

Republic of the Philippines
House of Representatives

Quezon City, Metro Manila

SIXTEENTH CONGRESS
First Regular Session

House Bill Number **3958**



Introduced by Representative EDGARDO 'ERM' RAMA MASONGSONG

EXPLANATORY NOTE

"AN ACT AMENDING REPUBLIC ACT NO. 9136, OTHERWISE KNOWN AS THE "ELECTRIC POWER INDUSTRY REFORM ACT OF 2001 OR EPIRA", AND FOR OTHER PURPOSES"

This legislative measure is a collation of various proposals from the stakeholders in the power industry. It is admitted that putting all those into one final piece of a proposed bill is not a walk in the park. The proposals collected vary to an extent in terms of ways in pursuing reforms. Take for example the Mindanao sentiment for the provisions on privatization of National Power Corporation (NPC) Plants; we realize that the word "privatization" has taken some various forms of definition. For the greater number of consumers, the word has assumed notoriety because it would mean selling the Agus and Pulangui Hydro Complexes to a few people and easily drive rates to skyrocketing heights. Privatization to the same people in Mindanao, would also mean letting go of these assets in the same fashion and outcome as the disposal of the power barges 117 and 118, previously owned by the NPC.

The recent submission of the Mindanao Coalition of Power Consumers (MCPC), in the Electric Power Industry Reform Act (EPIRA) review by the Department of Energy (DOE), enlightens us that what the people in Mindanao objects to is simply selling the Agus and Pulangui Hydro Complexes resulting to increase in rates. This means privatization could still be done for as long as it does not necessarily drive the rates high, and for as long as it does not result to a monopoly or oligopoly set up. This makes the proposal from the Association of Mindanao Rural Electric Cooperatives, Inc. (AMRECO) palatable since it promoted the principle EPIRA espouses of widening the ownership base by maintaining ownership of the same resources with the people, linking the process to the creation of a Government-Owned and Controlled Corporation (GOCC). While the creation of the Mindanao Power Corporation is taken up by House Bills 676 and 2621, this instant bill provides a transition of the Mindanao Hydro Complexes being owned and controlled by the PSALM Corporation to being separated as a distinct corporate firm. For the preceding explanations, this immediate bill takes priority cognizance on the subject of privatization.

Another point noteworthy mentioning, this author admits, is on the ambivalence of the necessity of filing this measure without sacrificing the intent of not confining myself to the duties of being a legislator, but rather of being part of the bigger picture of the reform agenda. As an ordinary participant in various consumer-based forums, I am overwhelmed by the clamor to overhaul the EPIRA. Expressions of common experiences pointing an accusing finger to EPIRA being the culprit have been exchange. These provide the urge to act soon on the matter as they command immediate action seemingly at all costs. However, learning of the business sector's perception into the review of this law, has provided the insight that a balance should be struck at. Accordingly,

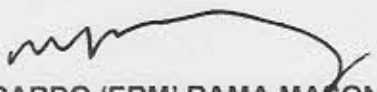
tinkering EPIRA will freeze current investment initiatives in the generation sector. I believe that, notwithstanding my outrage being a consumer myself, utmost care must be done to avoid sending the wrong message and instead imbibe sacrifice by all.

Undeniably, the outpour of citizens' action will re-direct the energies of the members in literally dismantling the law which may negate the milestones, however few, EPIRA has achieved. It is therefore a requirement that the leadership of Congress must, once it decides to hear the various proposals, identify specific provisions which should not put instability to the current investments on additional power supply, if the problem indeed is simply on supply unavailability. It is therefore indispensable to contemplate on congress's collective action to pin down on the solutions "without burning the house".

In particular, this bill features what the consumers' alliance want amended, as follows:

- Retain state ownership of Agus-Pulangui Hydroelectric plants complexes to ensure stability of power supply and thereby avert power crises in Mindanao grid;
- Create the Mindanao Power Corporation to manage and operate the Agus and Pulangui Hydro Electric Power Plants;
- Optimize the powers and functions of the DOE to protect the electric consumers against market abuse;
- Rationalize application of the wholesale Electricity Spot Market to achieve the objective of stabilizing power supply and the maximum utilization thereof, at least cost manner;
- Authorize the government, through the National Power Corporation, to engage in power generation and contracting capacity undertaking as supplementary to stabilize market prices during emergency shutdown of base load plants;
- Transfer of Small Power Utilities Group (SPUG) operation to the National Electrification Administration (NEA);
- Ensure true market competition by enhancing safeguards on ownership limitations and restrictions;
- Simplify the distribution of the shares of national wealth tax, the communities hosting any source of energy are entitled for eighty percent (80%), with the provision that the generation facilities deduct the same amount from the generation charges imposed to electric consumers;
- Enhance the selection process for the heads of agencies in the power sector; and
- Expand the use of Universal Charge through funding the rehabilitation of lines previously constructed using subsidy funds from NEA and/or Priority Development Assistance Fund (PDAF) to electrify far-flung areas.

