



Republic of the Philippines
House of Representatives
Quezon City

TWENTIETH CONGRESS

Second Regular Session



House Bill No. 10582

Introduced by
APEC Party-List Representative Sergio C. Dagooc
PhilRECA Party-List Representative Presley C. De Jesus

EXPLANATORY NOTE

Republic Act No. 9136, or the Electric Power Industry Reform Act (EPIRA) of 2001, is one of the most important structural reforms in the Philippine electric power industry, with the declared policy of promoting free and fair competition, ensuring transparent and reasonable electricity prices, and protecting the public interest in the provision of power and related services.

More than two decades after its enactment, however, captive customers of distribution utilities continue to face opaque and potentially excessive generation charges, particularly under automatic pass-through mechanisms and complex power supply agreements whose cost structures are difficult for consumers and policymakers to scrutinize.

Experience has likewise shown that the existing framework on cross-ownership and market power abuse does not sufficiently prevent large distribution utilities and their affiliated generation companies from entering into arrangements that allow undue control over supply, pricing, and market behavior to the prejudice of consumers and other industry participants.

In Mindanao, the potential privatization of the Agus and Pulangui Hydroelectric Power Complexes would expose strategic, predominantly renewable assets to commercial pressures that may compromise long-term affordability, public control, and regional equity.

These gaps and risks constrain the full realization of EPIRA's intent and undermine the protection of captive market end-users.

Thus, this bill proposes to amend Sections 43(f), 45, and 47(f) of EPIRA to strengthen consumer protection, deter market power abuse, and preserve strategic public assets, while remaining faithful to the law's pro-market and pro-consumer objectives.

First, the amendment to Section 43(f) expressly empowers the ERC, with respect to the generation component recoverable from captive markets, to review, regulate, benchmark, confirm, adjust, or disallow generation rates and corresponding recoverable generation costs, including those reflected in automatic adjustment mechanisms and other pass-through charges, ensuring that only prudent and reasonable costs are charged to end-users.

Second, the amendment to Section 45 tightens safeguards against cross-ownership and market power abuse by lowering the allowable share of installed generating capacity per grid and clarifying the limits on bilateral supply that distribution utilities may source from affiliated generation firms, calibrated by demand level.

Third, the amendment to Section 47(f) permanently excludes the Agus and Pulangui Hydroelectric Power Complexes from privatization and any form of transfer to private entities, vesting their ownership, operation, and control in the National Power Corporation.

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



REP. SERGIO C. DAGOOC
APEC Party-List



REP. PRESLEY C. DE JESUS
PhilRECA Party-List



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AN ACT
AMENDING SECTIONS 43 (f), 45, AND 47 (f) OF REPUBLIC ACT NO.
9136, OTHERWISE KNOWN AS THE 'ELECTRIC POWER INDUSTRY
REFORM ACT OF 2001 OR EPIRA', AND FOR OTHER PURPOSES

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

1 **SEC 1.** Section 43 (f) of Republic Act No. 9136 is hereby amended to
2 read as follows:

3 (f) In the public interest, establish and enforce a methodology for
4 setting, transmission and distribution wheeling rates and retail rates for the
5 captive market of a distribution utility, taking into account all relevant
6 considerations, including the efficiency or inefficiency of the regulated
7 entities. The rates must be such as to allow the recovery of just and
8 reasonable costs and a reasonable return on rate base (RORB) to enable the
9 entity to operate viably. The ERC may adopt alternative forms of
10 internationally-accepted rate-setting methodology as it may deem
11 appropriate. The rate-setting methodology so adopted and applied must
12 ensure a reasonable price of electricity. The rates prescribed shall be non-
13 discriminatory. To achieve this objective and to ensure the complete removal
14 of cross subsidies, the cap on the recoverable rate of system losses prescribed
15 in Section 10 of Republic Act No. 7832, is hereby amended and shall be

