

TWENTIETH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



HOUSE OF REPRESENTATIVES
HOUSE BILL No. 6111

INTRODUCED BY HON. RICARDO S. CRUZ, JR.

EXPLANATORY NOTE

It is the policy of the State to ensure the availability of quality, reliable, secure, and affordable supply of electric power throughout the country.¹ This obligation supports inclusive economic development, industrial growth, and the protection of consumer welfare, recognizing that access to electricity is a fundamental driver of national progress.

In this regard, Republic Act No. 9136, or the “Electric Power Industry Reform Act of 2001”, was enacted to restructure the electric power industry and introduce market reforms. While the law initiated the privatization and unbundling of generation, transmission, distribution, and supply, it preserved the character of transmission and distribution as public utilities subject to regulation. The Energy Regulatory Commission (ERC) was established to oversee this regulation, particularly in the determination of performance standards, recoverable costs, and allowable returns.²

Over two decades later, the ERC continues to play a central role in the regulation of the electric power industry. However, legislative inquiries held during the 19th Congress revealed critical issues plaguing the energy sector, particularly in the regulatory process of the ERC. Stakeholders voiced serious concerns over key procedural shortcomings within the ERC’s regulatory framework, including substantial delays in processing applications and the absence of streamlined

¹ Sec. 2(b), RA 9136.

² Sec. 43, RA 9136

operational procedures. These procedural inefficiencies were identified as critical impediments to advancing a more efficient and responsive energy sector.³

This bill seeks to strengthen the ERC through a recalibration of its mandate, powers, and internal systems. This aims to ensure that the ERC remains independent, competent, responsive, and capable of balancing the needs of consumers, investors, and the State.

This proposed measure sets additional qualifications for ERC Commissioners to ensure a broader range of expertise, aiming to enhance both the quality and efficiency of decision-making. To uphold ERC's integrity, transparency, and independence, this bill also imposes prohibitions and disqualifications of ERC Commissioners and their relatives.

Recognizing the evolving nature of the electric power sector, this bill mandates the continued upskilling of ERC personnel. It also strengthens rate-setting mechanisms and enhances regulatory effectiveness by including benchmarking as a regulatory function. In the exercise of its quasi-judicial powers, the Commission will also be given procedural flexibility, with authority to conduct regular, summary, or administrative proceedings aimed at improving transparency, expediency, and consistency in regulatory action.

Finally, the bill significantly increases the administrative penalties to reflect the gravity of violations and to ensure that they serve as a meaningful deterrent, with future adjustments tied to inflation to maintain their effectiveness over time. A stronger ERC means a more accountable, transparent, and responsive power sector.

In line with the policy adopted by its original proponent Senator Pia S. Cayetano, this bill therefore serves as a counterpart measure. It is for the reasons stated above that the passage of this measure is earnestly sought.


RICARDO S. CRUZ, JR.

³ Senate of the Philippines. (2024, October 17). *Senator Pia Cayetano: Strengthen ERC for Reliable Energy Supply*. https://web.senate.gov.ph/press_release/2024/1017_cayetano2.asp

TWENTIETH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)

HOUSE OF REPRESENTATIVES
HOUSE BILL No. 6111

INTRODUCED BY HON. RICARDO S. CRUZ, JR.

AN ACT
STRENGTHENING THE ENERGY REGULATORY COMMISSION, AMENDING
FOR THE PURPOSE SECTIONS 38, 39, 40, 41, 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

The Commission shall be composed of a Chair[man]**PERSON** and four (4) members, to be appointed by the President of the Philippines. **THE CHAIRPERSON AND THE MEMBERS OF THE COMMISSION SHALL HAVE THE RANK OF CABINET SECRETARY AND UNDERSECRETARY, RESPECTIVELY.** [The Chairman and the members of the Commission shall be natural-born citizens and residents of the Philippines, persons of good moral character, at least thirty-five (35) 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 actual and distinguished experience in their respective fields of expertise: Provided, That out of the four (4) members of the

Commission, at least one (1) shall be a member of the Philippine Bar with at least ten (10) years of experience in the active practice of law, and one (1) shall be a certified public accountant with at least ten (10) years of experience in active practice.]