I, therefore, urge my dear colleagues for the immediate passage of this bill.


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AN ACT
AMENDING REPUBLIC ACT NO. 9136, OTHERWISE KNOWN AS THE
"ELECTRIC POWER INDUSTRY REFORM ACT OF 2001 OR EPIRA", AND
FOR OTHER PURPOSES

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

CHAPTER I – POLICY AND DEFINITIONS

SECTION 1. **Title.** - This act shall be known as the "Revised Electric Power Industry Reform Act or REPIRA". It shall hereinafter be referred to as the Act.

SEC. 2. **Declaration of Policy.** – It is hereby declared the policy of the State to ensure that the right policy direction is provided in the power industry in order to provide the right support for sectors that deliver direct benefits to consumers such as the rural electrification program. Towards this end, the State shall strengthen the support mechanism to enable electric cooperatives do their mandate in delivering electricity to the countryside even in the economically marginalized areas.

CHAPTER II – AMENDATORY PROVISIONS

SEC. 3. Section 2 of EPIRA is hereby amended to read as follows:

"Section 2. **Declaration of Policy.** - It is hereby declared the policy of the State:

- (a) xxx
- (b) xxx
- (c) xxx

"(d) To enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and distribution sectors **IN ORDER TO MINIMIZE THE FINANCIAL RISK EXPOSURE OF THE NATIONAL GOVERNMENT AND THEREBY RATIONALIZE OWNERSHIP TO PREVENT MONOPOLY AND OLIGOPOLY IN ANY OF THE SECTORS OF THE INDUSTRY;**

(e) xxx

(f) xxx

(g) xxx

"(h) To promote the utilization of indigenous and new and renewable energy resources in power generation in order to reduce dependence on imported energy **AND COME UP WITH POLICIES THAT WOULD ENCOURAGE RATHER THAN RESTRICT INVESTORS IN THIS AREA;**

"(i) To provide for an orderly and transparent privatization of the assets and liabilities of the National Power Corporation (NPC), **WITH THE ASSURANCE OF PROVIDING A WELL UNDERSTOOD PROCESS GIVING EQUAL OPPORTUNITY OF PARTICIPATION;**

"(j) To establish a strong and purely independent regulatory body, **MANNED BY INDEPENDENT OFFICERS WITH EXTENSIVE BACKGROUND OF INDUSTRY PRACTICE,** and system to ensure consumer protection and enhance the competitive operation of the electricity market; and

(k) xxx"

SEC. 4. Section 4 of EPIRA shall be amended to read as follows:

"Section 4. *Definition of Terms.* –

"(a) "Aggregator" refers to a person or entity, engaged in consolidating electric power demand of end-users in the contestable market, for the purpose of purchasing [and], reselling, **MANAGING FOR THE OPTIMUM UTILIZATION OF THE AGGREGATED DEMAND, OR SIMPLY POOLING FOR THE TENDERING PROCESS IN LOOKING FOR SUPPLY, OF** electricity on a group basis;

xxx

"(pp) "Privatization" refers to the sale, disposition, change and transfer of ownership and control of assets and IPP contracts from the Government or a government corporation to **ANOTHER CORPORATION OR FIRM OR A** private person or entity;

xxx"

SEC. 5. Section 23 of the EPIRA shall be amended to read as follows:

"Section 23. *Functions of Distribution Utilities.* – xxx

xxx

"To achieve economies of scale in utility operations, distribution utilities may, after due notice and public hearing, pursue structural and operational reforms such as but not limited to, joint actions between or among the distribution utilities, subject to the guidelines issued by the ERC. **IN PURSUING JOINT ACTIONS PARTICULARLY IN AGGREGATING DEMAND TO ATTRACT INVESTMENTS THAT WOULD RESULT TO THE REDUCTION OF THE PER KILOWATT HOUR OF ELECTRICITY, THE DISTRIBUTION UTILITIES MAY CREATE A SUBSIDIARY COMPANY, THE OWNERSHIP OF WHICH SHALL BE SUBJECT TO THE LIMITATIONS IMPOSED UNDER THE CROSS-OWNERSHIP PROVISION.** Such joint actions shall result in improved efficiencies, reliability of service, reduction of costs and compliance to the performance standards prescribed in the IRR of this Act.

xxx"

SEC. 6. Section 30 of the EPIRA is hereby repealed to read as follows:

"SEC. 30. *Wholesale Electricity Spot Market.* - Within one (1) year from the effectivity of this Act, the DOE shall establish a wholesale electricity spot market composed of the wholesale electricity spot market participants. The market shall provide the mechanism for identifying and setting the price of actual variations from the quantities transacted under contracts between sellers and purchasers of electricity.

