

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Manila

Seventeenth Congress
Second Regular Session

HOUSE BILL NO. **7104**



Introduced by Honorable Lord Allan Jay Q. Velasco

EXPLANATORY NOTE

Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act (EPIRA) of 2001, sought to re-structure the electric power industry by privatizing the Generation, Transmission, Distribution, and Supply of the power sector. Distribution and transmission were later declared as public utilities.

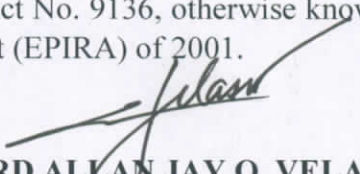
In line with the EPIRA, the Energy Regulatory Commission (ERC) was created as an independent, quasi-judicial regulatory body, amending for that purpose the existing Energy Regulatory Board (ERB) created under Executive Order No. 172, as amended.

ERC, as the country's electric power regulator has a crucial role in ensuring consumer protection, and in enhancing the competitive operation of the electricity market. An evaluation of the governance structure of the ERC would show that the powers and functions of the Chairman of the Commission and the Chief Executive Officer is lodged in one person. Experience shows that practice does not foster a balance of power and accountability.

Moreover, the Commissioners of the ERC, numbering only five (5), are burdened with cases from Luzon, Visayas, and Mindanao. There is therefore a need to increase this number. Accountability and transparency in the workings of the Commission should also be paramount in order to engender trust and integrity among the industry players and the public.

It is in this light that this measure is proposed. This bill aims to enhance and strengthen the existing governance structure of the regulatory body, renaming the same into the Philippine Power Regulatory Commission (PPRC), by providing (1) additional number and qualifications and requirements for ERC Commissioners to ensure board diversity; (2) prohibitions and disqualifications for PPRC Commissioners and their relatives to prevent conflicts of interest; (3) divestment of the CEO functions from the Chairperson and lodging the same to the Executive Director of the PPRC; (4) creation of three [3] Commission divisions, aside from the Commission en banc, to ensure faster resolutions of cases, applications, and rules lodged or made by the PPRC; and (5) detailing a Code of Ethics for the Commissioners.

In view of the foregoing, this bill seeks to provide a more streamlined and stronger power regulator by the creation of the Philippine Power Regulatory Commission, amending for that purpose, Republic Act No. 9136, otherwise known as the otherwise known as the Electric Power Industry Reform Act (EPIRA) of 2001.


HON. LORD ALLAN JAY Q. VELASCO

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

SEVENTEENTH CONGRESS
Second Regular Session
7104

INTRODUCED BY:
HON. LORD ALLAN JAY Q. VELASCO

AN ACT
STREAMLINING THE REGULATORY COMMISSION ON ENERGY, RENAMING THE
ENERGY REGULATORY COMMISSION INTO THE PHILIPPINE POWER REGULATORY
COMMISSION,
AMENDING FOR THAT PURPOSE REPUBLIC ACT NO. 9136, OTHERWISE KNOWN AS
THE “ELECTRIC POWER INDUSTRY REFORM ACT OF 2001”, APPROPRIATING FUNDS
THEREFOR, AND FOR OTHER PURPOSES

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

CHAPTER I
TITLE AND DECLARATION OF POLICY

SECTION 1. *Short Title.* — This Act shall be known as THE PHILIPPINE POWER REGULATORY COMMISSION ACT OF 2018”.

SECTION 2. *Declaration of Policy* — It is hereby declared the policy of the State to establish a strong and purely independent regulatory body and system to ensure consumer protection and enhance the competitive operation of the electricity market, quality, reliability, security and affordability of the supply of electric power, and ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market.

SECTION 3. Section 38 of the Republic Act 9136 is hereby amended to read as follows:

CHAPTER IV
REGULATION OF THE ELECTRIC POWER INDUSTRY

“SEC. 38. *Creation of the PHILIPPINE POWER REGULATORY COMMISSION.* —THE ENERGY REGULATORY COMMISSION IS HEREBY RECONSTITUTED AND TO THAT END, IS HEREBY CREATED AN INDEPENDENT, CREDIBLE, TRANSPARENT, ACCOUNTABLE, AND STRONG QUASI-JUDICIAL AND QUASI-LEGISLATIVE REGULATORY BODY TO BE NAMED THE PHILIPPINE POWER REGULATORY COMMISSION, WHICH FOR THE PURPOSE OF THIS ACT, IS REFERRED TO AS “PPRC”. THE PPRC SHALL BE EXCLUSIVELY RESPONSIBLE FOR THE REGULATION OF THE POWER AND ENERGY INDUSTRY. ALL POWERS FORMERLY VESTED IN THE ENERGY REGULATORY COMMISSION UNDER REPUBLIC ACT NO. 9136, AS AMENDED, THAT ARE RELEVANT AND CONSISTENT WITH THE PROVISIONS OF THIS ACT SHALL BE EXERCISED BY THE PPRC. THE PPRC SHALL ENJOY LIMITED FISCAL AUTONOMY.

ITS ANNUAL APPROVED BUDGET SHALL BE AUTOMATICALLY AND REGULARLY RELEASED.

The PPRC shall be composed of a Chairman and EIGHT (8) MEMBERS. THE CHAIRMAN SHALL BE APPOINTED BY THE PRESIDENT OF THE PHILIPPINES AND SHALL SERVE A TERM CO-TERMINOUS WITH THAT OF THE PRESIDENT. THE REST OF THE MEMBERS OF THE COMMISSION SHALL [to be] appointed by the President of the Philippines FROM A SHORT-LIST PROVIDED BY THE JOINT CONGRESSSIONAL POWER COMMISSION (JCPC). A SHORT-LIST OF THREE (3) NOMINEES PER POSITION WILL BE CHOSEN BY THE PRESIDENT ONLY FROM AMONG THOSE NOMINATED BY THE JCPC. The Chairman and the members of the PPRC shall be natural-born citizens and residents of the Philippines, persons of good moral character, at least thirty-five (35) years of age, and of recognized competence in ONE OR MORE of the following fields: energy, law, economics, finance, engineering, with at least [three (3)] FIVE (5) years actual and distinguished experience in their respective fields of expertise; *Provided That* out of the NINE (9) members of the [Commission] PPRC, at least THREE (3) MEMBERS, INCLUDING THE CHAIRMAN, shall be a member of the Philippine Bar with at least ten (10) years experience in the active practice of law, At least TWO (2) MEMBERS shall be certified public accountantS with at least ten (10) years OF experience in THE active practice, at least THREE (3) MEMBERS SHALL BE ENGINEERS WITH AT LEAST FIVE (5) YEARS OF EXPERIENCE IN POWER SYSTEM ENGINEERING; and AT LEAST ONE (1) MEMBER SHALL BE AN ECONOMIST WITH AT LEAST FIVE (5) YEARS OF EXPERIENCE IN UTILITY ECONOMICS.

THERE SHALL BE AN EXECUTIVE DIRECTOR WHO SHALL BE A CIVIL SERVICE CAREER OFFICIAL APPOINTED FROM AMONG THE DIRECTORS OR OFFICERS OF THE PPRC. THE EXECUTIVE DIRECTOR SHALL FUNCTION AS THE CHIEF EXECUTIVE OFFICER OF THE PPRC, WHO SHALL ENJOY THE SAME RANK AND PRIVILEGES AS A CABINET UNDERSECRETARY, AND SHALL REPORT DIRECTLY TO THE COMMISSION EN BANC. THE EXECUTIVE DIRECTOR SHALL HAVE AT LEAST FIVE (5) YEARS OF EXPERIENCE IN THE ELECTRIC POWER INDUSTRY, WITH EXPERTISE IN MANAGEMENT AND ADMINISTRATION.