1 replaced by caps which shall be determined by the ERC based on load density,
2 sales mix, cost of service, delivery voltage and other technical considerations
3 it may promulgate. The ERC shall determine such form of rate-setting
4 methodology, which shall promote efficiency. In case the rate setting
5 methodology used is RORB, it shall be subject to the following guidelines:

6 (i) For purposes of determining the ratebase, the TRANSCO or any
7 distribution utility may be allowed to revalue its eligible assets not more
8 than once every three (3) years by an independent appraisal company:
9 Provided, however, That ERC may give an exemption in case of unusual
10 devaluation: Provided, further, That the ERC shall exert efforts to
11 minimize price shocks in order to protect the consumers;

12 x x x

13 **(vi) WITH RESPECT TO THE GENERATION COMPONENT**
14 **RECOVERABLE FROM THE CAPTIVE MARKET, ERC SHALL HAVE**
15 **THE POWER TO REVIEW, VALIDATE, ADJUST, CONFIRM, OR**
16 **DISALLOW COST OR EXPENSES WHICH THE COMMISSION DEEM**
17 **UNNECESSARY AND EXCESSIVE, INCLUDING THOSE REFLECTED**
18 **IN AUTOMATIC ADJUSTMENT MECHANISMS OR OTHER**
19 **PASS-THROUGH CHARGES, IN ORDER TO ENSURE THAT ONLY**
20 **PRUDENT AND REASONABLE COSTS ARE INCLUDED IN THE**
21 **GENERATION COMPONENT;**

22 **THE ERC SHALL ESTABLISH AND REGULARLY UPDATE COST**
23 **BENCHMARKS AND INDICATIVE COSTS FOR GENERATION**
24 **CHARGES BY FUEL AND TECHNOLOGY TYPE, INCLUDING BUT**
25 **NOT LIMITED TO COAL, NATURAL GAS, OIL-BASED GENERATION,**
26 **HYDROPOWER, GEOTHERMAL, SOLAR, WIND, BIOMASS AND**
27 **OTHER RENEWABLE OR INDIGENOUS ENERGY RESOURCES, FOR**
28 **USE IN EVALUATING THE REASONABLENESS OF GENERATION**
29 **RATES AND RELATED CHARGES, INCLUDING COSTS ARISING**
30 **FROM POWER SUPPLY AGREEMENTS, ANCILLARY SERVICES,**
31 **BILATERAL CONTRACTS, AND PURCHASES FROM THE**
32 **WHOLESALE ELECTRICITY SPOT MARKET, INsofar AS SUCH**
33 **COSTS ARE RECOVERABLE FROM THE CAPTIVE MARKET;**

34 **FOR THIS PURPOSE, ERC SHALL REQUIRE GENERATION**
35 **COMPANIES, DISTRIBUTION UTILITIES, SUPPLIERS AND OTHER**
36 **ELECTRIC POWER INDUSTRY PARTICIPANTS TO SUBMIT THE**
37 **TECHNICAL, OPERATIONAL, FINANCIAL AND CONTRACTUAL**
38 **DATA REASONABLY NECESSARY TO COMPUTE, VALIDATE AND**
39 **MAINTAIN SUCH BENCHMARKS, AND TO ENSURE THE**
40 **COMPARABILITY OF GENERATION PRICES ACROSS FUEL TYPES,**
41 **TECHNOLOGIES, CONTRACTS AND MARKETS, SUBJECT TO DUE**

1 **PROCESS AND THE PROTECTION OF LEGITIMATELY**
2 **CONFIDENTIAL INFORMATION AS MAY BE AUTHORIZED BY LAW;**

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

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

6 x x x

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

22 An “affiliate” means any person which, alone or together with any other
23 person, directly or indirectly, through one or more intermediaries,
24 controls, is controlled by, or is under common control with another
25 person. As used herein, “control” shall mean the power to direct or
26 cause the direction of the management policies of a person by contract,
27 agency or otherwise.

