EN BANC

G.R. No. 249678 – QUEZON FOR ENVIRONMENT, ATIMONAN POWER TO THE PEOPLE, PHILIPPINE MOVEMENT FOR CLIMATE JUSTICE (PCMJ) INC. CENTER FOR ENERGY, ENVIRONMENT AND DEVELOPMENT INCORPORATED, SANLAKAS, MONSIGNOR EMMANUEL MA. L. VILLAREAL, REV. FR. WARREN R. PUNO, REYNALDO UPALDA, FR. EDWIN GARIGUEZ, GERARD ARANCES, BIBIANO RIVERA, JR., MARIE MARGARUERITE LOPEZ, and ERWIN PUHAWAN, Petitioners, v. **HON. SALVADOR MEDIALDEA, in his capacity as Executive Secretary, SENIOR UNDERSECRETARY JESUS CRISTINO P. POSADAS, in his capacity as Chair of the Energy Investment Coordinating Council, and JOHN AND JANE DOES,** Respondents.

Promulgated:

November 5, 2024

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CONCURRING OPINION

CAGUIOA, *J.*:

The *ponencia* dismisses the present Petition for *Certiorari* (Petition), which was characterized as an "environmental *certiorari*" challenging the validity of Executive Order No. 30, Series of 2017,[1] or the executive issuance creating the Energy Investment Coordinating Council (EICC). The EICC was created primarily to streamline the regulatory processes for energy projects, particularly, those which are considered Energy Projects of National Significance (EPNS) under Section 2[2] of Executive Order No. 30.

On the procedural issues, the *ponencia* rules in the following manner:

(i) Despite petitioners' claim that the present action is an environmental suit under the Rules of Procedure for

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[1] Creating the Energy Investment Coordinating Council in Order to Streamline the Regulatory Procedures Affecting Energy Projects, June 28, 2017.

[2] **SECTION 2. Energy Projects of National Significance (EPNS).** EPNS are major energy projects for power generation, transmission and/or ancillary services including those required to maintain grid stability and security, identified and endorsed by the DOE as "projects of national significance" that are in consonance with the policy thrusts and specific goals of the PEP, and which possess any of the following attributes:

a) significant capital investment of at least ₱3.5 Billion;
b) significant contribution to the country's economic development;
c) significant consequential economic impact;
d) significant potential contribution to the country's balance of payments;
e) significant impact on the environment;
f) complex technical processes and engineering designs; and/or
g) significant infrastructure requirements.

Environmental Cases[3] (RPEC), the Petition is treated as a special civil action for *certiorari*.[4]

(ii) Respondents' argument that there is no actual case or controversy, as the essence of petitioners' arguments is to prevent the expansion of the coal industry, is unmeritorious. The Petition presents a justiciable controversy ripe for determination.[5]

On the substantive issues, the *ponencia* finds petitioners' arguments without merit and resolves to dismiss the Petition.

I concur. This Concurring Opinion highlights my position on the procedural issues raised by the parties and emphasizes anew that an actual case or controversy does not require an actual injury to parties seeking relief from the Court. As to the substantive issues, I write this concurrence to emphasize that Executive Order No. 30 is a valid and reasonable exercise of the President's ordinance power, in conjunction with his power of control over the executive department.

I.

There is a justiciable controversy in this case by virtue of the issuance and effectivity of Executive Order No. 30

Preliminarily, I agree with the *ponencia* that the present Petition should be treated as one for *certiorari*, even if petitioners invoked the RPEC in filing this case. While petitioners' arguments have environmental underpinnings, such as the degradation of the environment because of coal power projects, these are mere collateral attacks that serve only to support the main arguments of the Petition.[6] Ultimately, petitioners' arguments—that Executive Order No. 30 is unconstitutional for: (1) violating their right to due process; (2) being outside the authority of the President to issue; and (3) contravening the relevant statutes on the regulatory requirements for energy projects—relate to the Court's expanded power of judicial review.[7]

As the Court ruled in *Araullo v. Aquino III*:[8]

> The Constitution states that judicial power includes the duty of the courts of justice not only "to settle actual controversies involving rights which are legally demandable and enforceable" but also "**to determine whether or not there has been a grave abuse of discretion amounting to**

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3 A.M. No. 09-6-8-SC (2010).
4 *Ponencia*, pp. 9–11.
5 *Id.* at 13–15.
6 *See Social Justice Society (SJS) Officers v. Lim*, 748 Phil. 25, 86 (2014) [Per J. Perez, *En Banc*].
7 *Ponencia*, pp. 4–6.
8 737 Phil. 457 (2014) [Per J. Bersamin, *En Banc*].

