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IN THE MATTER OF THE PROPOSED JOINT VENTURES OF MGEN RENEWABLE ENERGY, INC. WITH PASUQUIN ENERGY HOLDINGS, INC., AND 7 BALBOA ENERGY HOLDINGS, INC., THROUGH THE ACQUISITION OF SHARES IN 3 BARRACUDA ENERGY CORPORATION, BOLT ENERGY HOLDINGS, INC., ISLAND WIND ENERGY CORPORATION, AND KOAN DEVELOPMENT CORPORATION

MAO Case No. M-2023-012

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COMMISSION DECISION NO. 13-M-012/2023

This refers to two (2) proposed joint ventures between MGEN Renewable Energy Corporation (MGreen) and the following companies:

(1) Pasuquin Energy Holdings, Inc. (Pasuquin Energy), for the acquisition of shares in 3 Barracuda Energy Corporation (3BEC), Bolt Energy Holdings, Inc. (BEHI), and Island Wind Energy Corporation (IWEC), and

(2) 7 Balboa Energy Holdings, Inc. (7 Balboa), for the acquisition of shares in Koan Development Corporation (Koan).

MGreen, Pasuquin Energy, and 7 Balboa shall be hereinafter collectively referred to as Parties, while the two (2) joint ventures shall be referred to as the Transactions, submitted 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, application of the Philippine Competition Act (PCA), its Implementing Rules and Regulations, related issuances and regulatory framework, and based on the findings and recommendation of the Mergers and Acquisitions Office (MAO), the Commission finds that the Transactions will not likely result in substantial prevention, restriction, or lessening of competition in the relevant markets for the reasons discussed below.

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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.

The Parties

MGreen is the Renewable Electricity (RE) power generation arm of Meralco PowerGen Corporation (MGEN) and is engaged solely in the business of RE power generation.[2] Its 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 of, or partnership interest and participation in, a corporation or partnership.

MGreen's notifying group includes Metro Pacific Investments Corporation (MPIC) and Manila Electric Company (MERALCO). MPIC was incorporated as a subsidiary consisting of various corporations in several business sectors (i.e., power, water, toll operations, healthcare, rail, logistics and storage, and real estate). MPIC owns MERALCO which remains to be the largest player in the power distribution sector.

Pasuquin Energy is a domestic holding company with investments in RE power generation facilities that are currently under development, construction, and operation.[3] Pasuquin Energy's RE portfolio includes the following subsidiaries that are subject of the Transaction:

Company	Type	Location
Island Wind Energy Corporation (IWEC)	Wind	Talim Island, Rizal Province
Bolt Energy Holdings Inc. (BEHI)	Wind	Rizal and Laguna
3 Barracuda Energy Corporation (3BEC)	Solar	Bugallon, Pangasinan

7 Balboa is a holding company engaged in the business of power generation and wholly owned by Koan. Koan is engaged in real estate and holds land assets that are being considered as sites of the RE power generation facilities of IWEC and BEHI.

2 Under MGEN's RE portfolio are: PowerSource First Bulacan Solar, Inc., a 55 Megawatt (MW) solar power plant in San Miguel, Bulacan which provides RE to the Luzon Grid; Nuevo Solar Energy Corp., a solar plant under construction in Currimao, Ilocos Norte; and CACI Power Corporation, a solar plant under construction in Baras, Rizal.

3 Pasuquin Energy also has six (6) other RE power generation facilities located in (i) Cadiz City, Bacolod; (ii) Pililia, Rizal; (iii) Ormoc, Leyte; (iv) Currimao, Ilocos Norte; (v) Bukidnon; and (vi) an extension in Currimao, Ilocos Norte.

Pasuquin Energy and 7 Balboa belong to the same notifying group, with Security Bank Corporation Trust and Asset Management Group (SB Asset Management) as their UPE.[4]

The Transactions

MGreen will be acquiring [redacted] in IWEC, BEHI, 3BEC, and Koan through subscription to voting and non-voting shares based on the par value issued by the respective companies out of their authorized capital stock. The joint venture partners agree to contribute a total of ~ [redacted] based on the estimated equity requirement projections for the relevant power generation facilities, distributed as follows:

[redacted]

[redacted]

[redacted]

[4] SB Asset Management holds, administers, and manages the funds of Vena Retirement Plan invested in PEHI and 7 Balboa.