"Jointly with the electric power industry participants, the DOE shall formulate the detailed rules for the wholesale electricity spot market. Said rules shall provide the mechanism for determining the price of electricity not covered by bilateral contracts between sellers and purchasers of electricity users. The price determination methodology contained in said rules shall be subject to the approval of ERC. Said rules shall also reflect accepted economic principles **SUCH AS THE REQUIREMENT OF ESTABLISHING AVAILABILITY OF SUPPLY PRIOR TO THE INTRODUCTION OF THE WESM** and provide a level playing field to all electric power industry participants. The rules shall provide, among others, procedures for:

(a) xxx;

(b) xxx;

(c) xxx;

"(d) Prescribing guidelines for the market operation in system emergencies, **WHICH INCLUDE THE REQUIREMENT OF ESTABLISHING THE AVAILABILITY OF SUPPLY IN A CERTAIN GRID PRIOR TO THE IMPLEMENTATION OF THIS SAME;** and

"(e) Amending the rules.

"The wholesale electricity spot market shall be implemented by a market operator in accordance with the wholesale electricity spot market rules. The market operator shall be an autonomous group, to be constituted by DOE, with equitable representation from electric power industry participants, initially under the administrative supervision of the TRANSCO. The market operator shall undertake the preparatory work and initial operation of the wholesale electricity spot market. Not later than one (1) year after the implementation of the wholesale electricity spot market, an independent entity shall be formed and the functions, assets and liabilities of the market operator shall be transferred to such entity with the joint endorsement of the DOE and the electric power industry participants. Thereafter, the administrative supervision of the TRANSCO over such entity shall cease. **NOTWITHSTANDING THE FAILURE OF ESTABLISHING WESM IN MINDANAO GRID, TRANSCO SHALL ACT AS THE MARKET OPERATOR OF THE GRID, IN CONTRA-DISTINCTION TO THE ROLE OF THE NGCP WHICH IS THE DE FACTO SYSTEMS OPERATOR OF THE GRID.**

"Subject to the compliance with the membership criteria, **WHICH SHALL BE PREMISED ON PROVISIONS THAT WILL DETERMINE VOLUNTARINESS ON THE NATURE OF MEMBERSHIP**, all generating companies, distribution utilities, suppliers, bulk consumers/end-users and other similar entities authorized by the ERC shall be eligible to become members of the wholesale electricity spot market.

xxx

"In cases of national and international security emergencies or natural calamities, **INCLUDING DURING A DECLARATION OF SUPPLY SHORTAGE IN A PARTICULAR GRID SUCH AS BUT NOT LIMITED TO THE ONE IN MINDANAO**, the ERC is hereby empowered to suspend the operation of the wholesale electricity spot market or declare a temporary wholesale electricity spot market failure, **OR IS HEREBY EMPOWERED TO PREVENT THE IMPLEMENTATION OF THE WESM OR A SIMILAR STRUCTURE OF MARKET OPERATIONS WHEN SUCH WILL CLEARLY RESULT TO INCREASE OF RETAIL ELECTRICITY PRICES DUE TO THE DEMAND INCREASE WITHOUT THE CORRESPONDING INCREASE OR THE CORRESPONDING ADDITIONAL SUPPLY IN THE SAID GRID.**"

SEC. 7. Section 34 of the EPIRA shall be amended to read as follows:

"SEC. 34. *Universal Charge*. – Within one (1) year from the effectivity of this Act, a universal charge to be determined, fixed and approved by the ERC, shall be imposed on all electricity end-users for the following purposes:

(a) xxx

(b) xxx

(c) xxx

"(d) An environmental charge equivalent to one-fourth of one centavo per kilowatt-hour (P0.0025/kWh), which shall accrue to an environmental fund to be used solely for watershed rehabilitation and management. Said fund shall be managed by NPC under existing arrangements; [and]

"(e) A charge to account for all forms of cross-subsidies for a period not exceeding three (3) years[.]; **AND**

"(F) TO FUND THE REHABILITATION OF LINES PREVIOUSLY CONSTRUCTED USING NEA-SUBSIDY FUNDS AND/OR PRIORITY DEVELOPMENT ASSISTANCE FUND (PDAF) TO ELECTRIFY FAR-FLUNG UNVIABLE AREAS.

"The universal charge shall be non-by passable charge which shall be passed on and collected from all end-users on a monthly basis by the distribution utilities. Collections by the distribution utilities and the TRANSCO in any given month shall be remitted to the PSALM Corp. on or before the fifteenth (15th) of the succeeding month, net of any amount due to the distribution utility. Any end-user or self-generating entity not connected to a distribution utility shall remit its corresponding universal charge directly to the TRANSCO.

"The PSALM Corp., as administrator of the fund, shall create a Special Trust Fund which shall be disbursed only for the purposes specified herein in an open and transparent manner. All amounts collected for the universal charge shall be distributed to the respective beneficiaries within a reasonable period to be provided by the ERC."