THE CHAIRPERSON AND THE MEMBERS OF THE COMMISSION SHALL BE:

- A) NATURAL-BORN CITIZENS AND RESIDENTS OF THE PHILIPPINES;**
- B) AT LEAST THIRTY-FIVE (35) YEARS OF AGE;**
- C) OF GOOD MORAL CHARACTER; AND**
- D) OF RECOGNIZED COMPETENCE IN ANY OF THE FIELDS OF ENERGY, LAW, ECONOMICS, FINANCE, COMMERCE, OR ENGINEERING, WITH AT LEAST TEN (10) YEARS OF ACTIVE PRACTICE IN THEIR RESPECTIVE FIELDS OF EXPERTISE.**

***PROVIDED*, THAT OUT OF THE FOUR (4) MEMBERS OF THE COMMISSION, THERE SHALL BE AT LEAST ONE (1) MEMBER OF THE PHILIPPINE BAR, ONE (1) CERTIFIED PUBLIC ACCOUNTANT, AND ONE (1) LICENSED ENGINEER.**

[Within three (3) months from the creation of the ERC, the Chairman shall submit for the approval by the President of the Philippines the new organizational structure and plantilla positions necessary to carry out the powers and functions of the ERC.]

WITHIN THREE (3) MONTHS FROM THE EFFECTIVITY OF THIS ACT, SUBJECT TO THE REVIEW AND APPROVAL OF THE DEPARTMENT OF BUDGET AND MANAGEMENT (DBM), THE CHAIRPERSON OF THE ERC SHALL DETERMINE THE NEW ORGANIZATIONAL STRUCTURE AND STAFFING PATTERN OF THE ERC HEREIN PROVIDED, IN ACCORDANCE WITH EXISTING CIVIL SERVICE COMMISSION LAWS, RULES AND REGULATIONS: *PROVIDED*, THAT THE MOVEMENT OF

PERSONNEL TO IMPLEMENT THE ESTABLISHMENT OF A NEW ORGANIZATIONAL STRUCTURE SHALL BE BASED ON PRIOR MANDATORY ASSESSMENT OF FITNESS, SKILLS, AND COMPETENCIES OF EXISTING STAFF, IN ACCORDANCE WITH APPLICABLE LAWS, RULES AND REGULATIONS, AND ALIGNED WITH THE PERSONNEL'S CAPACITY AND PERFORMANCE: *PROVIDED, FURTHER*, THAT THE NEW POSITION TO WHICH THEY WILL BE TRANSFERRED SHALL NOT BE LOWER THAN THE RANK AND SALARY OF THEIR PREVIOUS POSITION.

EVERY FIVE (5) YEARS THEREAFTER, OR AS MAY BE DEEMED NECESSARY BY THE COMMISSION, THE ERC SHALL REVIEW ITS ORGANIZATIONAL STRUCTURE TO DETERMINE THE NECESSITY OF FURTHER RESTRUCTURING OR REORGANIZATION, WHICH MAY INCLUDE THE CREATION OF ADDITIONAL SERVICES, ESTABLISHMENT OF NEW DIVISIONS, OR THE ASSIGNMENT OF ADDITIONAL PERSONNEL WITHIN EACH DIVISION.

XXX

THE CHAIRPERSON OF THE COMMISSION, 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 IMPLEMENT THE ORDER OF TEMPORARY PRICE MITIGATION MEASURES, SUCH AS MARKET SUSPENSION, PAYMENT DEFERRAL, SUSPENSION OF DISCONNECTION, AND SUCH OTHER MEASURES THAT MAY BE APPROVED BY THE COMMISSION DURING THE EXISTENCE OF OR DURATION OF A CALAMITY OR EMERGENCY, AND UNDER SUCH CONDITIONS AS MAY BE DETERMINED BY LAW OR GUIDELINES TO BE ISSUED BY THE COMMISSION: *PROVIDED*, THAT A FORMAL DECLARATION OF CALAMITY OR EMERGENCY HAS BEEN ISSUED BY THE RELEVANT NATIONAL GOVERNMENT AGENCY OR LOCAL GOVERNMENT UNIT: *PROVIDED, FURTHER*, THAT THE IMPLEMENTATION OF TEMPORARY PRICE MITIGATION MEASURES SHALL BE SUBJECT TO SUBSEQUENT CONFIRMATION BY THE COMMISSION; AND

