CRUZ MARCELO & TENEFRANCIA

Patricia A. O. Bunye is a senior partner, Rafael Raymundo A. Evangelista is a senior associate and Angelli Camille P. Ancheta is a junior associate at Cruz Marcelo & Tenefrancia. Ms Bunye can be contacted by email: po.bunye@cruzmarcelo.com. Mr Evangelista can be contacted by email: ra.evangelista@cruzmarcelo.com. Ms Ancheta can be contacted by email: ap.ancheta@cruzmarcelo.com.

Published by Financier Worldwide Ltd

SPECIAL REPORT ARTICLE April 2020

Energy investment coordinating council created to promote significant energy projects in the Philippines

BY PATRICIA A. O. BUNYE, RAFAEL RAYMUNDO A. EVANGELISTA AND ANGELLI CAMILLE P. ANCHETA

The Philippine government is advocating the creation of new infrastructure under its 'Build, Build, Build' programme in an attempt to stimulate local industries and accelerate economic development which, in turn, is expected to increase the Philippines' regional and global competitiveness. However, the programme is hampered, in part, by the high price of electricity in the country.

To address this, the Department of Energy (DOE) is pursuing different initiatives to ensure affordable, reliable, modern and sustainable energy, specifically the creation of 43 GW additional capacity by 2040 to meet the growing demand for electric power and promoting investment opportunities in the Philippine energy sector.

To streamline regulatory processes and ensure effective and timely implementation of projects, the Energy Investment Coordinating Council (EICC) was created under the 2017 Executive Order No. 30 (EO 30). This key reform seeks to guarantee the immediate delivery of adequate and reliable government services in relation to energy projects and infrastructure.

The EICC is composed of a representative from the Department of Energy as chair and representatives from relevant agencies,

such as the Department of Environment and Natural Resources, the National Electrification Administration, the National Grid Corporation of the Philippines, the National Power Corporation and the National Transmission Corporation, among others.

One of the crucial mandates of the EICC is to create an efficient and effective administrative process for energy projects of national significance (EPNS), with the aim of avoiding unnecessary delays in the implementation of the Philippine Energy Plan (PEP). The PEP is a comprehensive roadmap, prepared by the DOE, of energy sector programmes and projects to ensure sustainable, stable, secure, sufficient, accessible and reasonably-priced energy. While investments in energy projects are ostensibly supported and encouraged by the country's policymakers, the complicated permitting process (which requires dealing with numerous government agencies to secure a contract), coupled with pervasive bureaucratic red tape in the country, has inevitably slowed down the successful implementation of the PEP's goals.

Projects are designated as EPNS through the application of the proponent and the identification and endorsement of the DOE. To be considered an EPNS, the project must be a major energy project for power generation, transmission or ancillary services, including those required to maintain grid stability and security. Furthermore, an EPNS should possess any of the following attributes: (i) a significant capital investment of at least PhP3.5bn; (ii) make a significant contribution to the country's economic development; (iii) have consequential economic impact; (iv) the potential to contribute to the country's balance of payments; (v) the ability to have an impact on the environment; (vi) complex technical processes and engineering designs; and (vii) significant infrastructure requirements.

Once confirmed, an EPNS is issued a certificate by the DOE to facilitate and fast track the issuance of permits and clearances from different government agencies. Among the rights to which EPNS are entitled under EO 30 are the presumption of prior approvals and for action to be taken within 30 days.

Furthermore, EPNS are entitled to the presumption that relevant permits from other government agencies have already been issued. As an effect, the processing government agency which receives an application involving EPNS will process the application without awaiting the action of any other agency. With this presumption, all documents already submitted to the DOE may no longer be required by other government agencies such that only requirements specific to the mandate of said agency may be required. Likewise, a government agency cannot defer processing until another agency releases a required permit, licence or grant so that, in effect, there is simultaneous or parallel processing of requirements.

EPNS are also entitled to a 30-day time frame from the time complete documentary requirements are submitted, within which government agencies must act upon application for permits involving EPNS. Most importantly, the failure of the approving authority to approve or deny the application in writing within the 30-day time frame will prohibit him or her from denying the application. The approving authority must then issue the relevant permit within five working days after the lapse of the time frame.

The importance of these procedural improvements cannot be overemphasised in light of the cumbersome and often long, drawn-out processes in the application for and issuance of government permits.

Under the implementing rules and regulations of EO 30, the project proponent is also entitled to notification and time to fix its application in case it is determined that there are any defects and lapses in its application. The rules provide that the rights provided to EPNS extend to associated infrastructure of the project with CEPNS.

The CEPNS may be issued either for projects under pre-development stages, such as conventional sources of energy (oil, gas and coal) or renewable energy (geothermal, solar, hydropower, ocean and wind), or for projects proceeding to their commercial stage, such as power plants, liquefied natural gas or natural gas infrastructure. While there is no difference in the rights to which the two CEPNS are entitled, there is a difference in the stages to be undergone. Projects which involve indigenous energy resource have to undergo the two stages.

As of 28 February 2020, 390 applications have been submitted to the EICC for evaluation, 145 of which were certified to be EPNS and are therefore entitled to the rights outlined above. Of these applications, 186 come from oil and gas projects, accounting for almost 50 percent of the total applications. They include 99 renewable energy projects, 69 transmission projects, 24 coal projects and 12 hybrid projects.

Among the projects to be certified EPNS are the Mindanao-Visayas Interconnection Project, the Kalinga Geothermal Project, the 151.2 MW Talim Wind Power Project, the Pagbilao 650 MW Combined Cycle Gas Turbine Power Plant, the 15 MW Masbate Coal Power Plant, the 100 MW Total Power, Inc. Sarangani Solar Power Project, the 19.7 MW Ilaguen 3A Hydropower

Project and the 600 MW Rizal Wind Power Project, among others. More recently, the Galoc field area and development, an investment in the upstream oil and gas sector and the Mahanagdong geothermal brine optimisation plant of the Energy Development Corporation, were granted CEPNS.

The total investments for EPNS-certified projects are estimated to be valued at PhP681.94bn or around $13.36bn, while for the projects in process or under evaluation the value is pegged at PhP618.71bn, or $12.11bn.

While its implementation poses a challenge for government agencies, especially for local government units, the EICC and its procedure for CEPNS continue to adapt and evolve. Last year, it engaged the National Commission on Indigenous People, the primary government agency mandated to formulate and implement policies and programmes to protect and promote the interests of Philippine indigenous cultural communities (ICCs) and indigenous peoples (IPs), in a discussion for the latter to represent ICCs/IPs in relation to EPNS, which are situated within their ancestral domains. This partnership should ideally benefit the EICC's goal of streamlining the CEPNS procedure, while ensuring that any EPNS carried out in an ancestral domain are done with the concerned ICCs/IPs' free and prior informed consent and without exploitation or damage to their land.

The expectation is that the EICC's establishment will significantly advance Philippine infrastructure investment, specifically in the energy sector. While the overall effect of the EICC, in terms of convenience and effectiveness of government procedures, remains to be seen, it is envisioned that it will further the government's agenda of guaranteeing the effective and timely implementation of energy projects which, in turn, can contribute to the Philippines' power capacity and goal of providing reliable, affordable and sustainable energy supply to the country. ■