

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

NINETEENTH CONGRESS
First Regular Session

House Bill No. **3601**



**INTRODUCED BY REPRESENTATIVES RALPH WENDEL P. TULFO
AND JOCELYN P. TULFO**

EXPLANATORY NOTE

Republic Act No. 9136, as amended, or the Electric Power Industry Reform Act of 2001 ("EPIRA") provides that:

- (i) The State shall ensure the quality, reliability, security and affordability of the supply of electric power;
- (ii) The State shall enhance the inflow of private capital and broaden the ownership base of the power generation; and
- (iii) Generation of electric power shall be competitive and open.

Likewise, the EPIRA mandates generation companies ("GenCo"), which are not publicly listed, to offer and sell at least 15% of their common shares to the public ("Public Offering Requirement").

At present, a GenCo may only satisfy the Public Offering Requirement through the following means:

- (i) Listing with the Philippine Stock Exchange;
- (ii) Listing of the shares of stock in any accredited stock exchange or direct offer of a portion of the shares to the public and/or the GenCo's employees, when deemed desirable by the Board of Investments; and
- (iii) Offering of shares in accordance with Rule 3.1.17 of the 2015 Implementing Rules and Regulations of the Securities Regulation Code.¹

As seen from the foregoing, complying with the Public Offering Requirement is a costly and tedious exercise, contrary to the mandates of EPIRA which provides that generation of electric power shall be competitive and open. Worse, the same hinders new entities from investing in the power generation sector. Ultimately, it is the people who will suffer when the country's electric demands are not met.

Moreover, while the Public Offering requirement was enacted to ensure transparency in the electricity sector for the general public, in reality, certain regulatory measures are already in place which safeguards this. Primarily, all GenCos, prior to operation, must strictly satisfy the requirements of the Energy Regulatory Commission in order to secure a Certificate of

¹ Energy Regulatory Commission Resolution No. 4, series of 2019.

Compliance. GenCos must also secure other permits and/or licenses from various government agencies in order to commence and maintain operations, while also ensuring continuous compliance of the terms and conditions thereof.

As it stands, current laws and regulations already serve the intended purpose of the Public Offering Requirement in ensuring transparency and protecting the welfare of the general public. Instead, after two (2) decades since the enactment of the EPIRA, it is clear that the Public Offering Requirement serves merely as costly and administrative impediments for new entrants in the power generation market, particularly for small and medium-sized enterprises.

Finally, in his first State of the Nation Address, President Ferdinand R. Marcos, Jr. stated that *"our demand for energy far exceeds our reliable supply"* and called for an *"increase [in] the level of energy production"* and to *"look at every possible option that would be appropriate for the Philippine situation."*

Therefore, in line with the call of the President, to encourage the necessary investments in the power generation sector and meet the electric demands of all end-users, this bill seeks to remove the public offering requirement of generation companies.

In view of the foregoing, the urgent passing of this bill is earnestly sought.



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**AN ACT REMOVING THE PUBLIC OFFERING REQUIREMENT OF
GENERATION COMPANIES, AMENDING FOR THE PURPOSE SECTION 43(T)
OF REPUBLIC ACT NO. 9136, AS AMENDED, OTHERWISE KNOWN AS THE
ELECTRIC POWER INDUSTRY REFORM ACT OF 2001**

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

SECTION 1. *Removal of Public Offering Requirement of Generation Companies.* -Section 43(t) of Republic Act No. 9136, as amended, is hereby amended to read as follows:

SEC. 43. Functions of the ERC - The ERC shall promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry. In appropriate cases, the ERC is authorized to issue cease and desist order after due notice and hearing. Towards this end, it shall be responsible for the following key functions in the restructured industry:

xxx xxx xxx

(t) 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 share of stocks: Provided, however, That [~~generation companies~~] distribution utilities or their respective holding companies that are already listed in the PSE are deemed in compliance. For existing [~~companies~~] DISTRIBUTION UTILITIES, such public offering shall be implemented not later than five (5) years from the effectivity of this Act.

New [~~companies~~] DISTRIBUTION UTILITIES shall implement their respective public offerings not later than five (5) years from the issuance of their certificate [~~of compliance~~] OF PUBLIC CONVENIENCE AND NECESSITY; and

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3 **SEC. 2. *Implementing Rules and Regulations.*** - The Energy Regulatory Commission shall, in
4 consultation with the Department of Energy, other relevant government agencies, the electric
5 power industry participants, consumers, and other public and private stakeholders,
6 promulgate the Implementing Rules and Regulations of the Act within ninety (90) calendar
7 days from its effectivity.

8
9 **SEC. 3. *Separability Clause.*** - If, for any reason, any provision of this Act is declared to be
10 unconstitutional or invalid, the other sections or provisions hereof which are not affected
11 thereby shall continue to be in full force or effect.

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13 **SEC. 4. *Repealing Clause.*** - All laws, decrees, orders, rules and regulations, or parts thereof
14 which are inconsistent with or contrary to the provisions of this Act are hereby repealed,
15 amended, or modified accordingly.

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17 **SEC. 5. *Effectivity.*** - This Act shall take effect fifteen (15) days after its publication in the Official
18 Gazette or in at least two (2) national newspapers of general circulation.

19
20 Approved,