

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Batasan Hills, Quezon City

NINETEENTH CONGRESS
First Regular Session



HOUSE BILL No. 8079

Introduced by
ACT Teachers Party-List Rep. FRANCE L. CASTRO,
GABRIELA Women’s Party Rep. ARLENE D. BROSAS,
and **KABATAAN Party-List Rep. RAOUL DANNIEL A. MANUEL**

AN ACT
PROHIBITING OWNERSHIP BY ELECTRICITY DISTRIBUTION UTILITIES
IN ELECTRICITY GENERATION COMPANIES AND RETAIL ELECTRICITY
SUPPLIERS

EXPLANATORY NOTE

The Philippines has the unenviable reputation of having one of the highest electricity rates in Asia.¹ Despite 20 years of the Electric Power Industry Reform Act or EPIRA, the country has not moved from its top spot in the world’s most expensive electricity list.

One major flaw of the EPIRA is that it allows distribution utilities to own generation companies. The industry uses a seemingly indifferent term for it – cross-ownership. But far from being indifferent, recent developments reveal that cross-ownership is generously biased in favor of the distribution utility and poverty-inducing to the consumers.

The logic is simple. Given that the generation cost of electricity is passed on by the distribution utility to the consumers, the higher the generation price, the higher the rates the consumers will pay. If the distribution utility also owns the generation company, it will be to its financial interest to pay a higher generation cost. In other words, cross-ownership brings about a conflict of interest that the distribution utility will resolve to fatten its pockets rather than lower electricity rates to consumers.

It is often touted that competitive mechanisms such as retail competition and open access is an effective countermeasure because consumers will have the power to choose the electricity supplier anyway and ignore the generation companies owned by the distribution utility when they are expensive. However, this is not what is happening in the real world. In the name of the EPIRA, the regulator has abetted conflicted distribution utilities to own retail electricity suppliers or be one themselves, or both. It is not difficult to guess which generation companies these retail electricity suppliers prefer.

¹ As of January 2018, the country’s average electricity price for residential customers ranked second highest in Asia.
<https://businessmirror.com.ph/2018/08/07/average-electricity-price-in-phl-2nd-highest-in-asia-think-tank/>

It has also been the convenient excuse that competitive selection process or CSP prevents the conflicted distribution utility from unduly awarding power supply agreements (PSAs) to the generation companies it owns or has business ties with. Again, this is not the reality. Like most public biddings, the CSP can be rigged. Never underestimate a monopoly’s power to abuse.

Case in point: MERALCO. It is the largest distribution utility in the country, accounting for 55% of the country’s total electricity output and with a customer base of almost 7 million. No other monopoly comes remotely close to its size and power.

In April 2016, MERALCO signed seven (7) “sweetheart” power supply agreements or PSAs amounting to 3,551 megawatts (MW) in contracted capacity, at a time when peak demand stood at 6,748 MW. In other words, it contracted more than 50% of its peak demand at that time, breaching the limit allowed by EPIRA.

As disturbing as the disregard of the legal limits was, the fact that MERALCO’s partners in these PSAs are generation companies or Gencos that were either wholly-owned or partly-owned by MERALCO was too brazen to ignore:

	<i>GenCo</i>	<i>PSA</i>	<i>Meralco Interest</i>
1	Atimonan One Energy, Inc.	1,200 MW	100% owned by Meralco PowerGen Corporation (“MGen”); in turn 100% owned by MERALCO
2	Global Luzon Energy Development Corporation	600 MW	100% owned by Global Business Power Corporation; in turn owned by MGen and companies controlled by M V Pangilinan and/or Salim Group of Indonesia (Beacon Powergen Holdings Inc., Beacon Electric Asset Holdings Inc., Metro Pacific Investments Corporation and PLDT Communications and Energy Ventures, Inc.)
3	Mariveles Power Generation Corporation	528 MW	49% owned by MERALCO’s MGen; 51% owned by SMC Global Power Holdings
4	Central Luzon Premiere Power Corporation	528 MW	100% owned MERALCO partner in Mariveles Power Generation Corporation, SMC Global Power Holdings
5	St. Raphael Power Generation Corporation	400MW	50% owned by MERALCO’s MGen; 50% by Semirara Mining and Power Corp.
6	Redondo Peninsula Energy Inc.	225MW	47% owned by MERALCO’s MGen; 0.03% by MERALCO Pension Fund; remaining held by Therma Power, Inc., Taiwan Cogeneration Int’l. Corp. and several individuals
7	Panay Energy Development Corporation	70MW	100% owned by Panay Power Holdings Corp., in turn 89.3% owned by Global Business Power Corporation that traces its ownership base to MERALCO and MERALCO’s controlling shareholders

In 2017, the House of Representatives Joint Committees on Energy and Good Government and Public Accountability launched an inquiry to look into these deals of MERALCO with its affiliated Gencos. For being privately contracted with haste and in such bulk never been seen before in the industry, these PSAs were called MERALCO's midnight deals.