> **lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.**" It has thereby expanded the concept of judicial power, which up to then was confined to its traditional ambit of settling actual controversies involving rights that were legally demandable and enforceable.[9] (Emphasis supplied)

Since the *certiorari* jurisdiction of the Court is invoked, there must be a *prima facie* showing of grave abuse of discretion in the assailed governmental act which, in essence, is the actual case or controversy.[10]

What constitutes an actual case or controversy has been settled by the Court in numerous cases. Recently, in *Universal Robina Corporation v. Department of Trade and Industry*,[11] the Court ruled that an actual case or controversy exists when there are "actual facts to enable courts to intelligently adjudicate the issues," **or when there is "a clear and convincing showing of a contrariety of legal rights."**[12] The Court also explained in *Belgica v. Ochoa, Jr.*[13] that this requirement is satisfied if the parties raise antagonistic positions on the constitutionality of the subject matter of the case.[14] Such contrariety should be susceptible of judicial resolution or capable of specific reliefs that the Court can grant.

Relatedly, in order to be justiciable, the controversy must also be ripe for adjudication. This may be established by showing that the governmental act being challenged has a direct adverse effect on the individual challenging it. A case is also considered ripe for adjudication when "something had then been accomplished or performed by either branch . . . and the petitioner . . . [alleges] the existence of an immediate or threatened injury to itself as a result of the challenged action."[15]

Respondents argue that there is no justiciable controversy here because petitioners' assertion that their right to a balanced and healthful ecology is violated by Executive Order No. 30 is "a mere imagined possibility of abuse from the coal sector."[16] Respondents also assert that petitioners were unable to demonstrate how they sustained, or will sustain, some direct injury as a result of the enforcement of Executive Order No. 30.[17]

The *ponencia* finds these arguments unmeritorious, ruling that the effectivity of a governmental act, coupled with an interpretation thereof that violates constitutional rights, constitutes a contrariety of rights that is capable of judicial review. The right to a healthful and balanced ecology confers both

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9 *Id.* at 525.
10 *Pangilinan v. Cayetano*, 898 Phil. 522, 601 (2021) [Per J. Leonen, *En Banc*].
11 G.R. No. 203353, February 14, 2023 [Per J. Leonen, *En Banc*].
12 *Id.* at 10. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.
13 721 Phil. 416 (2013) [Per J. Perlas-Bernabe, *En Banc*].
14 *Id.* at 520.
15 *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*, 589 Phil. 387, 481 (2008) [Per J. Carpio Morales, *En Banc*].
16 *Rollo*, p. 452.
17 *Id.* at 453.

a right and a duty to protect the environment, and such duty vests especially to those responsible for enforcing and implementing environmental laws. Given these, the *ponencia* holds that there exists an actual case or controversy in this case when petitioners allege that respondents violated this right and duty by issuing and implementing Executive Order No. 30, which facilitates the awarding of permits for EPNS that purportedly damage the environment.[18]

As stated at the outset, I agree with the *ponencia* in rejecting respondents' arguments.

When the judiciary's expanded power of judicial review is invoked, it is sufficient that the questioned law has been enacted or that the challenged action was approved. No further overt acts are necessary to render the controversy ripe.[19] Thus, in *Spouses Imbong v. Ochoa, Jr.*,[20] the Court held that the effectivity of the Reproductive Health Law and its implementing rules, which were alleged to have infringed the Constitution, rendered the case justiciable.[21]

As well, the Court ruled that the petition in *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*[22] was justiciable, even if the Memorandum of Agreement on the Ancestral Domain was argued as merely preliminary in character, and simply a proposal that does not automatically create rights or obligations. In rejecting this argument, the Court held that it was sufficient that the petitions alleged acts or omissions on the part of therein respondents that exceed the Constitution or violate their mandate under the law:

> As the petitions allege acts or omissions on the part of respondent that exceed their authority, by violating their duties under [Executive Order] No. 3 and the provisions of the Constitution and statutes, the petitions make a *prima facie* case for *Certiorari*, Prohibition, and *Mandamus*, and an actual case or controversy ripe for adjudication exists. **When an act of a branch of government is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute.**[23] (Emphasis supplied, citation omitted)

Here, it is undisputed that Executive Order No. 30 and its corresponding Implementing Rules and Regulations[24] (IRR) have been issued. Pursuant to its effectivity, and at the time of the filing of the Petition, the EICC was reported to have received over 400 applications for EPNS, 149 of which have

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18 *Ponencia*, pp. 13–15.