[redacted]

[redacted]		[redacted]		[redacted]	

[redacted]. PSAs between power generation companies and RES undergo a Competitive Selection Process (CSP), wherein power supply contracts are awarded to generation companies through transparent and competitive bidding in a least costly manner.[5]

[redacted]

The Relevant Markets

In the review of a merger or acquisition, the Commission examines all the relevant markets[9] that may be potentially affected by the Transactions to determine whether significant harm to competition is likely to occur in any of them.[10]

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5 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.

6 Notifying Party's submissions to the MAO.

7 *Id.*

8 *Id.*

9 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.

10 PCC Merger Review Guidelines, Section 2.5.

Two (2) relevant markets were identified in this case: (i) the horizontal overlap in the market for the development, construction, and operation of non-Feed-in-Tariff (FIT) renewable energy power generation facilities in the Luzon-Visayas power grid; and (ii) the vertical relationship in the market for the Retail Electricity Supply in the Luzon-Visayas grid.

Development, Construction, and Operation of Non-FIT Renewable Energy Power Generation Facilities in the Luzon-Visayas Grid

While development, construction, and operation are three distinct stages provided by power generation companies, this is considered as a single product market because this captures all activities involved in the service of generating power to Distribution Utilities (DU) and RES.

The development stage involves two (2) main activities: financial analysis and scouting for a suitable location for a prospective power plant.[11] Power generation companies conduct analysis of power demand to determine the type of plant that best accommodates this demand and identify potential customer DUs and RES that would commit to buy the power generated by the prospective plant.[12] This commitment is sought to ensure bank financing.[13]

The construction phase involves the actual building of the plant. Contractors are hired to facilitate the construction process and installation of relevant equipment, like solar panels and wind turbines, are procured and installed on the site. At this stage, power generation companies are expected to secure their Certificate of Compliance (COC) with the Energy Regulatory Commission (ERC). A provisional certificate of approval to connect to the grid is also secured from the National Grid Corporation of the Philippines.

In the operation stage, power generation companies commence operation upon receipt of the COC from the ERC. However, pending such issuance, a power generation company may be allowed to operate based on a Provisional Authority to Operate for a maximum period of one year or upon issuance of a Final Certificate of Approval to Connect.[14]

MERALCO Group and Pasuquin Energy operate at all stages, although their constituent entities perform different functions. Under the MERALCO Group, there are

11 MAO's Interview with the Notifying Parties.
12 *Id.*
13 *Id.*
14 Department of Energy, Department Circular No. 2022-05-0015.

currently 14 holding companies with power generation assets including MGEN.[15] MGEN, through its various subsidiaries, associates, and joint ventures is linked to 25 power generation companies including MGreen and its constituent entities.[16] Likewise, Pasuquin Energy has a portfolio of five (5) power generation companies currently in operation.[17]

The product market is limited to RE because of its inherent distinction from conventional energy sources due to their power output profile and existing regulations that treat them as separate markets.

Non-FIT plants are considered as a separate market from FIT-eligible power generation facilities because the latter have practically ceased to compete with other power generation facilities. FIT-eligible plants are covered by 20-year contracts and are required to sell power outputs to the National Transmission Corporation (NTC) to be later aggregated and sold on the WESM. FIT-eligible plants are guaranteed a FIT rate during the term of their contracts. FIT-eligible plants are required to exclusively sell to the FIT program.[18] On the other hand, non-FIT/GEAP eligible plants are covered by shorter term contracts (e.g., 1 to 5 years) and its rates are based on prevailing market price.[19]

The geographic market is limited to the Luzon-Visayas grid due to the lack of interconnectivity with the Mindanao grid and the prevailing transmission costs. The power generation facilities subject of the Transaction are in Pangasinan, Laguna, and Rizal, which are connected to the Luzon-Visayas grid [redacted]

Retail Electricity Supply in the Luzon-Visayas Grid

[redacted] Due to this vertical relationship, the retail electricity supply market in the Luzon-Visayas grid was included in the analysis as an affected market.