After several exhaustive hearings, the investigation resulted in a recommendation, among others, to *“review the EPIRA with the view of strengthening the policy against cross-ownership, market abuse and anti-competitive behavior in the power industry, including the prohibition on a distribution utility to own or have any beneficial interest in power generation company and limiting Gencos in the business of generating and supply of electric power.”*

It was further revealed during the course of the inquiry that the PSAs were very expensive and actually cost significantly higher than what MERALCO has declared. The 7 PSAs' average price of P5.12 per kWh was found to be P1.45 per kWh higher, translating to more pass on charges to consumers in the amount of P159.3 billion a year or P3.19 trillion in 20 years.

MERALCO's expensive self-dealing contracts were also taken up by the Supreme Court after the Alyansa para sa Bagong Pilipinas, Inc. filed a petition against MERALCO, ERC, DOE and the seven partners of MERALCO in the PSAs. On 17 May 2019, the Supreme Court ordered that all PSA applications submitted to the ERC on or before 30 June 2015 should undergo CSP. The 7 MERALCO PSAs were thus invalidated. The SC ruled that *“both Meralco and the ERC have been remiss in their obligations. Going through competitive bidding as prescribed in the 2015 DOE Circular is the only way to ensure a transparent and reasonable cost of electricity to consumers.”*

MERALCO proceeded in 2019 to conduct CSP for its power supply requirements. Out of the three CSPs that were launched, 2 were successful with several GenCos winning for the 1700 MW of MERALCO's power supply requirements.

The one CSP that failed was mired in suspicions of bid rigging in favor of MERALCO's nullified 1200 MW deal with its subsidiary MGen's Atimonan One Energy. The subject CSP's bidding terms were deemed to be so skewed towards Atimonan that no other Genco believed it was worth submitting a bid for.

In the latter part of 2020, MERALCO commenced a CSP anew for 1800 MW of power supply needed starting 2024. Again, the terms of reference have been under question for appearing to bag a PSA for Atimonan.

Outside of the CSP quagmire, MERALCO has also been asked to answer allegations of irregularity in the power pricing of Quezon Power Philippines Ltd. (QPPL), owner and operator of a coal-fired power plant in Mauban, Quezon.

During the 18th Congress, Bayan Muna Representatives Carlos Zarate, Ferdinand Gaitan and Eufemia Cullamat filed House Resolution 1350 which revealed that *“QPPL has been perennially the most expensive coal power in the country since 2000 with rates 9 to 12 percent higher than the other coal plants. However, in 2020, Meralco paid QPPL 51 to 82 percent higher than other coal plants.”*

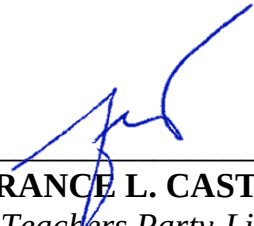
According to Matuwid na Singil sa Kuryente, QPPL is fully owned by Electricity Generating Public Company Limited (EGCO) of Thailand. The Thai company is MGen's minority partner in San Buenaventura Power Ltd. Co., which in turn owns a separate 460-megawatt coal-fired power plant, also in Mauban, that likewise supplies electricity to MERALCO.

The investigation in aid of legislation was sought to shed light on the alleged overpriced generation rates paid by MERALCO to QPPL whose owner is a MERALCO partner in another coal plant project. MERALCO has never answered the issue specifically and simply hid behind unresponsive generalizations in the media.

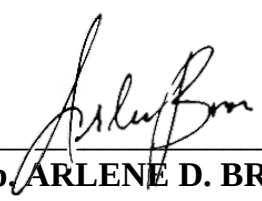
This pattern of anti-competitive behavior and abuse of monopoly power that MERALCO has consistently displayed begs the prohibition of cross-ownership in the distribution sector and the rest of the industry. The retail competition and open access and the competitive selection process mechanisms are not enough to protect the consumers from MERALCO's shameless self-dealing.

In gist, any entity should not be allowed ownership in a distribution utility like MERALCO, while at the same time owning any beneficial interest in generation companies and retail electricity suppliers.

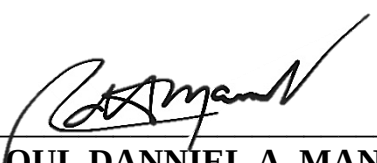
This Bill was first filed by Bayan Muna Party-list Representatives Carlos Zarate, Ferdinand Gaite and Eufemia Cullamat as HB 9260. The passage of this bill is earnestly sought.



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ACT Teachers Party-List



Rep. ARLENE D. BROSAS
GABRIELA Women's Party



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

SECTION 1. *Short Title.* – This Act shall be known as the “***Electricity Consumer Protection Against Cross-ownership Act***”.

SEC. 2. *Declaration of State Policy.* – It is hereby declared the policy of the State that any form of ownership by an electricity distribution utility in any person engaged in electric power generation or electricity supply is inimical to the interests of the electricity consumers, the general public, and the national economy.