SEC. 8. Section 35 of the EPIRA, is hereby amended to read as follows:

"SEC.35. *Royalties, Returns and Tax Rate.*- The provisions of Section 79 of Commonwealth Act No. 137 (C.A. No. 137) and any law to the contrary notwithstanding, the President of the Philippines shall reduce the royalties, returns and taxes collected for the **FOLLOWING:**

"1. INDIGENOUS ENERGY RESOURCES – F[f]or the exploitation of all indigenous sources of energy, including but not limited, natural gas and geothermal steam, so as to effect parity of tax treatment with the existing rates for imported coal, crude oil, bunker fuel and other imported fuels.

"2. TAX FOR ELECTRIC COOPERATIVES"

"To ensure lower rates for end-users, the ERC shall forthwith reduce rates of power from all indigenous sources of energy."

SEC. 9. Section 37 of the EPIRA shall be amended to read as follows:

"SEC. 37. *Powers and Functions of the DOE.* - In addition to its existing powers and functions, the DOE is hereby mandated to supervise the restructuring of the electricity industry. In pursuance thereof, Section 5 of R. A. 7638 otherwise known as "The Department of Energy Act of 1992" is hereby amended to read as follows:

(a) xxx

(b) xxx;

(c) xxx;

"(d) Ensure the reliability, quality and security of supply of electric power, **PRIMED ON THE INTEREST OF PROTECTING THE CONSUMERS FROM UNREASONABLE INCREASE OF PRICES;**

(e) xxx;

(i) xxx;

(ii) xxx;

(iii) xxx; and

(iv) xxx.

"(f) Jointly with the electric power industry participants, establish the wholesale electricity spot market **WHEN IT IS WARRANTED BY UNCONDITIONAL DECLARATION, WHICH MUST BE CONCURRED IN BY THE ERC, OF STABILITY IN POWER SUPPLY,** and formulate the detailed rules governing the operations thereof;

(g) xxx;

(h) xxx;

"(i) Develop policies and procedures and, as appropriate, promote a system of energy development incentives to enable and encourage electric power industry participants to provide adequate capacity to meet demand, **ESPECIALLY A SUDDEN SURGE OF DEMAND THAT MAY ARISE ON EMERGENCY SITUATION BROUGHT UPON BY A SIMULTANEOUS OUTAGE BY SEVERAL GENERATORS, OR A SINGLE ONE, REPRESENTING A HUGE BULK OF SUPPLY ON PER GRID BASIS,** including, among others, reserve requirements;

(j) xxx

(k) xxx

(l) xxx

(m) xxx

(n) xxx

(o) xxx

"(p) EXERCISE SUPERVISION OVER GOVERNMENT AGENCIES IN THE POWER SECTOR, FOR THEIR COMPLIANCE TO THIS ACT IN ORDER TO MONITOR AND TAKE REMEDIAL MEASURES IN PENALIZING ABUSE OF MARKET POWER, CARTELIZATION, AND ANTI-COMPETITIVE OR DISCRIMINATORY BEHAVIOUR. TO THIS END, DOE IS EMPOWERED MOTU PROPIO TO INVESTIGATE AND FILE CORRESPONDING CHARGES, IN THE APPROPRIATE COURT OR TO THE ARC, AGAINST VIOLATORS PARTICULARLY ON CARTELIZATION, ABUSE OF MARKET POWER, ANTI-COMPETITIVE OR DISCRIMINATORY BEHAVIOR OF INDUSTRY PARTICIPANTS [Formulate such rules and regulations as may be necessary to implement the objectives of this Act]; [and]

(q) FORMULATE SUCH RULES AND REGULATIONS AS MAY BE NECESSARY TO IMPLEMENT THE OBJECTIVES OF THIS ACT; AND

(r) EXERCISE SUCH OTHER POWERS AS MAY BE NECESSARY OR INCIDENTAL TO ATTAIN THE OBJECTIVES OF THIS ACT."

SEC. 10. Section 38 of EPIRA is herein amended to read as follows:

"SEC. 38. Creation of the Energy Regulatory Commission. – xxx

"The Commission shall be composed of a Chairman and four (4) members to be SELECTED AND appointed by the President of the Philippines FROM THE ROSTER OF NOMINEES TO BE SUBMITTED BY THE JCPC OR A SUBSTITUTE BODY CREATED WHEN JCPC'S TERM EXPIRES, WHICH SHALL BE CALLED MULTI-STAKEHOLDER POWER ADVISORY COUNCIL FORMED, PURSUANT TO THEIR ADDITIONAL MANDATE DEFINED IN SEC. 62 OF THIS AMENDATORY ACT. The Chairman and the members of the Commission shall be natural-born citizens and residents of the Philippines, persons of good moral character, at least thirty-five (35) years of age, GRADUATE OF AT LEAST FOUR-YEAR COURSE IN ANY OF THE FOLLOWING FIELDS: ENERGY, ECONOMICS, FINANCE, COMMERCE, ENGINEERING OR ANY RELATED FIELDS and WITH AT LEAST TEN (10) YEARS OF PROFESSIONAL AND RELEVANT EXPERIENCE LINKED TO THE PROVISION OF HIGH LEVEL POLICY ADVICE OR POLICY MAKING IN THE ELECTRIC POWER INDUSTRY [of recognized competence in any of the following fields: energy, law, economics, finance, commerce, or engineering, with at least three (3) years actual and distinguished experience in their respective fields of expertise]: *Provided*, That out of the four (4) members of the Commission, at least one (1) shall be a member of the Philippine Bar with at least ten (10) years of experience in the active practice of law, ONE (1) REPRESENTATIVE FROM THE ELECTRIC CONSUMER GROUPS, and one (1) shall be a certified public accountant with at least ten (10) years of experience in active practice.

"xxx"

SEC. 11. Section 43 of EPIRA is further amended to read as follows:

"SEC. 43. *Functions of the ERC.* –xxx

"(a) Enforce the implementing rules and regulations of this Act **RELATIVE TO INDUSTRY COMPETITION AND MARKET ABUSE TOGETHER WITH OTHER AGENCIES AUTHORIZED TO MONITOR THE STANDARDS IN ACCORDANCE WITH THE EXISTING RULES AND REGULATIONS SET.**

"(b) Within six (6) months from the effectivity of this Act, promulgate and enforce, in accordance with law, a National Grid Code and a Distribution Code which shall include, but not limited to, the following:

"(i) Performance standards for TRANSCO O & M Concessionaire, and suppliers: *Provided*, That in the establishment of the performance standards, the nature and function of the entities shall be considered; and

"(ii) Financial capability standards for the generating companies, the TRANSCO, distribution utilities and suppliers: *Provided*, That in the formulation of the entity shall be considered: *Provided, further*, That such standards are set to ensure that the electric power industry participants meet the minimum financial **AND TECHNICAL** standards to protect the public interest. **PROVIDED, FURTHERMORE, THAT MONITORING, SUPERVISION AND ENFORCEMENT OF FINANCIAL AND TECHNICAL STANDARDS OF THE ELECTRIC COOPERATIVES WILL BE IMPLEMENTED BY THE NATIONAL ELECTRIFICATION ADMINISTRATION, INCLUDING EXISTING GUIDELINES PROMULGATED BY THE ENERGY REGULATORY COMMISSION, PRIOR TO THIS AMENDMENT.** Determine, fix, and approve, after due notice and public hearings the universal charge, to be imposed on all electricity end-users pursuant to Section 34 hereof.

(c) xxx

(d) xxx

SEC. 12. Section 45 of the EPIRA shall be amended to read as follows:

"SEC. 45. *Cross Ownership, Market Power Abuse and Anti-Competitive Behavior.* – xxx

"No generation company or distribution utility, or its respective subsidiary or affiliate or stockholder or official of a generation company or distribution utility, **AND ANY OF THEIR RELATIVES WITHIN THE SIXTH CIVIL DEGREE OF CONSANGUINITY OR AFFINITY**, or other entity engaged in generating and supplying electricity specified by ERC [within the fourth civil degree of consanguinity or affinity], **EXCEPT WITH THE OFFICIALS OF A NON-STOCK AND NON-PROFIT ELECTRIC COOPERATIVES**, shall be allowed to hold

any interest, direct or indirect, 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] **SIXTH** civil degree of consanguinity or affinity, shall not hold any interest, whether direct or indirect, in any generation company or distribution utility. Except for government-appointed representatives, no person who is an officer or director of 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 fifteen percent (15%) [thirty percent (30%)] of the installed generating capacity of a grid [and/or twenty-five percent (25%) of the national installed generating capacity] **AS IN LUZON, VISAYAS AND MINDANAO GRID, THE SAME LEVEL OF OWNERSHIP SHALL BE MAINTAINED ON A PER ISLAND GRID BASIS EVEN AFTER THE INTERCONNECTION OF THE THREE MAIN GRIDS.** "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] **SIXTH** civil degree[;].

THE SECURITIES AND EXCHANGE COMMISSION (SEC) IS HEREBY TASKED TO CONSIDER IN THEIR TEMPLATE OF APPLICATION FOR REGISTRATION OF ALL POWER INDUSTRY PLAYERS INFORMATION RELATIVE TO ABOVE AND WILL BE HELD RESPONSIBLE IN CASE OF VIOLATION OF THE PROVISION FOR ANY POWER INDUSTRY PLAYER THAT CAN REGISTER EVEN IF NOT QUALIFIED PURSUANT TO THE ABOVE PROHIBITION.

