



Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

TWENTIETH CONGRESS
First Regular Session

House Bill No. 4147



Introduced by Representative KRISTINE SINGSON-MEEHAN

EXPLANATORY NOTE

The Energy Regulatory Commission (ERC), established under Republic Act No. 9136 or the Electric Power Industry Reform Act (EPIRA) of 2001, is the central regulatory authority mandated to oversee market operations, safeguard consumer welfare, and ensure the viability of the electric power industry. In enacting the EPIRA, we aimed to ensure the quality, reliability, security, and affordability of electric power supply, and to enhance our power generation, transmission, and distribution sectors.

However, more than two decades after its enactment, the EPIRA has faced sustained criticisms. Electricity rates in the Philippines remain among the highest in Asia despite privatization and unbundling. Market concentration persists, with a handful of conglomerates dominating generation and distribution. Consumers continue to shoulder stranded costs through universal charges, while mechanisms for consumer protection and participation remain underdeveloped.

These deficiencies underscore the need to fortify the ERC's independence, technical competence, and enforcement powers, so that it may effectively deliver on EPIRA's original intent of promoting competition, ensuring reliable and affordable electricity, and protecting the interests of consumers. It is high time we revisit the EPIRA law to fill the regulatory gaps in the electric power industry for the ultimate benefit of the country and of all electricity consumers. Ultimately, this bill seeks to:

1. Strengthen and expand the Energy Regulatory Commission (ERC);
2. Grant additional powers, functions and duties of the Chairperson to enhance the management of the Commission, thereby, providing an avenue to expedite matters in the ERC;
3. Impose additional qualifications, disqualifications, limitations and prohibitions to the Chairperson and the members of the Commission to strengthen transparency and efficiency in the collegial decision-making of the Commission;
4. Establish the mandate of the ERC to expand and continuously upskill its personnel in parallel with the increased regulation over the ever-evolving electric power industry;

5. Grant limited fiscal autonomy to the ERC which gives it an advantage in the training of personnel, and the acquisition of necessary equipment, facilities and other assets to perform effective regulation of the electric power industry;
6. Include benchmarking in the mandate of ERC to provide standardization of the rates imposed on electricity consumers;
7. Provide for flexibility in the exercise of its quasi-judicial and regulatory functions, wherein the ERC can implement regular, summary, administrative proceedings, and other processes that shall promote transparency, expediency and consistency; and
8. Increase the maximum administrative fine that can be imposed against erring industry participant from the current PhP 50 Million to P500 Million – with adjustment to the Consumer Price Index every five (5) years. Such fines can be used as refunds for affected electricity end-users. In addition, criminal and civil liabilities can be imposed against the officers of the erring entities in the electric power industry.

By strengthening the ERC's independence, competence, and enforcement powers, this measure ensures a more, competitive, and consumer-responsive energy sector—crucial to achieving reliable and affordable electricity for all Filipinos.

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



DEPUTY SPEAKER KRISTINE SINGSON-MEEHAN
2nd DISTRICT ILOCOS SUR



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**AN ACT STRENGTHENING THE ENERGY REGULATORY COMMISSION AND
AMENDING FOR THE PURPOSE SECTIONS 38, 39, 40, 41, 42, 43, 44, 45 AND
46 OF REPUBLIC ACT NO. 9136, OTHERWISE KNOWN AS THE “ELECTRIC
POWER INDUSTRY REFORM ACT OF 2001”**

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

SECTION 1. Section 38 of Republic Act No. 9136 is hereby amended to read
as follows:

“SEC. 38. Creation of the Energy Regulatory Commission. –

xxx xxx xxx

The Commission shall be composed of a Chair**PERSON** and four (4) members to
be appointed by the President of the Philippines. The Chair**PERSON** and the
members of the Commission shall be natural-born citizens and residents of the
Philippines, persons of good moral character, at least **FORTY [thirty]-five ([3]45)**
years of age, and of recognized competence in any of the following fields: energy,
law, economics, finance, commerce, or engineering, with at least **[three (3) years]
TEN YEARS** actual and distinguished experience in their respective fields of
expertise: *Provided*, That out of the four (4) members of the Commission ~~at least~~
THERE SHALL BE ONE (1) member of the Philippine Bar ~~[with at least ten (10)
years experience in the active practice of law]~~, and one (1) ~~[shall be]~~ a certified
public accountant ~~[with at least ten (10) years experience in active practice]~~,
AND ONE (1) LICENSED ENGINEER.