H) TO EXERCISE SUCH OTHER POWERS, FUNCTIONS AND DUTIES AS MAY BE ASSIGNED BY THE COMMISSION.

xxx

[The chairman and members of the Commission shall assume office of the beginning of their terms: *Provided*, That, if upon the

effectivity of this Act, the Commission has not been constituted and the new staffing pattern and plantilla positions have not been approved and filled-up, the current Board and existing personnel of ERB shall continue to hold office. The existing personnel of the ERB, if qualified, shall be given preference in the filling up of plantilla positions created in the ERC, subject to existing civil service rules and regulations.]

[The Chairman and members of the Commission or any of their relatives within the fourth civil degree of consanguinity or affinity, legitimate or common law, shall be prohibited from holding any interest whatsoever, either as investor, stockholder, officer or director, in any company or entity engaged in the business of transmitting, generating, supplying or distributing any form of energy and must, therefore, divest through sale or legal disposition of any and all interests in the energy sector upon assumption of office.]”

Sec. 2. A new Section, designated as Section 38(A) of Republic Act No. 9136, is hereby inserted to read as follows:

“SEC. 38(A). PROHIBITED ACTS - DURING THEIR TERM OF OFFICE, THE CHAIRPERSON AND MEMBERS OF THE COMMISSION ARE HEREBY PROHIBITED FROM:

A) TAKING UP ANY EMPLOYMENT OR CONSULTANCY ARRANGEMENT WITH ANY ELECTRIC POWER INDUSTRY PARTICIPANT;

B) HOLDING ANY COMMERCIAL OR ANY PECUNIARY INTEREST WHATSOEVER EITHER AS INVESTOR, STOCKHOLDER, OFFICER, OR DIRECTOR, IN ANY ELECTRIC POWER INDUSTRY PARTICIPANT, OR THOSE ENGAGED IN THE BUSINESS OF TRANSMITTING, GENERATING, SUPPLYING OR DISTRIBUTING ANY FORM OF ENERGY;

C) HOLDING ANY OTHER OFFICE OR EMPLOYMENT; AND

D) PRACTICING ANY PROFESSION, DIRECTLY OR INDIRECTLY, ENGAGING IN ANY BUSINESS, OR HOLDING ANY FINANCIAL INTEREST IN ANY CONTRACT WITH, OR ANY FRANCHISE, OR RECEIVING SPECIAL PRIVILEGES GRANTED BY THE GOVERNMENT OR ANY SUBDIVISION, AGENCY, OR INSTRUMENTALITY THEREOF, INCLUDING GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS (GOCCS) OR THEIR SUBSIDIARIES.

***PROVIDED,* THAT DURING THE INCUMBENCY OF THE CHAIRPERSON OR MEMBER OF THE COMMISSION, ANY OF THEIR RELATIVES WITHIN THE FOURTH CIVIL DEGREE OF CONSANGUINITY OR AFFINITY, LEGITIMATE OR COMMON LAW, SHALL BE PROHIBITED FROM:**

- A) TAKING UP ANY EMPLOYMENT OR CONSULTANCY ARRANGEMENT WITH AN ELECTRIC POWER INDUSTRY PARTICIPANT;**
- B) HOLDING ANY COMMERCIAL OR ANY PECUNIARY INTEREST, EITHER AS INVESTOR, STOCKHOLDER, OFFICER OR DIRECTOR, IN ANY ELECTRIC POWER INDUSTRY PARTICIPANT, OR THOSE ENGAGED IN THE BUSINESS OF TRANSMITTING, GENERATING, SUPPLYING OR DISTRIBUTING ANY FORM OF ENERGY; AND**
- C) APPEARING AS COUNSEL OR AGENT ON ANY MATTER PENDING BEFORE THE COMMISSION OR TRANSACTING BUSINESS DIRECTLY OR INDIRECTLY THEREIN.**