Within three (3) months from the creation of the [Commission] PPRC, the [Chairman] THE EXECUTIVE DIRECTOR, WITH CONFORMITY OF THE COMMISSION EN BANC, shall ADOPT AND submit [for the approval by] TO the President of the Philippines FOR HIS APPROVAL, AN EXPANDED [the new] organizational structure and plantilla positions necessary to carry out the powers and functions of the [Commission] PPRC.

The Chairman of the [Commission] PPRC, shall be a member of the Philippine Bar WITH AT LEAST FIVE (5) YEARS OF EXPERIENCE IN THE ACTIVE PRACTICE OF ENERGY AND/OR PUBLIC UTILITY LAW [shall act as the Chief Executive Officer of the Commission]. HE SHALL A TERM CO-TERMINOUS WITH THAT OF THE PRESIDENT OF THE PHILIPPINES.

[All] THE EIGHT (8) members of the [Commission] PPRC shall have a term of seven (7) years WITH THE CHAIRMAN HAVING A CO-TERMINOUS TERM WITH THE PRESIDENT OF THE PHILIPPINES; *Provided*, That for the first TWO (2) appointed MEMBERS, WHO SHALL SERVE FOR SERVE A TERM OF SEVEN (7) YEARS, THE NEXT THREE (3) APPOINTED MEMBERS SHALL SERVE A TERM OF FIVE (5) YEARS, AND THE LAST THREE (3) APPOINTED MEMBERS SHALL SERVE A TERM OF THREE (3) YEARS, [the Chairman shall hold office for seven (7) years and the other two (2) members shall hold office for three (3) years;] *Provided*, further, That appointment to any future vacancy shall only be for the unexpired term of the predecessor; *Provided*, finally, That there shall be no reappointment and in no case shall any member serve for more than seven (7) years in the [Commission] PPRC.

The Chairman and the members of the [Commission] PPRC shall assume office at the beginning of their terms; *Provided*, That, if upon the effectivity of this Act, the [Commission]

PPRC has not been constituted, and the new staffing pattern and plantilla positions have not been approved and/OR filled up, the current [Board] CHAIRMAN AND MEMBERS OF THE PPRC and ITS existing personnel shall continue to hold office UNTIL THEY ARE CORRESPONDINGLY REPLACED.

The existing personnel of the [ERB] PPRC, if qualified, AND HAS NOT BEEN CONVICTED WITH FINALITY OF ANY ADMINISTRATIVE OR CRIMINAL CASE INVOLVING MORAL TURPITUDE, shall be given preference in the filling up of THE NEW STAFFING PATTERN AND plantilla positions in the [ERC] PPRC, subject to existing civil service rules and regulations;

ALL members of the [Commission] PPRC shall enjoy security of tenure, and shall not be suspended or removed from office except for just cause as specified by law;

The Chairman and the members of the [Commission] PPRC or any of their relatives within the fourth civil degree of consanguinity or affinity, WHETHER SUCH PERSONAL RELATIONS ARE legitimate [or], common law, OR OTHERWISE shall be prohibited from holding any interest whatsoever, either as an officer or director, in any company or entity engaged in the business of [transmitting, generating, supplying, or distributing any form of energy and must, therefore] GENERATING, TRANSMITTING, DISTRIBUTING, OR supplying ELECTRICITY. UPON THE ASSUMPTION BY THE CHAIRMAN AND MEMBERS OF THE PPRC OF THEIR RESPECTIVE POSITIONS, THE CHAIRMAN AND MEMBERS OF THE PPRC AND THEIR RESPECTIVE RELATIVES WITHIN THE PROSCRIBED DEGREE OF PERSONAL RELATIONS MUST divest THEMSELVES OF ALL THEIR SAID INTERESTS. [sale or legal disposition of any and all interests in the energy sector upon the assumption of office.]

[The presence of at least three (3) FOUR (4) members of the Commission PPRC shall constitute a quorum and the majority vote of [two (2)] THREE (3) members in a meeting where a quorum is present shall be necessary for the adoption of any rule, ruling, order, resolution, decision, or other act of the [Commission] PPRC in the exercise of its quasi-judicial functions.]

THE COMMISSION SHALL BE DIVIDED INTO THREE (3) DIVISIONS, WITH THREE (3) MEMBERS EACH, INCLUDING THE CHAIRMAN. EACH DIVISION MUST HAVE AT LEAST ONE (1) MEMBER WHO IS A LAWYER AND ONE (1) MEMBER WHO IS AN ENGINEER. THE PRESENCE OF AT LEAST TWO (2) OF THE (3) MEMBERS OF THE DIVISION SHALL CONSTITUTE A QUORUM, AND THE MAJORITY VOTE AT LEAST TWO (2) MEMBERS OF THE DIVISION IN WHICH A QUORUM WAS PRESENT SHALL BE NECESSARY FOR THE ADOPTION OF ANY RULE, RULING, ORDER, RESOLUTION, DECISION OR OTHER ACTS OF THE PPRC.

AT LEAST FIVE (5) MEMBERS OF THE PPRC SHALL CONSTITUTE A QUORUM IN THE COMMISSION EN BANC. THE CHAIRMAN SHALL BE THE PRESIDING OFFICER DURING A COMMISSION EN BANC HEARING. IN HIS ABSENCE, THE REST OF THE MEMBERS, CONSTITUTING A QUORUM, MAY SELECT A PRESIDING OFFICER. A VALID DECISION BY THE COMMISSION EN BANC SHALL BE CONCURRED IN BY THE MAJORITY OF MEMBERS CONSTITUTING A QUORUM. THE COMMISSION EN BANC SHALL PRIMARILY ACT ON THE FOLLOWING CASES:

- a) CASES INVOLVING THE PPRC'S QUASI-LEGISLATIVE POWER, RULES, OR REGULATIONS;
- b) CASES INVOLVING THE NATIONAL TRANSMISSION COMPANY (TRANSCO) OR ITS AUTHORIZED CONCESSIONAIRE WHICH OPERATES THE TRANSMISSION NETWORK;
- c) CASES INVOLVING CONTRACTS WORTH MORE THAN FIVE HUNDRED MILLION PESOS (PHP 500,000,000.00);

- d) CASES INVOLVING PRIVATE DISTRIBUTION UTILITIES;
- e) CASES PREVIOUSLY HANDLED BY THE PPRC DIVISION IN WHICH NO QUORUM OR VALID DECISION WAS REACHED;
- f) OTHER CASES AS DESIGNATED BY THE COMMISSION EN BANC ITSELF.

THE CHAIRMAN AND THE MEMBERS OF THE PPRC SHALL CONFORM TO THE FOLLOWING **CODE OF ETHICS**:

- (1) AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES.
- (2) PERFORM ALL DUTIES WITH UTMOST IMPARTIALITY AND DILIGENCE.
- (3) MUST BEHAVE AT ALL TIMES AS TO PROMOTE PUBLIC CONFIDENCE IN THE PPRC AND AVOID OFF-THE-RECORD CONVERSATIONS BETWEEN ANY MEMBER OF THE PPRC AND PARTIES THERETO, INCLUDING ANY STAFF ACTING AS A PARTY, REGARDING THE MERITS OR ANY FACT IN ISSUE OF ANY MATTER PENDING BEFORE THE PPRC;
- (4) ABSTAIN FROM PUBLICLY EXPRESSING HIS OR HER PERSONAL VIEWS ON THE MERITS OF A MATTER PENDING BEFORE THE PPRC AND REQUIRE SIMILAR ABSTENTION ON THE PART OF PPRC PERSONNEL SUBJECT TO HIS OR HER DIRECTION AND CONTROL.
- (5) INITIATE APPROPRIATE DISCIPLINARY MEASURES AGAINST PPRC PERSONNEL FOR UNPROFESSIONAL CONDUCT.
- (6) INHIBIT HIMSELF OR HERSELF FROM PROCEEDINGS IN WHICH HIS OR HER IMPARTIALITY MIGHT BE REASONABLY QUESTIONED.
- (7) DISCLOSE HIS OR HER PERSONAL AND FIDUCIARY INTERESTS AND MAKE REASONABLE EFFORTS TO DISCLOSE THE PERSONAL FINANCIAL INTERESTS OF HIS OR HER SPOUSE AND CHILDREN.
- (8) ACTIVITIES OUTSIDE WORK SUCH AS ACADEMIC LECTURES WITH HONORARIA SHALL BE DISCLOSED ANNUALLY. SUCH DISCLOSURE STATEMENT SHALL BE FILED WITH THE EXECUTIVE DIRECTOR OF THE PPRC AND SHALL BE OPEN TO INSPECTION BY THE PUBLIC DURING THE NORMAL BUSINESS HOURS DURING THE TENURE OF THE CHAIRMAN OR MEMBER OF THE PPRC. THE CHAIRMAN OR ANY MEMBER OF THE PPRC SHALL NOT RESUME THEIR DUTIES UNTIL HE OR SHE SUBMITS SAID DISCLOSURE STATEMENT TO THE EXECUTIVE DIRECTOR OF THE PPRC.
- (9) REFRAIN FROM SOLICITATION OF FUNDS FOR ANY POLITICAL, EDUCATIONAL, RELIGIOUS, CHARITABLE, OR CIVIC PURPOSES, ALTHOUGH HE OR SHE MAY BE AN OFFICER, DIRECTOR, OR TRUSTEE OF SUCH ORGANIZATIONS.
- (10) REFRAIN FROM ANY FINANCIAL OR BUSINESS DEALINGS WHICH MAY CAST DOUBT ON THE IMPARTIALITY OF THE PPRC CHAIRMAN OR MEMBERS BY THE PUBLIC;
- (11) IN EXERCISING THEIR QUASI-JUDICIAL FUNCTION, THE CHAIRMAN AND MEMBERS OF THE PPRC SHALL ADHERE TO THE CANONS OF JUDICIAL CONDUCT.

(12) CONFORM TO ANY SUCH ADDITIONAL RULES AS THE PPRC MAY PRESCRIBE.

ANY VIOLATION OF THE ABOVE-MENTIONED CODE OF ETHICS SHALL CONSTITUTE CAUSE FOR REMOVAL FROM OFFICE BY THE OFFICE OF THE PRESIDENT OF THE PHILIPPINES, WITHOUT PREJUDICE TO ANY OTHER PENALTIES UNDER ALL APPLICABLE LAWS.

AFTER TERMINATING EMPLOYMENT OR SERVICE WITH PPRC, THE CHAIRMAN AND MEMBERS OF THE PPRC, EXECUTIVE DIRECTOR, SERVICE OR OFFICE DIRECTORS, OR ITS EQUIVALENT, WHO ARE APPOINTED, OR EMPLOYED UNDER PPRC, IS PROHIBITED FROM ACCEPTING EMPLOYMENT WITH ANY REGULATED ENTITY FOR A PERIOD OF THREE (3) YEARS, AND ALL MEMBERS OF THE PPRC ARE PROHIBITED FROM APPEARING BEFORE THE PPRC ON BEHALF OF ANY REGULATED ENTITY FOR A PERIOD OF THREE (3) YEARS AFTER SAID TERMINATION OF EMPLOYMENT.

SECTION 4. Section 39 of the same Act is hereby amended to read as follows:

“SEC. 39. Compensation and other Emoluments for [ERC] PPRC Personnel. — The compensation and other emoluments for the Chairman and members of the [Commission] PPRC, THE EXECUTIVE DIRECTOR, and the [ERC] PPRC personnel, shall be exempted from the coverage of Republic Act No. 6758, otherwise known as the "Salary Standardization Act". For this purpose, the schedule of compensation of the [ERC] PPRC personnel, except for the initial salaries and compensation of the Chairman and members of the [Commission] PPRC, shall be submitted for approval by the President of the Philippines. The new schedule of compensation AND OTHER EMOLUMENTS shall be implemented within six(6) months from the effectivity of this Act, and may be upgraded by the President of the Philippines EVERY THREE (3) YEARS TO ACCOUNT FOR INFLATION, AMONG OTHERS, OR as the need arises: *Provided*, That in no cases shall the rate OF SUCH COMPENSATION AND OTHER EMOLUMENTS be upgraded more than once a year.

The Chairman and members of the [Commission] PPRC shall initially be entitled to the same salaries [allowances, and benefits] of the CHIEF Justice and Associate Justices of the Supreme Court, respectively. The Chairman and members of the [Commission] PPRC shall, upon completion of their term OF OFFICE AND upon becoming eligible for retirement under existing laws, be entitled to the same retirement benefits and privileges provided for the CHIEF Justice and Associate Justices of the Supreme Court, respectively; *PROVIDED*, THAT THE CHAIRMAN OR MEMBER OF THE PPRC WHO OPTS TO RETIRE UNDER THE LATTER CASE, SHALL HAVE SERVED AT LEAST FIVE (5) OF THE SEVEN (7)-YEAR TERM PRESCRIBED HEREIN, UNLESS SUCH MEMBER BELONGS TO THE FIRST APPOINTEES TO THE PPRC WITH A STAGGERED TERM OF THREE (3) YEARS. IN WHICH CASE, THE MEMBER SHALL BE DEEMED TO HAVE SERVED THE TERM OF OFFICE FOR WHICH HE OR SHE WAS APPOINTED.

THE INCUMBENT MEMBERS OF THE PPRC SHALL BE ENTITLED TO THE RETIREMENT BENEFITS PROVIDED FOR HEREIN, UPON REACHING SIXTY-FIVE YEARS OF AGE, IF HE OR SHE HAS SERVED FOR AT LEAST FIVE (5) YEARS OF THE PRESCRIBED SEVEN (7)-YEAR TERM OF OFFICE AND HAS NOT BEEN CONVICTED WITH FINALITY OF ANY VIOLATIONS OF REPUBLIC ACT NO. 3019 OTHERWISE KNOWN AS THE ANTI-GRAFT AND CORRUPT PRACTICES ACT; PROVIDED THAT ALL FORMER COMMISSIONERS OF THE ERC SHALL NOT BE ELIGIBLE FOR REAPPOINTMENT TO THE PPRC; PROVIDED FURTHER, THAT NOTHING HEREIN SHALL BE CONSTRUED AS AFFECTING THE RETIREMENT AND OTHER BENEFITS TO WHICH THE PREVIOUS CHAIRMAN OR MEMBERS OF THE ERC OR ITS PREDECESSOR OFFICES ARE ENTITLED TO UNDER THE LAW OR JURISPRUDENCE.”

SECTION 5. Section 40 of the same Act is hereby amended to read as follows:

"SEC. 40. *Enforcement of Technical Competence.* — The [ERC] PPRC shall establish rigorous training programs for its staff for the purpose of enhancing the technical competence of the [ERC] PPRC in the following areas: THE ROLE AND FUNCTIONS OF REGULATORY AGENCIES, evaluation of technical performance and monitoring of compliance with service and performance standards, performance-based rate-setting reform, environmental standards, and such other areas as will enable the [ERC] PPRC to adequately perform its duties and functions.

THE PPRC MAY HIRE A REASONABLE NUMBER OF CONSULTANTS OR EXPERTS AS MAY BE APPROPRIATE TO GIVE ADVICE TO AND PERFORM SERVICES FOR THE PPRC. THE TERMS AND CONDITIONS OF THE ENGAGEMENT SHALL BE AS DETERMINED BY THE PPRC; PROVIDED HOWEVER, THAT THE DISTRIBUTION MANAGEMENT COMMITTEE (DMC) AND THE GRID MANAGEMENT COMMITTEE (GMC) ESTABLISHED IN CHAPTER 2, SECTION 22 OF THE PHILIPPINES DISTRIBUTION CODE AND THE PHILIPPINE GRID CODE, AS AMENDED, RESPECTIVELY, SHALL CONTINUE TO CARRY OUT THEIR FUNCTIONS AS SPECIFIED UNDER SAID CODES."