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The Chairperson of the Commission~~[-, who shall be a member of the Philippine
Bar,]~~ shall act as the Chief Executive Officer of the Commission.

xxx xxx xxx

THE CHAIRPERSON OF THE COMMISSION, ACTING AS THE CHIEF EXECUTIVE OFFICER, SHALL HAVE THE FOLLOWING POWERS, FUNCTIONS AND DUTIES:

- a. TO EXECUTE, ADMINISTER AND IMPLEMENT THE POLICIES AND MEASURES APPROVED AND ADOPTED BY THE COMMISSION;
- b. TO DIRECTLY ADMINISTER AND SUPERVISE THE OPERATIONS AND DAY-TO-DAY BUSINESS ACTIVITIES OF THE COMMISSION;
- c. TO REPRESENT THE COMMISSION IN ALL DEALINGS WITH OFFICES, AGENCIES AND INSTRUMENTALITIES OF THE GOVERNMENT AND WITH ALL PERSONS AND ENTITIES, PUBLIC OR PRIVATE, DOMESTIC OR FOREIGN, UNLESS OTHERWISE DIRECTED BY THE COMMISSION;
- d. TO EXECUTE, ON BEHALF OF THE COMMISSION, ALL CONTRACTS, AGREEMENTS AND OTHER INSTRUMENTS AFFECTING THE INTERESTS OF THE ERC DULY APPROVED BY THE COMMISSION;
- e. TO DIRECT AND SUPERVISE THE PREPARATION OF THE AGENDA FOR THE MEETINGS OF THE COMMISSION;
- f. TO PRESIDE AT THE MEETINGS OF THE COMMISSION;
- g. TO INSTITUTE TEMPORARY PRICE MITIGATION MEASURES TO PROTECT CONSUMER INTERESTS DURING THE IMPENDENCY, EXISTENCE, OR EFFECTS OF A CALAMITY OR EMERGENCY; *[SIMILAR TO THE POWERS PROVIDED IN SEC. 7 OF RA 7581]* AND
- h. TO EXERCISE SUCH OTHER POWERS, FUNCTIONS AND DUTIES AS MAY BE ASSIGNED TO HIM BY THE COMMISSION.

THE ERC SHALL SUBMIT TO THE DEPARTMENT OF BUDGET AND MANAGEMENT (DBM) THE PROPOSED ORGANIZATIONAL RESTRUCTURING PROVIDED HEREIN WITHIN THREE (3) MONTHS FROM THE EFFECTIVITY OF THIS ACT.

THE DBM SHALL ACT ON THE SUBMITTED PROPOSED ORGANIZATIONAL RESTRUCTURING WITHIN ONE (1) MONTH FROM ITS RECEIPT.

EVERY AFTER FIVE (5) YEARS FROM THE EFFECTIVITY OF THIS ACT, THE ERC SHALL REASSESS ITS THEN ORGANIZATIONAL STRUCTURE TO DETERMINE IF THERE IS A NEED FOR FURTHER RESTRUCTURING OR REORGANIZATION, WHICH MAY INCLUDE ADDITIONAL SERVICES, DIVISIONS OR PERSONNEL PER DIVISION. THE DBM SHALL APPROVE ANY PROPOSED ORGANIZATIONAL RESTRUCTURING WITHIN ONE (1) MONTH FROM ITS RECEIPT THEREOF.

THE COMMISSION SHALL CONDUCT AN ASSESSMENT OF THE FITNESS OF THE SKILLS AND CAPABILITIES OF EXISTING PERSONNEL ON THE BASIS OF THE RESULTS OF SUCH ASSESSMENT, THE COMMISSION MAY IMPLEMENT SUCH MOVEMENT IN PERSONNEL TO ESTABLISH THE NEW ORGANIZATIONAL STRUCTURE, IN ACCORDANCE WITH APPLICABLE LAWS, ALIGNED WITH SUCH PERSONNEL'S CAPACITY AND PERFORMANCE; *PROVIDED*, THAT THE NEW POSITION TO WHICH THEY WERE TRANSFERRED TO WILL BE OF THE SAME RANK AND SALARY FROM ITS PREVIOUS POSITION WITHOUT THE NECESSITY OF REAPPOINTMENT."