***PROVIDED, FURTHER,* THAT THE CHAIRMAN AND MEMBERS OF THE COMMISSION OR ANY OF THEIR RELATIVES WITHIN THE FOURTH CIVIL DEGREE OF CONSANGUINITY OR AFFINITY, LEGITIMATE OR COMMON LAW, HOLDING ANY**

COMMERCIAL OR ANY PECUNIARY INTEREST, IN ANY ELECTRIC POWER INDUSTRY PARTICIPANT, IN ANY CAPACITY, SHALL DIVEST THROUGH SALE OR LEGAL DISPOSITION OF ANY AND ALL INTERESTS IN THE ENERGY SECTOR UPON ASSUMPTION OF OFFICE: *PROVIDED, FINALLY*, THAT WITHIN THREE (3) YEARS FROM CESSATION OF THEIR SERVICE, THE CHAIRPERSON AND THE MEMBERS OF THE COMMISSION ARE HEREBY PROHIBITED FROM:

- A) RUNNING FOR ANY PUBLIC OFFICE IN THE NATIONAL OR LOCAL ELECTION;**
- B) TAKING UP ANY EMPLOYMENT OR CONSULTANCY ARRANGEMENT WITH ANY ELECTRIC POWER INDUSTRY PARTICIPANT; AND**
- C) PERSONALLY APPEARING OR PRACTICING AS COUNSEL OR AGENT ON ANY MATTER PENDING BEFORE THE COMMISSION."**

Sec. 3. 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 Chair[man]**PERSON** and members of the Commission and the ERC personnel shall be exempted from the coverage of Republic Act No. 6758, [otherwise known as]**OR** the Salary Standardization Act. For this purpose, the schedule of compensation of the ERC personnel, except for the initial salaries and compensation of the Chair[man]**PERSON** 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 Chair[man]**PERSON** 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 Chair[man]**PERSON** 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 Justice and Associate Justices of the Court of Appeals, respectively.”

Sec. 4. 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.**”

Sec. 5. 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 GUIDELINES FOR DETERMINING LEGITIMATE REPRESENTATION OF CONSUMER ORGANIZATIONS FOR CONDUCTING FORUMS WHERE CONSUMERS CAN EXPRESS CONCERNS ON

POLICIES AND REGULATIONS OUTSIDE THE FORMAL RULE-MAKING PROCESSES: *PROVIDED*, THAT THE DETERMINATION OF LEGITIMATE CONSUMER ORGANIZATION SHALL BE SUBJECT TO THE EXISTING RULES AND REGULATIONS ISSUED BY THE DEPARTMENT OF TRADE AND INDUSTRY.

UNLESS CONSIDERED CONFIDENTIAL OR COVERED BY EXECUTIVE OR DELIBERATIVE PROCESSES, ALL PETITIONS, APPLICATIONS, AND REPORTORIAL REQUIREMENTS OF ELECTRIC POWER INDUSTRY PARTICIPANTS, INCLUDING ALL ANNEXES THERETO, AS WELL AS ORDERS, DECISIONS, AND RESOLUTIONS OF THE COMMISSION, SHALL BE POSTED ON THE ERC'S OFFICIAL WEBSITE WITHIN FIVE (5) DAYS FROM SUBMISSION OR PROMULGATION, AS THE CASE MAY BE.

A SUPPORT DESK SHALL BE MADE AVAILABLE TO THE PUBLIC, WHICH WILL PROVIDE ASSISTANCE TO CONSUMERS FOR A BETTER UNDERSTANDING OF ALL PROCEEDINGS AND ISSUANCES OF THE COMMISSION, AS WELL AS ANY AND ALL MATTERS WHICH AFFECT THE ELECTRICITY RATES CHARGED TO CONSUMERS: *PROVIDED*, THAT THE INFORMATION IS NOT CONFIDENTIAL IN NATURE.

