

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

**NINETEENTH CONGRESS**  
First Regular Session

**HOUSE BILL NO. 174**



**Introduced by Rep. Caroline L. Tanchay and Rep. Rodante D. Marcoleta**

### **EXPLANATORY NOTE**

Section 45 of Republic Act (RA) No. 9136 otherwise known as the Electric Power Industry Reform Act of 2011 (“EPIRA”) allows cross-ownership among the power sectors. This means that a distribution utility may source, at the maximum, fifty percent (50%) of its demand from an associated firm engaged in generation of power. Section 45 further defined an “associated firm” as any person alone or together with any other person, directly or indirectly, through one or more intermediaries, [who] controls, is controlled by, or is under common control with, such entity. Simply put, if both the distribution utility and the generation company are controlled by one entity, they are to be considered as associated firms.<sup>1</sup>

However, Section 4(b), Rule 11 of the Implementing Rules and Regulation of the EPIRA unduly expanded the concept of the limits on the concentration of ownership by redefining “control” as the “entity controlling the terms and conditions of the prices or quantities of the output of such capacity sold in the market” instead of “the power to direct or cause the direction of the management policies of a person by contract, agency or otherwise” in Section 45 of the EPIRA.

This undue expansion allowed private power firms to circumvent the *already generous* cross-ownership limitation in the EPIRA.

For instance, the Manila Electric Company (Meralco) is known to be the biggest distributor of electricity in Luzon. Meralco, through its Powergen Corporation (MGEN) can easily be categorized as an energy cartel – having ownership in the following: 51% of the 455MW San Buenaventura Power Plant expansion in Mauban, Quezon; 100% of the Global Business Power Corporation (GBP); GBP, in turn, owns 50% interest in Alsons Thermal Energy Corporation (ATEC); ATEC, in turn, holds 75% interest in Sarangani Energy Corporation’s 237MW coal-fired power plant in Sarangani and a 120MW coal-fired power plant in Zamboanga. MGEN likewise entered into a Joint-Venture with San Miguel Corporation for the 1200MW coal-fired Mariveles Power Plant, which is contracted to supply 528MW power to Meralco. In addition, MGEN also entered into a Joint Venture with

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<sup>1</sup> Section 45, EPIRA.

DMCI/Semirara for the 700MW coal-fired St. Rafael Power Plant, which is contracted to supply 400MW power to Meralco.<sup>2</sup>

Totaling the amount of the contracted power vis-à-vis the demand of Meralco would translate to almost 95% of the demand of Meralco, as part of the MVP Group, sourced from associated firms. However, the abhorrent contravention of the EPIRA through its IRR allows Meralco to cartelize the power industry, to the prejudice and damage of its consumers.

This is on top of the sweetheart deals freely available to Meralco in contracting power supply from its affiliates which is allowed generously by the EPIRA – to as much as 50% of the demand of the distribution utility.

This bill seeks to avoid this monopoly altogether by eliminating the allowance for cross-ownership in the EPIRA, and by adjusting its IRR accordingly. The prohibition on any form of cross-ownership will remove the conflict of interest as among distribution utilities and generation companies, allowing a level playing field for all power stakeholders.

In view of the foregoing, the immediate approval of this measure is earnestly sought.

  
CAROLINE L. TANCHAY

  
RODANTE D. MARCOLETA

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<sup>2</sup> MGEN is a wholly-owned subsidiary of Meralco. Meanwhile, Meralco is 35% owned by Beacon Electric Assets Holdings Inc., a wholly owned subsidiary of Metro Pacific Investment Corporation (MPIC). MPIC, on the other hand, owns 10.50% of Meralco.

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**AN ACT**  
**PROHIBITING CROSS-OWNERSHIP AS AMONG DISTRIBUTION UTILITIES**  
**AND GENERATION COMPANIES AMENDING FOR THIS PURPOSE SECTION 45**  
**OF REPUBLIC ACT (RA) NO. 9136**

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

**SECTION 1.** Section 45 of RA No. 9136 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 company, distribution utility, or its respective subsidiary or affiliate or stockholder or official of a generation company or distribution utility, or other entity engaged in generating and supplying electricity specified by ERC within the fourth civil degree of consanguinity or affinity, shall be allowed to hold any interest, directly or indirectly, in TRANSCO or its concessionaire. Likewise, the TRANSCO, or its concessionaire or any of its stockholders or officials or any of their relatives within the fourth civil degree of consanguinity or affinity, shall not hold any interest, whether directly or indirectly, in any generation company or distribution utility. Except for ex officio government-appointed representatives, no person who is an officer or director of the TRANSCO or its concessionaire shall be an officer or director of any generation company, distribution utility or supplier.*

*“An “affiliate” means any person which, alone or together with any other person, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person. As used*

herein, "control" shall mean the power to direct or cause the direction of the management policies of a person by contract, agency or otherwise.