"(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 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] **FOR THE PURPOSE OF PREVENTING MARKET POWER ABUSE BETWEEN ASSOCIATED FIRMS ENGAGED IN GENERATION AND DISTRIBUTION, DISTRIBUTION UTILITY IS ONLY ALLOWED TO SOURCE FROM BILATERAL POWER SUPPLY CONTRACT OF ITS TOTAL DEMAND FROM ITS ASSOCIATED FIRMS ENGAGED IN GENERATION AS FOLLOWS:**

DU'S TOTAL DEMAND	ALLOWED BILATERAL CONTRACT
50 MW AND BELOW	60%
51-100 MW	50%
101-250 MW	40%
251-500 MW	30%
501 AND ABOVE	25%

"(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.] **UPON OPERATION OF THE VARIOUS WHOLESALE ELECTRICITY SPOT MARKET, NO DISTRIBUTION UTILITY SHALL SOURCE MORE THAN 90% OF ITS TOTAL DEMAND FROM A BILATERAL CONTRACT IF THE SAME IS MORE THAN 15 MW AND THAT THERE IS NO AVAILABLE RENEWABLE ENERGY SOURCES THAN CAN BE DEVELOPED IN ITS FRANCHISE AREA. TO THE CONTRARY, A DISTRIBUTION UTILITY WITH A TOTAL DEMAND OF 15 MW AND BELOW MAY OPT TO SECURE ITS POWER REQUIREMENT THROUGH BILATERAL CONTRACT OR DEVELOP ITS OWN GENERATING PLANT, ESPECIALLY IF RENEWABLE ENERGY IS EMBEDDED IN ITS FRANCHISE AREA.**

"xxx"

SEC. 13. Section 47 of the EPIRA is hereby amended to read as follows:

"SEC. 47. *NPC Privatization.* – [Except for the assets of SPUG, the generating assets, real estate, and other disposable assets as well as generation contracts of NPC shall be privatized in accordance with this Act. 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 generation contracts of NPC and thereafter, implement the same, in accordance with the following guidelines, except as provided for in paragraph (f) herein:] **EXCEPT FOR THE AGUS AND PULANGUI HYDRO ELECTRIC PLANTS 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 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 [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] **SHALL BE RETAINED TO GENERATE POWER WHICH WILL SERVE AS BUFFER SUPPLY TO AVERT POWER CRISES. THE GOVERNMENT THROUGH THE NPC SHALL ENSURE ITS IMMEDIATE REHABILITATION TO MAXIMIZE ITS CAPACITY OUTPUT THROUGH LOANS WHICH SHALL BE RECOVERED IN A GENERATION RATE TO BE FILED WITH THE ERC WHOSE REVENUE SHALL BE USED FOR THE REPAYMENT OF ITS REHABILITATION AND OPERATION EXPENSES. PROVIDED, THAT ELECTRIC COOPERATIVES SHALL BE PRIORITIZED IN CONTRACTING THESE COMPLEXES’ CAPACITY TO SERVE THE NEED OF THE RESIDENTIAL CONSUMERS.**

“FOR THE PURPOSE OF ENSURING THE VIABILITY OF OPERATION OF THE AGUS AND PULANGI HYDRO ELECTRIC PLANTS COMPLEXES. A MINDANAO POWER CORPORATION SHALL BE CREATED THAT WILL MANAGE, OPERATE AND MAINTAIN THE PLANTS. FOR THIS PURPOSE, THE ASSETS AND LIABILITIES OR OBLIGATIONS AND DEBTS OF NAPOCOR / PSALM RELATED TO THE OPERATION OF THE MINDANAO GENERATION (MINGEN) SHALL BE SEPARATED FROM THE BOOK OF ACCOUNTS OF NAPOCOR AND TRANSFERRED TO THE NEW ENTITY, THE MINDANAO POWER CORPORATION.

“THE MINDANAO POWER CORPORATION SHALL BE A GOVERNMENT OWNED AND CONTROLLED CORPORATION BUT SHALL BE MANAGED AND OPERATED IN A PRIVATELY OWNED TYPE OF MANAGEMENT, WHOSE COMPOSITION IN ITS BOARD OF DIRECTORS SHALL INCLUDE ONLY THE SECRETARY OF THE MINDANAO DEVELOPMENT AUTHORITY AS CHAIRMAN. OTHER BOARD MEMBERS

COMPOSED OF A MAXIMUM OF FIVE EXCLUDING THE CHAIRMAN SHALL BE A REPRESENTATIVE OF ELECTRIC COOPERATIVES IN MINDANAO, PRIVATELY OWNED DU'S IN MINDANAO, CONSUMER ORGANIZATION, BUSINESS SECTOR REPRESENTATIVE, AND FROM LAKE LANAOW WATERSHED PROTECTION AND DEVELOPMENT COUNCIL.

