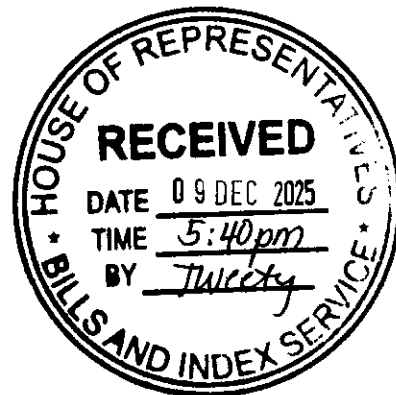




Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City



TWENTIETH CONGRESS
First Regular Session

HOUSE BILL NO. 6737

Introduced by Hon. Jonathan Keith T. Flores

EXPLANATORY NOTE

This bill seeks to strengthen and modernize the Energy Regulatory Commission (ERC) by reforming its mandate, structure, and financing, thereby ensuring it can more effectively regulate the electric power industry in the Philippines. The measure recognizes that, while the ERC was established under the Electric Power Industry Reform Act (EPIRA, RA 9136), it has faced institutional constraints that limit its capacity to fulfill its regulatory functions in a rapidly evolving energy sector.

A central reform proposed is to reconstitute the ERC as an independent, accountable, quasi-judicial, and rule-making regulatory body. The bill would expand the ERC's board composition from four to eight members, all serving seven-year non-renewable terms, to improve the body's technical expertise, continuity, and independence. To bolster its financial and operational capacity, the ERC is authorized under the bill to retain 50% of its internally generated revenues (from fees, assessments, licenses, and other charges) to support its capital outlay, operations (MOOE), and personnel services - reducing its dependence on annual appropriations.

By enhancing penalties, improving monitoring mechanisms, and reinforcing the Commission's authority to conduct inspections and investigations, this measure ensures that erring entities are held accountable and that the competitive landscape envisioned under the Electric Power Industry Reform Act (EPIRA) is realized. This aligns with expert calls for more robust regulatory intervention to address structural weaknesses in the wholesale electricity spot market and distribution sectors. It also empowers the ERC chairperson to adopt emergency consumer protection measures, such as temporary price mitigation (e.g., suspension of market disconnections, payment deferments), especially in times of calamity or declared emergency.

Ultimately, this proposed legislation aims to provide the ERC with both stronger institutional foundations and regulatory tools to promote market competition, protect consumer welfare, and enhance the resilience and transparency of the country's electric power sector. This reform recognizes that effective, transparent, and consumer-focused regulation is central to lowering electricity costs, improving service quality, and fostering a more competitive and resilient power sector.

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

JONATHAN KEITH T. FLORES
2nd District, Bukidnon



Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

TWENTIETH CONGRESS
First Regular Session

HOUSE BILL NO. 6737

Introduced by Jonathan Keith T. Flores

AN ACT
RESTRUCTURING THE ENERGY REGULATORY COMMISSION, AMENDING
SECTIONS 38, 39, 40, 41, 43, 44, AND 46 AND REPEALING SECTION 42 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. *Short Title.* This Act shall be known as the “ERC Reform Act.”

SECTION 2. *Declaration of Policy.* The State recognizes the significant role of the Energy Regulatory Commission in:

- (a) Ensuring transparent and reasonable prices of electricity;
- (b) Protecting the consumers affected by the rates and services of electric utilities and other providers of electric power; and
- (c) Promoting competition, encouraging market development and ensuring customer choice, and penalizing abuse of market power in the restructured power industry.

To this end, the State shall:

- (a) Establish a strong, independent, transparent, and accountable regulatory body; and
- (b) Ensure the efficient and effective performance of the functions and mandates of the regulatory body to promote market competition in the electric power industry.

SECTION 3. Section 38 of Republic Act (RA) No. 9136 is hereby amended to read as follows:

~~“SEC. 38. [Creation of the Energy Regulatory Commission. There is hereby created an independent, quasi-judicial regulatory body to be named the Energy Regulatory Commissions (ERC). For this purpose, the existing Energy Regulatory Board (ERB) created under Executive Order No. 172, as amended, is hereby abolished.~~

~~The Commission shall be composed of a Chairman and four (4) members to be appointed by the President of the Philippines. 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 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.~~

~~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.~~

~~The Chairman of the Commission, who shall be a member of the Philippine Bar, shall act as the Chief Executive Officer of the Commission.~~

~~All members of the Commission shall have a term of seven (7) years: Provided, That for the first appointees, the Chairman shall hold office for seven (7) years, two (2) members shall hold office for five (5) years and the other two (2) members shall hold office for three (3) years; Provided, further, That appointment to any future vacancy shall only be for the unexpired term of the predecessor: Provided, finally, That there shall be no reappointment and in no case shall any member serve for more than seven (7) years in the Commission.~~

~~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.~~

~~Members of the Commission shall enjoy security of tenure and shall not be suspended or removed from office except for just cause as specified by law.~~