EVERY CONSUMER HAS THE RIGHT TO INFORMATION AND SHALL, UPON REQUEST, BE GIVEN ACCESS TO SUCH INFORMATION OF PUBLIC CONCERN AND WITHIN THE CONTROL OF THE COMMISSION: *PROVIDED*, THAT SAID ACCESS SHALL NOT BE GRANTED IF:

- A) THE INFORMATION IS CONSIDERED CONFIDENTIAL UNDER THE ERC RULES OF PRACTICE AND PROCEDURE;**

- B) THE INFORMATION CONSISTS OF MINUTES OR RECORDS OF ADVICE GIVEN, OR OF OPINIONS EXPRESSED DURING DECISION-MAKING OR POLICY FORMULATION IN THE COURSE OF EXECUTIVE SESSIONS;
- C) THE INFORMATION REQUESTED CONSISTS OF DRAFTS OF ORDERS, RESOLUTIONS, DECISIONS, OR MEMORANDA OF THE COMMISSION IN THE EXERCISE OF ITS REGULATORY FUNCTION; OR
- D) THE INFORMATION REQUESTED PERTAINS TO TRADE SECRETS, SENSITIVE, OR OTHER PROPRIETARY INFORMATION, WHENEVER THE REVELATION THEREOF WOULD PREJUDICE THE INTERESTS OF A NATURAL OR JURIDICAL PERSON IN TRADE, INDUSTRIAL, FINANCIAL, OR COMMERCIAL COMPETITION."

Sec. 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] **THE ERC SHALL HAVE THE AUTHORITY** 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, **AND REGULARLY THEREAFTER**, 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:

xxx

- f) [In the public interest] **IN THE INTEREST OF THE PUBLIC**, 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 NECESSARY POWER SUPPLY FOR DISTRIBUTION UTILITIES, ANCILLARY SERVICES OF TRANSCO OR ITS CONCESSIONAIRE, AND COMPLIANCE WITH EXISTING DOE AND ERC POLICIES, RULES 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 **AND BENCHMARKING**, as it may deem appropriate. The rate-setting methodology **AND BENCHMARKING** 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:

xxx

THE ERC SHALL LIKEWISE ESTABLISH A RATE-SETTING METHODOLOGY FOR NEWLY FRANCHISED PRIVATE DISTRIBUTION UTILITIES, TAKING INTO ACCOUNT THE SAME FACTORS STATED UNDER THIS SUBSECTION, AND ENSURING THAT THE APPLICABLE RETAIL RATES AND DISTRIBUTION WHEELING RATES ARE DETERMINED WITHIN THE TIMELINE PROVIDED IN SECTION 13 OF R.A. 11234, OR THE ENERGY VIRTUAL ONE-STOP SHOP (EVOSS) ACT, FROM THE FILING OF THE RELEVANT APPLICATION.

xxx

- 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 **DETERMINED** [fixed] by the ERC after due notice and public hearing[.];
- j) xxx
- k) Monitor and take measures in accordance with this Act, **IN COORDINATION WITH THE PCC**, to penalize abuse of market power, cartelization, and anti-competitive or discriminatory behavior by any electric power industry participant;
- l) xxx
- m) xxx
- n) xxx
- o) xxx
- p) xxx
- q) xxx