SEC. 3. *Prohibition Against Cross-Ownership.* – Any provision of law notwithstanding, it shall be unlawful for an electricity distribution utility, or its affiliate, to hold any interest, directly or indirectly, in any person engaged in electric power generation or electricity supply.

The foregoing prohibition shall also apply to:

(a) stockholders and officers of the electricity distribution utility company, including their relatives within the fourth civil degree of consanguinity or affinity;

(b) any juridical entity holding any financial interest in the electricity distribution utility; and

(c) stockholders and officers of any juridical entity holding any financial interest in the electricity distribution utility and their relatives within the fourth civil degree of consanguinity or affinity.

SEC. 4. Definition of Terms. – As used in this Act:

(a) “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.

(b) “Control” means the power to direct or cause the direction of the management policies of a person by contract, agency, or otherwise.

(c) “Energy Regulatory Commission” or “ERC” refers to the regulatory agency created under Section 38 of Republic Act 9136 or its successor as may be provided by law.

(d) “Electricity distribution utility” refers to private distribution utilities, cooperatives, and other entities authorized by the ERC to engage in the distribution of electricity or in the conveyance of electricity through a distribution system to end-users pursuant to Republic Act 9136 and/or other laws.

(e) “Indirect interest” includes beneficial ownership or the ability to exercise any right usually accorded to an owner by virtue of trust or other contractual arrangements.

(f) “Person engaged in electric power generation” refers to a natural or juridical person authorized by the ERC to operate facilities used in the generation of electricity pursuant to Republic Act 9136 and/or other laws.

(g) “Person engaged in electricity supply” refers to a natural or juridical person selling, trading, or dealing in electricity or rights to electricity supply including the retail electricity suppliers authorized by the ERC to sell, broker, market or aggregate electricity to the end-users pursuant to Republic Act 9136.

(h) “Philippine Competition Commission” or “PCC” refers to the independent quasi-judicial body created under Republic Act 10667.

Sec. 5. Any interest in an electricity distribution utility or a person engaged in electric power generation or electricity supply that becomes unlawful upon the effectivity of this Act shall be divested through absolute transfer by its holder within one (1) year from the date of said effectivity.

Sec. 6. Any agreement by and between an electricity distribution utility company as one party and an affiliate person engaged in electric power generation or an affiliate person engaged in electricity supply as the other party, although valid under Republic Act 9136 at the time of its execution, shall *ipso facto* be considered void six (6) months from the date of the effectivity of this Act unless the same has expired at an earlier date, in which case it shall be considered terminated.

All electricity distribution utilities shall report such agreements that have come into its knowledge to the Philippine Competition Commission within thirty (30) days from the effectivity of this Act and the latter, in turn, shall promptly publish a consolidated list in its official website. The failure by the distribution utility company to report or by the PCC to

publish the list shall not in any way delay or negate the voiding of any agreement pursuant to the preceding paragraph but shall constitute a violation of this Act.

Sec. 7. *Administrative Fines.* – Any person who holds an interest that is unlawful under Section 3 of this Act shall be fined an amount equivalent to the face value of the interest, the market value of the interest if determinable, or an amount equivalent to Twenty Million Pesos (₱20,000,000.00), whichever is higher.

Any person who fails to divest a prohibited interest as provided under Section 5 of this Act shall be fined an amount equivalent to the face value of the interest, the market value of the interest if determinable, or the amount of Ten Million Pesos (₱10,000,000.00), whichever is higher.

Any distribution utility company that fails to make the report under Section 6 of this Act shall be fined the amount of Five Million Pesos (₱5,000,000.00) for every agreement unreported.

Any electricity consumer may file a complaint with the PCC, which shall promptly decide on the complaint in accordance with its rules of procedure. Where the existing rules of procedure of the PCC cannot be utilized for the purpose, the PCC shall promulgate the necessary rules within six (6) months from the effectivity of this Act.

Sec. 8. *Criminal Penalties.* – Affiliated distribution utility companies, electric power generation companies, and retail electricity suppliers entering into an agreement relating to the supply of electricity despite the existence of an unlawful interest under Section 3 shall, for each and every violation, be penalized by imprisonment from two (2) to seven (7) years, and a fine of Fifty Million Pesos (₱50,000,000.00) or the estimated value of the relevant agreement, whichever is higher. The penalty of imprisonment shall be imposed on their officers, directors, or employees holding managerial positions, who are knowingly and willfully responsible for such violation.

Sec. 9. *Separability Clause.* – If any clause, sentence, section or part of this Act shall be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Act, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy.

Sec. 10. *Repealing Clause.* – All laws, decrees, executive orders, and regulations, or part or parts thereof, including Republic Act 9136, inconsistent with any provision of this Act are hereby repealed, amended, or modified accordingly.

Sec. 11. *Effectivity Clause.* – This Act shall take effect fifteen (15) days following its publication in the Official Gazette or at least two (2) national newspapers of general circulation.

Approved,