~~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.~~

~~The presence of at least three (3) members of the Commission shall constitute a quorum and the majority vote of two (2) members in a meeting where a quorum is present shall be necessary for the adoption of any rule, ruling, order, resolution, decision, or other act of the Commission in the exercise of its quasi-judicial functions: Provided, That in fixing rates and tariffs, an affirmative vote of three (3) members shall~~
~~be required.]~~ **REFORM AND RESTRUCTURING OF THE ENERGY REGULATORY COMMISSION. THE ENERGY REGULATORY COMMISSION (ERC) IS HEREBY RECONSTITUTED AS AN INDEPENDENT, ACCOUNTABLE, QUASI-JUDICIAL, AND RULE-MAKING REGULATORY BODY, WITH POWERS TO PROMULGATE AND ENFORCE RULES AND REGULATIONS TO EFFECTIVELY IMPLEMENT THE PROVISIONS OF THE EPIRA. TO THIS END, THE ERC SHALL BE EXCLUSIVELY RESPONSIBLE FOR THE REGULATION OF THE ELECTRIC POWER INDUSTRY.**

THE COMMISSION SHALL, IN ADDITION TO ITS YEARLY APPROPRIATION UNDER THE GENERAL APPROPRIATIONS ACT (GAA),

BE ALLOWED TO USE FOR THE FOLLOWING YEAR FIFTY PERCENT (50%) OF ITS REVENUES GENERATED FROM THE COLLECTION OF FEES, ASSESSMENTS, LICENSES, AND OTHER CHARGES. THE SAID AMOUNT SHALL BE UTILIZED IN THE FOLLOWING MANNER:

- (A) TEN PERCENT (10%) OF SUCH INCOME SHALL BE USED TO AUGMENT THE ERC'S CAPITAL OUTLAY BUDGET;
- (B) SIXTY PERCENT (60%) OF SUCH INCOME SHALL BE USED TO AUGMENT THE ERC'S MAINTENANCE AND OTHER OPERATING EXPENSES (MOOE) BUDGET; AND
- (C) THIRTY PERCENT (30%) OF SUCH INCOME SHALL BE USED TO AUGMENT THE ERC'S PERSONNEL SERVICE (PS) BUDGET, INTENDED TO AUGMENT THE BENEFITS OF THE ERC OFFICERS, PERSONNEL AND STAFF EXCEPT FOR THE CHAIRPERSON AND MEMBERS OF THE COMMISSION.

THE ERC MAY, SUBJECT TO THE ISSUANCE OF APPROPRIATE RULES AND REGULATIONS, REVIEW AND REVISE THE ABOVE ALLOCATION FOR ITEMS (A) AND (B) AS IT MAY DEEM NECESSARY IN THE PERFORMANCE OF ITS MANDATE UNDER THIS ACT, SUBJECT TO THE EXISTING ACCOUNTING AND AUDITING PROCEDURES. IN CASE THE ERC FAILS TO FULLY UTILIZE THE REVENUES MENTIONED HEREIN, THE UNUTILIZED AMOUNT SHALL REVERT TO THE NATIONAL TREASURY.

THE CHAIRPERSON SHALL SUBMIT THE ORGANIZATIONAL STRUCTURE AND STAFFING PATTERN OF THE ERC TO THE DEPARTMENT OF BUDGET AND MANAGEMENT FOR ITS EVALUATION AND RECOMMENDATION FOR THE APPROVAL OF THE PRESIDENT OF THE PHILIPPINES, WITHIN THREE (3) MONTHS FROM THE EFFECTIVITY OF THIS ACT.

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 THE PERSONNEL'S CAPACITY AND PERFORMANCE: *PROVIDED*, THAT THE NEW POSITION TO WHICH THEY SHALL BE TRANSFERRED SHALL BE OF THE SAME RANK AND SALARY AS THAT OF THEIR PREVIOUS POSITION. AFFECTED EMPLOYEES MAY OPT FOR VOLUNTARY SEPARATION FROM THE SERVICE WITHIN SIX (6) MONTHS FROM THE EFFECTIVITY OF THIS ACT AND SHALL BE ENTITLED TO RECEIVE SEPARATION AND EARLY RETIREMENT AND OTHER BENEFITS UNDER APPLICABLE LAWS AND ISSUANCES WITHIN NINETY (90) DAYS FROM THE DATE OF THE EFFECTIVITY OF THEIR SEPARATION FROM SERVICE.

THE ERC SHALL REASSESS ITS ORGANIZATIONAL STRUCTURE EVERY FIVE (5) YEARS FROM THE EFFECTIVITY OF THIS ACT, OR EARLIER AS NECESSARY, TO DETERMINE IF THERE IS A NEED FOR FURTHER RESTRUCTURING OR REORGANIZATION, WHICH MAY INCLUDE ADDITIONAL SERVICES, DIVISIONS OR PERSONNEL."