- r) In the exercise of its investigative and quasi-judicial powers, **AND IN COORDINATION WITH THE PCC**, act against any participant or player in the energy sector for violations of any law, rule and regulation governing the same, including the rules on cross-ownership, anti-competitive practices, abuse of market positions and similar or related acts by any participant in the energy sector or by any person, as may be provided by law, and require any person or entity to submit any report or data relative to any investigation or hearing conducted pursuant to this Act[.];
- s) **IN COORDINATION WITH THE PCC**, [I]inspect, on its own or through duly authorized representatives, the premises, books of accounts and records of any person or entity at any time, in the exercise of its quasi-judicial power for purposes of determining the existence of any anti-competitive behavior and/or market power abuse and any violation of rules and regulations issued by the ERC;
- t) xxx [and]
- u) xxx
- v) **TO ORGANIZE AND ADMINISTER THE TRANSMISSION GRID RELIABILITY MANAGEMENT COMMITTEE, WHICH SHALL BE TASKED TO DEVELOP, IMPROVE, AND CONDUCT AUDIT IN COMPLIANCE WITH THE GRID CODE AND OTHER RELATED ISSUANCES, TO MONITOR AND REPORT TO THE ERC ANY VIOLATIONS AGAINST THE TRANSMISSION GRID CODE, TO INVESTIGATE AND PROVIDE RESOLUTIONS ON GRID SIGNIFICANT INCIDENTS, AND TO RECOMMEND PENALTIES FOR NON-CONFORMANCE AND VIOLATIONS THEREOF;**
- w) **TO ORGANIZE AND ADMINISTER THE DISTRIBUTION GRID RELIABILITY MANAGEMENT COMMITTEE,**

WHICH SHALL BE TASKED TO DEVELOP, IMPROVE, AND CONDUCT AUDIT IN COMPLIANCE WITH DISTRIBUTION RELIABILITY STANDARDS, TO MONITOR AND REPORT TO THE ERC ANY VIOLATIONS OF THE DISTRIBUTION GRID CODE, TO INVESTIGATE AND PROVIDE RESOLUTIONS ON GRID SIGNIFICANT INCIDENTS, AND TO RECOMMEND PENALTIES FOR NON-COMPLIANCE AND VIOLATIONS THEREOF; AND

- x) 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), IN REAL TERMS, OR BY IMPRISONMENT NOT EXCEEDING TEN (10) DAYS, OR BOTH, ANY PERSON GUILTY OF ANY ACT INTENDED TO INTERRUPT THE HEARING, SESSION, OR ANY PROCEEDING BEFORE THE COMMISSION, 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 BE POSTED ELECTRONICALLY ON THE OFFICIAL WEBSITE OF ERC."**

Sec. 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. 8. New Sections, designated as Sec. 44(A), 44(B), 44(C), 44(E), and 44(D) of Republic Act No. 9136, are hereby inserted to read as follows:

"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, COMPETITION, ACCOUNTABILITY, IMPARTIALITY, AND EFFICIENCY. THE RESULTING POWER SUPPLY AGREEMENTS MUST EMBODY THE PRINCIPLES OF QUALITY, AFFORDABILITY, SUSTAINABILITY, AND RELIABILITY OF SUPPLY OF ELECTRIC POWER.

IN ACCORDANCE WITH THE PROVISIONS OF THIS ACT, THE ERC SHALL REVIEW AND APPROVE THE RATES, TERMS AND CONDITIONS OF POWER SUPPLY AGREEMENTS THAT THE DOE HAS CERTIFIED TO HAVE OBSERVED ITS PROCUREMENT POLICIES.

SEC. 44(B). BENCHMARK PRICES, RATES, AND KEY PERFORMANCE INDICATORS. – THE ERC SHALL DETERMINE THE BENCHMARK FOR THE RANGE OF PRICES, RATES, AND KEY PERFORMANCE INDICATORS THAT ARE DEEMED REASONABLE FOR BOTH THE

END-USERS AND THE OPERATIONS OF GENERATION, TRANSMISSION, AND DISTRIBUTION ENTITIES: *PROVIDED*, THAT 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, ON ITS OFFICIAL WEBSITE, THE BENCHMARK PRICES, RATES, AND KEY PERFORMANCE INDICATORS, WHICH SHALL BE REGULARLY REVIEWED AND UPDATED AS THE ERC MAY DEEM NECESSARY.