SECTION 2. Sec. 39 of Republic Act No. 9136 is hereby amended to read as follows:

*“SEC. 39. Compensation and Other Emoluments for ERC Personnel. - The compensation and other emoluments for the ChairPERSON and members of the Commission and the ERC personnel shall be exempted from the coverage of Republic Act No. 6758, otherwise known as the Salary Standardization Act. For this purpose, the schedule of compensation of the ERC personnel, except for the initial salaries and compensation of the ChairPERSON and members of the Commission, shall be submitted for approval by the President of the Philippines. The new schedule of compensation shall be implemented within six (6) months from the effectivity of this Act and may be upgraded by the President of the Philippines as the need arises: *Provided*, That in no case shall the rate be upgraded more than once a year.*

The ChairPERSON and members of the Commission shall initially be entitled to the same salaries, allowances and benefits as those of the **[Presiding] CHIEF Justice** and Associate Justices of the Supreme Court, respectively. The ChairPERSON and the members of the Commission, upon completion of their term or upon becoming eligible for retirement under existing laws, shall be entitled to the same retirement benefits and privileges provided for the **[Presiding] CHIEF Justice** and Associate Justices of the Court of Appeals, respectively.

AFTER COMPLETION OF THE TERM WITH THE ERC, THE CHAIRPERSON AND MEMBERS OF THE COMMISSIONS SHALL BE PROHIBITED FROM ACCEPTING EMPLOYMENT OR APPOINTMENT IN ANY CAPACITY WITH ANY REGULATED ENTITY FOR A PERIOD OF THREE (3) YEARS FOLLOWING SUCH COMPLETION. ALL MEMBERS AND EMPLOYEES OF THE COMMISSION SHALL BE PROHIBITED FROM APPEARING BEFORE THE ERC FOR A PERIOD OF THREE (3) YEARS AFTER SAID COMPLETION OF TERM OR TERMINATION OF EMPLOYMENT.”

SECTION 39(A). IMMUNITY FROM SUIT. – THE CHAIRPERSON AND MEMBERS OF THE COMMISSION SHALL NOT BE SUBJECT TO ANY ACTION, CLAIM OR DEMAND IN CONNECTION WITH ANY ACT DONE OR OMITTED BY THEM IN THE PERFORMANCE OF THEIR DUTIES AND EXERCISE OF THEIR POWERS EXCEPT FOR THOSE ACTIONS AND OMISSIONS DONE IN EVIDENT BAD FAITH OR GROSS NEGLIGENCE.”

SECTION 3. Sec. 40 of Republic Act No. 9136 is hereby amended to read as follows:

*“SEC. 40. Enhancement of Technical Competence. – The ERC shall establish rigorous training programs for its staff for the purpose of enhancing the technical competence of the ERC in the following areas: evaluation of technical performance and monitoring of compliance with service and performance standards, performance-based rate-setting reform, environmental standards and such other areas as will enable the ERC to adequately perform its duties and functions. **FOR THIS PURPOSE, THE ERC SHALL ALLOT NO LESS THAN FIFTEEN PERCENT (15%) OF ITS TOTAL ANNUAL APPROVED BUDGET FOR THE TRAINING AND UPGRADING OF SKILLS OF ITS PERSONNEL.”***

SECTION 4. Sec. 41 of Republic Act No. 9136 is hereby amended to read as follows:

“SEC. 41. Promotion of Consumer Interests. – The ERC shall handle consumer complaints and ensure the adequate promotion of consumer interests.

THE ERC SHALL ESTABLISH PROCEDURES FOR DETERMINING LEGITIMATE REPRESENTATION OF CONSUMER ORGANIZATIONS AND THE CONDUCT OF FORUM, WHERE CONSUMERS CAN EXPRESS THEIR CONCERNS ON POLICIES AND REGULATIONS OUTSIDE THE FORMAL RULE-MAKING PROCESSES.

THE ERC SHALL ALSO EXERT EFFORTS TO INFORM CONSUMERS OF PENDING PROCEEDINGS, SUBJECT TO EXECUTIVE AND DELIBERATIVE PROCESS PRIVILEGES.”

SECTION 5. Sec. 42 of Republic Act No. 9136 is hereby amended to read as follows:

“SEC. 42. *Budget of the ERC.* - The ERC shall enjoy **LIMITED** fiscal autonomy, subject to regular audits by the Commission on Audit. **FOR THIS PURPOSE, THE ERC SHALL BE ALLOWED TO UTILIZE A MAXIMUM OF FIFTY PERCENT (50%) OF ITS COLLECTIONS FROM FEES, ASSESSMENTS, LICENSES, AND OTHER CHARGES TO USE FOR ITS BUDGETARY REQUIREMENTS, INCLUDING TRAINING, PERSONNEL SERVICE, CAPITAL OUTLAYS, MAINTENANCE AND OPERATING EXPENSES, AND THOSE DETERMINED BY THE COMMISSION TO BE NECESSARY IN THE PERFORMANCE OF ITS FUNCTIONS, SUBJECT TO APPLICABLE LAWS, RULES, AND REGULATIONS.** ~~[The amount of One hundred fifty million pesos (PHP150,000,000.00) is hereby allocated from the existing budget of the ERB for the initial operation of the ERC. Any balance shall initially be sourced from the Office of the President of the Philippines.]~~ Thereafter, the annual budget certified by the ERC, through its Chair**PERSON**, as necessary to defray its expenses shall be provided for in the regular or special appropriations and shall be released automatically and regularly.”

SECTION 6. Sec. 43 of Republic Act No. 9136 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:

- (a) xxx
- (b) Within six (6) months from the effectivity of this Act, promulgate, **REVIEW OR AMEND, WHEN NECESSARY, IN COORDINATION WITH THE DOE,** and enforce, in accordance with law, **THE [a] PHILIPPINE [National] Grid Code and THE PHILIPPINE [a] Distribution Code** which shall include, but not limited to, the following:

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- (f) In the public interest, establish and enforce a methodology for setting **AND BENCHMARKING** transmission and distribution wheeling rates and retail

rates for the captive market of a distribution utility, taking into account all relevant considerations, including the efficiency or inefficiency of the regulated entities, **THE MODE OF PROCUREMENT OF THE NECESSARY POWER SUPPLY FOR DISTRIBUTION UTILITIES AND ANCILLARY SERVICES OF TRANSCO OR ITS CONCESSIONAIRE, AND COMPLIANCE WITH OTHER DOE AND ERC POLICIES AND REGULATIONS.** The rates must be such as to allow the recovery of just and reasonable costs and a reasonable return on rate base (RORB) to enable the entity to operate viably. The ERC may adopt alternative forms of internationally-accepted rate-setting methodology as it may deem appropriate. The rate-setting methodology so adopted and applied must ensure a reasonable price of electricity. The rates prescribed shall be non-discriminatory, **COMPETITIVE AND TRANSPARENT.** To achieve this objective and to ensure the complete removal of cross subsidies, the cap on the recoverable rate of system losses prescribed in Section 10 of Republic Act No. 7832, is hereby amended and shall be replaced by caps which shall be determined by the ERC based on load density, sales mix, cost of service, delivery voltage and other technical considerations it may promulgate.

The ERC shall determine such form or rate-setting methodology, which shall promote efficiency. In case the rate setting methodology used is RORB, it shall be subject to the following guidelines:

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- (i) Allow the TRANSCO to charge user fees for ancillary services to all electric power industry participants or self-generating entities connected to the grid. Such fees shall be **BENCHMARKED [fixed]** by the ERC after due notice and public hearing[.]

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- (v) **SUMMARILY PUNISH FOR CONTEMPT BY A FINE NOT LESS THAN FIVE THOUSAND PESOS (PHP5,000.00) BUT NOT EXCEEDING ONE HUNDRED THOUSAND PESOS (PHP100,000.00) OR BY IMPRISONMENT NOT EXCEEDING TEN DAYS, OR BOTH, ANY PERSON GUILTY OF ANY ACT INTENDED TO INTERRUPT THE HEARING OR SESSION OR ANY PROCEEDING BEFORE THE COMISSION, OR WHEN A PERSON REFUSES TO BE SWORN IN AS A WITNESS OR TO ANSWER AS SUCH WHEN LAWFULLY REQUIRED TO DO SO IN ANY HEARING, SESSION, OR INVESTIGATION DULY HELD BY THE COMMISSION, ITS MEMBERS OR REPRESENTATIVES. TO ENFORCE THE PROVISIONS OF THIS SECTION, THE ERC MAY, IF NECESSARY, REQUEST THE ASSISTANCE OF THE PHILIPPINE NATIONAL POLICE FOR THE EXECUTION OF ANY ORDER MADE FOR SAID PURPOSE;**

All notices of hearings to be conducted by the ERC for the purpose of fixing rates or fees shall be published ~~[twice for two successive weeks in two (2) newspapers of nationwide circulation]~~ in at least **ONE (1) NEWSPAPER OF GENERAL CIRCULATION, AND/OR POST ELECTRONICALLY."**

SECTION 7. Sec. 44 of Republic Act No. 9136 is hereby amended to read as follows:

~~“SEC. 44. [Transfer of Powers and Functions.— The powers and functions of the Energy Regulatory Board not inconsistent with the provisions of this Act are hereby transferred to the ERC.]~~ **REVIEW BY THE ERC. – IN THE EXERCISE OF ITS QUASI-JUDICIAL AND REGULATORY FUNCTIONS, THE ERC SHALL IMPLEMENT REGULAR, SUMMARY AND ADMINISTRATIVE PROCEEDINGS, AND OTHER PROCESSES THAT SHALL PROMOTE TRANSPARENCY, EXPEDIENCY AND CONSISTENCY.**

SEC. 44(A). POWER SUPPLY AGREEMENTS. – THE DOE SHALL ISSUE THE POLICIES ON THE PROCUREMENT PROCESS FOR ANY POWER SUPPLY AGREEMENT WHICH SHALL OBSERVE THE PRINCIPLES OF TRANSPARENCY, COMPETITIVENESS, ACCOUNTABILITY, IMPARTIALITY AND EFFICIENCY. THE RESULTING POWER SUPPLY AGREEMENTS SHALL EMBODY THE PRINCIPLES OF QUALITY, AFFORDABILITY, SUSTAINABILITY AND RELIABILITY OF SUPPLY OF ELECTRIC POWER.

THE ERC SHALL REVIEW AND APPROVE THE POWER SUPPLY AGREEMENT IN ACCORDANCE WITH ITS POWERS UNDER SECTION 43 (W) OF THIS ACT.

SEC. 44(B). BENCHMARK PRICES AND RATES. –THE ERC SHALL DETERMINE THE BENCHMARK FOR THE RANGE OF PRICES AND RATES THAT ARE DEEMED REASONABLE FOR BOTH THE END-USERS AND THE OPERATIONS OF GENERATION, TRANSMISSION, AND DISTRIBUTION ENTITIES.

LOAD DENSITY, SALES MIX, COST OF SERVICE, DELIVERY VOLTAGE, RESOURCE AND FUEL, LOCATION AND OTHER TECHNICAL FACTORS SHALL BE CONSIDERED IN THE BENCHMARK DETERMINATION.

THE ERC SHALL PUBLISH THE BENCHMARK PRICES AND RATES, WHICH SHALL BE REGULARLY UPDATED.

SEC. 44 (C). PROCEEDINGS IN THE ERC. – CASES FILED BEFORE THE ERC SHALL BE DECIDED THROUGH REGULAR PROCEEDINGS; PROVIDED, HOWEVER, THAT CASES RELATED TO CONTRACTS OR SUBMISSIONS THAT ARE CERTIFIED BY THE DOE PURSUANT TO THIS ACT AND WITHIN THE BENCHMARK DETERMINED BY THE ERC, INCLUDING POWER SUPPLY AGREEMENTS, SHALL BE DECIDED THROUGH THE SUMMARY PROCEEDINGS OF THE ERC, WITHOUT NEED OF A HEARING. DECISIONS IN SUMMARY PROCEEDINGS SHALL BE LIMITED TO THE DETERMINATION OF COMPLIANCE OF THE CONTRACTS OR SUBMISSIONS WITH APPLICABLE RULES AND REGULATIONS; PROVIDED FURTHER, THAT OTHER CONTRACTS OR SUBMISSIONS THAT ARE NOT SUBJECT TO BENCHMARKING MAY BE DECIDED THROUGH SUMMARY PROCEEDINGS UPON DETERMINATION OF ERC.

SEC 44(D). ADMINISTRATIVE DECISIONS. – MATTERS REFERRING TO THE PERMITTING AND LICENSING MANDATE OF THE ERC AND DO NOT REQUIRE HEARINGS SHALL BE SUBJECT TO ADMINISTRATIVE PROCEEDINGS.

ADMINISTRATIVE ISSUES SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING SUBMISSIONS BY GENERATION, TRANSMISSION, AND DISTRIBUTION ENTITIES:

- i. APPLICATIONS RELATED TO THE RELIABILITY AND VIABILITY OF ASSETS, SYSTEMS AND OPERATIONS;
- ii. ANNUAL OR REGULAR SUBMISSIONS, WHETHER ON TECHNICAL, LEGAL OR FINANCIAL MATTERS;
- iii. SUBMISSIONS AND REPORTS INCLUDED IN THE REVIEW FOR REGULATORY RESET; AND
- iv. ANY OTHER CONTRACTS OR APPLICATIONS DETERMINED BY THE ERC AS SUBJECT TO ADMINISTRATIVE DECISION BY THE CHAIRPERSON.

ADMINISTRATIVE PROCEEDINGS SHALL BE DECIDED BY THE CHAIRPERSON OF THE ERC. THE CHAIRPERSON MAY DELEGATE THIS AUTHORITY TO A MEMBER OF THE COMMISSION OR ANY OFFICER NOT LOWER THAN THE LEVEL OF A DIRECTOR.

SEC. 44(E). *RULES AND APPEALS*. - FROM THE DATE THE CASE IS SUBMITTED FOR FINAL RESOLUTION, THE ERC SHALL PROMULGATE DECISIONS WITHIN THIRTY (30) DAYS FOR ADMINISTRATIVE PROCESSES, SIXTY (60) DAYS FOR SUMMARY QUASI-JUDICIAL PROCESSES, AND ONE HUNDRED EIGHTY (180) DAYS FOR REGULAR QUASI-JUDICIAL PROCESSES. THE ERC SHALL DETERMINE THE TIMELINES FOR ITS OTHER PROCESSES PURSUANT TO RA 11234, AND OTHER APPLICABLE LAWS AND REGULATIONS.

MOTIONS FOR RECONSIDERATION OF A DECISION THROUGH REGULAR, SUMMARY, OR ADMINISTRATIVE PROCEEDINGS OF THE COMMISSION SHALL BE FILED WITHIN FIFTEEN (15) DAYS AFTER THE RECEIPT OF THE DECISION. THE ERC SHALL RESOLVE THE MOTION FOR RECONSIDERATION WITHIN THIRTY (30) DAYS FROM RECEIPT OF THE MOTION.

APPEALS SHALL BE FILED IN ACCORDANCE WITH THE RULES OF COURT.

WITHIN SIX (6) MONTHS FROM THE EFFECTIVITY OF THIS ACT, THE ERC SHALL ISSUE THE RULES OF PROCEDURE FOR REGULAR AND SUMMARY QUASI-JUDICIAL, AND ADMINISTRATIVE PROCEEDINGS, AS PROVIDED FOR IN THIS ACT.

THE RULES OF PROCEDURE TO BE ISSUED BY THE ERC SHALL GOVERN ALL CASES FILED AFTER THE EFFECTIVITY OF SUCH RULES, AND ALL PENDING PROCEEDINGS, EXCEPT TO THE EXTENT THAT IN THE OPINION OF THE COMMISSION, THEIR APPLICATION WOULD NOT BE FEASIBLE, CAUSE UNDUE DELAY OR WOULD WORK INJUSTICE, IN WHICH CASE THE RULES UNDER WHICH THE CASES WERE FILED SHALL GOVERN.”

SECTION 8. Sec. 44 of Republic Act 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.

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

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(b) xxx

CONTROL, AS DEFINED IN SECTION 49(F) OF REPUBLIC ACT NO. 10667, OTHERWISE KNOWN AS THE PHILIPPINE COMPETITION ACT, REFERS TO THE ABILITY TO SUBSTANTIALLY INFLUENCE OR DIRECT THE ACTIONS OR DECISIONS OF AN ENTITY, WHETHER BY CONTRACT, AGENCY OR OTHERWISE.

IN DETERMINING THE CONTROL OF AN ENTITY, THE COMMISSION MAY CONSIDER THE FOLLOWING: CONTROL IS PRESUMED TO EXIST WHEN THE PARENT OWNS DIRECTLY OR INDIRECTLY, THROUGH SUBSIDIARIES, MORE THAN ONE HALF (1/2) OF THE VOTING POWER OF AN ENTITY, UNLESS IN EXCEPTIONAL CIRCUMSTANCES, IT CAN CLEARLY BE DEMONSTRATED THAT SUCH OWNERSHIP DOES NOT CONSTITUTE CONTROL. CONTROL ALSO EXISTS EVEN WHEN AN ENTITY OWNS ONE HALF (1/2) OR LESS OF THE VOTING POWER OF ANOTHER ENTITY WHEN: (A) THERE IS POWER OVER MORE THAN ONE HALF (1/2) OF THE VOTING RIGHTS BY VIRTUE OF AN AGREEMENT WITH INVESTORS; (B) THERE IS POWER TO DIRECT OR GOVERN THE FINANCIAL AND OPERATING POLICIES OF THE ENTITY UNDER A STATUTE OR AGREEMENT; (C) THERE IS POWER TO APPOINT OR REMOVE THE MAJORITY OF THE MEMBERS OF THE BOARD OF DIRECTORS OR EQUIVALENT GOVERNING BODY; (D) THERE IS POWER TO CAST THE MAJORITY VOTES AT MEETINGS OF THE BOARD OF DIRECTORS OR EQUIVALENT GOVERNING BODY; (E) THERE EXISTS OWNERSHIP OVER OR THE RIGHT TO USE ALL OR A SIGNIFICANT PART OF THE ASSETS OF THE ENTITY; (F) THERE EXIST RIGHTS OR CONTRACTS WHICH CONFER DECISIVE INFLUENCE ON THE DECISIONS OF THE ENTITY;

- (c) ~~[(e)]~~ 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.