SECTION 4. New sections 38(A), 38(B), 38(C), 38(D), 38(D-1), 38(D-2), 38(E), 38(F), and 38(G) are hereby inserted in RA No. 9136 to read as follows:

"SEC. 38(A). COMPOSITION OF THE COMMISSION AND

QUALIFICATIONS REQUIREMENTS. – THE COMMISSION SHALL BE COMPOSED OF A CHAIRPERSON AND EIGHT (8) MEMBERS. THE CHAIRPERSON AND THE MEMBERS OF THE COMMISSION SHALL BE APPOINTED BY THE PRESIDENT OF THE PHILIPPINES AND SHALL SERVE A TERM OF SEVEN (7) YEARS: *PROVIDED*, THAT THE CURRENT CHAIRPERSON AND MEMBERS WHO HAVE BEEN APPOINTED PRIOR TO THE EFFECTIVITY OF THIS ACT SHALL CONTINUE TO PERFORM THEIR FUNCTIONS UNTIL THE COMPLETION OF THEIR TERM: *PROVIDED, FURTHER*, THAT THE MEMBERS WHO SHALL BE APPOINTED IN ADDITION TO THE CURRENT MEMBERS SHALL SERVE ON A STAGGERED BASIS, WITH THE FIRST AND SECOND MEMBERS TO BE APPOINTED SERVING FOR A TERM OF SEVEN (7) YEARS, AND THE THIRD AND FOURTH MEMBERS TO BE APPOINTED SERVING FOR A TERM OF FIVE (5) YEARS: *PROVIDED, FURTHERMORE*, THAT APPOINTMENT TO ANY FUTURE VACANCY SHALL ONLY BE FOR THE UNEXPIRED TERM OF THE PREDECESSOR: *PROVIDED, FINALLY*, THAT THERE SHALL BE NO REAPPOINTMENT AND IN NO CASE SHALL ANY MEMBER SERVE FOR MORE THAN SEVEN (7) YEARS IN THE COMMISSION.

THE CHAIRPERSON AND THE MEMBERS OF THE COMMISSION SHALL BE NATURAL-BORN CITIZENS AND RESIDENTS OF THE PHILIPPINES, PERSONS OF GOOD MORAL CHARACTER, AT LEAST FORTY-FIVE (45) YEARS OF AGE, OF RECOGNIZED PROBITY AND COMPETENCE, IN GOOD STANDING, AND WITH EXTENSIVE FAMILIARITY IN ANY OF THE FOLLOWING FIELDS: ENERGY, LAW, ECONOMICS, FINANCE, COMMERCE, ENGINEERING, WITH AT LEAST TEN (10) YEARS OF ACTUAL AND ACTIVE EXPERIENCE IN THEIR RESPECTIVE FIELDS OF EXPERTISE, AND IN GENERATION, TRANSMISSION, DISTRIBUTION AND/OR RETAIL SUPPLY OPERATIONS OF THE PHILIPPINE ELECTRIC POWER INDUSTRY: *PROVIDED*, THAT: (A) THE CHAIRPERSON SHALL BE A MEMBER OF THE PHILIPPINE BAR OR A LICENSED ENGINEER; AND (B) AMONG THE EIGHT (8) MEMBERS OF THE COMMISSION, AND AT LEAST ONE (1) MEMBER SHALL BE A CERTIFIED PUBLIC ACCOUNTANT, ONE (1) MEMBER SHALL BE A LICENSED ENGINEER, AND ONE (1) MEMBER SHALL BE AN ECONOMIST.”

“SEC. 38(B). *SECURITY OF TENURE.* – THE CHAIRPERSON AND THE MEMBERS OF THE COMMISSION SHALL ENJOY SECURITY OF TENURE AND SHALL NOT BE SUSPENDED OR REMOVED FROM OFFICE EXCEPT FOR JUST CAUSE AS SPECIFIED BY LAW.”

“SEC. 38(C). *PROHIBITIONS.* – THE CHAIRPERSON AND MEMBERS OF THE COMMISSION, WITHIN THE DURATION OF THEIR TERM, 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 IN ANY ELECTRIC POWER INDUSTRY PARTICIPANT, IN ANY CAPACITY; (C) HOLDING ANY OTHER OFFICE OR EMPLOYMENT; AND (D) DIRECTLY OR INDIRECTLY PRACTICING ANY PROFESSION, PARTICIPATING IN ANY BUSINESS, OR BE FINANCIALLY INTERESTED IN ANY CONTRACT WITH, OR ANY FRANCHISE, OR SPECIAL PRIVILEGES GRANTED BY THE GOVERNMENT OR ANY SUBDIVISION, AGENCY, OR INSTRUMENTALITY THEREOF, INCLUDING GOVERNMENT-OWNED AND -CONTROLLED CORPORATIONS (GOCCS) OR THEIR SUBSIDIARIES. WITHIN THREE (3) YEARS FROM CESSATION OF THEIR SERVICE, THE CHAIRPERSON AND THE MEMBERS OF THE COMMISSION ARE HEREBY PROHIBITED FROM: (A) RUNNING FOR OFFICE IN THE 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. DURING THE INCUMBENCY OF CHAIRPERSON OR MEMBER OF THE COMMISSION, ANY RELATIVE 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 IN ANY ELECTRIC POWER INDUSTRY PARTICIPANT, IN ANY CAPACITY; AND**
- (C) APPEARING AS COUNSEL OR AGENT ON ANY MATTER PENDING BEFORE THE COMMISSION OR TRANSACTING BUSINESS DIRECTLY OR INDIRECTLY THEREIN: *PROVIDED*, THAT THIS PROHIBITION SHALL CONTINUE WITHIN THREE (3) YEARS FROM CESSATION OF SERVICE OF THE CONCERNED CHAIRPERSON OR MEMBER OF THE COMMISSION."**