SEC. 44 (C). *PROCEEDINGS IN THE ERC.* – CASES FILED BEFORE THE ERC SHALL BE DECIDED THROUGH REGULAR PROCEEDINGS: *PROVIDED*, THAT CASES RELATED TO CONTRACTS OR SUBMISSIONS, INCLUDING POWER SUPPLY AGREEMENTS, THAT ARE CERTIFIED BY THE DOE PURSUANT TO THIS ACT AND WITHIN THE BENCHMARK DETERMINED BY THE ERC SHALL BE DECIDED THROUGH SUMMARY PROCEEDINGS, WITHOUT THE NEED OF CONDUCTING A HEARING: *PROVIDED, FURTHER*, THAT DECISIONS IN SUMMARY PROCEEDINGS SHALL BE LIMITED TO THE DETERMINATION OF COMPLIANCE OF THE CONTRACTS OR SUBMISSIONS WITH APPLICABLE RULES AND REGULATIONS: *PROVIDED, FINALLY*, THAT UPON DETERMINATION BY THE ERC, OTHER CONTRACTS OR SUBMISSIONS MAY BE DECIDED THROUGH SUMMARY PROCEEDINGS.

SEC 44 (D). *ADMINISTRATIVE DECISIONS.* – MATTERS FALLING UNDER THE PERMITTING AND LICENSING MANDATE OF THE ERC THAT DO NOT REQUIRE THE

CONDUCT OF A HEARING SHALL BE CLASSIFIED AS ADMINISTRATIVE MATTERS AND SHALL BE SUBJECT TO ADMINISTRATIVE PROCEEDINGS: *PROVIDED*, THAT ADMINISTRATIVE MATTERS SHALL INCLUDE, BUT NOT LIMITED TO, THE FOLLOWING APPLICATIONS OR SUBMISSIONS MADE BY ELECTRIC POWER INDUSTRY PARTICIPANTS:

- I. ANNUAL OR REGULAR SUBMISSIONS, WHETHER ON TECHNICAL, LEGAL, OR FINANCIAL MATTERS;
- II. SUBMISSIONS AND REPORTS INCLUDED IN THE REVIEW FOR REGULATORY RESET: *PROVIDED*, THAT THE REGULATORY RATE RESET PROCESS SHALL BE DECIDED THROUGH REGULAR PROCEEDINGS, IN ACCORDANCE WITH THE ERC'S POWERS UNDER SECTION 43(F) OF THIS ACT;
- III. APPLICATIONS FOR THE GRANT OF PROVISIONAL APPROVAL FOR PERMITS AND LICENSES TO ELECTRIC POWER INDUSTRY PARTICIPANTS: *PROVIDED*, THAT THE SAME SHALL BE SUBJECT TO SUBSEQUENT CONFIRMATION BY THE ERC; AND
- IV. ANY OTHER CONTRACTS, APPLICATIONS, OR SUBMISSIONS MADE BY ELECTRIC POWER INDUSTRY PARTICIPANTS THAT DO NOT REQUIRE THE EXERCISE OF ERC'S QUASI-JUDICIAL FUNCTION, AS MAY BE DETERMINED BY THE ERC.

ADMINISTRATIVE PROCEEDINGS SHALL BE DECIDED BY THE CHAIRPERSON OF THE ERC: *PROVIDED*, THAT 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.* - THE ERC SHALL ISSUE AN ACTION ON ALL APPLICATIONS AND SUBMISSIONS MADE IN REGULAR PROCEEDINGS WITHIN TWO HUNDRED SEVENTY (270) CALENDAR DAYS FROM THE SUBMISSION OF A VALID APPLICATION AS PROVIDED UNDER SECTION 13 OF RA 11234 OR THE EVOSS ACT: *PROVIDED*, THAT FOR SUMMARY QUASI-JUDICIAL PROCEEDINGS, THE RELEVANT PERIOD SHALL BE SIXTY (60) CALENDAR DAYS FROM THE SUBMISSION OF A VALID APPLICATION.

