

EXPEDITING COAL EXPANSION IN THE GUISE OF DEVELOPMENT AND AT THE COST OF HUMAN RIGHTS

A Policy Brief on Executive Order No. 30, Series of 2017

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On 28 June 2017, President Rodrigo Duterte issued Executive Order No. 30, Series of 2017, which created the Energy Investment Coordinating Council (EICC). The EICC will lead the streamlining of processes in obtaining permits and regulatory approvals from concerned government agencies to expedite the implementation of Energy Projects of National Significance (EPNS) towards economic growth and development. The issuance is based on the policy to ensure the quality, reliability, security, and affordability of the supply of electric power.

1. Major energy projects, whether upstream (exploration, pre-development, and development stage) or downstream (generation, transmission, and distribution)¹, which possess any of the following attributes:

- a. Significant capital investment of at least P3.5 Billion;
- b. Significant contribution to the country's economic development (potential to promote greater access to energy);²
- c. Significant consequential economic impact (potential to generate jobs and increase gov't revenues);
- d. Significant potential contribution to the country's balance of payment (potential to contribute to the inflow of foreign investment capital);

- e. Significant impact on the environment (potential to contribute to sustainability with minimal adverse effects to the environment);
- f. Complex technical processes and engineering designs (newly developed or pioneering energy systems and/or technologies); or
- g. Significant infrastructure requirements.

2. Identified and endorsed by the DOE; and

3. In consonance with the policy thrusts and specific goals of the Philippine Energy Plan (PEP).

Once certified, an EPNS is granted the following rights:³

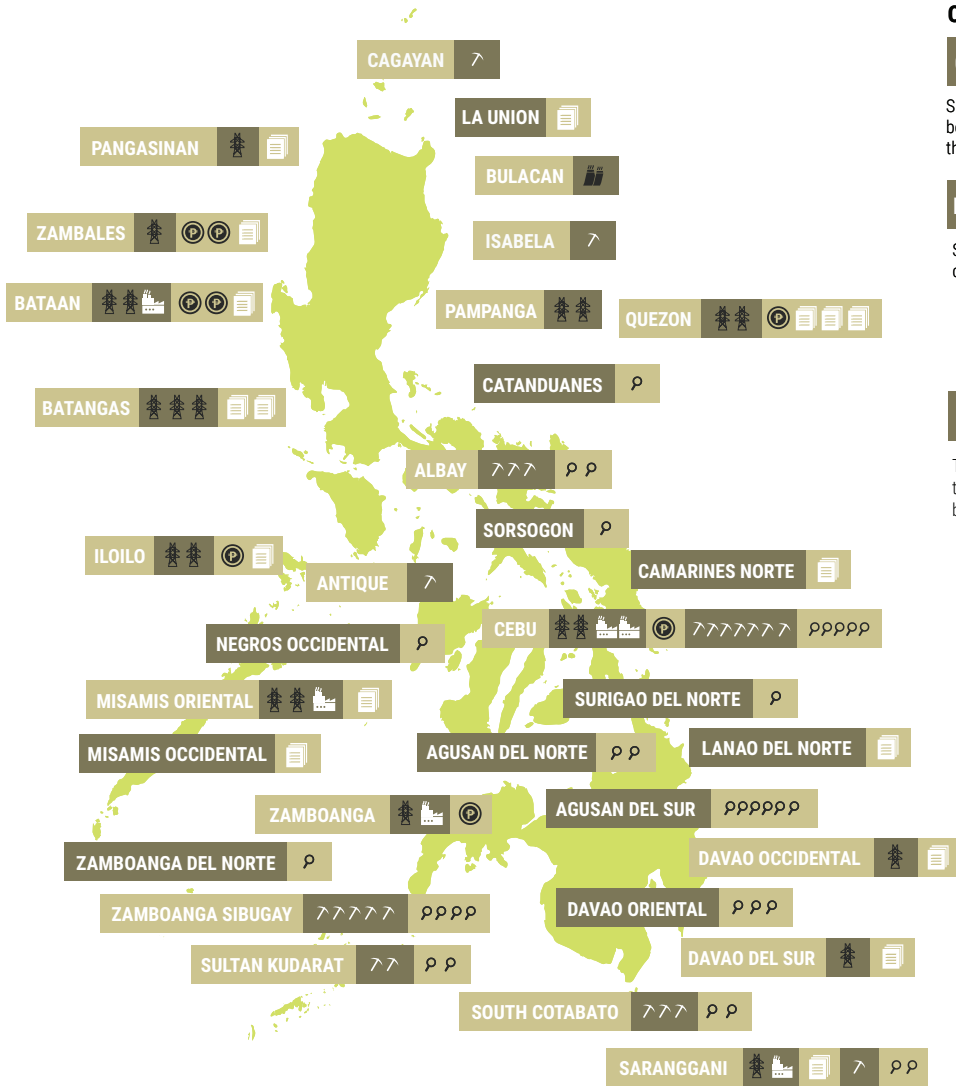
1. **Presumption of prior approvals**, wherein an approving authority shall act on the presumption that relevant permit/s from other approving authority/ies had already been issued, without awaiting action;
2. **Action within 30 days**, wherein an approving authority shall act upon an application for relevant permits within 30 days from the submission of complete documentary requirements. Should the application be denied, the denial should be made in writing, expressly providing the grounds therefor; and
3. **Automatic approval**, wherein if no decision is made within 30 days, an 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 this period is allowed except when absolutely necessary. However, if it is the proponent's application which has a defect or lapses in substance and form, the proponent is given appropriate time to take necessary actions.

