



Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

Thirteenth Congress
First Regular Session

HOUSE BILL NO. 4395



Introduced by Honorable Roger G. Mercado

EXPLANATORY NOTE

This bill seeks to lift the restrictions which disallow electricity generating companies from owning and operating electric transmission facilities, amending for the purpose Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA).

The EPIRA Law was enacted to ensure the quality, reliability, security and affordability of the supply of electric power. The law declared as policies of the State, the promotion of the utilization of indigenous and new and renewable energy resources in power generation in order to reduce dependence on imported energy, and the enhancement of the inflow of private capital and broadening of the ownership base of the power generation, transmission and distribution sectors of the electric power industry.

However, the EPIRA law also provided for restrictions on cross ownership and control between electricity generating companies and transmission companies. Emerging power generating and energy exploration firms consider these restrictions detrimental to their business because the restrictions constrain them from putting up transmission facilities which are essential in bringing the electricity that they produce to the consumers and, as such, negate the mentioned state policies as declared by the EPIRA law.

Aggressive participation of the private sector in the electric power industry must be encouraged by the government in order for the country to secure adequate electric power supply for its long-term requirements. Because of the huge budget deficit of the government, it cannot afford to finance the cost needed to develop the electric power industry. The private sector must be encouraged to infuse fresh capital into the electric power industry for the government to be able to utilize existing finances to fund other vital projects such as education, health, and infrastructure development.

To encourage the investment of capital into the electric power industry, the restrictions on co-ownership and control, which players in the electric power industry, particularly those in the electric generation sector, found to be detrimental must be lifted.

Lifting the restrictions on cross ownership between generating companies and transmission companies by amending the EPIRA law shall create a more conducive business environment for prospective investors in the electric power industry. Likewise, the policies declared in the EPIRA law could be better pursued with such amendments.

In view of the foregoing, approval of this bill is earnestly encouraged.

A handwritten signature in black ink, appearing to read 'R. Mercado', with a long horizontal flourish extending to the right.

ROGER G. MERCADO



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AN ACT
LIFTING THE RESTRICTIONS ON ELECTRICITY GENERATING
COMPANIES TO BUILD ELECTRIC TRANSMISSION
FACILITIES, AMENDING FOR THE PURPOSE THE ELECTRIC
POWER INDUSTRY REFORM ACT OF 2001.

Be it enacted by the Senate and House of Representatives of the Philippines
in Congress Assembled:

SECTION 1. Section 45 of Republic Act No. 9136, is hereby amended to read as follows:

"Sec. 45. [Cross Ownership,] Market Power Abuse and Anti-Competitive Behavior. – No participant in the electricity industry or any other person may engage in any anti-competitive behavior including, but not limited to, cross-subsidization, price or manipulation, or other unfair trade

practices detrimental to the encouragement and protection of contestable markets.

[No generation company, distribution utility, or its respective subsidiary or affiliate or stockholder or official of a generation company or distribution utility, or other entity engaged in generating and supplying electricity specified by ERC within the fourth civil degree of consanguinity or affinity, shall be allowed to hold interest, directly or indirectly in TRANSCO or its concessionaire. Likewise, the TRANSCO, or its concessionaire or any of their relatives within the fourth civil degree of consanguinity or affinity, shall not hold any interest, whether directly or indirectly, in any generation company or distribution utility. Except for ex officio government-appointed representatives, no person who is an officer or director of the TRANSCO or its concessionaire shall be an officer or director of any generation company, distribution utility or supplier.]

[An "affiliate" means any person which, alone or together with any person, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person. As used herein, "Control" shall

mean the power to direct or cause the direction of the management policies of a person by contract, agency or otherwise.]"

To promote true market competition and prevent harmful monopoly and market power abuse, the ERC shall enforce the following safeguards:

a) No company or related group can own, operate or control more than thirty percent (30%) of the installed generating capacity of a grid and/or twenty-five percent (25%) of the national installed generating capacity. "Related group" includes a person's business interests, including its subsidiaries, affiliates, directors or officers or any of their relatives by consanguinity or affinity, legitimate or common law, within the fourth civil degree;

b) Distribution utilities may enter into bilateral power supply contracts subject to review by the ERC: *Provided*, That such review shall only be required for distribution utilities whose markets have not reached household demand level. For the purpose of preventing market power abuse between associated firms engaged in generation and distribution, no

distribution utility shall be allowed to source from bilateral power supply contracts more than fifty percent (50%) of its total demand from an associated firm engaged in generation but such limitation, however, shall not prejudice contracts entered into prior to the effectivity of this Act. An associated firm with respect to another entity refers to any person which, alone or together with any other person, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such entity; and

c) For the first five (5) years from the establishment of the wholesale electricity spot market, no distribution utility shall source more than ninety percent (90%) of its total demand from bilateral power supply contracts.

For purposes of this Section, the grid basis shall consist of three (3) separate grids, namely Luzon, Visayas and Mindanao. The ERC shall have the authority to modify or amend this definition of a grid when two or more of the three separate grids become sufficiently interconnected to constitute a single grid or as conditions may otherwise permit.

"[Exceptions from these limitations shall be allowed for isolated grids that are not connected to the high voltage transmission system. Except as otherwise provided in this Section, any restriction on ownership and/or control between or within sectors of the electricity industry may be imposed by ERC only insofar as the enforcement of the provisions of this Section is concerned.] x x x"

SEC. 2. This Act shall take effect upon its approval.

Approved,