FOR APPLICATIONS AND SUBMISSIONS MADE IN ADMINISTRATIVE PROCEEDINGS, THE ERC SHALL ISSUE AN ACTION WITHIN SIXTY (60) CALENDAR DAYS FROM THE SUBMISSION OF ALL DOCUMENTARY REQUIREMENTS, AS PROVIDED FOR UNDER SECTION 13 OF RA 11234 OR THE EVOSS ACT.

MOTIONS FOR RECONSIDERATION OF A DECISION RENDERED THROUGH REGULAR, SUMMARY, OR ADMINISTRATIVE PROCEEDINGS OF THE ERC SHALL BE FILED WITHIN FIFTEEN (15) DAYS FROM 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, SUMMARY, 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 THEIR EFFECTIVITY, INCLUDING CASES PENDING AT THE TIME OF THEIR ISSUANCE: *PROVIDED*, THAT THE ERC MAY, IN THE INTEREST OF JUSTICE, WAIVE THE APPLICATION OF THE NEW RULES TO PENDING CASES IF IT DEEMS THAT THEIR APPLICATION WOULD CAUSE UNDUE DELAY, OR WOULD WORK INJUSTICE, IN WHICH CASE THE RULES UNDER WHICH THE CASES WERE FILED SHALL GOVERN.

Sec. 9. Sec. 45 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.

xxx

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

a) xxx

b) Distribution utilities may enter into bilateral power supply contracts subject to review by the ERC: *Provided*, That such review shall only be required for distribution utilities whose markets have not reached household demand level. For the purpose of preventing market power abuse between associated firms engaged in generation and distribution, no distribution utility shall be allowed to source from bilateral power supply contracts more than fifty percent (50%) of its total demand from an associated firm engaged in generation

but such limitation, however, shall not prejudice contracts entered into prior to the effectivity of this Act. An associated firm with respect to another entity refers to 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, such entity: **PROVIDED, FURTHER, THAT CONTROL, AS DEFINED IN SECTION 49(F) OF REPUBLIC ACT NO. 10667, OR 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.**

- 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.

xxx

The ERC, **IN COORDINATION WITH THE PCC**, 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:

[(a) the relevant markets for purposes of establishing abuse or misuse of monopoly or market position;]

xxx”

Sec. 10. 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, **THE PROVISIONS OF** this Act or **ITS** IRR:

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 FIVE HUNDRED [fifty] thousand pesos (P500,000.00) [(P50,000.00)] to a maximum of FIVE HUNDRED [Fifty] million pesos (P500,000,000.00) [(P50,000,000.000)].

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 NON-COMPLIANCE.

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, NATURAL OR JURIDICAL, A FINE OF NOT LESS THAN FIVE HUNDRED THOUSAND PESOS (PHP500,000.00) BUT NOT MORE THAN FIFTY MILLION PESOS (PHP50,000,000.00), 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.

To ensure compliance with this Act, the **CRIMINAL AND CIVIL PENALTIES** [penalty of prision correccional or a fine ranging from Five thousand pesos (P5,000.00) to Five million pesos (P5,000,000.00), 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 **OR SHE** 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 **OR SHE** may, in addition to the penalties prescribed, be deported without further proceedings after service of sentence.

C) OFFER OF COMPROMISE - ANY PERSON, NATURAL OR JURIDICAL, 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 INTO A COMPROMISE 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 COMPROMISE 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 CONTENDERE*, 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, FURTHER*, THAT ANY PERSON OR ENTITY CAN NOT ENTER INTO A COMPROMISE 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 (DOJ)* – 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 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*, *FURTHER*, 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.

xxx"

Sec. 11. *Separability Clause*. – If any portion of this Act is declared invalid or unconstitutional, other provisions hereof shall remain in full force and effect.

Sec. 12. *Repealing Clause*. – All laws, decrees, rules and regulations, or portion thereof, inconsistent with this Act are hereby repealed or modified accordingly, without prejudice to Republic Act No. 10667, otherwise known as the Philippine Competition Act.

Sec. 13. *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.

Sec. 14. *Effectivity*. – This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.

Approved,