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The ERC shall within one (1) year from the effectivity of this Act, promulgate 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:

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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.”

SECTION 9. Sec. 46 of Republic Act No. 9136 is hereby amended to read as follows:

“SEC. 46. ***Fines and Penalties.*** - **THE FOLLOWING** fines and penalties ~~[that]~~ shall be imposed ~~[by the ERC]~~ for any violation of or non-compliance with this Act or the IRR: xxx

A. ADMINISTRATIVE FINES AND PENALTIES. - **BY ANY JURIDICAL ENTITIES ENGAGED IN THE GENERATION, TRANSMISSION, DISTRIBUTION AND SUPPLY OF ELECTRICITY, THE FINE** shall range from a minimum of fifty thousand pesos (₱50,000.00) to a maximum of **FIVE HUNDRED** million pesos (₱500,000,000.00).

THE COMMISSION MAY ORDER THAT SUCH AMOUNT OF FINES AND PENALTIES IMPOSED FOR VIOLATION OF THIS ACT BE IMMEDIATELY APPLIED AS REFUND IN THE RATES CHARGED BY THE OFFENDING ENTITY TO THE END-USERS AFFECTED BY SUCH VIOLATION OR NON-COMPLIANCE.

THE ERC SHALL PROMULGATE THE SCHEDULE OF PENALTIES, WITH CONSIDERATION OF THE CIRCUMSTANCES SURROUNDING THE VIOLATION OR NONCOMPLIANCE, SUCH AS, BUT NOT LIMITED TO, RECIDIVISM, PERIOD OF NONCOMPLIANCE, OR ABUSE OF MARKET POWER, CARTELIZATION, OR ANTI-COMPETITIVE OR DISCRIMINATORY BEHAVIOR. THE ERC MAY IMPOSE THESE PENALTIES FOR EVERY DAY OF VIOLATION, DELAY, OR NONCOMPLIANCE.

The administrative sanction that may be imposed by the ERC shall be without prejudice to the filing of a criminal action, if warranted.

B. CRIMINAL AND CIVIL LIABILITIES. – **BY ANY PERSON, A FINE OF NOT LESS THAN FIFTY THOUSAND PESOS (₱50,000.00) BUT NOT MORE THAN FIFTY MILLION PESOS (₱50,000,000.00), OR BY IMPRISONMENT OF NOT LOWER THAN SIX (6) YEARS AND ONE (1) DAY AND NOT HIGHER THAN TWELVE (12) YEARS, OR BOTH, AT THE DISCRETION OF THE COURT.**

WHEN THE ENTITIES INVOLVED ARE JURIDICAL PERSONS, THE PENALTY OF IMPRISONMENT SHALL BE IMPOSED ON ITS OFFICERS, DIRECTORS, OR EMPLOYEES HOLDING MANAGERIAL POSITIONS, WHO ARE KNOWINGLY AND WILLFULLY RESPONSIBLE FOR SUCH VIOLATION. This rule shall apply to the members of the Board who knowingly or by neglect allows the commission or omission under the law.

To ensure compliance with this Act, the **CRIMINAL AND CIVIL PENALTIES** ~~[penalty of prison correccional or a fine ranging from Five thousand pesos (₱5,000.00) to Five million pesos (₱5,000,000.00), or both, at the discretion of the court,]~~ shall be imposed on any person, including but not

limited to the president, member of the Board, Chief Executive Officer or Chief Operating Officer of the corporation, partnership, or any other entity involved, found guilty of violating or refusing to comply with any provision of this Act or its IRR, other than those provided herein.

If the offender is a government official or employee, he shall, in addition, be dismissed from the government service with prejudice to reinstatement and with perpetual or temporary disqualification from holding any elective or appointive office.

If the offender is an alien, he may, in addition to the penalties prescribed, be deported without further proceedings after service of sentence.

