



MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (“MOA”) is entered into by and between:

The **PHILIPPINE COMPETITION COMMISSION**, a government agency duly created and established under Republic Act No. 10667, otherwise known as “*The Philippine Competition Act*”, with business address at the 25/F Vertis North Corporate Center I, North Avenue, Quezon City, herein represented by its Chairman, **ARSENIO M. BALISACAN**, and hereinafter referred to as the “PCC”;

-and-

The **ENERGY REGULATORY COMMISSION**, a government agency duly created and established under Republic Act No. 9136, otherwise known as “*The Electric Power Industry Reform Act of 2001*”, with business address at the Pacific Center Building, San Miguel Avenue, Ortigas Center 1600, Pasig City, Metro Manila, Philippines, herein represented by its Chairperson and CEO, **AGNES VST DEVANADERA**, and hereinafter referred to as the “ERC”;

The PCC and the ERC are individually referred to in this MOA as a “Party” and collectively, as the “Parties.”

WITNESSETH: Whereas –

- (A) The PCC is an independent quasi-judicial body created pursuant to Republic Act No. 10667, otherwise known as the Philippine Competition Act (“PCA”), to attain the objectives and purposes of the said law, which are to enhance economic efficiency and promote free and fair competition in trade, industry and all commercial economic activities, as well as establish a National Competition Policy to be implemented by the Government of the Republic of the Philippines and all of its constituent agencies as a whole; prevent economic concentration that will unduly stifle competition; and penalize all forms of anti-competitive agreements, abuse of dominant position, and anti-competitive mergers and acquisitions, with the objective of protecting consumer welfare and advancing domestic and international trade and economic development;

- (B) Pursuant to Section 31 of the PCA, the PCC shall, *motu proprio*, or upon the filing of a verified complaint by an interested party or upon referral by a regulatory agency, have the sole and exclusive authority to initiate and conduct a fact-finding or preliminary inquiry for the enforcement of the PCA;
- (C) The ERC is an independent quasi-judicial body created pursuant to Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (“EPIRA”) to regulate the restructured electric power industry in the Philippines, to promote competition, encourage market development, ensure customer choice, penalize abuse of market power in the industry, to protect the rights of consumers, and to balance the interests of all stakeholders in the electric power industry;
- (D) Under Section 43 of the EPIRA, the ERC is mandated to promote competition, encourage market development, ensure customer choice, and penalize abuse of market power in the restructured electricity industry;
- (E) The ERC and PCC have discussed the need to execute a MOA to delineate the PCC and ERC’s respective roles with respect to the investigation and review of unfair business conduct, abuse of dominant position, and anti-competitive transactions involving the electric power industry; and
- (F) The Parties have discussed coordination and collaboration mechanisms in order to fulfill their respective mandates in respect of the electric power industry, and the Parties have reached an agreement on several aspects thereof, such as, but not limited to (i) sharing of information on matters involving the electric power industry; and (ii) coordinating efforts on fact-finding investigations.

NOW THEREFORE, for and in consideration of the foregoing premises, the Parties have agreed as follows:

SCOPE AND LIMITATION

Section 1. This MOA outlines the working relationship of the Parties and is not intended to modify in any way or constitute a waiver of their respective mandates or powers under the PCA and the EPIRA as well as other relevant laws, rules and regulations.

SHARING OF INFORMATION

Section 2. Each Party, upon the request of the other, and to the extent permitted by law, shall furnish to the requesting Party information or documents relevant to competition in the electric power industry such as reports, data sets, assessments, notices, and guidelines in its possession. Access to information and documents under

this Section shall be subject to applicable laws or rules on confidentiality, data privacy, and privilege.

Prior to, during the implementation, and following the termination of this MOA, any such information or documents furnished by one Party to the other shall be kept confidential and shall not, without the prior written consent of the other Party, be divulged or given to any third party.

Section 3. The Parties shall designate focal persons to facilitate the sharing of information who shall endeavor to meet at least once a month or as often as necessary to identify possible issues.

