energy demand nationwide, it appears that no incentive exists for the Parties to engage in customer foreclosure strategies. Currently, it is estimated that there is over 254 MW of RE demand in the market, which is projected to increase further by 2026. Other large competitors within the CREM, such as the Aboitiz Group, are likely to purchase energy from other competing generation companies.

***No Ability and Incentive to Engage in
Foreclosure Strategies in the Market
For Construction Services to Power
Generation Companies Nationwide***

In the nationwide market for construction services, the Commission considered the ability and incentive of the Parties to engage in input and customer foreclosure strategies through (i) MIESCOR, as MERALCO's subsidiary active in the market for construction services, exclusively providing construction services to SPNEC's plants and projects and (ii) by exclusive arrangements between MIESCOR and SPNEC preventing other competitors from accessing SPNEC as a customer for construction and maintenance services.

⁴⁰ Notifying Parties' submissions to the MAO.

⁴¹ Competitive Retail Electricity Market (CREM) Report (March 2023), available at: <http://www.buyyourelectricity.com.ph/pdf/CREM%20REPORT%20FOR%20MARCH%202023.pdf> (last accessed on 09 September 2023).

Considering MIESCOR's minimal market shares and the presence of other strong and specialized construction companies, it appears that the Parties' lack the ability to effectively pursue foreclosure strategies. Engaging in foreclosure strategies would also not be profitable since majority of MIESCOR's revenue comes from external customers. Thus, a detailed analysis of the potential vertical effects, post-Transaction, is no longer necessary.

Lastly, the Commission also recognizes that the renewable energy market will continuously expand in the coming years. Based on the DOE's committed power generation facilities, around twenty (20) firms unaffiliated with existing players will enter the market by 2026. In addition, the increasing trend in the demand for renewable energy coupled with government incentives will likely encourage more RE power generation companies to enter the market. Thus, there will be sufficient competition in the renewable energy market.

After careful review of the existing market conditions, various submissions and representations of the Parties, the application of the PCA, its Implementing Rules and Regulations, and related issuances and relevant regulatory frameworks, the Commission finds that the Transaction is not likely to result in substantial prevention, restriction, or lessening of competition.

ACCORDINGLY, the Commission resolves to **CLEAR** the proposed acquisition by MERALCO PowerGen Corporation⁴² of shares in SP New Energy Corporation and Solar Philippines Power Project Holdings, Inc.

This Decision is rendered solely based on the facts disclosed, circumstances of the Transaction known to the Commission during the review period, and documents submitted by PEMHI and SP Holdings.

SO ORDERED.

5 October 2023.

⁴² In substitution of Metro Pacific Investment Corporation.

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