(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] **AT THE TIME OF THE APPROVAL OF THIS AMENDMENT, WITH THE EXCEPTION OF THOSE TO BE FORMED UNDER THE MINDANAO POWER CORPORATION, SHALL BE RETAINED AS ASSETS OF NPC TO SERVE AS ANCILLARY SERVICE PROVIDER OF THE LUZON AND VISAYAS GRID; and**

"(j) NPC **SHALL** [may] generate and sell electricity [only] 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.] **EXCLUSIVE OF THE AGUS AND PULANGUI HYDRO COMPLEXES IN MINDANAO WHICH SHALL BE OPERATED BY A SEPARATE ENTITY AND IPP CONTRACTS, INCLUDING NEW POWER SUPPLY PORFOLIO WHICH SHOULD NOT BE LESS THAN THE REQUIRED ANCILLARY CAPACITY OF EACH GRID IN LUZON, VISAYAS AND MINDANAO AS DETERMINED BY THE GRID MANAGEMENT COMMITTEE AND TO BE UPRATED ON THE BASE LOAD REQUIREMENT OF THE GRID PLUS TEN PERCENT (10%).**

"THE CAPACITY FEE OF ALL NPC POWER PLANTS AND POWER SUPPLY CONTRACTS THAT WILL SERVE AS ANCILLARY SHALL BE RECOVERED IN A FORM OF ANCILLARY SERVICE CHARGE TO BE COLLECTED FROM ALL ELECTRICITY END USERS BY THE GRID OPERATOR AND REMITTED DIRECTLY TO THE NPC.

"ANCILLARY CHARGES SHALL INCLUDE FIXED COST AND A CERTAIN MARGIN WHICH SHOULD BE APPLIED BY NPC TO THE ERC FOR COST DETERMINATION AND APPROVAL.

"IN CASE OF EMERGENCY AND IN ORDER TO STABILIZE THE PRICE IN THE WESM, NPC POWER PLANTS SHALL OPERATE AS BASE LOAD PLANTS WITH GENERATION COST TO BE DETERMINED BY ERC BASED ON THE TECHNOLOGY USED."

SEC. 14. Section 48 of EPIRA is hereby amended as follows:

"SEC. 40. [National Power Board of Directors] NATIONAL POWER CORPORATION.- Upon the passage of this Act, Section 6 of R.A. 6395, as amended, and Section 13 of RA 7638, as amended, referring to the composition of the National Power Board of Directors, are hereby repealed and a new Board shall be immediately organized. The new Board shall be composed of the Secretary of Finance as Chairman, with the following as members: the Secretary of Energy, the Secretary of Budget and Management, the Secretary of Agriculture, the Director General of the National Economic and Development Authority, the Secretary of Environment and Natural Resources, the Secretary of Interior and Local Government, the Secretary of the Department of Trade and Industry, and the President of the National Power Corporation.

"THE NATIONAL POWER CORPORATION SHALL REMAIN AS A GOVERNMENT OWNED AND CONTROLLED CORPORATION (GOCC), HOWEVER, ITS OPERATIONAL GOVERNANCE AND CONDUCT OF BUSINESS SHOULD BE BASICALLY SIMILAR TO THAT OF A PRIVATE UTILITY THAT ENSURES BUSINESS VIABILITY AND THEREFORE THE QUALIFICATIONS AND HIRING OF PERSONNEL AS WELL AS ITS ORGANIZATION STRUCTURE SHOULD BE ALIGNED TO THAT OF A PRIVATELY OWNED COMPANY OR CORPORATION.

"FOR THIS PURPOSE, THE DEPARTMENT OF TRADE AND INDUSTRY (DTI) SHALL ESTABLISH THE BUSINESS STRUCTURE OF NPC, INCLUDING PLANTILLA POSITION AND SALARY SCALE AS WELL AS JOB DESCRIPTIONS, WITHIN SIX (6) MONTHS FROM THE EFFECTIVITY OF THIS AMENDATORY ACT.

"THE COMPOSITION OF THE CORPORATE BOARD OF NPC SHALL BE PART OF THE PLANTILLA THAT SHALL BE DETERMINED BY THE DTI, EXCLUDING POLITICAL APPOINTEES."

SEC. 15. Section 62 of the EPIRA of the EPIRA is hereby amended to read as follows:

"SEC. 62. Joint Congressional Power Commission. – xxx

"The Commission shall, in aid of legislation, perform the following functions, among others:

(a) xxx

(b) xxx

(c) xxx

(d) xxx

(e) xxx

(f) xxx

"(g) Determine inherent weaknesses in the law **THAT BREEDS REGULATORY FLAWS** and recommend necessary remedial legislation or executive measures; [and]

"(h) [Perform such other duties and functions as may be necessary to attain its objectives.] **ENHANCE THE QUALITY OF THE SEARCH, SCREENING, AND SELECTION PROCESS FOR THE FOLLOWING POSITIONS: SECRETARY OF THE DEPARTMENT OF ENERGY, CHAIRMAN OF THE ERC, PRESIDENT OF NPC, PRESIDENT OF PEMC, PRESIDENT AND CEO OF TRANSCO, PRESIDENT AND CEO OF PSALM, AND OTHER HEADS OF AGENCIES COVERED BY EPIRA[.];**