SECTION 6. Section 41 of the same Act is hereby amended to read as follows:

"SEC. 41. *PROTECTION AND Promotion of Consumer Interests.* — The [ERC] PPRC shall handle AND PROVIDE TIMELY RESOLUTION TO consumer complaints and ensure adequate protection of consumer interests THROUGH THE ADOPTION OF POLICIES THAT FOSTER SUCH GOALS, AMONG OTHER THINGS, AS PUBLIC ACCESS TO THE PPRC AND ITS PROCESSES, CONSUMER EDUCATION, AND EFFICIENT UTILIZATION OF PPRC RESOURCES."

SECTION 7. Section 42 of the same Act is hereby amended to read as follows:

"SEC. 42. *Budget of the PPRC.* — The amount of FOUR HUNDRED MILLION PESOS (P400,000,000.00) [One Hundred Fifty Million pesos (P150,000,000.00)] is hereby allocated from the existing budget of the ERC for the initial operation of the [ERC] PPRC. Any balance shall initially be sourced from the Office of the President of the Philippines. Thereafter, the annual budget of the [ERC] PPRC shall be included in the regular or special appropriations.

THERE IS HEREBY CREATED A SPECIAL TRUST ACCOUNT IN THE NATIONAL TREASURY TO BE KNOWN AS THE "PHILIPPINE POWER REGULATORY COMMISSION DEVELOPMENT FUND", HEREINAFTER REFERRED TO AS THE "PPRC FUND", TO FURTHER ENHANCE AND PRESERVE THE INDEPENDENCE OF THE PPRC AND ENABLE IT TO FULFILL ITS MANDATE MORE EFFECTIVELY AND EFFICIENTLY, THE PPRC FUND SHALL BE DERIVED FROM FEES, ASSESSMENTS, LICENSES, FINES, PENALTIES AND OTHER CHARGES COLLECTED BY THE PPRC FROM THE ELECTRIC POWER INDUSTRY PARTICIPANTS DURING ANY ONE (1) YEAR AND SHALL BE IN ADDITION TO THE YEARLY APPROPRIATION OF THE PPRC AS AUTHORISED IN THE GENERAL APPROPRIATIONS ACT (GAA).

THE PPRC FUND SHALL BE USED TO DEFRAY THE COSTS AND EXPENSES INCURRED BY THE PPRC IN RELATION TO ITS OPERATION, INCLUDING BUT NOT LIMITED TO, EXPENDITURES NECESSARY TO RESTRUCTURE ITS ORGANIZATION AND SUPPLEMENT THE CAPABILITIES AND RESOURCES OF THE PPRC TO ACCURATELY REFLECT CURRENT AND FORESEEABLE FUNCTIONAL REQUIREMENTS IN LIGHT OF THE CHANGES IN REGULATORY CONDITIONS, DUTIES, RESPONSIBILITIES, AND ADVANCES IN TECHNOLOGY, IN ORDER TO UPDATE ITS REGULATORY POLICIES AND PRACTICES, AND ENHANCE ITS CAPABILITIES TO REGULATE, IN THE BEST PUBLIC INTEREST, PERSONS AND ENTITIES SUBJECT TO ITS JURISDICTION. THE PPRC FUND SHALL ALSO BE USED FOR THE EMOLUMENTS OF THE SECTORAL REPRESENTATIVES OF PPRC AND FOR ALL OTHER NECESSARY EXPENSES FOR THE PPRC. FOR THIS PURPOSE, THE PPRC IS HEREBY

AUTHORIZED TO RETAIN TWENTY PERCENT (20%) OF ITS YEARLY REVENUES GENERATED FROM THE COLLECTION OF AFORESAID FEES, ASSESSMENTS, LICENSES, FINES, PENALTIES AND OTHER CHARGES AND SHALL DEPOSIT THE MONEY COLLECTED IN THE PPRC FUND.

THE NATIONAL TREASURER SHALL BE THE CUSTODIAN OF THE PPRC FUND AND ALL DISBURSEMENTS AND EXPENDITURES THEREOF SHALL BE MADE IN ACCORDANCE WITH THE PROVISIONS OF THIS ACT AND ITS IMPLEMENTING RULES AND REGULATIONS. THE COMMISSION ON AUDIT OR ITS DULY AUTHORIZED REPRESENTATIVE SHALL EXAMINE AND AUDIT THE RECEIPTS, REVENUES, USES, DISBURSEMENTS, AND EXPENDITURES OF THE FUND AND SHALL SUBMIT THE APPROPRIATE REPORT THEREON TO THE CHAIRMAN OF THE COMMISSION ON AUDIT, COPY FURNISHED THE CHAIRMAN OF THE PPRC."

SECTION 8. Section 43 of the same Act is hereby amended to read as follows:

"SEC. 43. JURISDICTION, POWERS, AND Functions of the [ERC] PPRC. —

The [ERC] PPRC shall HAVE JURISDICTION AND GENERAL POWER TO REGULATE AND SUPERVISE THE BUSINESS OF EACH PERSON OR COMPANY ENGAGED IN THE GENERATION, TRANSMISSION, DISTRIBUTION, AND SUPPLY OF ELECTRICITY AND TO PERFORM FUNCTIONS SPECIFICALLY DESIGNATED OR IMPLIED BY THIS ACT THAT IS NECESSARY AND CONVENIENT TO THE EXERCISE OF THAT JURISDICTION AND POWER; *PROVIDED, HOWEVER*, THAT WITH RESPECT TO THE WHOLESALE ELECTRICITY MARKET, the PPRC shall AMONG OTHERS, (1) promote competition; (2) encourage market development; (3) PROTECT END-USERS OF ELECTRICITY FROM DISCRIMINATORY, UNFAIR, AND CONFISCATORY RATES; (4) ensure, [customer] UPON THE ESTABLISHMENT OF THE CONTESTABLE MARKET, END-USER'S choice; AND (5) CONTROL, PREVENT, AND penalize abuse of market power in the restructured electricity POWER industry. [In appropriate cases, the ERC is authorized to issue a cease and desist order after due notice and hearing. Towards this end, it shall] THE PPRC IS AUTHORIZED TO ISSUE A CEASE AND DESIST ORDER, WHENEVER NECESSARY TO SERVE THE INTEREST OF THE PUBLIC OR THE INTEREST OF JUSTICE.

THE PPRC, ACTING AS A QUASI-JUDICIAL BODY, SHALL CONDUCT PUBLIC HEARINGS ON ALL APPLICATIONS FOR RATE INCREASE AND ON ANY ISSUE, THE RESOLUTION OF WHICH WILL AFFECT PRIVATE RIGHTS OR IMPOSE OBLIGATIONS THAT MAY RESULT IN ANY CHANGE IN THE PRICE OF ELECTRICITY TO THE CONSUMERS.

IN ADDITION, THE PPRC SHALL PERFORM AND EXERCISE AND be responsible for the following POWERS AND functions:

- (a) Enforce the implementing rules and regulations of this Act AND ADOPT AND ENFORCE RULES REASONABLY REQUIRED IN THE EXERCISE OF ITS JURISDICTION, POWERS, AND FUNCTIONS FOR THIS PURPOSE. THE PPRC SHALL DEVELOP AND IMPLEMENT A POLICY TO ENCOURAGE THE USE OF NEGOTIATED RULE-MAKING PROCEDURES FOR THE ADOPTION OF RULES AND APPROPRIATE ALTERNATIVE DISPUTE RESOLUTION (ADR) PROCEDURES TO ASSIST IN THE RESOLUTION OF INTERNAL AND EXTERNAL DISPUTES UNDER ITS JURISDICTION;
- (b) REVIEW THE IMPLEMENTATION OF THE [Within six (6) months from the effectivity of this Act, promulgate and enforce, in accordance with law,] National Grid Code and [a] THE Distribution Code INCLUDING [which shall include, but not limited to,] the following:
 - (i) Performance standards for TRANSCO O & M Concessionaire, distribution utilities 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*, further, That such standards are set to ensure that the electric power industry participants meet the minimum financial standards to protect the public interest; AND

(III) DETERMINE, FIX, AND APPROVE, AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND PUBLIC HEARING, THE ITEMIZED AMOUNTS OF THE UNIVERSAL CHARGE TO BE IMPOSED ON ALL ELECTRICITY END-USERS PURSUANT TO SECTION 34 OF THIS ACT.