Section 4. Any information provided by one Party to the other will be disseminated within the respective Parties' organization on a strict "need to know" basis. However, nothing in this MOA shall prevent either Party from using the information provided by the other Party to develop independently its own evidence for use in any manner not inconsistent with this MOA.

COORDINATION AND COOPERATION

Section 5. Pursuant to their respective competition mandates in the PCA and EPIRA, the Parties may conduct Joint Fact-Finding Inquiries (each, a "Joint Inquiry") pertaining to competition matters within the electric power industry to determine whether there have been violations of the PCA or EPIRA.

Section 6. Towards this end, the Parties may appoint their respective representatives who shall be the members of the Joint Fact-Finding Body that shall conduct the Joint Inquiry.

Section 7. Upon receipt of a request for assistance, subject to resource and other operational considerations, the Parties may provide each other with enforcement and technical support.

Section 8. In the event that the Parties, in the course of the Joint Inquiry, determine the necessity to consult individual officers or employees of institutions or firms, such as but not limited to the Philippine Electricity Market Corporation, the National Grid Corporation of the Philippines, and generation companies, in order to obtain relevant information, the Parties shall coordinate on such information to be requested, and conduct meetings or hearings in an efficient and optimal manner.

Section 9. The Parties shall issue joint statements in relation to any Joint Inquiry conducted pursuant to this MOA.

Section 10. The Parties shall also exert best efforts to issue a joint report; however, where such joint report is not practicable, either Party may opt to issue a separate report provided that prior notice of such intent to release a separate report shall be given to the other party and a copy of such report shall be furnished to the other Party at least ten (10) days before it is officially released.

Section 11. Upon conclusion of the Joint Inquiry and issuance of a joint report or separate reports as the case may be, the Parties shall coordinate on the next steps to be taken as prescribed under the PCA and EPIRA.

Section 12. The Parties shall endeavor to conclude any Joint Inquiry within a reasonable time frame.

In the event that a Joint Inquiry has commenced and has not been concluded prior to the termination of the MOA, such Joint Inquiry shall continue until the same is concluded. Such continuation shall be construed as an extension of the term of this MOA from the last day of its effectivity until the conclusion of said Joint Inquiry.

CAPACITY-BUILDING

Section 13. Subject to resource and operational considerations, the Parties may organize joint capacity-building activities for the purpose of enhancing coordination efforts and facilitating the successful implementation of this MOA.

DISPUTE RESOLUTION

Section 14. In case of disputes arising out of or in connection with this MOA, the Parties shall exert best efforts to settle the same. In case of failure to amicably settle such disputes, the Parties shall observe the applicable dispute resolution provisions of the Administrative Code.

EFFECTIVITY AND TERMINATION

Section 15. Subject to Section 12 hereof, this MOA shall become effective upon signing by both Parties and shall remain in force until terminated upon written notice by either Party to the other.

REVIEW, AMENDMENT, AND REVISION

Section 16. Any subsequent revision, amendment, repeal, and supplement to this MOA shall be made only upon written agreement by the Parties.

SEPARABILITY CLAUSE


Section 17. Each provision of this MOA shall be treated as a separate and independent clause. If any provision in this MOA or part thereof is subsequently declared invalid, illegal, or unenforceable under any applicable law, such declaration shall not affect the other provisions of this MOA.

This instrument, denominated as Memorandum of Agreement, consisting of six (6) pages, including this page wherein the Acknowledgement is written, has been signed by the parties and their instrumental witnesses on each and every page thereof.

WITNESS MY HAND AND SEAL on the date and place first abovementioned.

Doc. No. 2600;
Page No. 101;
Book No. V;
Series of 2019.

NOTARY PUBLIC


CHIARA ANGELA L.B. BLANCO
NOTARY PUBLIC PASIG CITY
UNTIL DECEMBER 31, 2019
ROLL NO. 64188
PTR NO. 1361235 / 3 JAN. 2019 / QUEZON
IBP NO. 097947 / 7 JAN. 2019 / QUEZON CITY
APPOINTMENT NO. 70 (2018-2019)
MCLE COMPLIANCE NO. VI-0014774 / 14 APRIL 2022
ORTIGAS CENTER, PASIG CITY