"SEC. 38(D). *DUTIES AND RESPONSIBILITIES OF THE CHAIRPERSON AND CHIEF EXECUTIVE OFFICER.* – 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 SERVE AS HEAD OF AGENCY AND 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 *EN BANC*;**
- (F) TO PRESIDE AT THE MEETINGS OF THE COMMISSION *EN BANC* AND THE DIVISION TO WHICH THEY ARE A MEMBER;**
- (G) TO ORDER THE IMPLEMENTATION OF TEMPORARY PRICE MITIGATION MEASURES TO PROTECT CONSUMER INTERESTS, 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 THE 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 *EN BANC*;

- (H) TO EXERCISE THE POWER TO APPOINT OFFICIALS WITH THE RANK OF DIVISION CHIEF AND BELOW; AND
- (I) TO EXERCISE SUCH OTHER POWERS, FUNCTIONS AND DUTIES AS MAY BE ASSIGNED TO HIM OR HER BY THE COMMISSION."

"SEC. 38(D-1). DUTIES AND RESPONSIBILITIES OF THE MEMBERS OF THE COMMISSION. – IN ADDITION TO THE FUNCTIONS ENUMERATED IN RA NO. 9136, THE MEMBERS OF THE COMMISSION SHALL:

- (A) REGULARLY ATTEND AND ACTIVELY PARTICIPATE IN THE MEETINGS OF THE COMMISSION *EN BANC* OR DIVISION WHERE ANY CASE, ISSUE OR MATTER WITHIN ITS JURISDICTION IS UNDER CONSIDERATION;
- (B) RECOMMEND TO THE CHAIRPERSON OR PRESIDING COMMISSIONER THE INCLUSION IN THE AGENDA OF ANY CASE, ISSUE OR MATTER DEEMED APPROPRIATE IN THE PERFORMANCE OF THE COMMISSION'S FUNCTIONS;
- (C) CONDUCT HEARINGS IN THE AFFECTED AREAS, IF NECESSARY, AND THOROUGHLY ANALYZE CASES, ISSUES AND MATTERS PENDING BEFORE THE COMMISSION *EN BANC* OR DIVISION;
- (D) TAKE PART IN CONTINUOUS EDUCATION AND CAPACITY BUILDING PROGRAMS OF THE COMMISSION TO ENHANCE TECHNICAL COMPETENCE;
- (E) REFRAIN FROM ACTS WHICH UNDULY INFLUENCE, IMPEDE, OR HAMPER THE EFFECTIVE FULFILMENT OF DUTIES AND RESPONSIBILITIES OF ANY OFFICIAL OF THE COMMISSION;
- (F) REVIEW AND ACT ON THE ENDORSEMENT OF THE PROPOSED ERC BUDGET; AND
- (G) TIMELY PERFORM IN GOOD FAITH AND TO THE BEST OF HIS OR HER ABILITY THE DUTIES AND RESPONSIBILITIES PROVIDED HEREIN."

"SEC. 38(D-2). FUNCTIONS OF THE PRESIDING COMMISSIONER. – EACH DIVISION SHALL HAVE A PRESIDING COMMISSIONER, WHO SHALL BE THE MOST SENIOR COMMISSIONER IN ACCORDANCE WITH THEIR DATES OF APPOINTMENT: *PROVIDED*, THAT THE CHAIRPERSON SHALL BE CONSIDERED AS THE MOST SENIOR IN THE COMMISSION. THE POWERS AND DUTIES OF THE PRESIDING COMMISSIONER, WHEN DISCHARGING HIS OR HER FUNCTIONS IN CASES PENDING BEFORE THE DIVISION, SHALL BE AS FOLLOWS:

- (A) TO ISSUE CALLS FOR THE SESSIONS OF THE DIVISION;
- B) TO DIRECT AND SUPERVISE THE PREPARATION OF THE AGENDA FOR THE MEETINGS OF THE DIVISION;
- (C) TO PRESIDE OVER THE SESSIONS OF THE DIVISION;
- (D) TO PRESERVE ORDER AND DECORUM DURING THE SESSIONS OF THE DIVISION;

- (E) TO SIGN INTERLOCUTORY ORDERS IN CASES ALREADY ASSIGNED TO THE DIVISION;
- (F) TO DECIDE ALL QUESTIONS OF ORDER, SUBJECT TO APPEAL TO THE COMMISSION *EN BANC*, AS MAY BE PROVIDED UNDER THIS ACT; AND
- (G) TO TAKE SUCH OTHER MEASURES AS HE OR SHE MAY DEEM PROPER UPON CONSULTATION WITH THE OTHER MEMBERS OF THE DIVISION.”