¹ DOE Department Order No. 002018-04-0008, Operationalizing the Procedures for the Effective and Efficient Implementation of E030, Part IV, secs. 7-8, 25 April 2018.

² Additional details in parenthesis are provided in DOE Department Circular No. 2018-04-0013, Implementing Rules and Regulations of Executive Order No. 30, Series of 2017, Creating the EICC in order to Streamline the Regulatory Procedures Affecting Energy Projects [E030 IRR], Part II, Rule 5, 25 April 2018.

³ In order to facilitate these rights, E030 mandates all concerned approving authorities to implement new rules for the processing of permits in accordance with the expedited timeframes, and the presumption and automatic approvals.

COAL IN THE PHILIPPINES



COAL-FIRED POWER PLANTS

OPERATING

GRID-CONNECTED

Supplies power outside of its own boundaries by connecting to one of the three major grids.

EMBEDDED

Supplies power within a limited distribution network.

IN THE PIPELINE

COMMITTED

Projects which already have a firm financial backing.

INDICATIVE

Projects which are still in the process of securing regulatory permits or financial closing.

COAL OPERATING CONTRACT HOLDERS

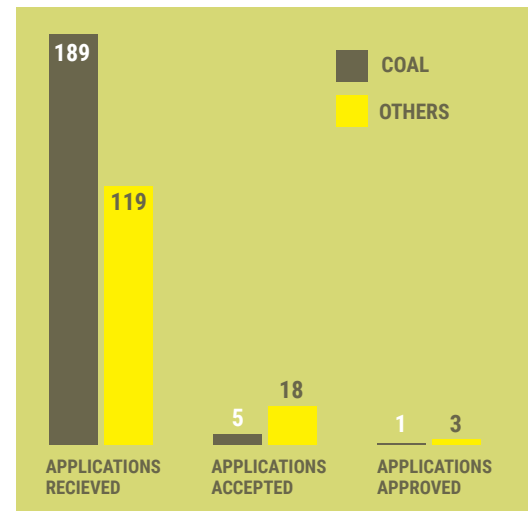
FOR DEVELOPMENT

Those that process the mined coal so that they can be used by other businesses such as coal plants.

FOR EXPLORATION

Those that explores sites to see if they can mine coal in the area.mu

EPNS Applications as of 20 September 2018



CERTIFIED ENERGY PROJECTS OF NATIONAL SIGNIFICANCE

1 | 8 May 2018

Visayas-Mindanao Interconnection Project (VMIP) in Sibonga, Cebu and Aurora, Zamboanga del Sur by the National Grid Corporation of the Philippines.

2 | 10 August 2018

Kalinga Geothermal Project in Lubuagan, Pasil, and Tinglayan, Kalinga Province by Aragorn Power and Energy Corporation (APEC).

3 | 30 August 2018

Talim Wind Power Project in Talim, Rizal Province by Island Wind Energy Corporation.

4 | 11 September 2018

Atimonan One Coal-Fired Power Plant in Atimonan, Quezon Province by Atimonan One Energy, Inc. (A1E).

The 2x600 MW Coal-Fired Power Plant heavily opposed by affected communities, electric consumers, and concerned civil society organizations, for its irregularity-ridden Environmental Compliance Certificate (ECC) and anomalous Power Supply Agreement (PSA).

Criminal and administrative complaints filed against ERC Commissioners involved in accepting A1E's PSA have been suspended.

An unconstitutional order

EO30 is unconstitutional for violating the principle of separation of powers, which demarcates three fundamental powers: the power to make, alter, or repeal to the Legislative branch, the power to carry out laws to the Executive branch, and the power to evaluate laws and settle controversies to the Judicial branch. Meanwhile, the issuance of implementing rules and regulations (IRRs) is a delegated legislative power.