(c) Enforce the rules and regulations governing the operations of the WHOLESALE Electricity Spot Market and the activities of the spot market operator and other participants in the spot market, for the purpose of ensuring a greater supply and rational pricing of electricity;

(d) ENSURE THAT THERE ARE NO [Determine the level of] cross subsidies in the existing retail rate [until the same is removed] pursuant to Section 74 hereof;

(e) Amend, REVISE, or revoke, after due notice TO ALL INTERESTED PARTIES and PUBLIC hearing, the authority to operate [of] GRANTED TO any person or entity, which fails to comply with the PERTINENT provisions [hereof] OF THIS ACT, OR WITH ANY OF the [IRR] IMPLEMENTING RULES AND REGULATIONS OF THIS ACT, or WITH any DECISION, order or resolution of the [ERC] COMMISSION. In the event a divestment, CESSATION, OR DESISTANCE is required, the [ERC] COMMISSION shall, THROUGH A FORMAL ORDER FOR THAT PURPOSE, allow the affected party [sufficient] REASONABLE time to remedy the infraction or TO UNDERTAKE an orderly disposal OF THE MATTER, ACTIVITY, OR BUSINESS INVOLVED, AS THE CASE MAY BE, but in no case SHALL SAID REASONABLE TIME exceed twelve (12) months from the issuance of the FORMAL order OF THE COMMISSION;

(f) [In the public interest] Establish and enforce [a methodology for setting] IN THE INTEREST OF THE GENERAL PUBLIC AND IN THE INTEREST OF THE END-USERS OF ELECTRICITY, AFTER TAKING INTO ACCOUNT ALL RELEVANT CONSIDERATIONS, INCLUDING THE EFFICIENCY OR INEFFICIENCY OF THE REGULATED ENTITIES AND AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND PUBLIC HEARING, JUST AND REASONABLE transmission and distribution NON-DISCRIMINATORY wheeling rates, AS WELL AS JUST and REASONABLE retail rates for the captive market of distribution [utility, taking into account all relevant considerations, including the efficiency or inefficiency of the regulated entities. The rates must be such as to] UTILITIES, WHICH SHALL allow the recovery of ALL just and reasonable costs.[The ERC may adopt alternative forms of internationally-accepted rate-setting methodology as it may deem appropriate. The rate-setting methodology so adopted and applied must ensure a reasonable price of electricity. The rates prescribed shall be non-discriminatory. To achieve this objective and to ensure the complete removal of cross subsidies, the cap on the recoverable rate of system losses prescribed in Section 10 of Republic Act No. 7832, is hereby amended and shall be replaced by caps which shall be determined by the ERC based on load density, sales mix, cost of service, delivery voltage and other technical considerations it may promulgate. The ERC shall determine such form or rate-setting methodology, which shall promote efficiency. In case the rate setting methodology used is RORB, it shall be subject to the following guidelines:]

THE PPRC, TO PROMOTE EFFICIENCY AND FAIRNESS IN THE ELECTRIC POWER INDUSTRY, AND WHEN JUSTIFIED AND DEMANDED BY NATIONAL INTEREST, MAY ADOPT AFTER DUE NOTICE AND PUBLIC HEARING, ANY OTHER ALTERNATIVE FORM OF INTERNATIONALLY ACCEPTED METHOD OF RATEMAKING THAT SHALL BEST SERVE THE MUTUAL INTEREST OF THE GENERAL PUBLIC, THE END-USERS OF ELECTRICITY, AND THE ELECTRIC POWER INDUSTRY PARTICIPANTS.

IN EVERY CASE, THE RATEMAKING METHOD SO ADOPTED AND APPLIED MUST BE NEITHER EXTORTIONARY TO THE END-USERS OF ELECTRICITY NOR

CONFISCATORY TO THE TRANSCO OR TO THE DISTRIBUTION UTILITIES, AND MUST FURTHERMORE, ENSURE THAT THE PRICE OF ELECTRICITY IS JUST AND REASONABLE.

THE RATEMAKING POWER HEREIN GRANTED TO PPRC MUST BE EXERCISED IN SUCH A MANNER THAT EVERY DOUBT MUST BE RESOLVED IN FAVOR OF THE PROTECTION OF THE RIGHTS OF THE GENERAL PUBLIC.

IN DETERMINING A JUST AND REASONABLE RETURN ON RATE BASE OF THE TRANSCO OR OF A DISTRIBUTION UTILITY, THE PPRC MUST OBSERVE THE FOLLOWING GUIDELINES:

(I) THE VALUE OF THE FRANCHISE OF THE TRANSCO OR OF THE DISTRIBUTION UTILITY SHALL NOT BE INCLUDED IN THE RATE BASE, WHEN APPLICABLE, FOR THE PURPOSE OF RATEMAKING;

[i] (II) [For the purposes of determining the rate base] The TRANSCO or [any] A distribution utility [may be allowed to revalue its eligible assets not more than] IS AUTHORIZED TO REVALUE ITS ASSETS, FACILITIES, PROPERTY, AND PERMANENT IMPROVEMENTS CONSTITUTING ITS RATE BASE once every three (3) years [by an] THROUGH THE SERVICES OF EXPERIENCED, WELL-ESTABLISHED, REPUTABLE, AND independent appraisal company, IN ACCORDANCE WITH SOUND AND CONSISTENTLY MAINTAINED METHOD OF VALUATION; *Provided, however,* That the [ERC] PPRC may [give an exemption in case of unusual devaluation;] TEMPORARILY SUSPEND THE AFORESAID THREE(3) YEAR LIMITATION IN THE EVENT OF EXTRAORDINARY INFLATION OF THE PESO AND ONLY FOR THE PERIOD THAT SUCH EXTRAORDINARY INFLATION OR DEVALUATION LASTS; *Provided, further,* That the [ERC] PPRC, IN THAT EVENT, shall exert EVERY effort to PREVENT AND/OR minimize ANY STEEP AND RAPID ESCALATION OF THE price [shocks] OF ELECTRICITY in order to protect THE END-USERS OF ELECTRICITY;

(III) CORPORATE INCOME TAX LEVIED ON THE NET TAXABLE INCOME OF THE TRANSCO OR OF A DISTRIBUTION UTILITY SHALL NOT, DIRECTLY OR INDIRECTLY, BE PASSED ON TO THE END-USERS OF ELECTRICITY;

[ii] (VI) Interest expenses [are not allowable] OF THE TRANSCO OR OF A DISTRIBUTION UTILITY SHALL NOT BE ALLOWED AS deductions [from permissible] FOR PURPOSES OF DETERMINING A JUST AND REASONABLE return on rate base OR OTHER CURRENT METHOD OF RATEMAKING, WHEN APPLICABLE;

[iii] (VII) [In determining eligible] FOR THE PURPOSES OF DETERMINING JUST AND REASONABLE cost of services that will be passed on to the end-users OF ELECTRICITY, the [ERC] PPRC shall establish minimum efficiency performance standards for the TRANSCO and the distribution utilities, including systems losses, interruption frequency rates, and collection efficiency OF THE REGULATED ENTITIES;

[v] (VIII) [Further,] in determining the rate base OF the TRANSCO or of any distribution utility, THE PPRC shall not [be allowed] ALLOW THE TRANSCO OR ANY DISTRIBUTION UTILITY to include THE COSTS OF management inefficiencies [like] SUCH AS, BUT NOT LIMITED TO THE costS of project delays not [excused] EXCUSABLE by force majeure OR THE penalties, and related interest CHARGES ARISING during construction [applicable to these unexcused] PERIOD BECAUSE OF SAID INEXCUSABLE delays;

[v] (IX) Any significant operating costs or project investments of the TRANSCO and of a distribution utility, which shall become part of the rate base, shall be subject to [verification by] THE APPROVAL OF the [ERC] PPRC, AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND PUBLIC HEARING, IN ORDER to ensure that the contracting and procurement of the equipment, assets, and/or services [have been subjected to], AS WELL AS THE TERMS AND CONDITIONS OF THE CONTRACT OR CONTRACTS COVERING

SAID PROCUREMENT SHALL BE DONE IN COMPLIANCE WITH THE REQUIREMENTS OF EXISTING APPLICABLE PROCUREMENT LAWS, AS WELL AS IN ACCORDANCE WITH transparent AND accepted industry procurement and purchasing practices to protect the public interest.