“SEC. 38(E). *CREATION OF NEW DIVISIONS*. – THE COMMISSION SHALL BE DIVIDED INTO THREE (3) DIVISIONS, WITH THREE (3) MEMBERS EACH, INCLUDING THE CHAIRPERSON. THE PRESENCE OF AT LEAST TWO (2) OF THE (3) MEMBERS OF THE DIVISION SHALL CONSTITUTE A QUORUM, AND THE MAJORITY VOTE AT LEAST TWO (2) MEMBERS OF THE DIVISION IN WHICH A QUORUM IS PRESENT SHALL BE NECESSARY FOR THE ADOPTION OF ANY RULING, ORDER, RESOLUTION, DECISION OR OTHER ACTS OF THE COMMISSION.”

“SEC. 38(F). *QUORUM*. – AT LEAST FIVE (5) MEMBERS OF THE ERC SHALL CONSTITUTE A QUORUM IN THE COMMISSION *EN BANC*. THE CHAIRPERSON SHALL BE THE PRESIDING OFFICER DURING A COMMISSION *EN BANC* HEARING. IN THE ABSENCE OF THE CHAIRPERSON, THE MOST SENIOR MEMBER AMONG THE COMMISSIONERS PRESENT SHALL SERVE AS THE PRESIDING OFFICER. A VALID DECISION OF THE COMMISSION *EN BANC* SHALL BE CONCURRED IN BY THE MAJORITY OF THE MEMBERS CONSTITUTING A QUORUM.”

SUBJECT TO SECTION 44 OF THIS ACT, THE COMMISSION *EN BANC* SHALL ACT PRIMARILY ON THE FOLLOWING CASES:

- (A) CASES INVOLVING THE ERC’S POWER TO PROMULGATE RULES OR REGULATIONS;
- (B) CASES INVOLVING CAPITAL EXPENDITURES WITH A GROSS VALUE OF ONE BILLION PESOS (₱1,000,000,000.00) AND ABOVE;
- (C) CASES INVOLVING THE PERFORMANCE AND OPERATIONS, AND THE SETTING OF RETAIL RATES OF THE NATIONAL TRANSMISSION CORPORATION (TRANSCO) OR ITS AUTHORIZED CONCESSIONAIRE, AND OF DISTRIBUTION UTILITIES, AS MAY BE APPLICABLE;
- (D) REVIEW OF CASES DECIDED BY A DIVISION OF THE ERC IN THE EVENT THERE IS A CONFLICTING DECISION BY ANOTHER DIVISION;
- (E) APPOINTMENTS OF OFFICIALS WITH THE RANK OF DIRECTOR AND ABOVE; AND
- (F) OTHER CASES AS MAY BE DETERMINED BY THE COMMISSION *EN BANC* ITSELF.”

“SEC. 38(G). *CODE OF CONDUCT AND ETHICAL STANDARDS*. – THE CHAIRPERSON AND THE MEMBERS OF THE ERC SHALL CONFORM TO THE CODE OF CONDUCT AND ETHICAL STANDARDS AS SPECIFIED IN RA NO. 6713.”

SECTION 5. Section 39 of RA No. 9136 is hereby amended to read as follows:

“SEC. 39. ADJUSTED Compensation STRUCTURE and Other Emoluments for ERC Personnel. – The compensation and other emoluments for the ~~[Chairman]~~ 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,” **AS AMENDED BY EXECUTIVE ORDER NO. 201, SERIES OF 2016.**

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The ~~[Chairman]~~ CHAIRPERSON and members of the Commission shall ~~[initially]~~ be entitled to the same ~~[salaries;]~~ allowances and benefits ~~[as those of the Presiding Justice and Associate Justices of the Supreme Court, respectively]~~ **PRESENTLY RECEIVED: PROVIDED, THAT UPON SERVING AT LEAST FIVE (5) YEARS OF THEIR TERMS AND UPON REACHING THE AGE OF SIXTY-FIVE (65) YEARS OLD, the [Chairman] CHAIRPERSON and the members of the Commission shall, [upon completion of their term or upon becoming] BE CONSIDERED eligible for retirement. [under existing laws and be entitled to the same retirement benefits and privileges provided for the Presiding Justice and Associate Justices of the Supreme Court, respectively].**

THE COMPENSATION SCHEDULE OF THE PERSONNEL SHALL BE COMPETITIVE WITH THE SALARY RANGE OF OTHER REGULATORY AGENCIES, AND THE ELECTRIC POWER INDUSTRY STAKEHOLDERS. FOR THIS PURPOSE, THE COMMISSION EN BANC SHALL, SUBJECT TO THE APPROVAL OF THE PRESIDENT OF THE PHILIPPINES, ADJUST THE COMPENSATION SCHEDULE AND BENEFITS OF ERC PERSONNEL ONCE EVERY TWO (2) YEARS TO ENSURE THAT THE SAME IS COMPARABLE WITH THE COMPENSATION PACKAGE OF OTHER REGULATORY AGENCIES, AND THE ELECTRIC POWER INDUSTRY STAKEHOLDERS.”

