Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

NINETEENTH CONGRESS
Second Regular Session
House Bill No. **9922**



Introduced by: Congressman **BIENVENIDO M. ABANTE, JR.**

AN ACT
AMENDING SECTIONS 6, 32, AND 34 OF THE REPUBLIC ACT NO. 9136 OTHERWISE KNOWN AS THE ELECTRIC POWER INDUSTRY REFORM ACT OF 2001 (EPIRA) AND FOR OTHER PURPOSES

EXPLANATORY NOTE

The Electric Power Industry Reform Act of 2001 (EPIRA) was passed in 2001 on the premise that privatizing each component of the power sector (generation, transmission, retail/supply and distribution) and giving play to supposed free market forces would force electric companies to compete in terms of lower electricity prices.

The latest study of the Congressional Policy and Budget Research Department (CPBRD Policy Brief No. 2023 – 06) shows that the average price of electricity in the Philippines is US$0.174/kWh for residential consumers. This rate is more expensive than Thailand (US$0.127/kWh), South Korea (US$0.94/kWh), Indonesia (US$0.97/kWh), Malaysia (US$0.50/kWh), Vietnam (US$0.80/kWh), and China (US$0.81/kWh).[1]

Average MERALCO residential rates have increased 145% from P4.87 per kWh in 2000 before EPIRA to P11.92 per kWh today (February 2024).[2]

What is the root cause of the problem? There are several causes, and this bill will focus on two sets of defective provisions in the EPIRA which contributed to high electricity prices in the country. Consider the following:

1. **Section 6 of the EPIRA** states that power generation shall not be considered a public utility operation. For this purpose, any Person engaged or intending to engage in the generation of electricity is not required to secure a national franchise.

[1] CPBRD Policy Brief No. 2023 – 06 (page 5).
[2] https://business.inquirer.net/444729/meralco-rates-up-by-57%C2%A2-per-kwh-in-feb.

As a result of this categorization, prices charged by a generation company for the supply of electricity are not subject to regulation by the Energy Regulatory Commission (ERC), thus exempting and excluding the generation sector from the 12% cap on profits and net income of a public utility.

2. **Sections 32, 33, and 34 of the EPIRA** allow a host of onerous charges to be passed on to consumers. These have included legitimizing burdensome provisions from dubious contracts with independent power producers (IPPs) as well as new charges towards ensuring profits for the power monopolies. The controversial Power Purchase Agreements (PPAs) which pay IPPs for power that has not been consumed, for instance, have been `hidden' under various charges. It is dispersed between the generation charge, transmission charge, systems loss charge, franchise taxes, and generation rate adjustment mechanism (GRAM).[3]

The electric power industry is among those industries with multiple charges and taxes levied on the consumers. Apart from the general electricity charges (i.e., generation, distribution, and transmission), consumers are also billed for systems loss, subsidies, universal charges, etc.[4]

Worse, VAT is also levied on systems loss or electricity not even consumed by the (i) public; (ii) subsidies to the "lifeline" electricity users or marginal sectors which consume 100 kwh of electricity and below, and (iii) capital expenditure contribution or reinvestment fund collected in advance from consumers to cover for the expansion and rehabilitation of distribution lines. The VAT on systems loss and lifeline rate, for instance, is a "tax on tax" on items in the electricity bill that are not actually consumed as goods or services by electricity end-users.[5]

For years, ordinary consumers have shouldered the brunt of these defective provisions in the EPIRA**.** EPIRA in its almost Ang 23 years of implementation has highlighted the fact that power should not be treated as a business. Electricity, after all, is a basic service that should be provided to the people. It is a public utility as it is imbued with public interest that must be safeguarded and regulated by the government.

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

BIENVENIDO M. ABANTE, JR.

[3] https://www.ibon.org/epira-failed-promise-of-affordable-electricity/
[4] CPBRD Policy Brief No. 2023 – 06 (page 13)
[5] CPBRD Policy Brief No. 2023 – 06 (page 13)

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

SECTION 1. Section 6 of the EPIRA is hereby amended to read as follows:

SEC 6. *Generation Sector*. - Generation of electric power shall be competitive and open.

Upon the effectivity of this Act, any new generation company shall, before it operates, secure from the Energy Regulatory Commission (ERC) a certificate of compliance pursuant to the standards set forth in this Act, as well as health, safety, and environmental clearances from the appropriate government agencies under existing laws.

Any law to the contrary notwithstanding, power generation **SHALL BE CONSIDERED A PUBLIC UTILITY OPERATION**. For this purpose, any person or entity engaged or which shall engage in power generation and supply of electricity **SHALL BE REQUIRED TO SECURE A LOCAL OR NATIONAL FRANCHISE**.

