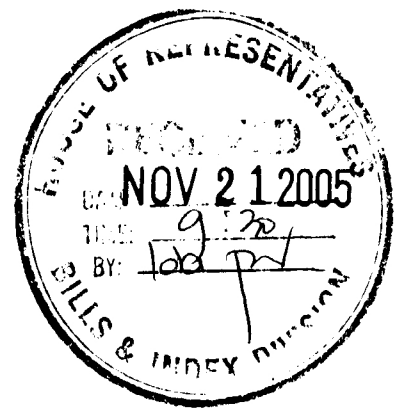


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

THIRTEENTH CONGRESS
SECOND REGULAR SESSION

HOUSE BILL NO. 4908



INTRODUCED BY HONORABLE ROGER G. MERCADO

EXPLANATORY NOTE

This bill seeks to amend certain provisions of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act (EPIRA) of 2001 to make the law more responsive to the challenges that have confronted in its actual implementation over the years.

The amendment to Section 9, on the Functions and Responsibilities of TRANSCO, allows TRANSCO to put up transmission lines for missionary areas that can be connected to the grid or those already connected to Transco's main inter-island to spur economic development in these areas.

The Municipality of Cabalian in Southern Leyte, for example, is a sixth class municipality with a population of more or less ten thousand (10,000). At present, it is considered a missionary area because its low population makes it an unviable area for electrification. However, there is a potential 60-100 MW geothermal plant that PNOC-EDC, a government-owned and -controlled corporation engaged in the exploration and development of geothermal resources, is considering as part of its new project. Once the geothermal plant is operational, we foresee that Cabalian will enjoy the attendant economic and downstream activities brought about by having electricity. With adequate power supply, post-market facilities, piers, and other commercial establishments can now thrive in the area. This, in turn, can spur the municipality's development.

However, the PNOC-EDC's plant will just produce electricity which still needs transmission line facilities to be connected to the Leyte grid. Since TRANSCO is mandated to ensure and maintain the reliability, adequacy, security, stability and integrity of the nationwide electrical grid, it must be allowed to invest in the expansion of its transmission lines to include missionary areas to be connected to the grid.

The amendment to Section 45 will exempt generating companies utilizing or producing power from site-specific indigenous and renewable energy from the market share limitations. This will serve as a boost to the development of indigenous and renewable energy resources, consistent with Section 2(h) of the EPIRA, which is "to promote the utilization of indigenous and new and renewable energy resources in power generation in order to reduce dependence on imported energy".

The use of indigenous and renewable energy resources has important economic advantages. As we reduce dependence on imported fuel, the country is able to generate much-needed foreign exchange savings and we also reduce our exposure to fluctuations in the international prices of imported fuels.

Moreover, indigenous and renewable resources are considered environmentally-friendly sources of energy. Their use supports the plan during the Johannesburg Earth Summit of 2002 to accelerate the development of renewable energy resources for the reduction of greenhouse gas emissions causing global warming. This also provides the country an opportunity to avail of the Clean Development Mechanism (CDM) facility under the Kyoto Protocol.

Another exemption from the market share limit proposed in Section 45 is when there is a temporary or permanent shutdown or non-operation of other generating facilities, which is already beyond the control of the plant owner/operator. The temporary or permanent shutdown of other generating facilities reduces the total installed capacity in the grid, with a consequential effect of increasing the market share of an owner/operator. Since the breach of market share limitation was not due to any action by the owner/operator, penalties such as divestment which can be particularly severe if contracts and ability to service loan obligations by the owner/operator are impaired, should not be imposed.

The energy sector is a capital-intensive industry. Investments for a power plant averages about US\$ 1 million to US\$ 2million per megawatt, and the gestation period is about three (3) to five (5) years. With the time and money invested in such power plants, it is difficult to penalize power plant owner/operator for factors, such as the shutdown of other plants, beyond their control.

In view of the foregoing and in order to adapt to the dynamics in the energy sector, early approval of this bill is earnestly requested.

A handwritten signature in black ink, appearing to read 'Roger G. Mercado', with a stylized, flowing script.

ROGER G. MERCADO

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THIRTEENTH CONGRESS
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“AN ACT
AMENDING SECTIONS 9 AND 45 OF REPUBLIC ACT NO. 9136, OTHERWISE KNOWN AS
THE ELECTRIC POWER INDUSTRY REFORM ACT (EPIRA) OF 2001,
AND FOR OTHER PURPOSES”

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

Section 1. Section 9 of Republic Act No. 9136 is hereby amended to read as follows:

“Sec. 9. Functions and Responsibilities. – Upon the effectivity of this Act, the TRANSCO shall have the following functions and responsibilities:

- (a) Act as the system operator of the nationwide electrical transmission and subtransmission system, to be transferred to it by NPC;
- (b) Provide open, equal and non-discriminatory access to its transmission system to all electricity users;
- (c) Ensure and maintain the reliability, adequacy, security, stability and integrity of the nationwide electrical grid in accordance with the performance standards for the operation and maintenance of the grid, as set forth in a Grid Code to be adopted and promulgated by the ERC within six (6) months from the effectivity of this Act;
- (d) Improve and expand its transmission facilities, consistent with the Grid Code and the Transmission Development Plan (TDP) to be promulgated pursuant to this Act, to adequately serve generation companies, distribution utilities and suppliers requiring transmission service and/or ancillary services through the transmission system: Provided, That EXPANSION SHALL INCLUDE PUTTING UP TRANSMISSION LINES FOR MISSIONARY AREAS THAT CAN BE CONNECTED TO THE GRID OR THOSE ALREADY CONNECTED TO TRANSCO'S MAIN INTER-ISLAND CABLES IN ORDER TO SPUR ECONOMIC DEVELOPMENT IN THESE AREAS; PROVIDED, FURTHER, THAT UPON COMMERCIAL OPERATION OF THE GENERATING

FACILITY IN THESE AREAS, OWNERSHIP OF THE TRANSMISSION LINES SHALL BE TRANSFERRED BY TRANSCO TO THE GENERATING FACILITY AT A FAIR MARKET PRICE; PROVIDED, FINALLY, THAT TRANSCO shall submit any plan for expansion or improvement of its facilities for approval by the ERC;

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Sec. 2. Section 45 of RA 9136 is also 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 market 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 any interest, directly or indirectly, in TRANSCO or its concessionaire. Likewise, the Transco, or its concessionaire or any of its stockholders or officials 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 representative, 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 other 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, AND ALSO UNDER THE FOLLOWING CONDITIONS:

1. FOR GENERATING COMPANIES UTILIZING OR PRODUCING POWER FROM SITE-SPECIFIC INDIGENOUS AND RENEWABLE ENERGY RESOURCES, SUCH AS BUT NOT LIMITED TO HYDRO, GEOTHERMAL AND WIND, TO PROMOTE THE UTILIZATION AND DEVELOPMENT OF INDIGENOUS AND RENEWABLE ENERGY RESOURCES AND REDUCE DEPENDENCE ON IMPORTED ENERGY; OR
2. IF BREACH OF MARKET SHARE LIMITS IS DUE TO THE TEMPORARY OR PERMANENT SHUTDOWN OR NON-OPERATION OF OTHER GENERATING FACILITIES, WHICH REDUCES THE TOTAL INSTALLED CAPACITY IN THE GRID WITH A CONSEQUENTIAL EFFECT OF INCREASING THE MARKET SHARE OF AN OWNER/OPERATOR.

Except as otherwise provided for in this Section, any restriction on ownership and/or control between or within sectors of the electricity industry may be imposed by ERC insofar as the enforcement of the provisions of this Section is concerned.

x x x

SEC. 3. Effectivity. This Act shall take effect fifteen (15) days after its complete publication in at least One (1) newspaper of general circulation.

Approved,