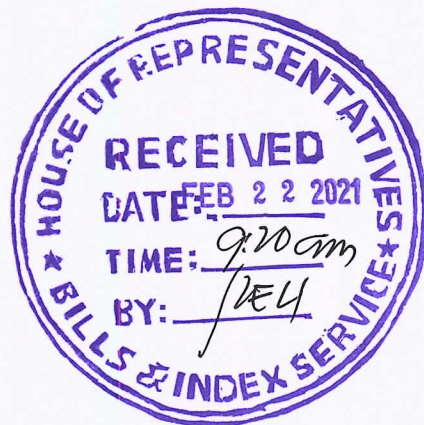




Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City



EIGHTEENTH CONGRESS

Second Regular Session

8786

House Bill No. _____

Introduced by Representative Presley C. De Jesus, Philreca Party-List
Representative Godofredo N. Guya, RECOBODA Party-List
Representative Sergio C. Dagooc, APEC Party-List
Representative Adriano A. Ebcas, Ako Padayon Pilipino Party-List

**“AN ACT PROVIDING FOR THE NATIONAL POLICY AND FRAMEWORK
FOR ENERGY ADVOCACY THROUGH THE CREATION OF THE ENERGY
COUNSEL OFFICE”**

Explanatory Note

The enactment of Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA) marked the era of paradigm shift from a government monopolized energy sector towards a liberated and private sector-driven industry. Corollarily, the said law mandates the Energy Regulatory Commission (ERC) to eponymously regulate matters to balance the interests of the entire energy industry players. However, the herculean tasks bestowed upon ERC makes it hard for them to balance these battling interests from the entire energy spectrum—especially for the captive market end-user consumers.

Despite the presence of ERC, the captive market end-users do not have an office of public interest lawyers that will represent their grievances against the incessant demands of energy players—from generation to distribution utilities—who have always a group of legal gladiators at their disposal to fight for their corporate interest.

Thus, it is imperative to create an institution to represent solely the interest of end-users in rate-setting, rule-making, and other energy-related cases and proceedings

before all government agencies including its judicial and quasi-judicial organs: *The Tribune of the End-User Consumers*.

This bill seeks to create an Energy Counsel Office (ECO) as an institution tasked to realize the aforementioned premises and ensure a low and reasonable electricity rates for the end-user consumers who are held captive in a private sector dominated power industry.

In view of the foregoing, the immediate passage of this bill is earnestly sought.



SERGIO C. DAGOOOC

APEC Party-List Representative



PRESLEY C. DE JESUS

PHILRECA Party-List Representative



ADRIANO A. EBCAS

Ako Padayon Pilipino Party-List Representative



GODOFREDO N. GUYA

RECOBODA Party-List Representative



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AN ACT
PROVIDING FOR THE NATIONAL POLICY AND FRAMEWORK FOR
ENERGY ADVOCACY THROUGH THE CREATION OF THE ENERGY
COUNSEL OFFICE

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

SEC. 1. Short Title. — This Act shall be referred to as the "Energy Counsel Act of 2020."

SEC. 2. Declaration of Policy. — It is hereby declared the policy of the State to recognize the right of end-users to reasonable rates, to adequate and reliable services, and to transparent processes involving these rates and services. Towards this end, there is a need for institutionalized and independent end-user representation in rate-setting, rule-making, and other energy related cases and proceedings before government agencies including judicial and quasi-judicial bodies.

SEC. 3. The Energy Counsel Office (ECO). — The ECO is hereby created which shall be an independent and autonomous office attached to the Department of Justice (DOJ) for purposes of policy and coordination in accordance with Section 38(3), Chapter 7, Book IV of Executive Order No. 292, as amended.

SEC. 4. Powers and Functions. - The ECO shall be a public legal office that shall represent all captive market end-users in the energy sector, and matters affecting the public interest before any department, commission, agency, or court requiring the services of a lawyer. It shall independently discharge its mandate towards the best interest of all captive end-users, ensuring least cost without compromising safety, reliability, and sufficient service. Towards this end, the ECO shall:

- (1) Initiate, intervene, and represent all end-users, in the following:
 - (a) Rate-setting, rule-making, and other energy related cases, complaints, proceedings, and consultations before the Department of Energy (DOE), Energy Regulatory Commission (ERC), National Electrification Administration (NEC), Philippine Competition Commission (PCC), and other judicial and quasi-judicial bodies; and
 - (b) Actions before any trial or appellate court, including the Supreme Court, which involve the validity of any decision, memoranda, rule, regulation, circular, or order of the DOE, ERC, NEC, PCC, and other departments, commissions, and agencies insofar as these decisions and policy issuances affect energy rates and services;
- (2) Monitor all issuances of the DOE, ERC, NEC, PCC, and other departments, commissions, and agencies and formulate and issue the necessary comments or legal memoranda insofar as these affect energy rates and services;
- (3) Evaluate and act upon requests and complaints from end-users concerning the matters set forth in items (1) and (2), except that any court proceedings initiated by the ECO must be brought on behalf of the Republic of the Philippines and not on behalf of the captive market end-user. The initiation or continuation of any proceedings is in the sole discretion of the ECO.
- (4) Conduct investigations, initiate studies, conduct research, present comments and testimony before governmental bodies, issue reports, *and* engage in regular information, education, and communication programs for all captive market end-users on laws, rules, regulations, decisions, circulars, and orders that affect energy rates and services, including end-user rights and remedies
- (5) Consult directly with end-users on a regular basis in order to determine the concerns of end-users with respect to electricity rates;
- (6) Be furnished or served, as the case may be, by departments, commissions, and agencies with all documents, notices, petitions, applications, complaints, answers, motions, and other pleadings in all related cases, complaints, proceedings, and consultations;

(7) Have the right to access, free of charge, all files, records, and documents in the DOE, ERC, NEC, PCC and other departments, commissions, and agencies pertaining to energy related cases, complaints, proceedings, and consultations: *Provided*, That the files, records, and documents do not pertain to the following:

(a) Personnel information;

(b) Confidential communications between commissioners, judges, or justices and general counsels on records relating to proceedings in which the ECO is a party to; and

(c) Confidential information declared as such by the ERC.

ECO lawyers shall have the authority to administer oaths in connection with the performance of their duty.

SEC. 5. *Representation of indigent litigants* - The ECO shall independently discharge its mandate to render, free of charge, legal representation, assistance, and counselling to indigent persons in cases falling under Sec. 4(1) of this law. In the exigency of the service, the ECO may be called upon by proper government authorities to render such service to other persons, subject to existing laws, rules and regulations.

SEC. 6. *The Energy Counsel and Deputy Energy Counsels*. — The Energy Counsel (EC) shall head the ECO, shall have the primary authority and responsibility for the effective exercise of its mandate and the discharge of its powers and functions, and shall be assisted by *three (3)* Deputy Energy Counsels. In case of temporary absence of the EC, a Deputy EC shall be designated as the Officer-in-Charge of the ECO.

The EC and Deputy ECs shall be natural-born citizens of the Philippines, at least thirty-five (35) years of age, with at least seven (7) years of practice in law, and with proven competence, integrity, probity, and independence: *Provided*, That the EC shall have at least six (6) years of practice in the field of energy, and the Deputy EC shall have at least four (4) years of practice in the field of energy. *Provided finally*, that they shall not be affiliated with any energy company, as a member of the board, officer, employee, or consultant, at least one (1) year before their respective appointments.

SEC. 7. *Appointment, Term, and Rank*. — The EC shall be appointed by the President, who shall subsequently appoint the Deputy ECs. They shall serve for a term of six (6) years and may be reappointed: *Provided*, That for the first appointees, the EC and Deputy ECs shall hold office until the end of term of the appointing President.

The EC and Deputy ECs shall have the same rank, salaries, allowances, and retirement benefits as the Prosecutor General and Senior Deputy State Prosecutor of the National Prosecution Service respectively: *Provided*, That their retirement benefits

shall be prorated in accordance with Section 21 of Republic Act No. 10071, otherwise known as the Prosecution Services Act.

SEC 8. Prohibitions. — The EC and Deputy EC shall be prohibited from:

- (1) Serving as a member of the board, officer, employee, or consultant of any energy company in the course of their respective terms of office: *Provided*, That this prohibition shall also apply to their family members up to the third degree of consanguinity or affinity;
- (2) Having any interest, ownership, or stake in any energy company in the course of their respective terms of office: *Provided*, That this prohibition shall also apply to their family members up to the third degree of consanguinity or affinity;
- (3) Being members of a political party and committee, or engaging in any partisan political activity in the course of their respective terms of office; and
- (4) To enter any energy-related businesses in the course of two (2) years after relinquishing the post from any reason thereof.

When any of the foregoing acts is done in collusion with private individuals or corporations, the private individuals or corporation shall likewise be liable for the offense.

In addition, the public officer involved shall also suffer the penalty of temporary disqualification from public office, while the private individual or corporation shall be permanently disqualified from transacting business with the Government.

Private individuals who commit any of the following acts, including any public officer, who conspires with them, shall suffer the penalty of *Prisión mayor* or not less than six (6) years and one (1) day but not more than twelve (12) years:

SEC 9. Organizational Structure and Plantilla Positions. — The Department of Justice shall submit its temporary organizational structure and plantilla positions to the Department of Budget and Management (DBM) not later than six (6) months from the effectivity of this Act.

The ECO, upon approval of the DOJ, may request the DBM for any change in the organizational structure and plantilla positions after a comprehensive review resulting to a finding that any alteration will improve the discharge of the ECO's powers and functions: *Provided*, That the DBM shall render a decision on such request within six (6) months from submission.

The ECO shall have legal, technical, and administrative personnel in its organizational structure and staffing complement, and may hire consultants as expert witnesses or technical advisors as it finds necessary for the full and efficient discharge of its powers and functions. All employees and consultants shall be subject to civil

service laws, rules, and regulations: *Provided*, That all employees shall be subject to Republic Act No. 6758, otherwise known as the Salary Standardization Act.

SEC 10. *Removal and Vacancy.* — The EC and Deputy ECs shall not be removed or suspended, except for cause provided by law. The President may remove the EC or Deputy ECs for malfeasance, misfeasance, or nonfeasance in office, or for any reason which renders any of them ineligible for appointment, incapable, or unfit to discharge the mandate, powers, and functions of the ECO.

In case of death, permanent incapacity, removal, or resignation of the incumbent EC or Deputy ECs, the President may appoint or designate one, as the case may be, in an acting capacity until a new EC or Deputy EC has been appointed: *Provided*, That the new appointment shall only be for the unexpired term of the predecessor.

SEC 11. *Exemption from Fees and Costs of Suits.* — The ECO shall be exempt from payment of docket and other fees incidental to instituting an action in court and other quasi-judicial bodies, as an original proceeding or on appeal.

SEC. 12. *Costs of Suit.* — The costs of the suit, attorney's fees, and contingent fees imposed upon adversarial parties of the ECO after a successful litigation shall be deposited in the National Treasury.

SEC. 13. *Franking Privilege.* — The ECO may, free of charge, transmit through ordinary mail, registered mail, or courier service for the transmittal of official communications and papers directly connected with the conduct of its powers, functions, or exercise of administrative supervision over its personnel.

SEC. 14. *Grant of Special Allowances.* — The EC, Deputy EC, service or division heads, and lawyers shall be granted special allowances in amounts to be determined by the DBM: *Provided*, That the grant of said special allowances shall not exceed one hundred percent (100%) of the basic salary of the ECO officials and lawyers: *Provided further*, That special allowances shall be paid from costs of suit, attorney's fees and contingent fees deposited in the National Treasury pursuant to Section 11 of this Act: *Provided finally*, That whenever the funding source is insufficient, the special allowance shall be paid through the General Appropriations Act.

SEC. 15. *Appropriations.* The amount necessary for the initial implementation of this Act in the amount of two hundred million pesos (P200,000,000.00) shall be taken from the budget of the DOJ. Thereafter, the amount of two hundred million pesos (P200,000,000.00) shall be automatically appropriated and included in the annual General Appropriations Act every year which may be increased as may be necessary for the continued implementation of this Act.

SEC. 16. *Implementing Rules and Regulations.* — Within ninety (90) calendar days from the approval of this Act, the DOJ, in consultation with the DBM, government

energy agencies, and private energy stakeholders, shall adopt and issue the rules and regulations for the effective implementation of this Act.

SEC. 17. *Congressional Oversight.* — The Joint Congressional Energy Commission shall exercise oversight powers over the implementation of this Act.

SEC. 18. *Amendatory Clause.* — Section 13 of Republic Act No. 7638, otherwise known as the Department of Energy Act of 1992, as amended, is hereby further amended.

SEC. 19. *Separability Clause.* — Any portion or provision of this Act, which may be declared unconstitutional or invalid shall not have the effect of nullifying other portions or provisions hereof.

SEC. 20. *Repealing Clauses.* — All laws, ordinances, rules, regulations and other issuance or parts thereof, which are inconsistent with this Act, are hereby amended, modified, or repealed accordingly.

SEC. 21. *Effectivity Clause.* — This Act shall take effect fifteen (15) days after its publication in the Official Gazette or at least two (2) newspapers of general circulation.

Approved,