- (g) ENSURE [Three (3) years after the imposition of the universal charge, ensure] that the charges of the TRANSCO or any distribution utility shall bear no cross subsidies between grids, within grids, or between classes of customers, except as provided herein;
- (h) Review and approve any changes on the terms and conditions of service of the TRANSCO or any distribution utility;
- (i) Allow TRANSCO to charge user fees for ancillary services to all electric power industry participants or self-generating entities connected to the grid. Such fees shall be fixed but the [ERC] PPRC after due notice TO ALL INTERESTED PARTIES, and public hearing;
- (j) Set a lifeline rate for the marginalized end-users;
- (k) Monitor and take measures in accordance with this Act to penalize abuse of market power, cartelization, and anti-competitive or discriminatory behavior by any electric power industry participant; TO ENSURE THAT RATES ARE JUST AND REASONABLE, THE PPRC SHALL DEVELOP AND ESTABLISH A REGULATORY STRUCTURE THAT COMBINES RIGOROUS ADVANCE SCREENING OF THE POWER MARKET WITH FREQUENT PUBLIC REPORTING, CONTINUING AGENCY MONITORING, AND SIGNIFICANT ENFORCEMENT ACTIVITY;
- (l) Impose fines or penalties for any non-compliance with or breach of this Act, the IRR of this Act, rules and regulations which it promulgates or administers.
- (m) Take any other action delegated to it pursuant to this Act;
- (n) Before the end of April of each year, submit to the Office of the President of the Philippines and Congress AND THE JCPC, copy furnished the DOE, an annual report containing such matters or cases, which have been filed before or referred to it during the preceding year, the actions and proceedings undertaken, and its decision or resolution in each case. The [ERC] PPRC shall make ELECTRONIC copies of such reports available to any interested party. PRINTED COPIES MAY BE AVAILABLE OF, upon payment of a charge, which reflects the printing costs. The [ERC] PPRC shall publish all its decisions involving rates and anti-competitive cases in at least one (1) newspaper of general circulation, and/or post electronically IN ITS OFFICIAL WEBSITE, and circulate to all interested electric power industry participants copies of its resolutions, to ensure fair and impartial treatment;
- (o) Monitor the activities in the generation and supply of the electric power industry with the end in view of promoting free market competition and ensuring that the allocation or pass through of bulk purchase cost by distributors is transparent, non-discriminatory and that any existing subsidies shall be divided pro-rata among all retail suppliers;
- (p) Act on applications for or modifications of certificates of public convenience and/or necessity, licenses, permits of franchised electric utilities in accordance with law; and revoke, review, and modify such certificates, licenses, or permits in appropriate cases, such as in the cases of violations of the Grid Code, Distribution Code, and other rules and regulations issues by the [ERC] PPRC in accordance with law';
- (q) Act on application for cost recovery and return on demand side management ENERGY EFFICIENCY, AND DEMAND RESPONSE projects AND MEASURES, INCLUDING INVESTMENTS ON SMART GRID TECHNOLOGIES;
- (r) In the exercise of its investigative and quasi-judicial powers, act against any participant or player in the energy sector for violations of any law, rule and regulation governing the same,

including the rules on cross-ownership, anti-competitive practices, abuse of market positions and similar or related acts by any participant in the energy sector or by any person, as may be provided by law, and require any person or entity to submit any report or data relative to any investigation or hearing conducted pursuant to this Act, OVER ANY OTHER GOVERNMENT AGENCIES WHICH MAY CLAIM JURISDICTION THEREOF, CONSIDERING THE TECHNICAL EXPERTISE OF THE PPRC ACTING AS GOVERNMENT REGULATOR ON POWER AND ENERGY PROJECTS OR ACTIVITIES;

(s) Inspect, on its own or through duly authorized representatives, the premises, books of accounts, and records of any persons or entity at any time, in the exercise of quasi-judicial power for purposes of determining the existence of any anti-competitive behavior and/or market power abuse and any violation of THE rules and regulations issued by the [ERC] PPRC;

(T) THE PPRC SHALL SUBMIT, AND SHALL MAKE AVAILABLE TO THE PUBLIC, WITHIN THE PRESCRIBED PERIOD, THE JCPC-REQUIRED DISCLOSURES SUCH AS REPORTS PERTINENT COMPLIANCE SUBMISSIONS, REPORTS, CERTIFICATES, ORDERS, OR DECISIONS, EXCEPT THOSE DESIGNATED AS CONFIDENTIAL SUBMISSIONS AFFECTING TRADE SECRETS OR THE LIKE, MADE OR ISSUED IN RELATION TO INDUSTRY PLAYERS IN THE GENERATION, TRANSMISSION, DISTRIBUTION, AND SUPPLY SECTOR, SUCH AS, BUT NOT LIMITED TO THE FOLLOWING: RESOLUTIONS, ORDERS, DECISIONS, CERTIFICATES OF COMPLIANCE, CERTIFICATES OF REGISTRATIONS, RETAIL RATES OF DISTRIBUTION UTILITIES, SYSTEM LOSS DATA OF DISTRIBUTION UTILITIES, SYSTEM AND CAPITAL INFRASTRUCTURE, CONSUMER COMPLAINTS, APPLICATIONS, PETITIONS, AND OTHER SIMILAR PUBLIC DOCUMENTS TO AN ELECTRONIC DISCLOSURE AND DATA ACCESS SYSTEM OR EDDA REPOSITORY. ELECTRONIC DISCLOSURE AND DATA ACCESS OR "EDDA" REFERS TO THE SYSTEM FOR DISCLOSURE OF ENERGY INDUSTRY INFORMATION FOR PUBLIC ACCESS TO ENSURE TRANSPARENCY AND CONSUMER PROTECTION USING ELECTRONIC DATABASE AND COMMUNICATIONS SYSTEM THAT SHALL OPERATE FOR TEN (10) YEARS FROM THE EFFECTIVITY OF THIS ACT;

[(t)] (U) Perform such other regulatory functions as are appropriate and necessary in order to ensure the successful restructuring and modernization of the electric power industry, such as, but not limited to, the rules and guidelines under which generation companies, distribution utilities which are not publicly listed shall offer and sell to the public a portion not less than fifteen PERCENT (15%) of their common shares of stocks: *Provided, however,* That generation companies, distribution utilities or their respective holding companies that are already listed in the PHILIPPINE STOCK EXCHANGE (PSE) are deemed in compliance. ENSURE THAT [For existing companies, such] public offering ARE IMPLEMENTED [shall be implemented not later than five (5) years from the effectivity of this Act. New companies shall implement their respective public offerings] not later than five (5) years from the issuance of their certificate of compliance; and

[(u)] (V) The [ERC] PPRC shall have the original and exclusive jurisdiction over all cases contesting rates, fees, finds, and penalties imposed by the [ERC] PPRC in the exercise of the above-mentioned powers, functions, and responsibilities, and over all cases involving disputes between and among participants or players in the energy sector.

All notices of hearings to be conducted by the [ERC] PPRC for the purpose of fixing rates or fees shall be published at least twice for two (2) consecutive weeks in two (2) newspapers of nationwide circulation.

SECTION 9. Section 44 of the same Act is hereby amended to read as follows:

"SEC. 44. *Transfer of Powers and Functions.* – The powers and functions of the [Energy Regulatory Board] ENERGY REGULATORY COMMISSION not inconsistent with the provisions of this Act are hereby transferred to the [ERC] PPRC. The foregoing transfer of

powers and functions shall include all applicable funds and appropriations, records, equipment, property and personnel as may be necessary.”

SECTION 10. Section 45 of the same Act 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 market manipulation, or other unfair trade practices detrimental to the encouragement and protection of contestable markets.

No generation, distribution utility, A COMPANY SUPPLYING ELECTRICITY, or ANY OF 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 the ERC] SUBSIDIARIES, AFFILIATES, STOCKHOLDERS, OFFICIALS OR DIRECTORS, OR OTHER STOCKHOLDERS OF SUCH SUBSIDIARIES OR AFFILIATES, OR ANY RELATIVES OF SUCH STOCKHOLDERS, OFFICIALS, OR DIRECTORS, within the fourth civil degree of consanguinity or affinity, shall be allowed to HAVE AND hold DIRECTLY OR INDIRECTLY, any interest [directly or indirectly] in the TRANSCO or its concessionaire. Likewise, the TRANSCO, or its concessionaire or any of [its] THE stockholders [or], officials, OR DIRECTORS OF THE TRANSCO OR ITS CONCESSIONAIRE, or any [of their] relatives OF SUCH STOCKHOLDERS, OFFICIALS, DIRECTORS OF THE TRANSCO OR ITS CONCESSIONAIRE within the fourth civil degree of consanguinity or affinity, shall not BE ALLOWED TO HAVE AND hold DIRECTLY OR INDIRECTLY, any interest [whether directly or indirectly], in any generation company, distribution utility, OR A COMPANY SUPPLYING ELECTRICITY. Except for *ex officio* government-appointed representative, no officer or director, OR STOCKHOLDER of the TRANSCO'S concessionaire shall be an officer or director of any generation company, distribution utility, or [supplier] a COMPANY SUPPLYING ELECTRICITY.

[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] PPRC shall enforce the following safeguards:

(a) No company or related group can own, operate, or control more than TWENTY PERCENT (20%) of the installed generating capacity of a grid and/or FIFTEEN PERCENT (15%) 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] PPRC, *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] FORTY PERCENT (40%) 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 PROTECTION OF THE CAPTIVE MARKETS AND IN ORDER TO ENSURE HEALTHY COMPETITION IN THE GENERATION SECTOR OF THE ELECTRIC POWER INDUSTRY, ALL BILATERAL SUPPLY CONTRACTS SHALL BE SUBJECT TO A COMPETITIVE SELECTION PROCESS (CSP) CONDUCTED BY AN ACCREDITED ENTITY OF THE PPRC.

(c) ENSURE THAT [For the first five (5) years from the establishment of the wholesale electricity spot market,] no distribution utility shall source more than EIGHTY-FIVE PERCENT (85%) of its total demand from bilateral electric power supply contracts.

For the purposes of this Section, the grid basis shall consist of three (3) separate grids, namely: THE Luzon GRID, THE Visayas GRID, and THE Mindanao GRID. THE [ERC] PPRC IS HEREBY AUTHORIZED to modify or amend this definition of a grid when two or all of the three (3) separate grids become sufficiently interconnected to constitute a single grid, or WHEN conditions may otherwise REQUIRE such modification or amendment.

Exceptions from THE ABOVE 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 ownerships and/or control between or within sectors of the electricity industry may be imposed by [ERC] PPRC only insofar as the enforcement of the provisions of this Section is concerned.

The [ERC] PPRC shall, within one (1) year from the effectivity of this Act, promulgate rules and regulations CONSISTENT WITH THE PROVISIONS OF THIS ACT, to ensure and promote competition, encourage market development, customer choice and deter AND/OR penalize ANY abuse of market power, cartelization OR any anti-competitive or discriminatory behavior, in order to further the intent of this Act and IN ORDER TO protect the interest OF THE GENERAL PUBLIC AND THE END-USERS OF ELECTRICITY, THE PROVISIONS OF REPUBLIC ACT NO. 10667, OTHERWISE KNOWN AS THE "PHILIPPINE COMPETITION ACT" NOTWITHSTANDING. Such rules and regulations shall COVER AND define the following:

(a) the relevant markets for purposes of establishing THE PRESENCE OR ABSENCE OF MONOPOLIZATION, CARTELIZATION, ANTI-COMPETITIVE AND/OR DISCRIMINATORY ACT OR BEHAVIOR, AND/OR abuse or misuse OF market [position] POWER;

(b) areas of isolated grids; and

(c) the periodic reportorial requirements FROM THE electric power industry participants THAT may be necessary to enforce the provisions of this Section.

THE PPRC shall ESTABLISH BY RULE, A CODE OF CONDUCT FOR ELECTRIC POWER INDUSTRY PARTICIPANTS AND THEIR AFFILIATES TO PROTECT AGAINST MARKET ABUSES AND ANTI-COMPETITIVE PRACTICES. THE CODE SHALL, AT A MINIMUM:

(1) REQUIRE AN ELECTRIC POWER INDUSTRY PARTICIPANT AND ANY AFFILIATE THAT SHARES THE SAME NAME AND LOGO TO DISCLOSE TO ALL ELECTRICITY CONSUMERS THE RELATIONSHIP BETWEEN SAID INDUSTRY PARTICIPANT AND AFFILIATE AND TO CLARIFY THAT THE AFFILIATE IS NOT THE SAME AS THE ELECTRIC POWER INDUSTRY PARTICIPANT AND THAT IN ORDER TO RECEIVE SERVICE FROM SAID INDUSTRY PARTICIPANT, A CONSUMER DOES NOT HAVE TO PURCHASE THE SERVICES OF THE AFFILIATE;

(2) PROHIBIT PREFERENTIAL ACCESS BY AN ELECTRIC POWER INDUSTRY PARTICIPANT AFFILIATE TO CONFIDENTIAL CONSUMER INFORMATION;

(3) PROHIBIT CROSS-SUBSIDIZATION BETWEEN COMPETITIVE OPERATIONS AND REGULATED OPERATIONS, INCLUDING THE USE OF ELECTRIC POWER INDUSTRY PARTICIPANT PERSONNEL AND OTHER RESOURCES;

(4) PROHIBIT JOINT MARKETING ACTIVITIES AND EXCLUSIVE REFERRAL ARRANGEMENTS BETWEEN AN ELECTRIC POWER INDUSTRY PARTICIPANT AND ITS AFFILIATES;

- (5) PROVIDE THE PPRC WITH ALL NECESSARY ACCESS TO BOOKS AND RECORDS RELATIVE TO PERTINENT CASES FILED AT THE PPRC;
- (6) REQUIRE ELECTRIC POWER INDUSTRY PARTICIPANTS TO MAKE ANNUAL COMPLIANCE FILINGS; AND
- (7) REQUIRE FAIR TREATMENT OF ALL COMPETITORS BY AN ELECTRIC POWER INDUSTRY PARTICIPANT.

