

HOUSE OF REPRESENTATIVE
H.B. No. 3081

Authored by HON. PETER "Sr. Pedro" UNABIA

EXPLANATORY NOTE

"AN ACT AMENDING SECTIONS 47, 57, 58, AND 70 OF REPUBLIC ACT NO. 9136 ENTITLED "ELECTRIC POWER INDUSTRY REFORM ACT."

This bill represents the views of the Mindanao Electric Cooperatives as far as amending the Electric Power Industry Reform Act or EPIRA. The contents of this measure were based on the letter of the Association of Mindanao Rural Electric Cooperatives, Inc (AMRECO) which tackled several provisions in the EPIRA that the association deems amended. Based on our dialogues with some leaders of the ECs in Misamis Oriental, the following proposed amendments appear to be the more important items, wit:

1. Ultimately Exempting the Agus & Pulangui Complexes from Privatization.
While there are pronouncements of the executive branch that privatization of the Agus & Pulangui Complexes in Mindanao will no longer proceed as a prerogative, we want it declared in permanence. There are studies made which strongly supports the theory that privatizing the said hydro-electric plants will definitely increase the already high power rates in Mindanao. Accordingly, the latest act of privatizing some assets like those power barges aggravated the power crises in Mindanao since there already was a shortage of supply. In fact, some sectors are further pushing the idea that a portion of the generated capacity of these same plants shall be devoted for the marginalized consumers.
2. Clarifying the Provision On the Registration of Electric Cooperatives Either with CDA, SEC or NEA as an Option by the Membership. Legislations mandating the registration of ECs under the Cooperative Development Authority are being resisted by the ECs in Mindanao as unnecessary and divisive. Accordingly, this issue dates back when the cooperative code was introduced in congress. According to some experts in the power industry, placing the supervision of ECs under the CDA will only defeat the missionary electrification function of these entities as the said agency lacks the technical capacity on a very specialized industry such as the power sector. Moreover, ECs will only be burdensome to CDA which is presently tasked to oversee thousands of other cooperatives. Clarifying the provision will be a

compromise to revisit the issue and to give the sense for membership self-determination.

3. The Privatization of Assets & Functions Under the Small Power Utilities Group (SPUG). Finally the circumstances of the operation of the SPUG which in actuality is a major concern and task of the island-based electric cooperatives in off-grid areas, can be examined. For the government to save costs, the National Power Corporation (NPC) which is currently operating these facilities should come up with a program of gradually transferring ownership of the assets associated to the SPUG operations, under the theme on privatization, to qualified electric cooperatives. ECs are private in nature and are already capable of running these facilities. If only to ensure the effective operation of the same, the NEA can supervise since as a matter of existing arrangement, NEA has also supervisory powers over the ECs. It is also our understanding that originally, the SPUG used to be an operation managed by the NEA until the decision to consolidate all generating facilities under one corporation.

Definitely a lot more provisions of the EPIRA will also be presented for amendment in the course of deliberating this bill. This has been manifested during the floor deliberations the subject of the same in fact dominated the discussions in the first week of congressional sessions.

Suffice it to say that the primary intention of this bill is to provide those that the ECs see as immediate steps for them to hasten the delivery of services in behalf of the government.

It is for these reasons that passage of this measure is earnestly sought.


PETER "Sr. Pedro" UNABIA

FIFTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

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AN ACT
AMENDING SECTIONS 47, 57, 58, AND 70 OF REPUBLIC ACT NO. 9136 ENTITLED
"ELECTRIC POWER INDUSTRY REFORM ACT."