The right to action within 30-days is an exercise of legislative power by the Executive Branch because it alters existing timeframes in relevant laws and IRRs. Although there are constitutionally-granted exceptions that allow the President to exercise legislative powers,⁴ none of these instances are applicable in the case of EO30.

Grants unbridled discretion, exposes to abuse of discretion

The definition of EPNS is too broad and vague. The attributes that require significant capital investment, contribution to economic development, environmental impacts, and more, do not provide for a sufficient measurable criteria. Thus, the EICC granted unbridled discretion on what is "significant" to be considered as an EPNS.

When an authority is granted unbridled discretion, it exposes a process to abuse of discretion. Although an energy project might not necessarily be of national significance, the EICC may abuse its discretion and certify it as EPNS. The Atimonan One Coal-Fired Power Plant Project, for instance, despite the strong and numerous oppositions to its implementation, the use of coal for the next two decades, the huge projected GHG emissions, and the expensive cost of electricity was certified as EPNS.

Expedites coal expansion

EO30 states as legal basis only the Electric Power Industry Reform Act (EPIRA) but not the Renewable Energy Act or the Climate Change Act, and, consequently, provides no preference for renewable energy as EPNS. Without including a clear preference for renewable energy or a prohibition on fossil fuels to be certified as EPNS, EO30 allows for the rapid expansion of more coal projects. Although this may be in line with our Power Energy Plan (PEP), it should be noted that under a Clean Energy Scenario, the PEP projects fossil fuels to still be the primary energy source by 2040 at 78.81% and renewable energy at 21.19%.

RELEVANT PERMITS PROCESSED FOR A PERIOD LONGER THAN 30 DAYS

ECC for new, and existing for modification of re-start up and operating without ECC.	90-165 working days (PD No. 1586, Revised Procedural Manual)
Free, Prior and Informed Consent (FPIC)	In accordance with their respective customary laws and practices (RA No. 8371, sec. 3(g))
Special Land use Permit (SLUP) for Areas 100 hectares and above.	58 working days (FAO 8-3, as amended)
Forest Land use Agreement (FLAg)	48 working days (Process flowchart of EMB Region V)
Land Use Conversion Permit	70-130 working days (2002 Comprehensive Land Use Conversion)
Water Permit Application	90 days (Water Code IRR, Sections 8-11)
Certificate of Compliance for generating companies	60 calendar days (ERC Resolution No 16, Series of 2014, Article III, Section 1)
Retail Electricity Suppliers' License	60 working days (Revised Rules for the Issuance of Licenses to Retail Electricity Suppliers (RES), Article III, Section 1)
Petroleum Service Contract	45 working days (DOE Citizen's Charter 2016)

⁴ Phil. Const., Article VI, secs. 23 and 28

Prioritizes “development” over human rights and ecological limits

Most of the important permits for an energy project require scoping, assessments, consultations, and/or reviews under their respective governing laws and rules. These processes, which would take more than 30 days, are crucial as they serve as safeguards and measures to protect human rights including the right to a balanced and healthful ecology. By granting right to action within 30 days which circumvent these safeguards and measures, EO30 promotes “development” over human rights and ecological limits in the guise of national significance.

This “development” also disregards the precautionary principle, which states that when human activities may lead to threats of serious and irreversible damage to the environment that is scientifically plausible but uncertain, actions shall be taken to avoid or diminish that threat; and the usual procedural presumption that when applications are not acted upon within a specified time period, these applications are deemed denied or rejected.

Revoke EO30

Genuine development places the interests and rights of the people front and center. If certain energy projects are granted rights to action within 30 days and presumption and automatic approval, it will compromise the integrity of existing safeguards and measures, and will allow energy projects to proceed despite potentially harming the people and their environment. “Development” will be at the cost of human rights.

Improve enforcement of existing rules

Existing rules already provide for specific periods for the processing and approval of permits, which were determined by the approving authorities that have the technical expertise on the matter. This procedure must be respected to ensure that the people and the environment are protected. However, these timeframes are usually not complied with thus, causing delays. The solution should be to improve the enforcement of existing rules instead of imposing a stringent 30-day period, and a presumption and automatic approval.

Integrate a Just Transition Framework in energy policies

By ratifying the Paris Agreement and submitting an ambitious Intended Nationally Determined Contribution, the Philippines committed to transition into a low-carbon economy and society. Thus, should the government choose to certify certain projects as EPNS, these energy projects should be limited to clean and affordable renewable energy projects in order to facilitate the expedient and just transition.

⁵ CEED has published a paper on Just Transition entitled “Just Transition in the Philippines”, which proposes a Just Transition Framework in the Philippines. A full version of the paper may be downloaded from CEED’s website: www.ceedphilippines.com.

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