19 J. Caguioa, Concurring and Dissenting Opinion in *Universal Robina Corporation v. Department of Trade and Industry*, G.R. No. 203353, February 14, 2023, p. 12, *citing Inmates of the New Bilibid Prison v. De Lima*, 854 Phil. 675, 694–695 (2019) [Per J. Peralta, *En Banc*]. This pinpoint citation refers to the copy of the Opinion uploaded to the Supreme Court website.

20 732 Phil. 1 (2014) [Per J. Mendoza, *En Banc*].

21 *Id.* at 124.

22 *Supra* note 15.

23 *Id.* at 485–486.

24 Department of Energy Department Circular No. DC2018-04-0013, Implementing Rules and Regulations of Executive Order No. 30, Series of 2017, Creating the Energy Investment Coordinating Council in Order to Streamline the Regulatory Procedures Affecting Energy Projects, April 25, 2018.

been approved, and 33 applications undergoing evaluation.[25] Aside from their right to a balanced and healthful ecology and their right to due process, petitioners primarily point out that the issuance of Executive Order No. 30 is beyond the ordinance powers of the President under the Constitution.

Whether there is a violation of petitioners' rights and whether the President exceeded his authority in issuing Executive Order No. 30 are questions that may be resolved, as the *ponencia* does, by an examination of the assailed regulations against the relevant provisions of the Constitution. The *ponencia* itself judiciously passes upon each question and arrives at the conclusion that Executive Order No. 30 is valid, without having to speculate or rely on hypothetical assumptions. Certainly, this contravenes respondents' submission that petitioners raised issues that are premature or speculative.

At this juncture, I emphasize that when the Court rules that there is no actual case or controversy, it should no longer proceed to rule upon the merits of a petition. In this case, for instance, whether petitioners' arguments as to the validity of Executive Order No. 30 is meritorious should not bear upon the procedural aspects of the case, which warrant a completely different standard of review. Needless to state, the Court's initial determination should always be preceded by the question of whether there is an actual case or controversy ripe for judicial determination. If the case before the Court fails this initial hurdle, then there is no reason for the Court to proceed and rule upon the merits. If there is no justiciable controversy, whatever ruling there is as to the merits of the case is tantamount to an advisory opinion, or at most, mere obiter.

II.

Executive Order No. 30 was validly issued by the President pursuant to his power of control and his duty to ensure the faithful execution of laws

As to the substantive issues, I concur with the *ponencia* in denying the Petition and upholding the validity of Executive Order No. 30.

The relevant provisions of Executive Order No. 30 are as follows:

> **SECTION 7. Baselines in the Processing of EPNS.** The rules, regulations and processes to be agreed upon within the EICC and to be adopted by its member-agencies shall adhere to the following baselines with regard to EPNS:
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> a) **Presumption of Prior Approvals.** Government agencies and instrumentalities that receive an application for a permit involving EPNS shall process such applications without

[25] *Rollo*, pp. 323–324.

awaiting the action of any other agency. The processing agency shall act on the presumption that the relevant permits from other government agencies had already been issued.

b) **Action within Thirty (30) Days**. Government agencies and instrumentalities shall act upon applications for permits involving EPNS within a specified processing timeframe not exceeding thirty (30) days from the submission of complete documentary requirements. Should such application be denied, the denial should be made in writing, expressly providing the grounds therefor. If no decision is made within the specified processing timeframe, the approving authority may no longer deny the application and shall issue the relevant permit within five (5) working days after the lapse of such processing timeframe.

No deviation from the baselines shall be allowed except when absolutely necessary either to enable an agency to comply with a specific statutory directive or to avoid prejudicing the public interest. All regulations and procedures taken up in the EICC which deviate from such baselines, and the justifications therefor, shall be included in the reports of the EICC to the Office of the President.

