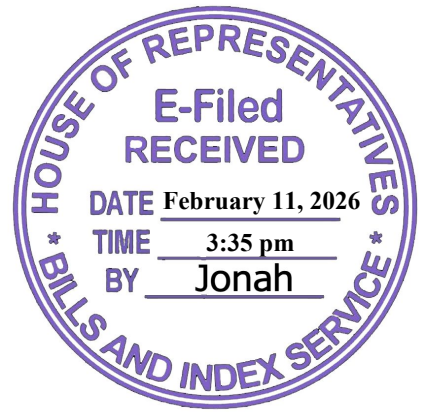


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

TWENTIETH CONGRESS
First Regular Session

HOUSE BILL NO. 7752



Introduced by Representative Paolo Henry M. Marcoleta

EXPLANATORY NOTE

Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act” (EPIRA), heralded the transition from a public sector vertically-integrated monopoly to a private sector-led competitive but regulated industry. One of the declared policies of the EPIRA is to “establish a strong and purely independent regulatory body and system to ensure consumer protection and enhance the competitive operation of the electricity market.”¹ This regulatory body is the Energy Regulatory Commission (ERC). It is responsible for setting performance standards and retail rates, allowing recovery of just and reasonable costs as well as reasonable returns, and ensuring consumer protection.² These duties result in a delicate balancing act of the regulator in deciding its cases.

However, the lack of representation for consumers is glaring in cases before the ERC.

Hence this measure. This bill creates an Energy Consumer Advocate Office (ECAO) led by the Energy Consumer Advocate. The ECAO acts as the independent consumer representative in all rate-setting, rule-making, and other energy-related cases and proceedings before government agencies, including judicial and quasi-judicial bodies. The creation of the ECAO aims to attain what jurisdictions with an institutionalized consumer advocate have, such as the postponement of utilities’ rate increase applications, a decrease in the income of utilities, and lower electricity retail prices.³

Hence, the passage of this measure is sought.

A handwritten signature in black ink, appearing to read "PHM", enclosed within a large, loopy oval shape.

PAOLO HENRY M. MARCOLETA
Representative, SAGIP Partylist

¹ Section 2(j). Republic Act No. (RA) 9136. (2001).

² Id. at Section 43.

³ Fremeth, Adam; Holburn, Guy L.F.; Spiller, Pablo; “The impact of consumer advocates on regulatory policy in the electric utility sector” Public Choice. Vol. 161, No.1/2 (October 2014)

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Introduced by Representative Paolo Henry M. Marcoleta

AN ACT
CREATING THE ENERGY CONSUMER ADVOCATE OFFICE,
PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES

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

1 **SECTION 1.** *Short Title.* – This Act shall be referred to as the “*Energy*
2 *Consumer Advocate Act.*”

3
4 **SEC. 2.** *Declaration of Policy.* – It is hereby declared the policy of the State
5 to recognize the right of energy consumers to reasonable rates, adequate and reliable
6 services, and to transparent processes involving these rates and services. Towards
7 this end, there is a need for institutionalized and independent consumer
8 representation in rate-setting, rule-making, and other energy related cases and
9 proceedings before government agencies including judicial and quasi-judicial
10 bodies.

11
12 **SEC. 3.** *The Energy Consumer Advocate Office (ECAO).* – The ECAO is
13 hereby created which shall be an independent and autonomous office attached to the
14 Department of Justice (DOJ) in accordance with Section 38 (3), Chapter 7, Book IV
15 of Executive Order No. 292, otherwise known as the Administrative Code of 1987,
16 as amended.

17

1 **SEC. 4. Powers and Functions.** - The ECAO shall be the representative of all
2 consumers in energy sector matters affecting the public interest before any
3 department, commission, agency, or court. It shall independently discharge its
4 mandate towards the best interest of all consumers, ensuring least cost without
5 compromising safety, reliability, and sufficient service. Towards this end, the
6 ECAO shall:

- 7
- 8 (1) Initiate, intervene, and represent all consumers, in rate-setting, rule-
9 making, and other energy related cases, complaints, proceedings, and
10 consultations before the Department of Energy (DOE), Energy Regulatory
11 Commission (ERC), National Electrification Administration (NEA),
12 Philippine Competition Commission (PCC), and other judicial and quasi-
13 judicial bodies;
 - 14 (2) Initiate, intervene, and represent all consumers in actions before any trial
15 or appellate court, including the Supreme Court, which involve the
16 validity of any decision, memoranda, rule, regulation, circular, or order of
17 the DOE, ERC, NEA, PCC, and other departments, commissions, and
18 agencies insofar as these decisions and policy issuances affect energy rates
19 and services;
 - 20 (3) Monitor all issuances of the DOE, ERC, NEA, PCC, and other
21 departments, commissions, and agencies insofar as these affect energy
22 rates and services;
 - 23 (4) Engage in regular information, education, and communication programs
24 for all consumers on laws, rules, regulations, decisions, circulars, and
25 orders that affect energy rates and services, including consumer rights and
26 remedies;
 - 27 (5) Be furnished or served, as the case may be, by departments, commissions,
28 and agencies with all documents, notices, petitions, applications,
29 complaints, answers, motions, and other pleadings in all energy related
30 cases, complaints, proceedings, and consultations;
 - 31 (6) Have the right to access, free of charge, all files, records, and documents
32 in the DOE, ERC, NEA, PCC and other departments, commissions, and

1 agencies pertaining to energy related cases, complaints, proceedings, and
2 consultations: *Provided*, That the files, records, and documents do not
3 pertain to the following:

- 4 (a) Personnel information;
- 5 (b) Confidential communications between commissioners, judges, or
6 justices and their general counsels on records relating to proceedings
7 in which the ECAO is a party to; or
- 8 (c) Confidential information declared as such by the ERC; and

9
10 (7) Be free of charge in its use of ordinary mail, registered mail, or courier
11 service for the transmittal of official communications and papers directly
12 connected with the conduct of its powers, functions, or exercise of
13 administrative supervision over its personnel.

14
15 ECAO lawyers shall have the authority to administer oaths in connection with
16 the performance of their duty.

17
18 **SEC. 5.** *The Energy Consumer Advocate and Deputy Energy Consumer*
19 *Advocate.* – The Energy Consumer Advocate (ECA) shall head the ECAO, shall
20 have the primary authority and responsibility for the effective exercise of its mandate
21 and the discharge of its powers and functions, and shall be assisted by a Deputy
22 ECA. In case of temporary absence of the ECA, the Deputy ECA shall be designated
23 as the Officer-in-Charge of the ECAO.

24
25 The ECA and Deputy ECA shall be natural-born citizens of the Philippines, at
26 least forty (40) years of age, with at least fifteen (15) years of practice in law, and
27 with proven competence, integrity, probity, and independence: *Provided*, That the
28 ECA shall have at least six (6) years of practice in the field of energy, and the Deputy
29 ECA shall have at least four (4) years of practice in the field of energy. Both of them
30 shall not be affiliated with any energy company, as member of the board, officer,
31 employee, or consultant, at least one (1) year before their respective appointments.

1 **SEC. 6. Appointment, Term, and Rank.** – The ECA and Deputy ECA shall be
2 appointed by the President: *Provided*, That the appointment of the Deputy ECA shall
3 be upon the recommendation of the ECA. They shall both serve for a term of six (6)
4 years and may be reappointed: *Provided*, That for the first appointees, the ECA and
5 Deputy ECA shall hold office until the end of term of the appointing President.

6
7 The ECA and Deputy ECA shall have the same rank, salaries, allowances, and
8 retirement benefits as the Prosecutor General and Senior Deputy State Prosecutor of
9 the National Prosecution Service respectively: *Provided*, That their retirement
10 benefits shall be prorated in accordance with Section 21 of Republic Act No. 10071,
11 otherwise known as the Prosecution Services Act.

12
13 **SEC. 7. Prohibitions.** – The ECA and Deputy ECA shall be prohibited from:

- 14
15 (1) Serving as a member of the board, officer, employee, or consultant of any
16 energy company in the course of their respective terms of office: *Provided*,
17 That this prohibition shall also apply to their family members up to the
18 fourth degree of consanguinity or affinity;
- 19 (2) Having any interest, ownership, or stake in any energy company in the
20 course of their respective terms of office: *Provided*, That this prohibition
21 shall also apply to their family members up to the fourth degree of
22 consanguinity or affinity;
- 23 (3) Representing any government agency, government –owned or –controlled
24 corporation, or private company in any energy related case, proceeding,
25 or consultation before any department, commission, agency, or court, in
26 the course of one (1) year after the end of their respective terms of office;
27 and
- 28 (4) Being members of a political party and committee, or engaging in any
29 partisan political activity in the course of their respective terms of office.
30

1 **SEC. 8. *Organizational Structure and Plantilla Positions.*** – The ECAO, upon
2 approval of the DOJ, shall submit its organizational structure and plantilla positions
3 to the Department of Budget and Management (DBM) not later than six (6) months
4 from the effectivity of this Act: *Provided*, That the DBM shall approve the final
5 organizational structure and plantilla positions of the ECAO not later than three (3)
6 months from submission.