SECTION 6. Section 40 of RA No. 9136 is hereby amended to read as follows:

“SEC. 40. Enhancement of Technical Competence. – ~~[The ERCM 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.]~~ **THE TECHNICAL COMPETENCE OF THE ERC PERSONNEL SHALL BE BENCHMARKED AGAINST INTERNATIONAL BEST PRACTICES. IN VIEW THEREOF, THE ERC SHALL ESTABLISH A RIGOROUS AND SUSTAINABLE TRAINING PROGRAM THAT SHALL ALLOW ITS STAFF TO ACQUIRE THE NECESSARY KNOWLEDGE AND SKILLS AT PAR WITH THE PERSONNEL OF REGULATORS FROM OTHER JURISDICTIONS AND ECONOMIES. FOR THIS PURPOSE, THE ERC SHALL ESTABLISH A UNIT WITHIN ITS STRUCTURE THAT SHALL DESIGN A STANDARDIZED TRAINING AND DEVELOPMENT PROGRAM AND FACILITATE THE REGULAR CONDUCT OF NECESSARY TRAINING FOR NEW AND INCUMBENT ERC PERSONNEL. THE ERC SHALL ALLOT A MAXIMUM OF FIFTEEN PERCENT (15%) OF THE REVENUES IT GENERATED FROM THE COLLECTION OF FEES, ASSESSMENTS, LICENSES, AND OTHER CHARGES FOR THE TRAINING AND UPGRADING OF SKILLS OF ITS PERSONNEL. THE AMOUNT SHALL BE TAKEN FROM ITS REVENUES RESERVED TO AUGMENT ERC’S BUDGET AS PROVIDED UNDER SECTION 38 OF THIS ACT.”**

SECTION 7. Section 41 of RA No. 9136 is hereby amended to read as follows:

“SEC. 41. PROTECTION AND Promotion of Consumer Interests. – ~~[The~~

~~ERC shall handle consumer complaints and ensure the adequate promotion of consumer interests.]~~ THE ERC SHALL ADDRESS AND PROVIDE TIMELY RESOLUTIONS TO CONSUMER COMPLAINTS AND ENSURE ADEQUATE PROTECTION 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. FOR THIS PURPOSE, THE ERC SHALL REGULARLY CONDUCT TRAININGS FOR THE EFFICIENT HANDLING OF CONSUMER COMPLAINTS BY THE DISTRIBUTION UTILITIES' CONSUMER WELFARE DESK (CWD). THE ERC SHALL ALLOCATE AN ANNUAL BUDGET FOR THIS PURPOSE.

A SUPPORT DESK SHALL BE MADE AVAILABLE TO THE PUBLIC TO ASSIST 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 ACCESS INFORMATION OF PUBLIC CONCERN, SUBJECT TO THE COMMISSION'S GUIDELINES IN THE GRANT AND LIMITATIONS OF THIS RIGHT: *PROVIDED, FURTHER*, THAT ACCESS TO INFORMATION SHALL NOT BE GRANTED IF:

- (A) THE INFORMATION IS CONSIDERED CONFIDENTIAL UNDER EXISTING LAWS AND REGULATIONS;
- (B) THE INFORMATION IS COVERED BY DELIBERATIVE PROCESS PRIVILEGE, OR EXECUTIVE PRIVILEGE; AND
- (C) THE INFORMATION REQUESTED PERTAINS TO TRADE SECRETS, COMPETITIVELY 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."

SECTION 8. Section 43 of RA No. 9136 is hereby amended to read as follows:

"SEC. 43. *Functions of the ERC.* – The ERC shall promote competition, encourage market development, AND 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:

x x x

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

x x x

- (i) Allow the TRANSCO OR ITS CONCESSIONAIRE 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 fixed by the ERC after due notice and public hearing;

X X X

(q) Act on applications for cost recovery and return on demand side management projects. **THE ERC SHALL FOLLOW THE TIMELINE PROVIDED IN SECTION 13 OF RA NO. 11234, AND FAILURE OF THE ERC TO RELEASE ITS ACTION ON THE APPLICATION WITHIN THE PRESCRIBED TIME FRAME SHALL DEEM SUCH APPLICATION APPROVED;**

(t) **X X X; [and]**

X X X

(V) **SUMMARILY PUNISH FOR CONTEMPT BY A FINE NOT LESS THAN FIVE THOUSAND PESOS (P5,000.00) BUT NOT EXCEEDING ONE HUNDRED THOUSAND PESOS (P100,000.00) OR BY IMPRISONMENT NOT EXCEEDING TEN (10) DAYS, OR BOTH, ANY PERSON WHO SHALL OBSTRUCT THE COMMISSION OR ITS HEARING OFFICERS WHILE ENGAGED IN THE DISCHARGE OF OFFICIAL DUTIES, OR WHO SHALL CONDUCT HIMSELF IN A RUDE, DISRESPECTFUL OR DISORDERLY MANNER BEFORE THE COMMISSION OR ITS HEARING OFFICERS, WHILE ENGAGED IN THE DISCHARGE OF OFFICIAL DUTIES, OR SHALL ORALLY OR IN WRITING BE DISRESPECTFUL TO, OFFEND OR INSULT THE COMMISSION OR ITS HEARING OFFICERS ON OCCASION OR BY REASON OF THE PERFORMANCE OF OFFICIAL DUTIES, GUILTY OF ANY ACT INTENDED TO INTERRUPT THE HEARING OR 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. OF MISCONDUCT IN THE PRESENCE OF THE COMMISSION, OR ANY OF 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.