These baselines were further clarified in the IRR issued by the Department of Energy (DOE) via Department Circular No. DC2018-04-0013:

RULE 6 - RIGHTS UNDER [CERTIFICATE OF EPNS (CEPNS)]

6.1 The CEPNS entitles the project to a processing time of 30-working day period upon submission of complete documentary requirements to the relevant agencies in the permitting process of Energy Projects. Towards this end, all national government agencies, instrumentalities, Local Government Units (LGUs) and government-owned and controlled corporations (GOCCs) involved in the processing and approval of permits and licenses are hereby directed, with respect to the permits and processes within their jurisdiction, to act upon applications for permits with CEPNS within 30-working days from submission of complete documentary requirements. Said period should be sufficient for each agency to determine whether such project is compliant with all the requirements set by existing laws, rules and regulations, including the general principle of protecting public interest and national security.

6.2 The CEPNS entitles the project to be processed by accordingly, without awaiting the action of other government agencies involved in the processing if such action is a precondition or a requirement for processing. Forthwith, the processing government agency shall act on the presumption that as holder of the CEPNS, the relevant permits from other government agencies had already been issued. Such presumption extends only insofar as the permitting process is concerned. Government agencies retain the right to enforce compliance with existing laws, rules and regulations within their jurisdiction.

6.3 On the assumption that the submitted requirements are complete in substance and form, the action to be taken for CEPNS must not exceed 30-working days. Failure to make a decision within the specified time will result in the issuance of the relevant permit within five (5) working days after the lapse of the 30-working day period. Action or decision of government agency covers approval or denial. If the action is denial, the government agency must issue a written explanation explicitly providing the reasons or grounds thereof to the CEPNS holder.

6.4 Upon the determination of any defect or lapses in substance and form of the submitted documents, the project proponent shall be notified and will be given appropriate time to take the necessary actions. During this reckoning period, the provision in Rule 6.3 shall not take into effect.

6.5 The rights under this Rule extends to associated infrastructure of the project with CEPNS.

RULE 7 – BASELINES IN THE PROCESSING OF EPNS

7.1 To ensure compliance under Rule 6, the EICC and/or other government agencies including local government units (LGUs), government owned and controlled corporations (GOCCs) and instrumentalities shall ensure that their respective timelines are adjusted accordingly. For this purpose, said government agencies are directed to submit a streamlined procedure relative to the processing of Energy Projects to the EICC within a year from the effectivity of [Executive Order No.] 30. Such submission shall serve as the baseline for processing of CEPNS. Attached is the list of documentary requirements and permits issued by all relevant government agencies as Annex A.

7.2 No deviation from the baselines shall be allowed except when absolutely necessary either to enable an agency to comply with a specific statutory directive or to avoid prejudicing the public interest. All regulations and procedures taken up in EICC, which deviate from such baselines with justification thereof, shall be included in the report of the EICC to the Office of the President.

A careful review of Executive Order No. 30 and the foregoing issuance reveal that they simply streamlined the processing of permits and other regulatory requirements for energy projects certified as "projects of national significance" (or an EPNS) by adopting the following measures: (i) setting a baseline period for the processing of permits; and (ii) allowing the parallel processing of permit applications before various government agencies (i.e., the presumption of prior approval). It does not, in any way, modify, alter, or dispense with any statutory requisite for an energy project to operate.

In fact, Rule 6, Section 6.2 of DOE Department Circular No. DC2018-04-0013 states that "[g]overnment agencies retain the right to enforce compliance with existing laws, rules and regulations within their

jurisdiction."[26] Thus, notwithstanding the 30-day baseline period for processing of permits and the presumption of prior approval, project proponents are still mandated to comply with the relevant laws, rules, and regulations.

Petitioners' argument that the presumption of prior approval and the prescribed 30-day period is an unreasonably stringent period that pressures government agencies to approve permits at the expense of environmental laws and procedure is also belied by a plain reading of Executive Order No. 30 and its IRR.[27] Both Executive Order No. 30 and DOE Department Circular No. DC2018-04-0013 provide that the 30-day processing period is only the general rule. Whenever necessary to comply with a specific statutory directive, or to avoid prejudicing the public interest, government agencies may deviate from this timeline. The prescribed 30-day processing period is also reckoned from the project proponent's submission of the complete documentary requirements.[28]

In *Kilusang Mayo Uno v. Director General, NEDA*,[29] the President issued an executive order to optimize and remove redundancies in the operations of government agencies by adopting a unified multi-purpose identification (ID) system for all government agencies. Therein petitioners challenged the validity of the executive order for being an encroachment on the legislative powers of Congress. The Court upheld the validity of the challenged executive order, ruling that this is a valid exercise of the President's power of control and duty to ensure the faithful execution of laws, *viz.*:

> Certainly, under this constitutional power of control the President can direct all government entities, in the exercise of their functions under existing laws, to adopt a uniform ID data collection and ID format to achieve savings, efficiency, reliability, compatibility, and convenience to the public. The President's constitutional power of control is self-executing and does not need any implementing legislation.
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> . . . .
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> **This Court should not interfere [on] how government entities under the Executive department should undertake cost savings, achieve efficiency in operations, insure compatibility of equipment and systems, and provide user-friendly service to the public.** The collection of ID data

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[26] DOE Department Order No. DO2024-04-0003, titled "Prescribing the Framework and Guidelines for the Processing of Applications for [CEPNS]" issued on April 1, 2024, which was issued after DOE Department Circular No. DC2018-04-0013, also contains the same proviso. *See* DOE Department Order No. DO2024-04-0003, sec. 5(c).

[27] *See rollo*, pp. 26–41.

[28] Executive Order No. 30, sec. 7(b) states that: "Government agencies and instrumentalities shall act upon applications for permits involving EPNS within a specified processing timeframe not exceeding thirty (30) days from the submission of complete documentary requirements."
DOE Department Circular No. DC2018-04-0013, Rule 6, sec. 6.3, further states: "On the assumption that the submitted requirements are complete in substance and form, the action to be taken for CEPNS must not exceed 30-working days."

[29] 521 Phil. 732 (2006) [Per J. Carpio, *En Banc*].

> and issuance of ID cards are day-to-day functions of many government entities under existing laws. Even the Supreme Court has its own ID system for employees of the Court and all first and second level courts. The Court is even trying to unify its ID system with those of the appellate courts, namely the Court of Appeals, Sandiganbayan and Court of Tax Appeals.[30] (Emphasis supplied)

Here, Executive Order No. 30 does not affect any substantive rights and obligations. It only seeks to cut down the red tape in obtaining the licenses and permits for energy projects, which requires numerous approvals from varying government agencies.[31] This complex regulatory framework, compounded by red tape and bureaucratic inefficiencies, has been identified as a major contributor to the increase of energy rates. The following observations in the briefer of the Congressional Policy and Budget Research Department (CPBRD) of the House of Representatives[32] is enlightening:

> - ***Red tape and bureaucratic inefficiencies.*** . . . According to literature, prospective power plants have to hurdle approximately four (4) to five (5) years of red tape (Navarro et.al, 2016). Mr. Emmanuel B. Rubio, the President of the Aboitiz Power, disclosed during a recent round table discussion on energy security that **it takes about 347 signatures to put up a new power plant**.
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> According to Clarete (2018), the permit with the longest processing time is the approval of the grid impact study in the predevelopment stage of the entire approval process. This step requires the investor-proponent to specify the location of the generation plant and how the electricity produced will be transmitted through the country's electricity grids. Although the investor commonly conducts the study to hasten the process, the National Grid Corporation of the Philippines (NGCP) nonetheless must review and approve the study. Reducing the approval time can be an important reform, as 54% of the entire duration of the permitting process comes from conducting the study and having the transmission plan approved by the NGCP (ibid.).
>
> **Meanwhile, Gatchalian (2017) estimated that each year of delay in the establishment of power plant corresponds to an inefficiency tariff equivalent to 28% of the generation cost (or P0.80/kwh).** For a household consuming 200 kwh a month, this translates to an inefficiency tariff of P1,920. If red tape were to result in a three-year delay, a household with a monthly consumption of 200 kwh would have to shell out an additional P6,000 (ibid.). Moreover, the aforementioned study by Clarete (2018) showed that removing red tape is potentially three times more effective in reducing electricity prices (as much as 6%

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30 *Id.* at 752, 756–757.

31 *See* DOE Department Circular No. DC2018-04-0013, Annex A: Requirements from the Different Government Agencies and Instrumentalities.

32 CBRD Policy Brief No. 2023-06, Continuing Reform in the Power Sector: Addressing Energy Insecurity and High Prices, *available at* https://cpbrd.congress.gov.ph/images/PDF%20Attachments/CPBRD%20Policy%20Brief/PB2023-06_Continuing_Reform_in_the_Power_Sector_Addressing_Energy_Insecurity_and_High_Prices_1.pdf.