C. OFFER OF COMPROMISE. - ANY PERSON OR ENTITY SUBJECT TO AN ADMINISTRATIVE PROCEEDING IN THE COMMISSION THAT MAY RESULT IN THE IMPOSITION OF FINES, REFUNDS AND/OR PENALTIES, PURSUANT TO THIS SECTION, MAY ENTER A PLEA OF *NOLO CONTENDERE*, IN WHICH SUCH PERSON OR ENTITY DOES NOT ACCEPT NOR DENY RESPONSIBILITY FOR THE CHARGES BUT AGREES TO ACCEPT THE OBLIGATION TO PAY FINES, REFUNDS AND/OR PENALTIES AS IF ALREADY FOUND LIABLE. THE PLEA CANNOT BE USED AGAINST SUCH PERSON OR ENTITY TO PROVE LIABILITY IN A CRIMINAL ACTION NOR IN ANOTHER CAUSE OF ACTION: *PROVIDED*, THAT A PLEA OF *NOLO CONTENDERE* MAY BE ENTERED ONLY WITH THE PRIOR APPROVAL OF THE COMMISSION *EN BANC* WHICH SHALL ACCEPT IT ONLY AFTER WEIGHING ITS EFFECT ON THE PARTIES AND THE CONSUMERS: *PROVIDED, FURTHER*, THAT SHOULD THE COMMISSION ACCEPT THE PLEA OF *NOLO CONTEDERE*, THE FINE, REFUND AND/OR PENALTY TO BE ADJUDGED FOR PAYMENT SHALL NOT BE LESS THAN FIFTY PERCENT (50%) OF THE CORRESPONDING FINE, REFUND AND/OR PENALTY FOR THE SUBJECT OFFENSE: *PROVIDED, FURTHERMORE*, THAT ANY PERSON OR ENTITY CAN NOT ENTER INTO A PLEA OF *NOLO CONTENDERE* FOR A VIOLATION OF ITS FRANCHISE OR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, AND SUCH OTHER CASES AS DETERMINED BY THE COMMISSION: *PROVIDED, FINALLY*, THAT THE COMMISSION SHALL ISSUE GUIDELINES FOR THIS PROVISION, SUBJECT TO PUBLIC CONSULTATION.

D. ROLE OF THE DEPARTMENT OF JUSTICE. - CIVIL AND CRIMINAL ACTIONS AND PROCEEDINGS INSTITUTED ON BEHALF OF THE GOVERNMENT UNDER THE AUTHORITY OF THIS ACT OR OTHER LAWS ENFORCED BY THE ERC SHALL BE BROUGHT IN THE NAME OF THE GOVERNMENT OF THE PHILIPPINES AND SHALL BE PROSECUTED AND HANDLED BY THE ERC WITH THE ASSISTANCE OF THE DEPARTMENT OF JUSTICE (DOJ): *PROVIDED*, THAT THE DETERMINATION OF THE EXISTENCE OF PROBABLE CAUSE AND THE SUBSEQUENT FILING OF ANY CRIMINAL OR CIVIL CASE WITH THE PROPER COURT AGAINST VIOLATORS OF THIS ACT SHALL EXCLUSIVELY BELONG TO THE DOJ: *PROVIDED, HOWEVER*, THAT NO CIVIL OR CRIMINAL ACTION FOR THE RECOVERY OF DUTIES OR THE ENFORCEMENT OF ANY FINE, PENALTY OR FORFEITURE UNDER THIS ACT SHALL BE FILED IN COURT WITHOUT THE APPROVAL OF THE ERC.

E. ADJUSTMENT OF FINES AND PENALTIES. - THE FINES AND PENALTIES MAY BE ADJUSTED TO ITS PRESENT VALUE EVERY FIVE (5) YEARS USING THE CONSUMER PRICE INDEX (CPI) AS PUBLISHED BY THE PHILIPPINE STATISTICS AUTHORITY.

Any case which involves question of fact shall be appealable to the Court of Appeals and those which involve question of law shall be directly appealable to the Supreme Court.

In addition, Congress may, upon recommendation of the DOE and/or ERC, revoke such franchise or privilege granted to the party who violated the provisions of this Act.”

SECTION 10. *Repealing Clause.* – All laws, decrees, rules and regulations, or portion thereof, inconsistent with this Act are hereby repealed or modified accordingly.

SECTION 11. *Implementing Rules and Regulations.* – The DOE and ERC shall, in consultation with relevant government agencies and all stakeholders, promulgate the Implementing Rules and Regulation (IRR) of the Act within six (6) months from the effectivity of this Act.

SECTION 12. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.

Approved,