Be it enacted by the senate and house of representative of the Philippines in congress assembled:

SECTION 1. The provision on privatization shall be amended to read as follows:

"SEC. 47. *NPC Privatization.* – Except for [the assets of SPUG] **THE AGUS & PULANGUI COMPLEXES**, the generation assets, real estate, and other disposable assets as well as IPP contracts of NPC shall be privatized in accordance with this Act[.] **AND** [Within six (6) months from the effectivity of this Act, the PSALM Corp shall submit a plan for the endorsement by the Joint Congressional Power Commission and the approval of the President of the Philippines, on the total privatization of the generation assets, real estate, other disposable assets as well as existing IPP contracts of NPC and thereafter, implement the same, in accordance with] the following guidelines, except as provided for in Paragraph (f) herein:

- a. Xxx...
- b. Xxx
- c. Xxx
- d. Xxx
- e. Xxx

'(f) The Agus and the Pulangui complexes in Mindanao shall be excluded from among the generation companies that will be [initially] privatized. Their ownership shall be transferred to the PSALM Corp. and both shall continue to be operated by the NPC. Said complexes **SHALL BE RETAINED TO GENERATE POWER WHICH WILL SERVE AS BUFFER SUPPLY TO AVERT POWER CRISES. ELECTRIC COOPERATIVES SHALL BE PRIORITIZED IN CONTRACTING THESE COMPLEXES' CAPACITY TO SERVE THE NEED OF THE RESIDENTIAL CONSUMERS.** [may be privatized not earlier than ten (10) years from the effectivity of this Act, and except for Agus III, shall not be subject to Build-Operate-Transfer (B-O-T), Build-Rehabilitate-Operate- Transfer (B-R-O-T) and other variations thereof pursuant to Republic Act No. 6957, as amended by Republic Act No. 7718. The privatization of Agus and Pulangui complexes shall be left to the discretion of PSALM Corp. in consultation with Congress;]

'(g) Xxx...

'(h) Xxx...

'(i) Not later than three (3) years from the effectivity of this **AMENDATORY** Act, and in no case later than the initial implementation of open access, at least seventy percent (70%) of the total capacity of generating assets of NPC and of the total capacity of the power plants under contract with NPC located in Luzon and Visayas, **WITH THE EXCEPTION OF THOSE WHICH ARE EXCLUDED FROM PRIVATIZATION AND SALE BY THIS AMENDATORY ACT**, shall have been privatized : *Provided*, That any unsold [capacity shall be privatized not later than eight (8) years from the effectivity of this Act; and]**AT THE TIME OF THE APPROVAL OF THIS AMENDMENT SHALL BE RETAINED AS ASSETS OF NPC, AND ADMINISTERED BY PSALM THAT WILL SERVE AS ANCILLARY SERVICE PROVIDER OF THE LUZON AND VISAYAS GRID. AND;**

'j. NPC shall generate and sell electricity from the undisposed generating assets [and IPP contracts of PSALM Corp. and shall not incur any new obligations to purchase power through bilateral contracts with generation companies or other suppliers.] **AND SHALL CONSTRUCT AND MAINTAIN ADDITIONAL CAPACITY EQUIVALENT TO THE CAPACITY OF THE BIGGEST POWER PLANT IN EVERY GRID, FOR ANCILLARY PURPOSES AND TO STABILIZE THE GRID IN ANY GIVEN TIME THAT A BASE PLANT EXPERIENCE OUTAGE.**

SECTION 2. Section 57 of the EPIRA is hereby amended to read as follows:

" Sec. 57.-**OPTIONS** [Conversion] of Electric Cooperatives.- Electric Cooperatives are hereby given the option to convert to either stock cooperatives under Cooperatives Development Authority, or Stock Corporation under the Corporation Code, **OR TO REMAIN AS NON-STOCK, NON-PROFIT COOPERATIVES UNDER PD 269.**

IF THE ELECTRIC COOPERATIVES OPT TO BECOME A STOCK COOPERATIVE OR STOCK CORPORATION, THE SAID COOPERATIVES SHALL CONDUCT A REFERENDUM PURSUANT TO THE EXISTING REFERENDUM GUIDELINES DULY ISSUED BY THE NEA.

IF THE COOPERATIVES OPT TO REMAIN AS NON-STOCK, NON-PROFIT, THE SAID COOPERATIVES SHALL MANIFEST THEIR INTENT THRU A BOARD RESOLUTION. THE SAID COOPERATIVES SHALL CONTINUE TO BE REGISTERED UNDER NEA AND SHALL BE EXEMPT FROM ALL LOCAL AND NATIONAL TAXES AND FEES. FOR THIS PURPOSE, SECTION 193 OF R.A. 7160 OTHERWISE KNOWN AS THE LOCAL GOVERNMENT CODE OF 1991, AND OTHER LAWS INCONSISTENT HERewith, ARE HEREBY DEEMED AMENDED OR REPEALED.