> reduction in power prices) than removing the value-added tax (VAT) on electricity.[33] (Emphasis supplied)

These are the same observations that were made by Senator Sherwin Gatchalian in his Sponsorship Speech for Senate Bill No. 1439 before the 17th Congress, which was eventually enacted as Republic Act No. 11234,[34] or the Energy Virtual One-Stop Shop (EVOSS) Act. By virtue of this Act, a secure and paperless processing system was established for the required permits for power generation, transmission, or distribution projects, with the primary objective of expediting the processing times for these projects:

> Senate Bill No. 1439, otherwise known as the Energy Virtual One Stop Shop Act of 2017, focuses on a problem that is painfully common in all fields of public governance – bureaucratic inefficiencies, redundancies, and overlaps, collectively known more commonly as "red tape." In the energy sector, red tape is particularly burdensome for power sector investors attempting to get new power plants off the ground. Given that energy generation projects take a tremendous amount of time to develop, additional delays caused by red tape compromise the profitability and sustainability of these projects.
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> **A particularly extreme example is the bureaucratic labyrinth that developers of run-of-river hydro plants have to go through – a tedious permitting process that involves securing at least 359 signatures from 74 regulatory agencies and attached bureaus. They will also have to make sense of 20 different laws governing the entire process as they attempt to accomplish 43 different contracts, certifications, endorsements, and licenses. The whole process is estimated to take around 1,340 days to complete. That is more than three and a half years! With that in mind, this legislation seeks to break down the walls of this bureaucratic labyrinth by streamlining the permitting process of new energy generation projects, cutting the length of the permitting process into half.**
>
> The elimination of red tape in the permitting process will go a long way toward rejuvenating our energy sector. It will remove a formidable barrier to entry that has often discouraged foreign firms from entering the generation market. These foreign firms, with superior financing capabilities and more advanced technology, have the capacity to build cutting-edge power plants that produce energy at lower costs. Their entry into the Philippine power generation industry will infuse greater competition into the system, resulting in a larger energy supply and cheaper generation costs.
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> This bill, however, will not only benefit prospective power generation developers and other energy industry players. It will also benefit consumers by driving down the cost of electricity through robust competition. **Based on my conversations with industry analysts and our own internal research, cutting down red tape could reduce consumer electricity prices by as much as Pl per kWh.**

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33 *Id.* at 6–7.

34 An Act Establishing the Energy Virtual One-Stop Shop for the Purpose of Streamlining the Permitting Process of Power Generation, Transmission, and Distribution Projects (2019).

> The ordinary household within the Greater Metro Manila Area consumes 200 kilowatt hours per month. Thus, shaving off P1 per kWh would translate into an annual savings of P2,400 for that family. An extra P2,400 can do a lot for a family. That is enough to buy an entire 50-kilogram sack of rice with some extra cash to spend on tuition and supplies for the children, healthcare, and other essentials.
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> On the macro level, just imagine the overall savings for the entire population each year. P2,400 multiplied by 23 million Filipino households. That amounts to a total consumer savings figure of P55.2 billion per year![35] (Emphasis supplied)

Even prior to the enactment of Republic Act No. 11234, there were statutes mandating the efficient processing of permits, some of which were discussed in the *ponencia*.[36] Foremost is Republic Act No. 9485,[37] or the Anti-Red Tape Act of 2007, the governing law at the time Executive Order No. 30 was issued, and the predecessor statute of Republic Act No. 11032,[38] or the Ease of Doing Business and Efficient Government Service Delivery Act of 2018. The declared policy of the Anti-Red Tape Act is to adopt "simplified procedures that will reduce red tape and expedite transactions in government."[39] Remarkably, the Anti-Red Tape Act provides an even shorter period for processing applications or requests, with simple transactions given a maximum processing period of five working days and 10 working days for complex transactions.[40]

For energy projects in particular, the DOE is vested with the authority to supervise and control all government activities[41] to provide continuous, adequate, and economic supply of energy,[42] one of the primary policy objectives of Republic Act No. 7638.[43] Section 23 of Republic Act No. 7638 likewise empowers the DOE to request the relevant government agencies to act upon and resolve matters relating to the approval of its projects within 10 calendar days. The DOE Secretary, with the approval of the President, is authorized to establish an interagency secretariat for the purpose of expediting the approval of these projects—much like the creation of the EICC under Executive Order No. 30, which is tasked to "harmonize, integrate and

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35 Journal, Senate, 17th Congress, 1st Regular Session (May 10, 2017), p. 1440, *available at* https://legacy.senate.gov.ph/lisdata/2597322329!.pdf.