RES directly sell electricity to contestable customers, regardless of service territory. In contrast, DUs are granted a franchise to operate within specific geographic areas and provide power supply to captive customers. Under the Electric Power Industry Reform Act (EPIRA),[20] captive markets refer to electricity end-users who do not have the

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[15] MGreen's Response to the Notice of Deficiency.
[16] *Id.*
[17] *Id.*
[18] MAO's Interview with Market Participants.
[19] *Id.*
[20] R.A. 9136.

choice of an electricity supplier.[21] In contrast, a contestable market refers to electricity end-users who have a choice of electricity supplier.[22]

Thus, the identified product market was limited to retail electricity supply to contestable customers because of the fundamental differences between contestable and captive markets and the absence of demand-side and supply-side substitutability between the two.

The geographic market is also limited to the Luzon-Visayas grid for the same reasons discussed earlier.

Competition Assessment

The Commission finds that the Transactions will not result in any significant change in the structure of the relevant market for the development, construction, and operation of non-FIT RE power generation facilities in the Luzon-Visayas Grid. In addition, the Commission also examined whether the exclusive supply of electricity to MPower by all three (3) power generation RE facilities could potentially restrict competition by limiting access of other competitors in these facilities through foreclosure strategies.[23] It appears that the competitive dynamics of the market and the regulatory policies in place are sufficient to ward off possible input and customer foreclosure strategies post-Transactions.

No loss of competition

While the Transactions will result in an increase in market share of the MERALCO Group from [redacted] sufficient competitive constraints from committed power generation facilities to be completed by 2025 would counteract any potential unilateral exercise of market power.

21 Section 4(c), R.A. 9136.

22 Section 4(h), *Id.*

23 In its assessment of the competitive effects of a merger, the Commission compares the competitive conditions resulting from the merger against conditions that would most likely prevail absent the merger. In this transaction, the counterfactual scenario adopted is that Pasuquin Energy and 7 Balboa would likely continue their power generation facility development as separate entities. The existing PSAs were not taken into account in framing the counterfactual scenario for the analysis.

Table 5. Pre- and Post Transactions Market Shares;
Non-FIT RE Power Generation Firms in the Luzon-Visayas Grid in 2025[24]

No.	FIRM	Pre-Transactions		Post-Transactions	
		Installed Generating Capacity	Market Share (%)	Installed Generating Capacity	Market Share (%)
1	Aboitiz Group	[redacted]	[redacted]	[redacted]	[redacted]
2	Solar Philippines	[redacted]	[redacted]	[redacted]	[redacted]
3	FGEN (Lopez Group)	[redacted]	[redacted]	[redacted]	[redacted]
4	PSALM	[redacted]	[redacted]	[redacted]	[redacted]
5	ACEN (Ayala Group)	[redacted]	[redacted]	[redacted]	[redacted]
6	SB Asset Management Group	[redacted]	[redacted]	[redacted]	[redacted]
7	San Miguel Corporation Group	[redacted]	[redacted]	[redacted]	[redacted]
8	Sapang Balen Solar Sustainable Energy Corp.	[redacted]	[redacted]	[redacted]	[redacted]
9	MERALCO Group	[redacted]	[redacted]	[redacted]	[redacted]
10	Citicore Group	[redacted]	[redacted]	[redacted]	[redacted]
	Total	[redacted]	100.0%	[redacted]	100.0%

The expected entry of at least 20 new power generation firms and expansion of incumbent firms that will bring about additional [redacted] Megawatt (MW) capacity will likely ensure that there are other suppliers that could cater to the demands of DUs and RES that are not affiliated to the MERALCO Group. The MERALCO Group will not gain control over the market for RE generation as there are larger competitor generators that will still impose competitive constraints.

The proposed Transactions are not expected to lead to any significant concentration of the market. Post-Transactions, at least 20 other expected competitors, unaffiliated

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[24] Data obtained by subtracting non-RE and FIT-eligible plants from the List of Existing Power Plants in Luzon and Visayas as of December 31, 2022. Post-transaction figures were computed by adding the capacities of committed non-FIT RE power generation facilities in Luzon and Visayas by 2025, *available at*: https://www.doe.gov.ph/listexisting-power-plants.

with existing market players, are expected to enter the market by 2025.[25] Entry of new competitors is encouraged by the absence of foreign ownership restrictions,[26] coupled with technological developments and continued increase in electricity demand. New competitors and the expansion of incumbent players in the relevant market will pose sufficient competitive constraints on the Parties.

No Ability and Incentive to Engage in Input Foreclosure

In the market for the retail electricity supply in the Luzon-Visayas grid, input foreclosure could take place as either: (i) total, where MGreen and other RE power generation facilities under MERALCO, together with the power generation facilities involved in the joint venture, will exclusively provide their output to MERALCO or MPower as its local RES; or (ii) partial, where MGreen and other MERALCO RE generation firms will raise their electricity rates to competitors. It was found that the Parties have neither the ability nor the incentive to engage in total or partial input foreclosure.

While the market shares in RE generation of the MERALCO Group will increase to [redacted] post-Transactions, other DU or RES would still have numerous options in power generation firms within the Luzon-Visayas grid. There are other non-FIT renewable power generation firms comprising the remaining [redacted] of the RE market in the Luzon-Visayas grid.

To note, it is typical for a power generation facility to supply to only one off-taker.[27] Competition in the pricing of supply to an off-taker is determined through different contract mechanisms. Once capacity is committed, a specific plant cannot raise the prices charged to other power generation facilities as the said plant would not supply other off-takers in the first place.[28]

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25 Department of Energy, List of Private Sector Initiated Power Projects, *available at*: https://www.doe.gov.ph/private-sector-initiated-power-projects.

26 There are no foreign ownership restrictions imposed on the exploration, development, and utilization of solar, wind, hydro and ocean or tidal energy resources, as well as biomass and waste-to-energy power generation facilities.

27 An off-take agreement enables the purchase or sale of a producer's future production in advance, thereby facilitating the acquisition of financing. Such agreements are often negotiated well ahead of time, so buyers can secure a price and ensure a steady supply of a product in anticipation of future demand; MAO's Interview with Market Stakeholders.

28 MAO's Interview with the Notifying Parties.

No Ability and Incentive to Engage in Customer Foreclosure

In the same market, customer foreclosure may occur if MPower, a local RES, would source its energy demand exclusively from its affiliates[29] instead of sourcing from external suppliers.

While MERALCO is a significant customer of RE, the electricity generated by the MERALCO Group is not sufficient to meet its own demand for electricity, even post-Transactions. Therefore, MERALCO does not have the ability to engage in customer foreclosure.

MERALCO also needs to increase and diversify its own RE sources across different firms rather than rely solely on its affiliates to increase the reliability and stability of its energy supply. Purchasing electricity from multiple independent power producers mitigates the risk of outages or disruptions caused by equipment failures, natural disasters, and other unforeseen events.

It is also important to note that MERALCO is highly unlikely to purchase electricity from [redacted] at exorbitant rates and consequently pass it on to consumers. The regulatory requirements imposed by the ERC and its regulatory oversight on RES ensure that each RES competes with others. The EPIRA provides for Retail Competition and Open Access, giving contestable customers the freedom to choose their electricity supplier. With the countervailing buyer power of contestable customers, the RES are constrained to offer prices around, or less, the market rate, to be able to attract or retain customers. It is in the best interest of a RES, therefore, to source the cheapest electricity as much as possible.

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

ACCORDINGLY, the Commission resolves to **CLEAR** the joint ventures of MGEN Renewable Energy Holdings, Inc. with: (i) Pasuquin Energy Holdings, Inc., and (ii) 7 Balboa Energy Holdings, Inc., through the acquisition of shares in 3 Barracuda Energy Holdings, Inc., Bolt Energy Holdings, Inc., Island Wind Energy Corporation, and Koan Development Corporation.

29 For the following possible reasons: ability to negotiate favorable terms and pricing, streamlining of processes, and reduction of transaction costs.

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

SO ORDERED.

15 June 2023.

[redacted]

MICHAEL G. AGUINALDO
Chairperson

[redacted]

(On official business)
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