(W) **IN RELATION TO SECTION 6 OF THIS ACT, THE ERC SHALL ISSUE A FIXED LIST OF REQUIREMENTS AND ACT ON APPLICATIONS OF GENERATING COMPANIES FOR THE ISSUANCE OF CERTIFICATES OF COMPLIANCE (COC): PROVIDED, THAT THE TIMELINE PROVIDED IN SECTION 13 OF RA NO. 11234 SHALL BE OBSERVED, AND FAILURE OF THE ERC TO RELEASE ITS ACTION ON THE APPLICATION WITHIN THE PRESCRIBED TIME FRAME SHALL DEEM SUCH COC APPLICATION APPROVED;**

(X) **ENCOURAGE AND ACTIVELY PROMOTE THE USE OF ALTERNATIVE DISPUTE RESOLUTION (ADR) IN DEREGULATED AREAS OF THE ELECTRIC POWER INDUSTRY AS AN IMPORTANT MEANS TO ACHIEVE SPEEDY AND IMPARTIAL JUSTICE, AND DECLOG THE DOCKETS OF THE ERC IN ACCORDANCE WITH RA NO. 9285, OTHERWISE KNOWN AS THE "ALTERNATIVE DISPUTE RESOLUTION ACT OF 2004". TO THIS END, THE ERC SHALL CONDUCT EDUCATIONAL AND INFORMATION ACTIVITIES TO EQUIP ADR PRACTITIONERS TO ADDRESS DEREGULATED ELECTRIC POWER INDUSTRY DISPUTES;**

(Y) **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;

(Z) TO ORGANIZE AND ADMINISTER THE DISTRIBUTION GRID RELIABILITY 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 UTILITIES AGAINST THE DISTRIBUTION GRID CODE, TO INVESTIGATE AND PROVIDE RESOLUTIONS ON GRID SIGNIFICANT INCIDENTS, AND TO RECOMMEND PENALTIES FOR NON-CONFORMANCE AND VIOLATIONS THEREOF.

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

SECTION 9. Section 44 of RA 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. The foregoing transfer of powers and functions shall include all applicable funds and appropriation, records, equipment, property and personnel as may be necessary.]

NATURE OF THE REGULATORY POWERS OF THE ERC. – IN THE PERFORMANCE OF ITS ROLE AS THE INDEPENDENT REGULATOR OF THE ELECTRIC POWER INDUSTRY, THE ERC SHALL PERFORM QUASI-JUDICIAL, QUASI-LEGISLATIVE, AND ADMINISTRATIVE FUNCTIONS. UNLESS ALREADY PROVIDED IN THIS ACT, THE ERC SHALL IDENTIFY WHICH AMONG ITS FUNCTIONS SHALL BE PERFORMED AND UNDERTAKEN THROUGH REGULAR, SUMMARY, AND ADMINISTRATIVE PROCEEDINGS. IT SHALL ESTABLISH THE RULES OF PROCEDURE FOR EACH TYPE OF PROCEEDING THAT SHALL PROMOTE TRANSPARENCY, EXPEDIENCY, CONSISTENCY, AND EFFICIENCY OF SERVICE."

"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). *REGULAR AND SUMMARY PROCEEDINGS IN THE ERC.* – CASES FILED BEFORE THE ERC, THAT REQUIRE THE EXERCISE OF ITS QUASI-JUDICIAL AND ADJUDICATORY, AND QUASI-LEGISLATIVE AND RULE-MAKING FUNCTIONS, 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 SUMMARY PROCEEDINGS, WITHOUT NEED OF A HEARING IN ACCORDANCE WITH THE EXERCISE OF THE ERC OF ITS POWERS UNDER SECTION 43(W) OF THIS ACT: *PROVIDED, FURTHER,* THAT OTHER CONTRACTS OR SUBMISSIONS THAT ARE NOT SUBJECT TO BENCHMARKING MAY BE DECIDED THROUGH SUMMARY PROCEEDINGS UPON DETERMINATION OF THE COMMISSION *EN BANC.*”

“SEC. 44(D). *ADMINISTRATIVE PROCEEDINGS IN THE ERC.* – MATTERS THAT REQUIRE THE EXERCISE BY THE ERC OF ITS ADMINISTRATIVE FUNCTIONS, AND DOES NOT REQUIRE THE EXERCISE OF THE ERC’S QUASI-JUDICIAL OR QUASI-LEGISLATIVE FUNCTIONS, SHALL BE SUBJECT TO ADMINISTRATIVE PROCEEDINGS. ADMINISTRATIVE MATTERS 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.

THE GRANT OF PROVISIONAL APPROVAL FOR PERMITS AND LICENSES TO ELECTRIC POWER INDUSTRY PARTICIPANTS SHALL BE CONSIDERED AN ADMINISTRATIVE MATTER AND SHALL BE DECIDED UPON BY THE CHAIRPERSON: *PROVIDED,* THAT THE GRANT OF PROVISIONAL APPROVAL SHALL BE SUBJECT TO SUBSEQUENT CONFIRMATION BY THE COMMISSION *EN BANC.* ADMINISTRATIVE MATTERS SHALL LIKEWISE INCLUDE THE FOLLOWING COMPLIANCE SUBMISSIONS 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; AND

(III) ANY OTHER CONTRACTS, APPLICATIONS, OR SUBMISSIONS MADE BY PARTICIPANTS IN THE ELECTRIC POWER INDUSTRY THAT DOES NOT REQUIRE THE EXERCISE OF THE ERC’S QUASI-JUDICIAL OR QUASI-LEGISLATIVE FUNCTIONS AS MAY BE DETERMINED BY THE COMMISSION *EN BANC.*”

“SEC. 44(E). *ISSUANCE OF DECISIONS AND RULE ON APPEALS.* – THE ERC SHALL ISSUE AN ACTION ON ALL APPLICATIONS AND SUBMISSIONS MADE IN REGULAR QUASI-JUDICIAL AND QUASI-LEGISLATIVE PROCEEDINGS WITHIN TWO HUNDRED SEVENTY

(270) CALENDAR DAYS FROM THE SUBMISSION OF A VALID APPLICATION AS PROVIDED UNDER SECTION 13 OF RA NO. 11234: **PROVIDED**, THAT FOR SUMMARY QUASI-JUDICIAL AND QUASI-LEGISLATIVE 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 UNDER SECTION 13 OF RA NO. 11234.

A DECISION ISSUED BY A DIVISION THROUGH A REGULAR OR SUMMARY PROCEEDING, OR BY THE CHAIRPERSON THROUGH AN ADMINISTRATIVE PROCEEDING, MAY BE SUBJECT TO A MOTION FOR RECONSIDERATION FILED BEFORE THE OFFICE THAT ISSUED THE DECISION.

UPON THE RESOLUTION OF THE MOTION FOR RECONSIDERATION, AN APPEAL MAY BE MADE BEFORE THE COMMISSION *EN BANC* SOLELY ON THE GROUND THAT A PREVIOUSLY ISSUED DECISION IS IN CONFLICT WITH THE DECISION SUBJECT OF THE APPEAL. ALL OTHER APPEALS THAT INVOLVE QUESTIONS OF FACT AND LAW SHALL BE MADE BEFORE THE COURT OF APPEALS. APPEALS THAT INVOLVE SOLELY QUESTIONS OF LAW SHALL BE MADE BEFORE THE SUPREME COURT.

DECISIONS SHALL BE CONSIDERED FINAL AND EXECUTORY ONLY UPON THE LAPSE OF THE PERIOD TO FILE A MOTION FOR RECONSIDERATION OR AN APPEAL, AS THE CASE MAY BE, WITHOUT SUCH MOTION OR APPEAL BEING FILED WITHIN THE GIVEN PERIOD.

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 INCLUDING THOSE THAT ARE PENDING AT THE TIME OF THE ISSUANCE OF THE RULES. FOR CASES THAT ARE PENDING AT THE TIME OF ISSUANCE OF THE RULES, THE COMMISSION *EN BANC* MAY WAIVE THE APPLICATION OF THE RULES IF IT DEEMS THAT ITS APPLICATION WOULD NOT BE FEASIBLE, CAUSE UNDUE DELAY OR WOULD WORK INJUSTICE, IN WHICH CASE THE RULES EXISTING AT THE TIME THE CASES WERE FILED SHALL GOVERN.”

SECTION 10. Section 46 of RA 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: x x x

(A) **ADMINISTRATIVE FINES AND PENALTIES.** – BY ANY JURIDICAL ENTITY ENGAGED IN THE GENERATION, TRANSMISSION, DISTRIBUTION AND SUPPLY OF ELECTRICITY, THE FINE shall range from a minimum of Fifty thousand pesos (P50,000.00) to a maximum of FIVE HUNDRED million pesos (P500,000,000.00).

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 NONCOMPLIANCE.

THE ERC SHALL PROMULGATE THE SCHEDULE OF PENALTIES, WITH CONSIDERATION OF THE CIRCUMSTANCES SURROUNDING THE VIOLATION OR NONCOMPLIANCE, SUCH AS, 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.

(B) CRIMINAL AND CIVIL LIABILITIES. – BY ANY PERSON, A FINE OF NOT LESS THAN FIFTY THOUSAND PESOS (P50,000.00) BUT NOT MORE THAN FIFTY MILLION PESOS (P50,000,000.00), 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.

(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.

x x x”

SECTION 11. Appropriations. The amount necessary for the initial implementation of this Act shall be charged against the current year’s Appropriations of the ERC. Thereafter, such amount shall be included in the annual General Appropriations Act.

SECTION 12. Congressional Oversight. The Joint Congressional Energy Commission shall exercise oversight powers over the implementation of this Act.

SECTION 13. Repealing Clause. Sections 1 and 2 of Executive Order No. 172, entitled “Creating the Energy Regulatory Board” and Section 42 of RA No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001”, as amended, are hereby repealed.

All laws, decrees, orders, rules and regulations or parts thereof which are inconsistent with or contrary to the provisions of this Act are hereby repealed or amended accordingly without prejudice to RA No. 10667, otherwise known as the “Philippine Competition Act”.

SECTION 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.