36 *Ponencia*, pp. 22–24.

37 An Act to Improve Efficiency in the Delivery of Government Service to the Public By Reducing Bureaucratic Red Tape, Preventing Graft and Corruption, and Providing Penalties Therefor (2007).

38 An Act Promoting Ease of Doing Business and Efficient Delivery of Government Services, Amending for the Purpose Republic Act No. 9485, Otherwise Known As the Anti-Red Tape Act of 2007, and For Other Purposes (2018).

39 Republic Act No. 9485 (2007), sec. 2.

40 *Id.*, sec. 8(b)(1). This has since been amended by Republic Act No. 11032, which prescribes three working days for simple transactions, seven working days for complex transactions, and 20 working days for highly technical applications and applications or requests involving activities which pose a danger to public health, public safety, public morals and public policy. *See* Republic Act No. 11032 (2018), sec. 9(b)(1).

41 Republic Act No. 7638 (1992), sec. 5(d).

42 *Id.*, sec. 2.

43 An Act Creating the Department of Energy Rationalizing the Organizations and Functions of Government Agencies Related to Energy and for Other Purposes, otherwise known as the "Department of Energy Act of 1992" (1992).

streamline regulatory processes, requirements and forms relevant to the development of energy investments in the country."[44]

At the risk of being repetitive, the measures under Executive Order No. 30 are only baselines—a standard that concerned government agencies should conform to, without compromising the substantive requirements for the issuance of a permit. Providing for definite timelines allows the project proponent and the government to plan and allocate their resources accordingly. It also improves efficiency, fosters reliability on government processes, and improves the delivery of public services. Given these, there should be no dispute that the reduction of bureaucracies and delays in the issuance of permits is within the President's power of control over executive departments, as well as his duty to ensure that the laws are faithfully executed.[45]

III.

What constitutes an EPNS under Executive Order No. 30 is determinable by clear and objective criteria

I also agree with the *ponencia* that Executive Order No. 30 establishes measurable and objective standards to identify an EPNS. As the *ponencia* ruled, Section 2(a) of Executive Order No. 30 classifies energy projects with a capital investment of at least PHP 3.5 Billion as an EPNS. This, by itself, is a sufficient benchmark to determine what projects may qualify, especially when taken in consideration with the rest of the criteria enumerated in Section 2(b) to (g).[46]

As well, aside from the enumerated attributes of an EPNS, Executive Order No. 30 provides that the energy project must conform with "the policy thrusts and specific goals of the [Philippine Energy Plan (PEP)]."[47] The PEP is an exhaustive policy roadmap for the government's plans, programs, and projects in the energy sector. It sets out the short, medium, and long-term action plans for achieving the supply and demand targets for a certain period. To my mind, this provides more than substantial context in determining whether a project is of national significance.

At this juncture, it bears noting that the DOE, on December 10, 2020, temporarily suspended the further issuance of CEPNS in order to assess the effectiveness of this measure in facilitating the expeditious processing of

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44 Executive Order No. 30, sec. 3.
45 CONST., art. VII, sec. 17.
46 *Ponencia*, p. 34.
47 Executive Order No. 30, sec. 2.

regulatory permits, licenses, endorsements, and other requirements.[48] The DOE resumed the issuance of CEPNS following the creation of the EVOSS by virtue of Republic Act No. 11234. While Executive Order No. 30 remained effective, the integration of the EVOSS in the permitting process necessitated the issuance of a revised framework for processing applications for CEPNS. Thus, the DOE issued Department Order No. DO2024-04-0003, titled "Prescribing the Framework and Guidelines for the Processing of Applications for [CEPNS]".

Attached as Annex "B" of DOE Department Order No. DO2024-04-0003 is the "Reference for Evaluation of EPNS Attributes", which provides a non-binding guide in evaluating applications for CEPNS. The attributes include, among others, a minimum equivalent capacity that should be financed by a minimum capital investment of PHP 3.5 Billion (e.g., 13 MW for nuclear power plants and 38 MW for wind projects). For the other attributes, Annex "B" of DOE Department Order No. DO2024-04-0003 lays down the following guidelines:

. . . .

b. Significant contribution to the country's economic development; *Provided,* That this pertains to the potential of the project to promote greater access to energy and energy supply security of the country.