"To promote true market competition and prevent harmful monopoly and market power abuse, the ERC shall enforce the following safeguards:

(a) No company or related group can own, operate or control more than thirty percent (30%) of the installed generating capacity of a grid and/or twenty-five percent (25%) of the national installed generating capacity. "Related group" includes a person's business interests, including its subsidiaries, affiliates, directors or officers or any of their relatives by consanguinity or affinity, legitimate or common law, within the fourth civil degree;

(b) Distribution utilities may enter into bilateral power supply contracts subject to review by the ERC: Provided, That such review shall only be required for distribution utilities whose markets have not reached household demand level. For the purpose of preventing market power abuse between associated firms engaged in generation and distribution, ~~no distribution utility shall be allowed to source from bilateral power supply contracts more than fifty percent (50%) of its total demand from an associated firm engaged in generation but such limitation, however, shall not prejudice contracts entered into prior to the effectivity of this Act. An associated firm with respect to another entity refers to any person which, alone or together with any other person, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such entity;~~ **BY NO MEANS CAN DISTRIBUTION UTILITIES ENTER INTO BILATERAL POWER SUPPLY AGREEMENTS WITH ANY ASSOCIATED FIRM ENGAGED IN GENERATION, WHETHER DIRECT OR INDIRECT. THIS 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,WHO CONTROLS, IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH, SUCH ENTITY. THE IMPLEMENTING RULES AND REGULATIONS OF THIS ACT IS TO BE ADJUSTED ACCORDINGLY WITHOUT REDEFINING "CONTROL" AS DEFINED IN THIS SECTION.**

- (c) For the first five (5) years from the establishment of the wholesale electricity spot market, no distribution utility shall source more than ninety percent (90%) of its total demand from bilateral power supply contracts.

“For purposes of this Section, the grid basis shall consist of three (3) separate grids, namely Luzon, Visayas and Mindanao. The ERC shall have the authority to modify or amend this definition of a grid when two or more of the three separate grids become sufficiently interconnected to constitute a single grid or as conditions may otherwise permit.

“Exceptions from these limitations shall be allowed for isolated grids that are not connected to the high voltage transmission system. Except as otherwise provided for in this Section, any restriction on ownership and/or control between or within sectors of the electricity industry may be imposed by ERC only insofar as the enforcement of the provisions of this Section is concerned.

“The ERC shall, within one (1) year from the effectivity of this Act, ~~promulgate~~ **ADJUST THE** rules and regulations to ensure and promote competition, encourage market development and customer choice and discourage/penalize abuse of market power, cartelization, and any anti-competitive or discriminatory behavior, in order to further the intent of this Act and protect the public interest. Such rules and regulations shall define the following:

- (a) the relevant markets for purposes of establishing abuse or misuse of monopoly or market position;
- (b) areas of isolated grids; and
- (c) the periodic reportorial requirements of electric power industry participants as may be necessary to enforce the provisions of this Section.

The ERC shall, *motu proprio*, monitor and penalize any market power abuse or anti-competitive or discriminatory act or behavior by any participant in the electric power industry. Upon finding that a market participant has engaged in such act or behavior, the ERC shall stop and redress the same. Such remedies shall, without limitation, include the imposition of price controls, issuance of injunctions, requirement of divestment or disgorgement of excess profits and imposition of fines and penalties pursuant to this Act.

The ERC shall, within one (1) year from the effectivity of this Act, promulgate rules and regulations providing for a complaint procedure that,

without limitation, provides the accused party with notice and an opportunity to be heard.

**SECTION 2. *Implementing Rules and Regulations (IRR)*** - Within ninety (90) days from the effectivity of this Act, the Department of Energy (DOE), as the lead agency, together with the Energy Regulatory Commission (ERC), and other public and private stakeholders representing consumers and sectors affected by this Act, in consultation with other agencies involved in the implementation and monitoring thereof, shall promulgate the necessary implementing rules and regulations of this Act; Provided, That prior to its effectivity, the draft of the IRR shall be posted at the DOE website for at least one month, and shall be published in at least two newspapers of general circulation.

**SECTION 3. *Separability Clause*** - If, for any reason, any provision of this Act or any part thereof shall be held unconstitutional and invalid, the other parts or provisions of this Act, which are not affected thereby, shall remain in full force and effect.

**SECTION 4. *Repealing Clause*** - All laws, decrees, issuances, orders, letters of instructions, administrative orders, rules and regulations or parts thereof contrary to or inconsistent with any of the provisions of this Act are hereby repealed, amended, or modified accordingly.

**SECTION 5. *Effectivity*** - This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.

Approved,