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

- 31 (a) No company or related group can own, operate or control more
32 than ~~{thirty percent (30%)}~~ **fifteen percent (15%)** of the
33 installed generating capacity of a grid and/or twenty-five
34 percent (25%) of the national installed generating capacity.
35 “Related group” includes a person’s business interests,
36 including its subsidiaries, affiliates, directors or officers or
37 any of their relatives by consanguinity or affinity, legitimate
38 or common law, within the ~~{fourth}~~ **sixth** civil degree;
39 (b) ~~{Distribution utilities may enter into bilateral power supply~~
40 ~~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; and} **For the purpose of preventing market power abuse between affiliated firms engaged in generation and distribution, distribution utilities are only allowed to source from bilateral power supply contract of its total demand from its affiliated firms engaged in generation as follows:**

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

(c) For the first five (5) years from the establishment of the wholesale electricity spot market, no distribution utility shall source more than ninety percent (90%) of its total demand from bilateral power supply contracts.

SEC. 3. Section 47 (f) of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001", is hereby amended to read as follows:

~~"(f) The Agus and the Pulangui complexes in Mindanao shall be excluded from among the generation companies that will be initially privatized. Their ownership shall be transferred to the PSALM Corp. and both shall continue to be operated by the NPC. Said complexes may be~~

1 ~~privatized not earlier than ten (10) years from the effectivity of this Act,~~
2 ~~and except for Agus III, shall not be subject to Build Operate Transfer~~
3 ~~(B O T), Build Rehabilitate Operate Transfer (B R O T) and other~~
4 ~~variations thereof pursuant to Republic Act No. 6957, as amended by~~
5 ~~Republic Act No. 7718. The privatization of Agus and Pulangui~~
6 ~~complexes shall be left to the discretion of PSALM Corp. in consultation~~
7 ~~with Congress;~~

8 **"(F) THE AGUS AND THE PULANGUI HYDROELECTRIC POWER**
9 **COMPLEXES IN MINDANAO SHALL BE PERMANENTLY EXCLUDED**
10 **FROM PRIVATIZATION AND FROM ANY FORM OF SALE,**
11 **CONCESSION, LEASE, MANAGEMENT CONTRACT, JOINT**
12 **VENTURE, PUBLIC-PRIVATE PARTNERSHIP ARRANGEMENT, OR**
13 **ANY SIMILAR TRANSFER OF OWNERSHIP, CONTROL, OR**
14 **OPERATION TO PRIVATE ENTITIES.**

15 **"OWNERSHIP, OPERATION, AND CONTROL OF THE AGUS AND**
16 **PULANGUI HYDROELECTRIC POWER COMPLEXES SHALL BE**
17 **VESTED IN THE NATIONAL POWER CORPORATION (NPC). IT**
18 **SHALL HAVE NO AUTHORITY TO PRIVATIZE, SELL, CONCESSION,**
19 **OR OTHERWISE TRANSFER OWNERSHIP, OPERATION, AND**
20 **CONTROL OF THE AGUS AND PULANGUI COMPLEXES.**

21 **SEC. 4. Implementing Rules and Regulations.** – The Energy
22 Regulatory Commission (ERC), in consultation with concerned government
23 agencies and stakeholders, shall promulgate the Implementing Rules and
24 Regulations necessary to carry out and implement the provisions of this Act
25 within sixty days (60) from the effectivity of this Act.

26 **SEC 5. Separability Clause.** If any part or provision of this Act shall be
27 declared unconstitutional, the other parts or provisions hereof which are not
28 affected thereby, shall continue in full force and effect.

29 **SEC 6. Repealing Clause.** All laws, acts, decrees, executive orders,
30 issuances and rules and regulations or parts thereof which are contrary to
31 and inconsistent with any provisions of this Act are hereby repealed, amended
32 or modified accordingly.

33 **SEC 7. Effectivity.** This Act shall take effect fifteen (15) days after its
34 complete publication in the Official Gazette or in two (2) newspapers of general
35 circulation.

36 *Approved,*