Aside from promoting greater energy supply security and access to energy, a project must contribute to wealth creation for the country through the following:

i. ER 1-94 Benefits to Host Communities of at least PhP22 million annually; and/or,
ii. Contribution to National Wealth Tax of at least PhP100 million annually;

c. Significant consequential economic impact, which pertains to the potential of the project to generate jobs, employment, and increased revenue for the government, among others.

A project has the potential to generate jobs quantified by the number of workers employed, and/or contribution to providing greater access to electricity in off-grid areas as follows:

i. Contribute to local job generation of at least 150 workers (during operation including indirect employment) and 1,000 workers during construction;
ii. Potential for Micro-Grid in areas offered for Micro-Grid Service Providers in unserved and underserved areas, either

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[48] EICC Advisory dated December 10, 2020, Re: Suspension of the Issuance of Certificate of Energy Project of National Significance, *available at* https://doe.gov.ph/sites/default/files/pdf/announcements/Advisory-on-the-suspension-of-the-issuance-of-cepns.pdf.

declared by the DOE or identified by the distribution utility as such, in support of productive use of electricity;

iii. Funded by grants of business communities and bilateral or multilateral financial institutions; and/or

iv. Investment by LGUs or mandated GOCCs.

d. Significant potential contribution to the country's balance of payment, wherein the project can contribute to the inflow of foreign investment capital;

A project must have the potential to contribute to the inflow of foreign investment capital and reduction in the country's balance of payments:

i. At least 40% Foreign Investment of total project investment; and

ii. Contribution to reduction of energy imports.
   a. Equivalent avoidance of at least or in excess of 2.0 billion cubic feet of [Liquefied Natural Gas] annually;
   b. Equivalent avoidance of at least or in excess of 180,000 barrels of oil annually;

e. Significant impact to the environment, that is, the project has potential to contribute to sustainability with minimal adverse effects to the environment;

A project with the potential to contribute to energy infrastructure sustainability and/or with minimal adverse effects to the environment through:

i. Entry of climate-resilient energy facilities; and

ii. Contribute to the Greenhouse Gas (GHG) emission reduction/avoidance of at least 200 thousand tons (Kton) of CO2 equivalent;

f. Significant complex technical processes and/or engineering designs, wherein the project involves newly developed or pioneering energy systems and/or technologies;

A project introducing new and emerging energy technologies and/or pioneering energy systems as determined by the following:

i. Entry of new and emerging technologies with higher efficiency factors than existing ones:

   a. Oil-based at 40.0 percent (existing 25.0 - 40.0 percent);
   b. Gas Turbine at 40.0 percent (existing 33.0 percent – 38.0 percent);
   c. [Combined Cycle Gas Turbine] at 60.0 percent (existing 33.0 – 50.0 percent); and
   d. Biomass 40.0 percent (existing 87.0 – 91.0 percent).

ii. Pioneering Projects; or

g. Significant infrastructure requirement, when the associated infrastructure necessary for the delivery of energy services and/or supply, such as, but not limited to, transmission and distribution networks.

A project with associated infrastructure necessary for the delivery of energy services and supply, which can be realized through the following:

i. With associated infrastructure, such as alternative transmission corridors and pipeline;
ii. Government Priority Projects which relate to the delivery of energy services and/or supply; and
iii. Project completion by the end of the year as required by the energy systems.

With these parameters under DOE Department Order No. DO2024-04-0003, there can be no more doubt as to what constitutes an EPNS. The discretion of the EICC to issue CEPNS to project proponents is clearly circumscribed by the objective criteria under the revised guidelines.

IV.

Based on the foregoing, Executive Order No. 30 does not seek to impair the duty of government agencies to ensure that proponents of energy projects are compliant with the relevant laws, especially environmental statutes. It does not also dispense with any statutory requirement for energy projects, even those issued with CEPNS. At its core, Executive Order No. 30 was issued to make the unreliable government processing times more reliable, to expedite action on pending permit applications, and to minimize further losses in investment in the energy sector. Streamlining the procedure of relevant government agencies is within the President's constitutional power of control over the executive department, as well as under the President's constitutional duty to ensure that laws are faithfully executed.

ACCORDINGLY, I concur with the dismissal of the Petition.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice