



Republic of the Philippines
House of Representatives
Quezon City



TWENTIETH CONGRESS

First Regular Session

House Bill No. 856

Introduced by
PhilLRECA Party-List Representative Presley C. De Jesus

EXPLANATORY NOTE

Republic Act No. 9136 or the Electric Power Industry Reform Act (EPIRA) of 2001 is considered to be one of most important pro-market reforms in the Philippines. Its goal was to restructure the electric power industry to achieve reliable and competitively priced electric service for future generations of Filipinos.

To achieve the desired outcomes, EPIRA's approach was straightforward: Eliminate monopolies in the electric power industry, promote competition in the market, and tighten the regulations to ensure services will be cost-effective and efficient. More than 20 years after EPIRA's enactment, there is still a long way to go before its intent is fully realized and experienced by consumers.

In principle, EPIRA prohibits any anti-competitive behavior and other unfair trade practices in the industry as laid down by Section 45 of the law. However, the clause remains weak in practice as cross-ownership is only prohibited between the transmission company and any company in the other two sectors. Currently, large private distributions can enter sweetheart deals with its affiliated power generators which give them control over pricing and market behavior, to the detriment of consumers. As long as this practice remain, truly competitive electricity rates will continue to elude consumers.

This bill is proposed to amend the Cross-Ownership clause by tightening the restrictions for cross-ownership and setting limitations on the allowed percentage of supply that distribution utilities may source from their affiliated firms engaged in power generation. The measure seeks to inhibit the undue

advantage gained by large distribution utilities and their power producers over other players and finally deliver just and fair pricing to electric consumers. This bill was originally filed during the 19th Congress to advance the same policy objectives, and is being refiled to continue the legislative initiative.

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

A handwritten signature in black ink, appearing to read 'Presley C. De Jesus', with a stylized flourish at the end.

REP. PRESLEY C. DE JESUS
PhilRECA Party-List



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House Bill No. **856**

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AN ACT
AMENDING SECTION 45 OF REPUBLIC ACT NO. 9136, OTHERWISE
KNOWN AS THE 'ELECTRIC POWER INDUSTRY REFORM ACT OF 2001
OR EPIRA', AND FOR OTHER PURPOSES

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

1 **SECTION 1.** Section 45 of the EPIRA is hereby amended to read as
2 follows:

3 “Section 45. *Cross Ownership, Market Power Abuse and Anti-*
4 *Competitive Behavior.* –

5 x x x

6 No generation company, distribution utility, or its respective subsidiary
7 or affiliate or stockholder or official of a generation company or
8 distribution utility, **and any of their relatives within the sixth civil**
9 **degree of consanguinity or affinity,** or other entity engaged in
10 generating and supplying electricity specified by ERC [~~within the fourth~~
11 ~~civil degree of consanguinity or affinity~~], shall be allowed to hold any
12 interest, directly or indirectly, in TRANSCO or its concessionaire.
13 Likewise, the TRANSCO, or its concessionaire or any of its stockholders
14 or officials or any of their relatives within the [~~fourth~~] **sixth** civil degree
15 of consanguinity or affinity, shall not hold any interest, whether directly
16 or indirectly, in any generation company or distribution utility. Except
17 for ex officio government-appointed representatives, no person who is

1 an officer or director of the TRANSCO or its concessionaire shall be an
2 officer or director of any generation company, distribution utility or
3 supplier.

4 An “affiliate” means any person which, alone or together with any other
5 person, directly or indirectly, through one or more intermediaries,
6 controls, is controlled by, or is under common control with another
7 person. As used herein, “control” shall mean the power to direct or
8 cause the direction of the management policies of a person by contract,
9 agency or otherwise.

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

13 (a) No company or related group can own, operate or control
14 more than ~~thirty percent (30%)~~ **fifteen percent (15%)** of the
15 installed generating capacity of a grid and/or twenty-five
16 percent (25%) of the national installed generating capacity.
17 “Related group” includes a person’s business interests,
18 including its subsidiaries, affiliates, directors or officers or
19 any of their relatives by consanguinity or affinity, legitimate
20 or common law, within the ~~fourth~~ **sixth** civil degree;

21 ~~(b) [Distribution utilities may enter into bilateral power supply~~
22 ~~contracts subject to review by the ERC: Provided, That such~~
23 ~~review shall only be required for distribution utilities whose~~
24 ~~markets have not reached household demand level. For the~~
25 ~~purpose of preventing market power abuse between~~
26 ~~associated firms engaged in generation and distribution, no~~
27 ~~distribution utility shall be allowed to source from bilateral~~
28 ~~power supply contracts more than fifty percent (50%) of its~~
29 ~~total demand from an associated firm engaged in generation~~
30 ~~but such limitation, however, shall not prejudice contracts~~
31 ~~entered into prior to the effectivity of this Act. An associated~~
32 ~~firm with respect to another entity refers to any person which,~~
33 ~~alone or together with any other person, directly or indirectly,~~
34 ~~through one or more intermediaries, controls, is controlled~~
35 ~~by, or is under common control with, such entity; and]~~ **For**
36 **the purpose of preventing market power abuse between**
37 **affiliated firms engaged in generation and distribution,**
38 **distribution utilities are only allowed to source from**
39 **bilateral power supply contract of its total demand from**
40 **its affiliated firms engaged in generation as follows:**

<u>DU's TOTAL DEMAND</u>	<u>ALLOWED BILATERAL CONTRACT</u>
<u>50MW and below</u>	<u>60%</u>
<u>51-100MW</u>	<u>50%</u>
<u>101-250MW</u>	<u>40%</u>
<u>251-500MW</u>	<u>30%</u>
<u>501 and above</u>	<u>25%</u>

(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.

SECTION 2. *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.

SECTION 3. *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.

SECTION 4. *Separability Clause* – Should any part or provision of this Act be held unconstitutional or invalid, all other provisions hereof which are not affected thereby shall continue to be in full force and effect.

SECTION 5. *Effectivity.* – This Act shall take effect after fifteen (15) days following its complete publication in the Official Gazette or in two (2) newspapers of general circulation whichever is earlier.

Approved,