The PPRC shall, *motu proprio*, monitor and, WHEN WARRANTED BY THE ATTENDANT FACTS penalize any SUCH MONOPOLIZATION, CARTELIZATION, ABUSE OF market power, or anti-competitive or discriminatory act or behavior by any [participant in the] electric power industry PARTICIPANT. Upon finding that [a] AN ELECTRIC POWER INDUSTRY participant has engaged in such MONOPOLIZATION, CARTELIZATION, ABUSE OF MARKET POWER, OR ANTI-COMPETITIVE AND/OR DISCRIMINATORY act or behavior, the [ERC] PPRC shall FORTHWITH ISSUE A CEASE AND DESIST ORDER TO THE ERRING ELECTRIC POWER INDUSTRY PARTICIPANT, AND THEREAFTER PERMANENTLY stop and redress the same. Such REDRESS SHALL INCLUDE, AMONG OTHER remedies [shall, with limitation, include] THAT MAY BE APPROPRIATE UNDER THE CIRCUMSTANCES the imposition of price controls, THE issuance of [injunctions] INJUNCTIVE RELIEF, THE [requirement of] divestment or disgorgement of excess profits and THE imposition of fines and penalties pursuant to THE APPLICABLE PROVISIONS OF this Act.

The [ERC] PPRC shall within one (1) year from the effectivity of this Act, promulgate SUCH rules [and regulations providing for a complaint procedure, that, without limitation, provides] AS MAY BE NECESSARY, NOT INCONSISTENT WITH THE PROVISIONS OF THIS ACT, THAT WILL ESTABLISH A PROCEDURE WHEREBY the party COMPLAINED OF, with DUE notice AND PUBLIC HEARING, SHALL BE GIVEN an opportunity to be heard.

SECTION 11. Section 46 of the same Act is hereby amended to read as follows:

"SEC. 46. Fines and Penalties.— The fines and penalties that shall be imposed by the [ERC] PPRC for any violation of or non-compliance with ANY PROVISIONS OF this Act or [the IRR] ANY RULES AND REGULATIONS IMPLEMENTING THIS ACT, shall, DEPENDING UPON THE GRAVITY OF THE OFFENSE, range from a minimum of Fifty thousand pesos (P50,000.000) to a maximum of Fifty million pesos (P50,000,000.00).

Any person who is found guilty of any of the prohibited acts pursuant to Section 45 hereof shall suffer the penalty of prison mayor OR a fine ranging from Ten thousand pesos (P10,000.00) to Ten million pesos (P10,000,000.00), or both, at the discretion of the APPROPRIATE TRIAL court.

The STOCKHOLDERS, OFFICERS, members of the Board of Directors of [the juridical companies participating in or covered in the] THE generation [companies] COMPANY, distribution [utilities] UTILITY, the TRANSCO, [or its] TRANSCO'S concessionaire COMPANY, or A COMPANY THAT ACTS AS A supplier OF ELECTRICITY AND THE RELATIVES OF SUCH STOCKHOLDERS, OFFICERS, OR MEMBERS OF THE BOARD OF DIRECTORS WITHIN THE FOURTH CIVIL DEGREE OF CONSANGUINITY OR AFFINITY, who [violate] IS FOUND GUILTY OF ANY VIOLATION OF the provisions of this Act may be fined by an amount not exceeding double the AMOUNT of damages caused by the OFFENDING COMPANY or by imprisonment of one (1) year or two (2) years or both SUCH FINE AND IMPRISONMENT, at the discretion of the APPROPRIATE TRIAL court. This rule shall apply to the members of the Board who knowingly, or by neglect, allows the commission or omission under the law.

If the offender is a government official or employee, he shall, in addition TO [be] being dismissed from the service, [with prejudice to reinstatement and] with perpetual [or temporary] disqualification [from holding] TO HOLD any elective or appointive GOVERNMENT office.

If the offender is an alien, he [may] SHALL, in addition to the penalties prescribed, be deported SUMMARILY without further proceedings after THE PAYMENT OF HIS OR HER FINE OR THE service of [sentence] HIS OR HER IMPRISONMENT.

[Any case] CASES which involve QUESTIONS of fact shall be appealable to the Court of Appeals. THOSE which involve PURELY QUESTIONS of law shall be directly appealable to the Supreme Court.

[The] ANY administrative sanction [that may be] the [ERC] PPRC MAY HAVE imposed shall be without prejudice to the filing of ANY criminal action, if warranted.

To ensure compliance with this Act, the penalty of *prision correccional* or a fine ranging from Five thousand pesos (P5,000.00) to Five million pesos (P5,000,000.00), or both, at the discretion of the court, shall be imposed on any person, including but not limited to the president, member of the Board, Chief Executive Officer or Chief Operating Officer of the corporation, partnership, or any other entity involved, found guilty of violating or refusing to comply with any provision of this Act or its IRR, other than those provided herein.

Any party [to] CHARGED IN an administrative proceeding UNDER THE PROVISIONS OF THIS ACT, may, at any time, make an offer to the [ERC] PPRC, EITHER conditionally or otherwise, for a [consented] CONSENT decree, OR voluntary compliance or VOLUNTARY desistance [and], OR ANY other settlement of the case. The offer [and], INCLUDING any or all of the ultimate facts upon which the offer is based, shall be [considered] DEEMED TO HAVE BEEN MADE for settlement purposes only and shall not be used, FOR ANY PURPOSE, as evidence against THE OFFERING PARTY OR AGAINST any OTHER party for [any other purpose] THAT MATTER, and shall not constitute an admission of any violation of the laws, rules, regulations, orders [and] OR resolutions of the PPRC BY THE PARTY MAKING THE OFFER, NEITHER SHALL THE ACT OF THE PPRC, THE GOVERNMENT, OR ANY INTERESTED OR AGGRIEVED PARTY IN ENTERTAINING AND DISCUSSING THE OFFER BE DEEMED AS AN ESTOPPEL nor as a waiver ON THE PART OF THE PPRC, THE GOVERNMENT, OR ANY INTERESTED OR AGGRIEVED PARTY to file any criminal [actions] ACTION, IF WARRANTED.

In addition, Congress may, upon recommendation of the DOE AND/OR THE [ERC] PPRC, revoke such franchise or privilege granted to the ELECTRIC POWER INDUSTRY PARTICIPANT THAT violated the provisions of this Act.

CHAPTER IX FINAL PROVISIONS

SECTION 12. Section 76 of the same Act is hereby amended to read as follows:

“SEC. 76. *Education and Protection of End-Users.* — End-users shall be educated about the implementation of retail access and its impact on end-users and on the proper use of electric power. Such education shall include, but not limited to, the existence of competitive electricity suppliers, choice of competitive electricity services, regulated transmission and distribution services, systems reliability, aggregation, market, itemized billing, stranded cost, uniform disclosure requirements, low-income bill payment, energy conservation and safety measures.

The DOE, in coordination with the NPC, NEA, [ERC] PPRC and the Office of Press Secretary-Philippine Information Agency (OPS-PIA), shall undertake an information campaign to educate the public on the STREAMLINING OF THE POWER AND ENERGY INDUSTRY [restructuring of the electric power industry and privatization of NPC.]

SECTION 13. *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 14. *Applicability and Repealing Clause*. — The applicability provisions of Commonwealth Act No. 146, as amended, otherwise known as the “Public Service Act”; Republic Act 6395, as amended, revising the charter of NPC; Presidential Decree 269, as amended, referred to as the National Electrification Decree; Republic Act 7638, otherwise known as the “Department of Energy Act of 1992”; Executive Order 172, as amended, creating the ERB; Republic Act 7832 otherwise known as the “Anti-Electricity and Electric Transmission Lines / Materials Pilferage Act of 1994”, shall continue to have full force and effect except insofar as such acts and decree, and only to that extent, are inconsistent with any of the provisions of this Act.

The provision with respect to electric power of Section 11(c) of Republic Act 7916, as amended, and Section 5(f) of Republic Act 7227, are hereby repealed or modified accordingly.

Presidential Decree No. 40 and all laws, decrees, rules and regulations, or portion thereof, inconsistent with this Act are hereby repealed or modified accordingly.

SECTION 15. *Effectivity Cause*. — This Act shall take effect on the fifteenth day following its publication in at least two (2) national paper of general circulation.

Approved,