Upon implementation of retail competition and open access, the prices charged by a generation company for supply of **ELECTRICITY SHALL BE SUBJECT TO REGULATION BY THE ERC** except as otherwise provided in this Act

Pursuant to the objective of lowering electricity rates to end-users, sales of generated power by generation companies shall be value added tax zero-rated.

The ERC shall, in determining the existence of market power abuse or anti-competitive behavior, require from generation companies the submission of their individual pricing

formulas as well as their financial statements.

SEC 2. Section 32 of the EPIRA is hereby amended to read as follows:

SEC 32. *NPC Stranded Debt and Contract Cost Recovery*. - Stranded debt of NPC shall refer to any unpaid financial obligations of NPC **THAT HAVE NOT BEEN LIQUIDATED BY THE PROCEEDS FROM SALES AND PRIVATIZATION OF NPC ASSETS.**

Stranded contract costs of NPC shall refer to the excess of the contracted cost of electricity under eligible IPP contracts of NPC over the actual selling price of such contracts in the market. Such contracts shall have been **ACCREDITED BY THE DOE OR NPC AND APPROVED BY THE ERB AS OF THE EFFECTIVITY OF THIS ACT.**

The national government shall, **IN EXCHANGE FOR THE EQUIVALENT AMOUNT OF THE EQUITY OF NPC, DIRECTLY ASSUME THE FINANCIAL OBLIGATIONS OF NPC.**

THE ERC SHALL VERIFY AND ENSURE THAT SUCH STRANDED DEBT AND STRANDED CONTRACT COSTS AS DEFINED HEREIN SHALL NOT BE PASSED ON TO CONSUMERS.

SEC 3. Section 33 of the EPIRA is hereby amended to read as follows:

SEC 33. *Distribution Utilities Stranded Contract Costs Recovery*. - Stranded contract costs of distribution utilities shall refer to the excess of the contracted cost of electricity under eligible contracts of such utilities over the actual selling price of such contracts in the market. Such contracts shall have been **ACCREDITED BY THE DOE OR NPC AND APPROVED BY THE ERB AS OF THE EFFECTIVITY OF THIS ACT.**

ALL DISTRIBUTION UTILITIES ARE NOT ALLOWED TO RECOVER SUCH STRANDED CONTRACT COSTS BY PASSING IT OFF TO CONSUMERS AS PART OF THE RETAIL PRICE OF ELECTRICITY.

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SEC 4. Section 34 of the EPIRA is hereby amended to read as follows:

SEC 34. *Universal Charge*. - Within one (1) year from the effectivity of this Act, a universal charge to be determined, fixed and approved by the ERC, shall be imposed on all electricity end-users for the following purposes:

(a) **MISSIONARY ELECTRIFICATION**;

(b) **AN ENVIRONMENTAL CHARGE EQUIVALENT TO ONE-FOURTH OF ONE**

CENTAVO PER KILOWATT-HOUR (P0.0025/KWH), WHICH SHALL ACCRUE TO AN ENVIRONMENTAL FUND TO BE USED SOLELY FOR WATERSHED REHABILITATION AND MANAGEMENT. SAID FUND SHALL BE MANAGED BY NPC UNDER EXISTING ARRANGEMENTS.

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The universal charge shall be a non-bypassable charge which shall be passed on and collected from all end-users on a monthly basis by the distribution utilities. Collections by the distribution utilities and the TRANSCO in any given month shall be remitted to the PSALM Corp. on or before the fifteenth (15th) of the succeeding month, net of any amount due to the distribution utility. Any end-user or self-generating entity not connected to a distribution utility shall remit its corresponding universal charge directly to the TRANSCO.

The PSALM Corp., as administrator of the fund, shall create a Special Trust Fund which shall be disbursed only for the purposes specified herein in an open and transparent manner. All amounts collected for the universal charge shall be distributed to the respective beneficiaries within a reasonable period to be provided by the ERC.

SEC 5. *Implementing Rules and Regulations*. The Energy Regulatory Commission (ERC), in consultation with concerned government agencies and stakeholders, shall promulgate the Implementing Rules and Regulations necessary to carry out and implement the provisions of this Act within sixty days (60) from the effectivity of this Act.

SEC 6. *Repealing Clause*. All laws, presidential decrees, executive orders, letters of instruction, administrative rules and regulations, or parts thereof which are contrary to or inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC 7. *Separability Clause*. In case any provision of this Act is declared unconstitutional or invalid, the other provisions hereof which are not affected thereby shall continue in full force and effect.

SEC 8. *Effectivity.* This Act shall take effect fifteen (15) *days* after its complete publication in the Official Gazette or in two (2) national newspapers of general circulation whichever is earlier.

Approved.