Nothing contained in this act shall deprive the electric cooperatives of *OTHER* [any] privilege or right granted to them under Presidential Decree 269, as amended, and other existing laws.

SECTION 3. Section 58 Of EPIRA is hereby amended to read as follows:

"Sec. 58. *Additional Mandate of the National Electrification Administration (NEA).* – NEA shall develop and implement programs:

(a) To prepare electric cooperatives in operating and competing under the deregulated electricity market **AND IN AN OPEN ACCESS AND RETAIL COMPETITION ENVIRONMENT, INCLUDING SETTING UP MANAGEMENT SYSTEM, PROMOTING**

JOINT ACTIONS IN POWER PURCHASE POOLING, OPERATION OF SUB-TRANSMISSION LINES, SHARING OF COMMON SERVICE FACILITIES AND REGULATION-RELATED TRAINING AND TECHNICAL INTERVENTIONS, within five (5) years from the effectivity of this Act [, specifically in an environment of open access and retail wheeling];

(b) To **CONTINUE STRENGTHENING** [strengthen] the technical capability and financial viability of rural electric cooperative **AND FOR THAT PURPOSE, WITHIN ONE (1) YEAR FROM THE EFFECTIVITY OF THIS ACT, DEVELOP, SUBMIT AND IMPLEMENT PROGRAMS TO ENABLE THE ELECTRIC COOPERATIVES TO BE FINANCIALLY VIABLE AND INDEPENDENT**

(c) To [review and upgrade] **CREATE AN APPROPRIATE TECHNICAL STAFF TO ASSIST ELECTRIC COOPERATIVES IN CONDUCTING PERIODIC REVIEW OF RATES AND OTHER RELATED ACTIVITIES** [regulatory policies with a view to enhancing the viability of rural electric cooperatives as electric utilities] **AND**

(d) **TO ACT AS PLANNING AND IMPLEMENTING AGENCY INVOLVING MISSIONARY ELECTRIFICATION AND INTEGRATING GRID AND OFF-GRID EXPANSION PROGRAMS AND TO SUBMIT THE SAME TO DOE FOR REVIEW, APPROVAL AND PROPER IMPLEMENTATION.**

NEA shall continue to be under the supervision of the DOE and shall exercise its functions under Presidential Decree No. 269, as amended by Presidential Decree No. 1645, insofar as they are consistent with this Act.

SECTION 4. To continue the mandate of the government of serving the rural poor, section 70 of EPIRA shall be amended to read as follows:

“Sec. 70. Missionary Electrification. –[Notwithstanding the divestment and/or privatization of NPC assets, IPP contracts and spun-off corporations, NPC shall remain as a National Government-owned and -controlled corporation to perform the missionary electrification function through the Small Power Utilities Group (SPUG) and] .

THE MISSIONARY ELECTRIFICATION FUNCTIONS OF NPC-SPUG SHALL BE PERFORMED BY THE ELECTRIC COOPERATIVES UNDER THE SUPERVISION OF THE NATIONAL ELECTRIFICATION ADMINISTRATION. THIS SAME FUNCTION SHALL BE IN ACCORDANCE TO THE ADDITIONAL MANDATE OF NEA AS PROVIDED FOR BY SECTION 58 OF EPIRA AS AMENDED BY THIS ACT. NEA THROUGH THE ELECTRIC COOPERATIVES SHALL be responsible in providing power generation and its associated power delivery systems in areas that are not connected to the transmission system. The missionary electrification function shall be funded from the revenues from sales in missionary areas and from the universal charge to be collected from all electricity end-users as determined by the ERC.

SECTION 5. Separability Clause. If for any reason, any provision of this Act is declared unconstitutional or invalid, the other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

SECTION 6. Effectivity Clause. This Act shall take effect on the fifteenth (15th) day following its publication in at least two (2) newspapers of general circulation.

Approved