7
8 The ECAO, upon approval of the DOJ, may request the DBM for any change
9 in the organizational structure and plantilla positions after a comprehensive review
10 resulting to a finding that any alteration will improve the discharge of the ECAO’s
11 powers and functions: *Provided*, That the DBM shall render a decision on such
12 request within three (3) months from submission.

13
14 The ECAO shall have legal, technical, and administrative personnel in its
15 organizational structure and staffing complement, and may hire consultants as expert
16 witnesses or technical advisors as it finds necessary for the full and efficient
17 discharge of its powers and functions. All employees and consultants shall be subject
18 to civil service laws, rules, and regulations: *Provided*, That all employees shall be
19 subject to Republic Act No. 6758, otherwise known as the Salary Standardization
20 Act.

21
22 **SEC. 9. *Removal and Vacancy.*** – The ECA and Deputy ECA shall not be
23 removed or suspended, except for cause provided by law. The President may remove
24 the ECA or the Deputy ECA for malfeasance, misfeasance, or nonfeasance in office,
25 or for any cause which renders any of them ineligible for appointment, or incapable,
26 or unfit to discharge the mandate, powers, and functions of the ECAO.

27
28 In case of death, permanent incapacity, removal, or resignation of the
29 incumbent ECA or Deputy ECA, the President may appoint or designate one, as the
30 case may be, in an acting capacity until a new ECA or Deputy ECA has been
31 appointed: *Provided*, That the new appointment shall only be for the unexpired term
32 of the predecessor.

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SEC. 10. *Exemption from Fees and Costs of Suits.* – The ECAO shall be exempt from payment of docket and other fees incidental to instituting an action in court and other quasi-judicial bodies, as an original proceeding or on appeal.

SEC. 11. *Costs of Suit.* – The costs of the suit, attorney’s fees, and contingent fees imposed upon adversarial parties of the ECAO after a successful litigation shall be deposited in the National Treasury.

SEC. 12. *Grant of Special Allowances.* – The ECA, Deputy ECA, service or division heads, and lawyers shall be granted special allowances in amounts to be determined by the DBM: *Provided*, That the grant of said special allowances shall not exceed one hundred percent (100%) of the basic salary of the ECAO officials and lawyers: *Provided further*, That special allowances shall be paid from costs of suit, attorney’s fees and contingent fees deposited in the National Treasury pursuant to Section 11 of this Act: *Provided finally*, That whenever the funding source is insufficient, the special allowance shall be paid through the General Appropriations Act.

SEC. 13. *Appropriations.* – The amount necessary for the initial implementation of this Act in the amount of two hundred million pesos (P200,000,000.00) shall be taken from the budget of the DOJ. Thereafter, the amount of two hundred million pesos (P200,000,000.00) shall be automatically appropriated and included in the annual General Appropriations Act every year which may be increased as may be necessary for the continued implementation of this Act.

SEC. 14. *Amendatory Clause.* – Section 41, Chapter 10, Book I and Section 4, Chapter 1, Title III, Book IV of Executive Order No. 292, otherwise known as the Administrative Code of 1987, as amended, is hereby further amended.

SEC. 15. *Implementing Rules and Regulations.* – Within ninety (90) calendar days from the approval of this Act, the DOJ, in consultation with the DBM,

1 government energy agencies, and private energy stakeholders, shall adopt and issue
2 the rules and regulations for the effective implementation of this Act.

3
4 **SEC. 16. *Congressional Oversight.*** – The Joint Congressional Energy
5 Commission shall exercise oversight powers over implementation of this Act.

6
7 **SEC. 17. *Separability Clause.*** – Any portion or provision of this Act, which
8 may be declared unconstitutional or invalid shall not have the effect of nullifying
9 other portions or provisions hereof.

10
11 **SEC. 18. *Repealing Clauses.*** – All laws, ordinances, rules, regulations and
12 other issuance or parts thereof, which are inconsistent with this Act, are hereby
13 amended, modified, or repealed accordingly.

14
15 **SEC. 19. *Effectivity Clause.*** – This Act shall take effect fifteen (15) days after
16 its publication in at least two (2) newspaper of general circulation.

17
18 ***Approved,***