"(i) **SUBMIT A LIST OF FIVE (5) NOMINEES FOR EACH POSITION ENUMERATED IN SECTION 62 (H) TO THE PRESIDENT OF THE PHILIPPINES FOR FINAL APPOINTMENT AT LEAST ONE (1) YEAR BEFORE THE INCUMBENT'S TERM EXPIRES; AND**

"(j) **PERFORM SUCH OTHER DUTIES AND FUNCTIONS AS MAY BE NECESSARY TO ATTAIN ITS OBJECTIVES.**

"xxx"

SEC. 16. Section 66 of the EPIRA is hereby amended to read as follows:

"SEC. 66. *Benefits to Host Communities.*-The obligations of generation companies and energy resource developers to communities hosting energy generating facilities and/or energy resource developers as defined under Chapter II, Sections 289 to 294 of the Local Government Code and Section 5(i) of Republic Act No. 7638 and their implementing rules and regulations and applicable orders and circulars [consistent with this Act shall continue: *Provided*, That the obligations mandated under Chapter II, Section 291 of Republic Act No. 7160, shall apply to privately-owned corporations or entities utilizing the national wealth of the locality] **INCONSISTENT WITH THIS ACT ARE HEREBY AMENDED TO SIMPLIFY THE DISTRIBUTION OF THE SHARES IN NATIONAL WEALTH TAX.**

"**THE COMMUNITIES HOSTING ANY SOURCE OF ENERGY SHALL BE ENTITLED TO THE EIGHTY PERCENT (80%) OF THE NATIONAL WEALTH TAX; PROVIDED, THAT THE GENERATION FACILITIES AND/OR ENERGY RESOURCE DEVELOPERS SHALL DEDUCT THIS AMOUNT FROM THE POWER BILLS OF THE ELECTRIC COOPERATIVES/DISTRIBUTION UTILITIES; PROVIDED FURTHER, THAT THIS**

SHALL HAVE RETROACTIVE EFFECT FROM THE TIME THE GENERATION FACILITIES AND/OR ENERGY RESOURCE DEVELOPERS STARTED TO OPERATE IN THE HOST COMMUNITIES.

"xxx

"xxx"

SEC. 17. Section 70 of EPIRA is hereby 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 shall be responsible for providing power generation and its associated power delivery systems in areas that are not connected to the transmission system.] **THE MISSIONARY ELECTRIFICATION FUNCTIONS OF NPC-SPUG SHALL BE PERFORMED BY THE NATIONAL ELECTRIFICATION ADMINISTRATION AS AN ADDITIONAL MANDATE IN ACCORDANCE UNDER SECTION 58 OF THIS ACT WHICH IS TO ASSIST THE ELECTRIC COOPERATIVES IN COMPLYING WITH THIS ACT. THE NEA 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 **AND TO BE REMITTED AND ADMINISTERED BY THE NEA. THE NEA MAY OPT TO TRANSFER OR RELINQUISH THE OPERATION OF THE OFF-GRID POWER PLANTS TO THE ELECTRIC COOPERATIVE AFTER A SOUND EVALUATION OF THE SAID EC, IF EC IS TECHNICALLY AND FINANCIALLY CAPABLE OF MAINTAINING THE PLANT AND IF SO DOING THE ASSETS OF NPC-SPUG BE TRANSFERRED TO NEA."**

SEC. 18. Section 71 of EPIRA is hereby amended to read as follows:

"SEC. 71. *Electric Power Crisis Provision.*-Upon the determination by the President of the Philippines of an imminent shortage of the supply of electricity, [Congress may authorize, through a joint resolution, the establishment of additional generating capacity under such terms and conditions as it may approve] **THE PRESIDENT SHALL AUTHORIZE THE ESTABLISHMENT OF ADDITIONAL GENERATING CAPACITY."**

CHAPTER IV - GENERAL PROVISIONS

SEC. 19. **Implementing Rules and Regulations.** The Secretary of the Department of Energy, in coordination with the other agencies involved in power, shall create a technical writing group that will be tasked to draft the Implementing Rules and Regulations.

SEC. 20. **Separability Clause.** If any part or section of this Act is declared unconstitutional, such declaration shall not affect in any manner other parts or sections of this Act.

SEC. 21. **Repealing Clause.** – All laws, decrees, proclamations, issuances, or ordinances that are contrary to or inconsistent with the provisions of this Act are hereby amended, repealed or modified accordingly.

SEC. 22. **Effect on Other Acts.** All acts or parts of Acts inconsistent herewith are repealed or modified accordingly.

SEC. 23. **Effectivity Clause.** This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved,