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

SENATE

S. B. No. 2343

Introduced by Senator JUAN PONCE ENRILE

EXPLANATORY NOTE

The Electric Power Industry Reform Act, also known as the EPIRA law, was enacted into law in 2001 to ensure the quality and reliability of the supply of electric power that would translate to lower consumption costs.

However, the passage of the law was accompanied by increases in electric bills, confusion in the implementation and enforcement of the provisions of the law and inevitably caused a haphazard market behavior in the electric power industry.

The EPIRA law became evidently anti-poor, anti-people, benefiting only a selected number of power generators and distributors. It resulted in electricity cost that is more burdensome on the part of the consumers. At the same time, the issues the law originally intended to resolve were not properly addressed.

It is therefore in our national interest to pass an amendatory bill that will clarify vague and conflicting provisions of the law, afford protection to end-users of electricity and to level the playing field for all the industry players. We need a pragmatic and substantial solution to make the cost of electricity affordable to the consumers while recognizing the right of the electric power industry players to a just and reasonable return on their investments.

This bill seeks to lessen the hardship on electricity consumers by preventing certain industry players to pass on the costs of their inefficiencies, mistakes and questionable onerous contracts or dealings.

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

JUAN PONCE ENRILE
Senator

FIFTEENTH CONGRESS OF THE)
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Introduced by Senator **JUAN PONCE ENRILE**

AN ACT
AMENDING SECTIONS 4, 9, 20, 21, 23, 25, 26, 30, 31, 32, 33, 34, 35, 38, 41, 43, 45, 48, 51, 70 OF REPUBLIC ACT NO. 9136 ENTITLED "AN ACT ORDAINING REFORMS IN THE ELECTRIC POWER INDUSTRY AND FOR OTHER PURPOSES"

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

SECTION 1. Section 4, Chapter 1, of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001, hereinafter referred to as "the Act", is hereby amended to read as follows:

"SEC. 4. *Definition of Terms.* —

(A) "AFFILIATE"/"ASSOCIATED ENTITY OR PERSON" REFERS TO ANY ENTITY OR PERSON WHICH, ALONE OR TOGETHER WITH ANY OTHER ENTITY OR PERSON, DIRECTLY OR INDIRECTLY, THROUGH ONE OR MORE INTERMEDIARIES, CONTROLS, IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH ANOTHER ENTITY OR PERSON. FOR PURPOSES OF THIS ACT, A HOLDING COMPANY SHALL BE DEEMED AN "AFFILIATE" OF THE GENERATION AND/OR DISTRIBUTION COMPANY IN WHICH IT HOLDS INTERESTS;

[(a)] (B) "Aggregator" refers to a person or entity[, engaged] WHICH, WITHOUT A LEGISLATIVE FRANCHISE, IS DULY LICENSED BY THE COMMISSION TO ENGAGE in consolidating electric power demand of end-users OF ELECTRICITY in [the] A contestable market[,] WITHIN A

[(b)] (C) "Ancillary Services" refer to those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the transmission system in accordance with good utility practice and the Grid Code to be adopted in accordance with this Act;

[(c)] (D) "Captive Market" refers to [electricity end-users who do not have the choice of a supplier of electricity, as may be determined by the Energy Regulatory Commission (ERC) in accordance with this Act;] THAT MARKET WITH RESPECT TO A DISTRIBUTION UTILITY WHICH, AS DETERMINED BY THE COMMISSION IN ACCORDANCE WITH THIS ACT, AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND PUBLIC HEARING, CONSISTS OF END-USERS OF ELECTRICITY WITH LOAD REQUIREMENTS THAT DO NOT MEET THE THRESHOLD OF CONTESTABILITY AND MUST THEN BE SUPPLIED WITH ELECTRICITY EXCLUSIVELY BY THE DISTRIBUTION UTILITY HOLDING FRANCHISE OVER SUCH AREA;

[(d)] (E) "Central Dispatch" refers to the process of issuing direct instructions to electric power industry participants by the grid operator to achieve the economic operation, and maintenance of quality, stability, reliability, and security, of the transmission system;

[(e)] (F) "Co-Generation Facility" refers to a facility which produces electrical and/or mechanical energy and forms of useful thermal energy, such as heat or steam, which are used for industrial, commercial heating or cooling purposes through the sequential use of energy;

[(f)] (G) "Commission" refers to the decision-making body of the [ERC] ENERGY REGULATORY COMMISSION (ERC) composed of a Chairman and four (4) members as provided under Section 38 [hereof] OF THIS ACT[;]. FOR PURPOSES OF CONSTRUING AND INTERPRETING THE RELEVANT PROVISIONS OF THIS ACT, THE TERMS "COMMISSION", "ENERGY REGULATORY COMMISSION", AND "ERC" SHALL, UNLESS THE

CONTEXT CLEARLY INDICATES OTHERWISE, SHALL REFER TO THE ONE AND THE SAME ENTITY;

[(g)] (H) "Concession Contract" refers to the award by the government to a qualified private entity of the responsibility for financing, operating, expanding, maintaining, and managing specific Government-owned assets;

[(h)] (I) "Contestable Market" refers to [the electricity end-users who have a choice of a supplier of electricity, as may be determined by the ERC in accordance with this Act;] THAT MARKET, WHICH SHALL BE DETERMINED BY THE COMMISSION IN ACCORDANCE WITH THIS ACT, AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND PUBLIC HEARING, CONSISTING OF END-USERS OF ELECTRICITY WITHIN A FRANCHISE TERRITORY OF A DISTRIBUTION UTILITY THAT CAN CHOOSE THEIR SUPPLIER OF ELECTRICITY;

(J) "CONTROL" REFERS TO THE POWER TO DIRECT OR CAUSE THE DIRECTION OF THE MANAGEMENT POLICIES OF AN ENTITY OR PERSON BY CONTRACT, AGENCY, OR SIMILAR ARRANGEMENTS;

[(i)] (K) "Customer Service Charge" refers to the component in the retail rate intended for the cost recovery of customer-related services including, but not limited to, meter reading, billing administration and collection;

[(j)] (L) "Demand Side Management" refers to measures, undertaken by distribution utilities to encourage end-users in the proper management of their load to achieve efficiency in the utilization of fixed infrastructures in the system;

[(k)] (M) "Department of Energy" or "DOE" refers to the government agency created pursuant to Republic Act No. 7638 whose expanded functions are provided herein;

[(l)] (N) "Department of Finance" or "DOF" refers to the government agency created pursuant to Executive Order No. 127;

(O) "DEREGULATION" REFERS TO THE REMOVAL OF PRICE CONTROLS IN THE SUPPLY OF ELECTRICITY;

[(m)] (P) "Distribution Code" refers to a compilation of rules and regulations governing electric utilities in the, operation, and maintenance of their distribution systems, which includes, among others, the standards for service and performance, and defines and establishes the relationship of the distribution systems with the facilities or installations of the parties connected thereto;

[(n)] (Q) "Distribution of Electricity" refers to the conveyance of electric power by a distribution utility through its distribution system pursuant to the provisions of this Act;

[(o)] (R) "Distribution System" refers to the system of wires and associated facilities belonging to a franchised distribution utility, extending between the delivery points on the transmission or sub-transmission system or generator connection and the point of connection to the premises of the end-user;

[(p)] (S) "Distribution Wheeling Charge" refers to the cost or charge regulated by the ERC for the use of a distribution system and/or the availment of related services;

[(q)] (T) "Distribution Utility" refers to any electric cooperative, private corporation, government-owned utility, or existing local government unit, which has an exclusive franchise to operate a distribution system in accordance with this Act;

[(r)] (U) "Electric Cooperative" refers to a distribution utility organized pursuant to Presidential Decree No. 269, as amended, or as otherwise provided in this Act;

[(s)] (V) "Electric Power Industry Participant" refers to any person or entity engaged in the generation, transmission, distribution, or supply of electricity;

[(t)] (W) "End-user" refers to any person or entity requiring the supply and delivery of electricity for its own use;

[(u)] (X) "Energy Regulatory Board" or "ERB" refers to the [independent,] NOW DEFUNCT quasi-judicial regulatory body created under Executive Order No. 172, as amended;

[(v)] (Y) "Energy Regulatory Commission" or "ERC" refers to the regulatory agency created herein;

[(w)] (Z) "Franchise Area" refers to a geographical area exclusively assigned or granted to a distribution utility for distribution of electricity;

[(x)] (AA) "Generation Company" refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity;

[(y)] (BB) "Generation of Electricity" refers to the production of electricity by a generation company, or a co-generation facility, pursuant to the provisions of this Act;

[(z)] (CC) "Grid" refers to the high voltage backbone system of interconnected transmission lines, substations, and related facilities;

[(aa)] (DD) "Grid Code" refers to the set of rules and regulations governing the safe, and reliable operation, maintenance, and development, of the high voltage backbone transmission system and its related facilities;

[(bb)] (EE) "Independent Power Producer" or "IPP" refers to an existing [power generating entity] GENERATION COMPANY, which is not owned by NPC[;] AND WITH WHOM NPC OR A DISTRIBUTION UTILITY HAS A VALID AND EXISTING PURCHASED POWER CONTRACT;

[(cc)] (FF) "Inter-Class Cross Subsidy" refers to an amount charged by distribution utilities to industrial and commercial end-users as well as to other subsidizing customer sectors in order to reduce electricity rates of other customer sectors , such as the residential end-users, hospitals, and streetlights;

[(dd)] (GG) "Inter-Regional Grid Cross Subsidy" refers to an amount embedded in the electricity rates of NPC charged to its customers located in a viable regional grid in order to reduce the electricity rates in a less viable regional grid;

[(ee)] (HH) "Intra-Regional Grid Cross Subsidy" refers to an amount embedded in the electricity rates of NPC charged to distribution utilities and non-utilities with higher load factor and/or delivery voltage in order to reduce the electricity rates charged to distribution utilities with lower load factor and/or delivery voltage located in the same regional grid;

[(ff)] (II) "IPP Administrator" refers to qualified independent entities appointed by PSALM Corporation who shall administer, conserve, and manage the contracted energy output of NPC IPP contracts;

[(gg)] (JJ) "Isolated Distribution System" refers to the backbone system of wires and associated facilities not directly connected to the national transmission system;

[(hh)] (KK) "Lifeline Rate" refers to the subsidized rate given to low-income captive market end-users who cannot afford to pay at full cost;

[(ii)] (LL) "National Electrification Administration" or "NEA" refers to the government agency created under Presidential Decree No. 269, as amended, and whose additional mandate is further set forth herein;

[(jj)] (MM) "National Power Corporation" or "NPC" refers to the government corporation created under Republic Act No. 6395, as amended;

[(kk)] (NN) "National Transmission Corporation" or "TRANSCO" refers to the corporation organized pursuant to this Act to acquire all the transmission assets of the NPC;

[(ll)] (OO) "Open Access" refers to the [system of allowing] PRIVILEGE GRANTED TO any qualified person [the use of] TO USE THE transmission[, and/or] AND SUB-TRANSMISSION FACILITIES AND ASSETS AND/OR THE distribution system and associated facilities OF ANY PUBLIC OR PRIVATE PERSON OR ENTITY, subject to the payment of JUST AND REASONABLE transmission and/or distribution [retail] wheeling [rates] CHARGES duly approved by the ERC, AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND PUBLIC HEARING;

[(mm)] (PP) "Philippine Energy Plan" or "PEP" refers to the overall energy program formulated and updated yearly by the DOE and submitted to Congress pursuant to Republic Act No. 7638;

[(nn)] (QQ) "Power Development Program" or "PDP" refers to the indicative plan for managing electricity demand through energy-efficient programs and for the upgrading, expansion, rehabilitation, repair, and maintenance of power generation and transmission facilities, formulated and updated yearly by the DOE in coordination with the generation, transmission and distribution utility companies;

[(oo)] (RR) "Power Sector Assets and Liabilities Management Corporation" or "PSALM Corp." refers to the corporation created pursuant to Section 49 hereof;

[(pp)] (SS) "Privatization" refers to the sale, disposition, change, and transfer of ownership and control of assets and IPP contracts, from the Government or a government corporation to a private person or entity;

(TT) "PUBLIC HEARING" REFERS TO A PROCEEDING CONDUCTED BY THE COMMISSION AFTER ITS MEMBERS ARE FORMALLY CONVENED TO HEAR, AFTER DUE NOTICE TO ALL INTERESTED PARTIES, THE TESTIMONY OF WITNESSES UNDER OATH, SUBJECT TO CROSS-EXAMINATION BY ADVERSE PARTIES, AND TO FORMALLY RECEIVE DOCUMENTARY EVIDENCE, IN ORDER TO DISPOSE ANY ISSUE BROUGHT TO THE ATTENTION OF THE COMMISSION THROUGH MOTIONS, COMPLAINTS OR PETITION FILED WITH THE COMMISSION;

[(qq)] (UU) "Renewable Energy Resources" refers to energy resources, that do not have an upper limit on the total quantity to be used. Such resources are renewable on a regular basis and the renewable rate is rapid enough to consider, availability over an indefinite time. These include, among others, biomass, solar, wind, hydro, and ocean energy;

[(rr)] (VV) "Restructuring" refers to the process of reorganizing the electric power industry in order to introduce higher efficiency, greater innovation and end-user choice. It shall be understood as covering a range of alternatives enhancing exposure of the industry to competitive market forces;

[(ss)] (WW) "Retail Rate" refers to the total price paid by end-users consisting of the charges for generation, transmission and related ancillary services, distribution, supply, and other related charges for electric service;

[(tt)] (XX) "Small Power Utilities Group" or "SPUG" refers to the functional unit of NPC created to pursue missionary electrification function;

[(uu) "Stranded contract costs of NPC or distribution utility" refer to the excess of the contracted cost of electricity under eligible contracts over the actual selling price of the contracted energy output of such contracts in the market. Such contracts shall have been approved by the ERB as of December 31, 2000;

(vv) "Stranded Debts of NPC" refer to any unpaid financial obligations of NPC which have not been liquidated by the proceeds from the sales and privatization of NPC assets;]

[(ww)] (YY) "Sub-transmission Assets" refer to the facilities related to the power delivery service below the transmission voltages and, based on the functional assignment of assets including, but not limited to, step-down transformers used solely by load customers, associated switchyard/substation, control and protective equipment, reactive compensation equipment to improve customer power factor, overhead lines, and the land where such facilities/equipment are located. These include NPC assets linking the transmission system and the distribution system which are neither classified as generation nor transmission. REGARDLESS OF VOLTAGE, ANY FACILITY DIRECTLY SERVING AN END-USER SHALL BE CLASSIFIED AS A DISTRIBUTION ASSET;

[(xx)] (ZZ) "Supplier" refers to any person or entity, OTHER THAN A GENERATION COMPANY OR A DISTRIBUTION UTILITY, LICENSED BY

THE ERC TO ENGAGE IN THE BUSINESS OF BUYING AND SELLING, BROKERING, AND MARKETING, TO END-USERS OF ELECTRICITY, IN THE FRANCHISE TERRITORY OF A DISTRIBUTION UTILITY, USING FOR THE PURPOSE THE WIRES AND FACILITIES OF THE DISTRIBUTION UTILITY CONCERNED [authorized by the ERC to sell, broker, market, or aggregate electricity to the end-users];

[(yy)] (AAA) "Supplier's Charge" refers to the charge imposed by electricity suppliers for the sale of electricity to end-users, excluding the charges for generation transmission and distribution wheeling;

[(zz)] (BBB) "Supply of Electricity" [means the sale of electricity by a party other than a generator or a distributor in the franchise area of a distribution utility, using the wires of the distribution utility concerned;] SHALL REFER, UNLESS THE CONTEXT SUGGESTS OTHERWISE, TO THE BUSINESS OF BUYING AND SELLING, BROKERING, MARKETING ELECTRICITY BY A PERSON OR ENTITY, OTHER THAN A GENERATION COMPANY OR A DISTRIBUTION UTILITY, TO END-USERS OF ELECTRICITY, OR OF AGGREGATING DEMANDS FOR SUCH END-USERS OF ELECTRICITY, IN THE FRANCHISE TERRITORY OF A DISTRIBUTION UTILITY, USING FOR THE PURPOSE THE WIRES AND FACILITIES OF THE DISTRIBUTION UTILITY CONCERNED;

(CCC) "SYSTEM OPERATOR" REFERS TO THE ENTITY WHICH SHALL BE AN INDEPENDENT BODY THAT IS RESPONSIBLE FOR CENTRAL DISPATCH OF ALL ELECTRIC GENERATION PLANT FACILITIES CONNECTED DIRECTLY OR INDIRECTLY TO THE TRANSMISSION SYSTEM IN ACCORDANCE WITH THE DISPATCH SCHEDULE SUBMITTED BY THE MARKET OPERATOR;

[(aaa)] (DDD) "Transmission Charge" refers to the regulated cost or charges for the use of a transmission system which may include the availment of ancillary services;

[(bbb)] (EEE) "Transmission Development Plan" or "TDP" refers to the program for managing the transmission system through efficient planning for the expansion, upgrading, rehabilitation, repair, and maintenance, to be formulated by DOE and implemented by the TRANSCO pursuant to this Act;

[(ccc)] (FFF) "Transmission of Electricity" refers to the conveyance of electricity through the high voltage backbone system; and

[(ddd)] (GGG) "Universal Charge" refers to the charge, if any, [imposed for the recovery of the stranded cost and other purposes pursuant to Section 34 hereof.] TO BE DETERMINED, FIXED, AND APPROVED BY THE COMMISSION, AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND PUBLIC HEARING, IN ACCORDANCE WITH AND FOR THE PURPOSES MENTIONED IN SECTION 34 OF THIS ACT.

SEC. 2. Section 9, Chapter 11 of the Act is hereby amended to read as follows:

"SEC. 9. *Functions and Responsibilities.* – Upon the effectivity of this Act, the TRANSCO shall have the following functions and responsibilities:

(a) [Act] TO ACT as the [system] GRID operator of the nationwide electrical transmission and subtransmission system, THAT SHALL be transferred to it by NPC;

(b) [Provide open and] TO PROVIDE POWER DELIVERY SERVICE THROUGH non-discriminatory OPEN access to its transmission system to all [electricity] QUALIFIED AND AUTHORIZED users[;], SUBJECT TO THE PAYMENT OF TRANSMISSION WHEELING CHARGE APPROVED BY THE COMMISSION, AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND PUBLIC HEARING. TRANSCO SHALL NOT IN ANY WAY ENGAGE IN THE DISTRIBUTING AND RETAILING OF ELECTRICITY, WHICH IS A FUNCTION OF DISTRIBUTION UTILITIES;

(c) [Ensure] TO ENSURE and maintain the reliability, adequacy, security, stability, and integrity of the nationwide electrical TRANSMISSION grid in accordance with the performance standards for the operation and

maintenance of the NATIONWIDE ELECTRICAL TRANSMISSION grid, as set forth in a Grid Code to be adopted and promulgated by the [ERC] COMMISSION within six (6) months from the effectivity of this Act;

(d) [Improve] TO IMPROVE and expand its transmission ASSETS AND facilities, consistent with the Grid Code and the Transmission Development Plan [TDP] to be promulgated pursuant to this Act, IN ORDER to adequately serve generation companies, distribution utilities, and suppliers [requiring] THAT REQUIRE transmission service and/or [AND OR] ancillary services through the transmission system: *Provided,* That THE TRANSCO shall submit any plan for THE expansion or improvement of its ASSETS AND facilities for approval by the [ERC;] COMMISSION, AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND PUBLIC HEARING;

(e) Subject to SUCH technical constraints THAT MAY EXIST OR ARISE, IF ANY, AND TAKING INTO ACCOUNT ANY OUTSTANDING BILATERAL CONTRACTS, the [grid] SYSTEM operator of the TRANSCO shall provide central dispatch of all ELECTRIC generation PLANT facilities connected, directly or indirectly, to the transmission system in accordance with the dispatch schedule submitted by the market operator[, taking into account outstanding bilateral contracts]; *PROVIDED, HOWEVER,* THAT SUCH SYSTEM OPERATOR SHALL BE ALLOWED TO SPIN-OFF USING TRANSCO'S SYSTEM OPERATION CHARGES AS THE OPERATING BUDGET WHEN ITS SCHEDULE AND DISPATCH FUNCTIONS REQUIRE COMPLETE INDEPENDENCE FROM TRANSCO AS THE GRID OWNER; and

(f) THE TRANSCO, JOINTLY WITH THE DOE, shall undertake the preparation AND FORMULATION of the TDP, WHICH SHALL BE APPROVED BY THE DOE.

In the preparation AND FORMULATION of the TDP, THE TRANSCO AND THE DOE shall consult the other [participants of the] electric power

industry [such as] PARTICIPANTS, ESPECIALLY the generation companies, THE MARKET OPERATOR, THE SYSTEM OPERATOR, distribution utilities, and the [electricity] end-users[.] OF ELECTRICITY. The TDP shall be [submitted to the DOE for integration] INTEGRATED with the Power Development Program and the Philippine Energy Plan, BOTH OF WHICH ARE provided for in Republic Act No. 7683, otherwise known as "the Department of Energy Act of 1992".

SUBJECT TO THE PRIOR AUTHORIZATION OF THE COMMISSION, AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND PUBLIC HEARING, A generation company may develop and own or operate dedicated AND LIMITED point-to-point [limited] transmission ASSETS AND facilities that are consistent with the TDP[: *Provided,* That], IF IT IS CLEARLY SHOWN THAT such TRANSMISSION ASSETS AND facilities are required [only for the purpose of connecting] AND TO BE USED SOLELY BY THE GENERATION COMPANY TO CONNECT ITSELF to the transmission system[,and are used solely by the generating facility, subject to prior authorization by the ERC: *Provide, further,* That in [OF THE TRANSCO. IN the event that such LIMITED TRANSMISSION assets AND FACILITIES are required for competitive purposes, ownership of the same shall be transferred to the TRANSCO at a fair market price[: *Provided, finally,* That in]. IN case of ANY DISPUTE OR disagreement on the fair market price OF SUCH TRANSMISSION ASSETS AND FACILITES, the [ERC] COMMISSION shall determine the fair market [value of the asset.] PRICE OF SAID LIMITED TRANSMISSION ASSETS AND FACILITES, AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND PUBLIC HEARING."

SEC 3. Section 20, Chapter II of the Act is hereby amended to read as follows:

"SEC. 20. *TRANSCO Related Businesses.* — THE TRANSCO [may] IS HEREBY AUTHORIZED TO engage, DIRECTLY OR INDIRECTLY, in any BUSINESS related TO ITS MAIN business [which maximizes] IN ORDER TO

MAXIMIZE THE utilization of its assets[:] AND RESOURCES: *Provided,* That WHERE ASSETS FORMING PART OF THE RATE BASE OF THE TRANSCO ARE UTILIZED IN SUCH RELATED BUSINESS, a portion of the net income derived from such [undertaking utilizing assets which form part of the rate base] RELATED BUSINESS, WHICH PORTION SHALL NOT BE MORE THAN FIFTY PERCENT (50%) OF SUCH NET INCOME, shall be used to reduce THE transmission RATE OR wheeling [rates as determined by the ERC. Such portion of net income used to reduce the transmission wheeling rates shall not exceed fifty percent (50%) of the net income derived from such undertaking.] CHARGE PASSED-ON TO THE END-USERS OF ELECTRICITY.

Separate accounts shall be maintained for each RELATED business [undertaking] to ensure that the transmission business shall neither subsidize in any way such RELATED business [undertaking] nor encumber [its] THE TRANSCO'S transmission assets in any way to support such RELATED business."

SEC. 4. Section 21 of the Act is hereby amended to read as follows:

"SEC. 21. *TRANSCO Privatization.* — Within six (6) months from the effectivity of this Act, the PSALM Corp. shall submit a plan ON THE PRIVATIZATION OF THE TRANSCO for the endorsement by the Joint CONGRESSIONAL Power Commission TO, and FOR the approval of, the President of the Philippines. [The] THEREAFTER, THE President of the Philippines [thereafter] shall direct THE PSALM Corp. to [award, in] CONDUCT AN open competitive PUBLIC bidding, AND AWARD THE OWNERSHIP AND CONTROL OF THE TRANSCO THROUGH A CONTRACT OF SALE, OR AWARD THE ADMINISTRATION, MANAGEMENT, OPERATION, AND MAINTENANCE, AS WELL AS THE PRESERVATION, IMPROVEMENT, AND/OR EXPANSION OF the transmission ASSETS AND facilities, including THE grid interconnections and ancillary services THROUGH A CONCESSION CONTRACT to [a] THE qualified [party either through an

outright sale or a concession contract.] WINNING BIDDER. The buyer/concessionaire, AS THE CASE MAY BE, shall be responsible for the EFFICIENT ADMINISTRATION, MANAGEMENT, OPERATION, AND MAINTENANCE, AS WELL AS FOR THE PRESERVATION, improvement, AND/OR expansion[, operation, and/or maintenance of its] OF THE transmission assets and [the] FACILITIES, INCLUDING THE GRID INTERCONNECTIONS AND ANCILLARY SERVICES AND THE ADMINISTRATION, MANAGEMENT, AND FOR THE operation of any related business[.] OR BUSINESSES. The award [shall result in maximum] TO THE QUALIFIED WINNING BIDDER MUST BE BASED ON THE MOST ADVANTAGEOUS, BENEFICIAL, AND OPTIMAL present value [of proceeds] to the national government. In case a concession contract is awarded, the concessionaire shall [have a] BE GIVEN AN INITIAL CONCESSION contract period of twenty-five (25) years, subject to review and renewal for a maximum period of another twenty-five (25) years.

IF THE AWARDEE OF THE CONCESSION CONTRACT IS MERELY HIRED UNDER A COMPENSATION SCHEME TO ADMINISTER, MANAGE, OPERATE, MAINTAIN, PRESERVE, AND TO FINANCE AND SUPERVISE THE IMPROVEMENTS AND/OR EXPANSIONS OF THE ELECTRIC TRANSMISSION ASSETS AND FACILITIES AND THE GRID INTERCONNECTIONS AND THE ANCILLARY SERVICES FOR THE TRANSCO, THE AWARDEE OF THE CONCESSION CONTRACT SHALL NOT BE REQUIRED TO OBTAIN A NATIONAL FRANCHISE, AND NEITHER SHALL HE OR IT BE REQUIRED TO QUALIFY UNDER THE NATIONALITY REQUIREMENTS OF THE CONSTITUTION FOR PUBLIC UTILITY OPERATORS.

HOWEVER, IF THE WINNING BIDDER OR AWARDEE OF THE CONCESSION CONTRACT TAKES OVER THE POSSESSION AND CONTROL OF THE ELECTRIC TRANSMISSION ASSETS AND FACILITIES

AND THE GRID INTERCONNECTIONS AND ANCILLARY SERVICES, AS BUYER OR LESSEE THEREOF, AND ADMINISTERS, MANAGES, MAINTAINS, OPERATES, IMPROVES, AND EXPANDS THEM AS HIS OR ITS OWN BUSINESS, THEN IN THAT CASE THE AWARDEE OF THE CONCESSION CONTRACT MUST OBTAIN A NATIONAL FRANCHISE THEREFOR, AND HE OR IT MUST QUALIFY UNDER THE NATIONALITY REQUIREMENTS OF THE CONSTITUTION FOR PUBLIC UTILITY OPERATORS.

[In any case, the awardee shall] THE AWARDEE, WHETHER UNDER A CONTRACT OF SALE OR UNDER A CONCESSION CONTRACT, MUST comply with the Grid Code and the TDP [as approved]. The CONTRACT OF sale [agreement/concession] OR THE CONCESSION contract, AS THE CASE MAY BE, shall [include, but not limited to, the provision for] PROVIDE, AMONG OTHERS, SUCH performance and financial guarantees or [any] other covenants [which] THAT the national government may require. [Failure to comply with such obligations shall result in the imposition of appropriate sanctions or penalties by the ERC.] THE FAILURE OF THE AWARDEE TO COMPLY WITH ANY OF SUCH GUARANTEES OR COVENANTS SHALL CONSTITUTE A DEFAULT ON THE PART OF THE AWARDEE AND SHALL CAUSE THE IMMEDIATE RESCISSION AND CANCELLATION OF THE CONTRACT OF SALE OR OF THE CONCESSION CONTRACT AND, IN ADDITION, THE IMPOSITION OF APPROPRIATE SANCTIONS, FINES, OR PENALTIES BY THE COMMISSION IN ACCORDANCE WITH SECTION 44 OF THIS ACT.

The awardee [shall] MUST be financially and technically capable AND SOUND, with proven domestic and/or international experience and expertise as a leading transmission GRID AND system operator. Such experience must be with a transmission system of comparable capacity and coverage as THAT OF the Philippines. THE SALE AGREEMENT OR CONCESSION CONTRACT

SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO, COMMITMENTS ON A NEW OR REPLACEMENT INVESTMENTS CONSISTENT WITH THE TDP; UNDERTAKINGS ON TARIFF LEVELS; PERFORMANCE AND FINANCIAL GUARANTEES OR ANY OTHER COVENANTS WHICH THE NATIONAL GOVERNMENT MAY REQUIRE."

SEC. 5. Section 23 of the Act is hereby amended to read as follows:

"SEC. 23. *Functions of Distribution Utilities.* – A distribution utility shall have the obligation to provide distribution services and connections to its system for any end-user within its franchise area consistent with the distribution code. Any entity engaged therein shall provide open and non-discriminatory access to its distribution system to all users.

Any distribution utility shall be entitled to impose and collect distribution wheeling charges and connection fees from such end-users as approved by the ERC.

A distribution utility shall have the obligation to supply electricity in the least cost manner to its captive market[,].[subject to the collection of retail rate duly approved by the ERC.]

FOR THIS PURPOSE, "LEAST COST" SHALL MEAN THE EFFICIENT EFFECTIVE RATE THAT WOULD BE INCURRED TO MEET THE REQUIREMENT OF THE CAPTIVE MARKET OF EACH DISTRIBUTION UTILITY.

FOR THE PURPOSE OF ENCOURAGING GREATER COMPETITION, THE DOE, WITHIN SIX MONTHS FROM THE EFFECTIVITY OF THIS AMENDATORY ACT, SHALL ESTABLISH THE MANNER AND MECHANISM OF DETERMINING "LEAST COST".

To achieve OPERATING EFFIENCY [economies of scale in utility operations], distribution utilities may, after due notice and public hearing, pursue structural and operational reforms such as but not limited to, joint actions between or among the distribution utilities, subject to the guidelines issued by the ERC.

Such joint actions shall result in improved efficiencies, reliability of service, reduction of costs and compliance to the performance standards prescribed in the IRR of this Act.

Distribution utilities shall submit to the ERC a statement of their compliance with the technical specifications prescribed in the Distribution Code and the performance standards prescribed in the IRR of this Act. Distribution utilities which do not comply with any of the prescribed technical specifications and performance standards shall submit to the ERC a plan to comply, within three (3) years, with said prescribed technical specifications and performance standards. The ERC shall, within sixty (60) days upon receipt of such plan, evaluate the same and notify the distribution utility concerned of its action. Failure to submit a feasible and credible plan and/or failure to implement the same shall serve as grounds for the imposition of appropriate sanctions, fines or penalties.

Distribution utilities shall prepare and submit to the DOE their annual distributions development plans. In the case of electric cooperatives, such plans shall be submitted through the National Electrification Administration.

Distribution utilities shall provide universal service within their franchise, over a reasonable time from the requirement thereof, including unviable areas, as part of their social obligations, in a manner that shall sustain the economic viability of the utility, subject to the approval by the ERC in the case of private or government-owned utilities. To this end, distribution utilities shall submit to the DOE their plans for serving such areas as part of their distribution development plans. Areas which a franchised distribution utility cannot or does not find viable may be transferred to another distribution utility, if any is available, who will provide the service, subject to approval by ERC. In cases where franchise holders fail and/or refuse to service any area within this franchise territory and allowed another utility to service the same, then the status quo shall be respected.

Distribution utilities may exercise the power of eminent domain subject to the requirements of the Constitution and existing laws."

SEC. 6 Section 25 of the Act is hereby amended to read as follows:

"SEC. 25. Retail Rate – The retail rates charged by distribution utilities for the supply of electricity in their captive market shall be subject to regulation by the [ERC]COMMISSION based on the principle of [full recovery of prudent and reasonable economic costs incurred,] LEAST COST SUPPLY or such other principles that will promote ECONOMIC efficiency as may be determined by the [ERC]COMMISSION.

Every distribution utility shall identify and segregate in its bills to end-users the components of the retail rate, as defined in this Act."

SEC. 7. Section 26 of the Act is hereby amended to read as follows:

"SEC. 26. *Distribution Related Businesses.* — [Distribution utilities] SUBJECT TO THE APPROVAL OF THE COMMISSION, AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND PUBLIC HEARING, A DISTRIBUTION UTILITY may, directly or indirectly, engage in any BUSINESS related TO ITS MAIN business [undertaking which maximizes] IN ORDER TO MAXIMIZE the utilization of [their] ITS assets[:] AND RESOURCES: *Provided,* That WHERE ASSETS FORMING PART OF THE RATE BASE ARE UTILIZED IN SUCH RELATED BUSINESS, a portion of the net income derived from such [undertaking utilizing assets which form part of the rate base] RELATED BUSINESS, WHICH PORTION SHALL NOT BE MORE THAN FIFTY PERCENT (50%) OF SUCH NET INCOME, shall be used to reduce its distribution wheeling [charges] CHARGE AND RETAIL RATE [as determined] APPROVED by the [ERC: *Provided, further*, That such portion of net income used to reduce their distribution wheeling charges shall not exceed fifty percent (50%) of the net income derived from such undertaking: *Provided, finally*, That separate accounts are maintained for each business undertaking to ensure that the distribution business shall neither subsidize in any way such business undertaking nor encumber its distribution assets in any way to support such business.] COMMISSION. IN THE CASE OF THE ELECTRIC COOPERATIVES, A

REASONABLE TRANSITION PERIOD SHALL BE PROVIDED UNTIL SUCH TIME THAT A NEW RATE METHODOLOGY IS ADOPTED BY THE COMMISSION.

SEPARATE ACCOUNTS SHALL BE MAINTAINED FOR EACH RELATED BUSINESS TO ENSURE THAT THE DISTRIBUTION BUSINESS SHALL NEITHER SUBSIDIZE, IN ANY WAY, SUCH RELATED BUSINESS NOR ENCUMBER, IN ANY WAY, ITS DISTRIBUTION ASSETS TO SUPPORT SUCH RELATED BUSINESS."

SEC. 8. Section 30 of the Act is hereby amended to read as follows:

"SEC. 30. *Wholesale Electricity Spot Market.* — Within one (1) year from the effectivity of this Act, the DOE shall establish a wholesale electricity spot market, HEREINAFTER REFERRED TO AS THE WESM, composed of the [wholesale electricity spot market] WESM participants. The market shall provide the mechanism for identifying and setting the price of actual variations from the quantities transacted under contracts between sellers and purchasers of electricity.

Jointly with the electric power industry participants, the DOE shall formulate the detailed rules for the wholesale electricity spot market.. Said rules shall provide the mechanism for determining the price of electricity not covered by bilateral contracts between sellers and purchasers of electricity users. [The price determination methodology contained in said rules] THE METHOD CONTAINED IN THE SAID RULES FOR DETERMINING THE PRICE OF ELECTRICITY IN THE WESM shall be subject to the approval of [ERC.] THE COMMISSION, AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND PUBLIC HEARING. Said rules shall also reflect accepted economic principles and provide a level playing field to all electric power industry participants. The rules shall provide, among others, procedures for:

(a) Establishing the merit order dispatch instructions for each time period; *PROVIDED, HOWEVER,* THAT IN EVERY CASE, AS A GENERAL

RULE, THE CHEAPER ELECTRICITY SHALL BE DISPATCHED AHEAD OF THE HIGHER PRICED ELECTRICITY.

(b) Determining the market-clearing price for each time period;

(c) Administering the market, including criteria for admission to [and termination] OR DISMISSAL from the market [which includes], AS WELL AS ANY REQUIRED security or performance [bond requirements] BOND, voting rights of the participants, surveillance, [and] assurance of compliance [of] BY the participants with the rules, and the formation of the [wholesale electricity spot market governing body] GOVERNING BODY OF THE WESM;

(d) Prescribing guidelines for the market operation in system emergencies; and

(e) Amending the rules.

The wholesale electricity spot market shall be implemented by a market operator in accordance with the wholesale electricity spot markets rules. The market operator shall be an autonomous group, to be constituted by DOE, with equitable representation from electric power industry participants, initially under the administrative supervision of the TRANSCO. The market operator shall undertake the preparatory work and initial operation of the wholesale electricity spot market. Not later than one (1) year after the implementation of the wholesale electricity spot market , an independent entity shall be formed and the functions, assets and liabilities of the market operator shall be transferred to such entity with the joint endorsement of the DOE and the electric power industry participants. Thereafter, the administrative supervision of the TRANSCO over [such entity shall cease.] THE WESM AND THE INDEPENDENT MARKET OPERATOR SHALL CEASE AND TERMINATE.

Subject to the compliance with the membership criteria, all generating companies, distribution utilities, suppliers, bulk consumers/end-users and other similar entities authorized by the ERC shall be eligible to become members of the wholesale electricity spot market.

The ERC may authorize other similar entities to become eligible as members, either directly or indirectly, of the wholesale electricity spot market. All generating companies, distribution utilities, suppliers , bulk consumers/end-users and other similar entities authorized by the ERC, whether direct or indirect members of the wholesale electricity spot market, shall be bound by the wholesale electricity spot market rules with respect to transactions in that market.

NEA may, in exchange for adequate security and a guarantee fee, act as a guarantor for purchases of electricity in the wholesale electricity spot market by any electric cooperative or small distribution utility to support their credit standing consistent with the provisions hereof. For this purpose, the authorized capital stock of NEA is hereby increased, to Fifteen billion pesos (P15,000,000,000.00).

All electric cooperatives which have outstanding uncollected billings to any local government unit shall report such billings to NEA which shall, in turn, report the same to the Department of Budget and Management (DBM) for collection pursuant to Executive Order 190, issued on December 21, 1999.

The cost of administering and operating the wholesale electricity spot market shall be recovered by the market operator through a charge imposed to all market members: *Provided*, That such charge shall be filed with and approved by the [ERC.] COMMISSION, AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND PUBLIC HEARING.

In cases of national and international security emergencies or natural calamities, the ERC is hereby empowered to suspend the operation of the wholesale electricity spot market or declare a temporary wholesale electricity spot market failure.

TO ENCOURAGE AND PROMOTE THE DEVELOPMENT OF THE WESM, THE COMMISSION MAY, FROM TIME TO TIME, EITHER *MOTU PROPIO,* OR UPON THE PETITION OF ANY DISTRIBUTION UTILITY,

REVIEW THE APPROPRIATE LEVEL OF DEMAND TO BE SOURCED FROM THE WESM , SUBJECT TO A PUBLIC HEARING."

SEC. 9. Section 31 of the Act is hereby amended to read as follows:

"SEC. 31. *Retail Competition and Open Access.* — Any law to the contrary notwithstanding, retail competition and open access on distribution wires shall be implemented not later than three (3) years upon the effectivity of this Act, subject to the following conditions:

(a) Establishment of the wholesale electricity spot market ;

(b) Approval of unbundled transmission and distribution wheeling charges;

(c) Initial implementation of the cross subsidy removal scheme;

(d) Privatization of at least [seventy (70%) percent] FIFTY PERCENT (50%) of the total capacity of [generating] THE GENERATION assets of NPC in Luzon and Visayas; and

(e) Transfer of the management and control of at least [seventy percent (70%)] FIFTY PERCENT (50%) of the total energy output of power plants under contract with NPC to the IPP Administrators.

PROVIDED, THAT, WITH RESPECT TO THE CONDITIONS UNDER SUBSECTIONS (D) AND (E) ABOVE, (i) THE COMMISSION SHALL ENSURE THAT NECESSARY SAFEGUARDS ARE ESTABLISHED TO AVOID ABUSE OF MARKET POWER BY NPC AND PSALM AND IN FURTHERANCE THEREOF, PSALM AND NPC SHALL SUBMIT TO THE JOINT CONGRESSIONAL POWER COMMISSION A COMMITTED AND DETAILED SCHEDULE OF THE PRIVATIZATION OF NPC'S GENERATION ASSETS IN LUZON AND VISAYAS TO THE LEVEL OF SEVENTY PERCENT (70%); AND (ii) FULL OPEN ACCESS TO THE HOUSEHOLD LEVEL SHALL BE IMPLEMENTED SUBJECT TO COMPLIANCE WITH THE GRID AND NATIONAL LIMITS FOR

MAXIMUM INSTALLED GENERATING CAPACITY AS MAY BE PROMULGATED BY THE COMMISSION.

THE ERC MAY DECLARE OPEN ACCESS PRIOR TO THE FULFILLMENT OF THE CONDITIONS UNDER SUBSECTIONS (D) AND (E) ABOVE, ON THE CONDITION THAT GENERATION PARTICIPANTS IN THE OPEN ACCESS ELECTRICITY MARKET SHALL BE LIMITED TO THOSE GENERATION COMPANIES THAT COMPLY WITH THE LIMITS SET FORTH IN SEC. 45 (A) OF THIS ACT. FOR PURPOSES HEREOF, ALL GOVERNMENT ENTITIES SUCH AS THE NPC, PSALM OR ANY OTHER GOVERNMENT AGENCY AND GOVERNMENT OWNED OR CONTROLLED CORPORATIONS SHALL BE DEEMED AS ONE RELATED GROUP.

IN ORDER TO ENSURE A LEVEL PLAYING FIELD UPON THE COMMENCEMENT OF THE OPEN ACCESS, ALL THE BENEFITS ACCRUING TO NAPOCOR UNDER COMMONWEALTH ACT NO. 120 AND REPUBLIC ACT NO. 6395 SUCH AS, BUT NOT LIMITED TO, SOVEREIGN GUARANTY ON DEBTS, EXEMPTION FROM ALL KINDS OF TAXES AND GOVERNMENT IMPOSITIONS, AND MANDATORY PROCUREMENT OF ELECTRICITY OF ALL GOVERNMENT OFFICES AND INSTRUMENTALITIES FROM NAPOCOR ARE HEREBY DEEMED WITHDRAWN UPON THE EFFECTIVITY OF THIS ACT.

PEZA SHALL, IN THE EXERCISE OF ITS AUTHORITY TO REGULATE ELECTRIC POWER WITHIN ITS ECONOMIC ZONES, INCLUDING THE OPERATION OF DISTRIBUTION UTILITIES THEREIN, ADHERE TO THE POLICIES AND STANDARDS SET FORTH IN THIS ACT AND SHALL ADOPT RULES AND GUIDELINES IN COMPLIANCE WITH AND CONSISTENT HERETO. WITH RESPECT TO NEW ECONOMIC ZONES TO BE ESTABLISHED UNDER REPUBLIC ACT NO. 7916, PEZA SHALL GIVE PRIORITY TO THE INCUMBENT DISTRIBUTION UTILITY

SERVING THE FRANCHISE AREA OF SUCH ECONOMIC ZONES, PROVIDED THAT SUCH INCUMBENT DISTRIBUTION UTILITY IS QUALIFIED AND IS ADEQUATELY SERVING SUCH FRANCHISE AREA.

Upon the initial implementation of open access, the [ERC] COMMISSION shall [allow] CONSTITUTE IN A FORMAL ORDER TO BE ISSUED AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND PUBLIC HEARING all [electricity] end-users OF ELECTRICITY with a monthly average peak demand of [at least] NOT LESS THAN one megawatt (1MW) for the IMMEDIATELY preceding twelve (12) BILLING months to be the contestable market. [Two] AFTER TWO (2) years [thereafter,] IMMEDIATELY FOLLOWING THE INITIAL IMPLEMENTATION OF OPEN ACCESS, the threshold level for the contestable market shall be reduced to seven hundred fifty kilowatts (750kW). At [this] THAT level, aggregators shall be allowed to supply electricity to end-users whose aggregate demand within a contiguous area is at least seven hundred fifty kilowatts (750kW). [Subsequently and every] EVERY year thereafter, the [ERC] COMMISSION shall REVIEW AND evaluate the performance of the CONTESTABLE market[. On] AND, ON the basis of such YEARLY REVIEW AND evaluation, [it] THE COMMISSION shall gradually reduce the threshold level until [it reaches] THE CONTESTABLE MARKET SHALL FINALLY COVER the household [demand level.] END-USERS OF ELECTRICITY. In the case of electric cooperatives, retail competition and open access shall be implemented not earlier than five (5) years upon the effectivity of this Act."

SEC. 10. Section 32 of the Act is hereby deleted

["SEC. 32. *NPC Stranded Debt and Contract Cost Recovery.* — Stranded debt of NPC shall refer to any unpaid financial obligations of NPC.

Stranded contract costs of NPC shall refer to the excess of the contracted cost of electricity under eligible IPP contracts of NPC over the actual selling price

of the contracted energy output of such contracts in the market. Such contracts shall have been approved by the ERB as of December 31, 2000.

The national government shall directly assume a portion of the financial obligations of NPC in an amount not to exceed Two hundred billion pesos (P200, 000,000,000.00).

The ERC shall verify the reasonable amounts and determine the manner and duration for the full recovery of stranded debt and stranded contract costs as defined herein: *Provided,* That the duration for such recovery shall not be shorter than fifteen (15) years nor longer than twenty-five (25) years. The ERC shall, at the end of the first year of the implementation of stranded cost recovery, and every year thereafter, conduct a review to determine whether there is under-recovery or over-recovery and adjust (true-up) the level of stranded cost recovery charge accordingly. Any amount to be included for stranded cost recovery shall be reflected as a separate item in the consumer billing statement.]

SEC. 11. Section 33 of the Act is hereby deleted:

["SEC. 33. *Distribution Utilities Stranded Contract Costs Recovery.* — Stranded contract costs of distribution utilities shall refer to the excess of the contracted cost of electricity under eligible contracts of such utilities over the actual selling price of such contracts in the market. Such contracts shall have been approved by the ERB as of December 31, 2000.

A distribution utility shall recover stranded contract costs: *Provided, however* That such costs of the IPPs of distribution utilities are subject to review by ERC in order to determine fairness and reasonableness in relation to the average price of land-based IPP projects entered into by NPC, at the time they were contracted. The ERC shall take into consideration all factors that affect the total cost of NPC IPP generation projects, including direct or indirect subsidies or incentives provided by the Government.

Within one (1) year from the start of open access, any distribution utility that seeks recovery of stranded contract costs shall file with the ERC notice of

such intent together with, an estimate of such obligations, including the present value thereof and such other supporting data as may be required by the ERC. Any distribution utility that does not file within the date specified shall not be eligible for such recovery.

Any distribution utility which seeks to recover stranded cost shall have a duty to mitigate its potential stranded contract costs by making reasonable best efforts to:

(a) Reduce the costs of its existing contracts with IPPs to a level not exceeding the average buying price of other land-based electric power generators; and

(b) Submit to an annual earnings review by the ERC and use its earnings above its authorized rate of return, to reduce the book value of contracts until the end of the stranded cost recovery period.

Other mitigating measures which are reasonably known and generally accepted within the electric power industry shall be utilized. The ERC shall not require the distribution utility to take a loss to reduce stranded contract costs or divest assets, unless the divestiture is imposed as a penalty as provided herein.

The relevant distribution utility shall submit to the ERC quarterly reports showing the amount of stranded costs recovered and the balance remaining to be recovered.

Within three (3) months from the submission of the application for stranded cost recovery by the relevant distribution utilities, , the ERC shall verify the reasonable amounts, and determine the manner and duration for the full recovery of stranded contract costs as defined herein: *Provided*, That the duration for such recovery shall not be shorter than fifteen (15) years nor longer than twenty-five (25) years. Any amount to be included for stranded cost recovery shall be reflected as a separate item in the consumer billing statement.

The ERC shall, at the end of the first year of the implementation of stranded cost recovery, and every year thereafter, conduct a review to determine

whether there is under-recovery or over-recovery and adjust (true-up) the level of stranded cost recovery charge accordingly. In case of an over-recovery, the ERC shall ensure that any excess amount shall be remitted to the Special Trust Fund created under Section 34 hereof. A separate account shall be created for these amounts, which shall be held in trust for any future claims of distribution utilities for stranded cost recovery. At the end of the stranded cost recovery period, any remaining amount in this account shall be used to reduce the electricity rates to the end-users.]

SEC. 12. A new Section is added to read as follows:

"SEC. 32. *NON-RECOVERY OF OUTSTANDING DEBTS AND CONTRACT COSTS OF ALL INDUSTRY PARTICIPANTS.* —

IN ORDER TO REFLECT THE TRUE COST OF POWER AND TO AVOID ADDITIONAL BURDEN TO THE CONSUMERS, THERE SHALL HENCEFORTH BE NO RECOVERY OF STRANDED DEBTS AND CONTRACT COSTS FOR THE NATIONAL POWER CORPORATION, PSALM, GENERATION COMPANIES, AND DISTRIBUTION UTILITIES."

SEC. 13. Section 34 of the Act is hereby amended to read as follows:

"SEC. 34. *Universal Charge.* — Within one (1) year from the effectivity of this Act, a universal charge to be determined, fixed, and approved by the [ERC,] COMMISSION, AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND PUBLIC HEARING, shall be imposed on all [electricity] end-users OF ELECTRICITY, ON THE BASIS OF THE NUMBER OF KILOWATT HOURS OF ELECTRICITY RESPECTIVELY CONSUMED BY THEM, for the following purposes:

[(a) Payment for the stranded debts in excess of the amount assumed by the National Government and stranded contract costs of NPC and as well as qualified stranded contract costs of distribution utilities resulting from the restructuring of the industry;]

[(b)](**A**) Missionary electrification. – FIFTY PERCENT (50%) OF THE ALLOCATION FOR MISSIONARY ELECTRIFICATION SHALL BE UTILIZED TO SUBSIDIZE RENEWABLE ENERGY DEVELOPMENT WHICH SHALL INCLUDE BUT NOT LIMITED TO RESEARCH, EXPLORATION, PROMOTION AND UTILIZATION OF RENEWABLE ENERGY SYSTEMS AND TECHNOLOGIES.

[(c) The equalization of the taxes and royalties applied to indigenous or renewable sources of energy vis-à-vis imported energy fuels;]

[(d)](**B**) An environmental charge equivalent to one-fourth of one centavo per kilowatt-hour (P0.0025/kWh), which shall accrue to an environmental fund to be used solely for watershed rehabilitation and management. Said fund shall be managed by NPC under existing arrangements, AND IN APPROPRIATE CASES BY THE LOCAL GOVERNMENT UNIT WHERE THE WATERSHED IS LOCATED; and

[(e)](**C**) A charge to account for all forms of cross-subsidies for a period not exceeding three (3) years.

The universal charge [shall be a non-bypassable charge which] shall be passed on and collected PER BILLING MONTH BY THE DISTRIBUTION UTILITIES AND TRANSCO from all THEIR RESPECTIVE end-users OF ELECTRICITY on [a monthly] THE basis [by the distribution utilities.] OF THE NUMBER OF KILOWATT HOURS OF ELECTRICITY ACTUALLY CONSUMED BY EACH OF SUCH END-USERS OF ELECTRICITY PER BILLING MONTH. Collections by the distribution utilities and the TRANSCO in any given BILLING month shall be remitted to the PSALM Corp. on or before the fifteenth (15th) DAY of the succeeding month, net of any amount due to the distribution utility. [Any end-user or self-generating entity not connected to a distribution utility shall remit its corresponding universal charge directly to the TRANSCO.]

THE SELF-GENERATED ELECTRICITY OF AN END-USER WHO OR WHICH IS NOT DIRECTLY CONNECTED TO THE DISTRIBUTION SYSTEM OF A DISTRIBUTION UTILITY OR TO THE TRANSMISSION GRID AND ITS SUBTRANSMISSION FACILITIES SHALL NOT BE SUBJECT TO OR LIABLE FOR THE UNIVERSAL CHARGE IMPOSED IN THIS SECTION, EXCEPT FOR THE PAYMENT OF THE OBLIGATION SPECIFIED IN SUBSECTION (d)OF THIS ACT, IF THE SELF GENERATED ELECTRICITY OF THE END USER COMES FROM THE UTILIZATION AND EXPLOITATION OF THE NATURAL RESOURCES OF THE COUNTRY.

EVEN IF THE END USER WHO OR WHICH GENERATES ELECTRICITY FOR ITS OWN USE FROM ITS OWN GENERATION FACILITY IS CONNECTED TO THE DISTRIBUTION SYSTEM OF A DISTRIBUTION UTILITY OR TO THE TRANSMISSION SYSTEM OF TRANSCO, THE SAME SHALL NOT BE SUBJECT TO THE UNIVERSAL CHARGE IF THE SELF GENERATED ELECTRICITY DOES NOT PASS THROUGH THE DISTRIBUTION SYSTEM OF A DISTRIBUTION UTILITY OR OF THE TRANSMISSION SYSTEM OF TRANSCO, EXCEPT FOR THE PAYMENT OF THE OBLIGATION SPECIFIED IN SUBSECTION (d) OF THIS SECTION, IF THE SELF GENERATED ELECTRICITY OF THE END USER COMES FROM THE UTILIZATION AND EXPLOITATION OF THE NATURAL RESOURCES OF THE COUNTRY.

The PSALM Corp., [as] BEING THE CUSTODIAN AND administrator of the [fund,] UNIVERSAL CHARGE HEREIN PROVIDED, shall create a Special Trust Fund ACCOUNT, which shall be USED, AND FROM WHICH SHALL BE disbursed only SUCH AMOUNTS AS MAY BE NEEDED STRICTLY, for the purposes specified [herein] IN THIS SECTION in an open and transparent manner. THE RECORDS OF DISBURSEMENTS FROM SUCH SPECIAL TRUST FUND ACCOUNT SHALL BE OPEN FOR MONITORING

AND INSPECTION UPON WRITTEN REQUEST OF CONSUMERS, CONSUMER REPRESENTATIVES OR ORGANIZATIONS. All amounts collected for the universal charge shall be ALLOCATED AND distributed EXPEDITIOUSLY FOR THE PAYMENT OF THE OBLIGATIONS SPECIFIED IN (A), (B), AND (C) ABOVE AND to [the] THEIR respective beneficiaries, within [a] SUCH reasonable period [to be provided by the ERC.] OF TIME AS SHALL BE DETERMINED BY THE COMMISSION."

SEC. 14. Section 35 of this Act is hereby amended to read as follows:

"SEC. 35. *Royalties, Returns and Tax Rates for Indigenous Energy Resources.* – The provisions of Section 79 of Commonwealth Act No. 136 (C.A. No. 137) and any law to the contrary notwithstanding AND FOR THE PURPOSE OF LOWERING RATES OF ELECTRICITY TO END USERS, the President of the Philippines shall reduce the royalties, returns, and taxes [collected] OF THE NATIONAL GOVERNMENT for the exploitation of all indigenous sources of energy, including but not limited to, natural gas and geothermal steam, [so as to effect parity of tax treatment with the existing rates for, and other imported fuels.] WHENEVER THE INTEREST OF THE GENERAL PUBLIC SO REQUIRES.

To ensure [lower rates] CHEAPER ELECTRICITY for end-users, the [ERC shall] COMMISSION, AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND PUBLIC HEARING, SHALL forthwith reduce the PRICES AND/OR rates of ELECTRIC power from all indigenous sources of energy CORRESPONDING TO THE REDUCTION OF THE GOVERNMENT'S SHARE IN THE ROYALTIES RETURNS AND TAXES AND IMPROVE THE GRID'S GENERATION MIX OR PORTFOLIO OF PLANTS.

FRANCHISE TAXES IMPOSED BY LOCAL GOVERNMENT UNITS SHALL BE LIMITED ONLY TO THE DISTRIBUTION AND WHEELING CHARGES OF THE DISTRIBUTION UTILITIES WHICH ARE PASSED ON TO THE END-USERS."

SEC. 15. Section 38, Chapter IV, of the Act 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 Commission (ERC). For this purpose, the existing Energy Regulatory Board (ERB) created under Executive Order No. 172, as amended, is hereby abolished.] THE ENERGY REGULATORY BOARD (ERB) CREATED UNDER EXECUTIVE ORDER NO. 172, AS AMENDED, IS HEREBY ABOLISHED. IN LIEU THEREOF, THERE IS HEREBY CREATED AN IMPARTIAL, INDEPENDENT, AND QUASI-JUDICIAL REGULATORY BODY TO BE NAMED THE ENERGY REGULATORY COMMISSION (ERC), WHICH FOR PURPOSES OF THIS ACT IS REFERRED TO AS THE "COMMISSION". ALL THE POWERS FORMERLY VESTED IN THE ENERGY REGULATORY BOARD UNDER EXECUTIVE ORDER NO. 172, AS AMENDED, THAT ARE CONSISTENT WITH THE PROVISIONS OF THIS ACT MAY BE EXERCISED BY THE COMMISSION.

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) MEMBER shall be a member of the Philippine Bar with at least ten (10) years experience in the active practice of law, [and] one (1) MEMBER shall be a certified public accountant, with at least ten (10) years experience in active practice[.] IN FINANCIAL MANAGEMENT, ONE (1) MEMBER SHALL BE AN ENGINEER WITH AT LEAST TEN (10) YEARS EXPERIENCE IN POWER SYSTEM ENGINEERING AND ONE (1) MEMBER SHALL BE A

REGULATORY ECONOMIST WITH TEN (10) YEARS EXPERIENCE IN UTILITY ECONOMICS.

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 at 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 the members of the Commission [or any of] AND their relatives within the fourth civil degree of consanguinity or affinity, WHETHER SUCH PERSONAL RELATIONS ARE legitimate, [or] common law, [shall be] OR OTHERWISE, ARE 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, AGGREGATING, 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.] ELECTRICITY.

UPON THE ASSUMPTION BY THE CHAIRMAN AND THE ASSOCIATE MEMBERS OF THE COMMISSION OF THEIR RESPECTIVE POSITIONS, THE CHAIRMAN AND THE ASSOCIATE MEMBERS OF THE COMMISSION AND THEIR RESPECTIVE RELATIVES WITHIN THE PROSCRIBED DEGREE OF PERSONAL RELATIONS MUST DIVEST THEMSELVES OF ALL THEIR PROHIBITED INTEREST, THROUGH REAL ARMS LENGTH TRANSACTIONS OR OTHER VALID FORMS OF DISPOSITION, WITH CORRESPONDING PAYMENT OF ALL TAXES DUE, IF ANY, ON SUCH TRANSACTION OR OTHER FORMS OF DISPOSITION AND WITHOUT ANY PROVISION GRANTING A RIGHT TO THE TRANSFEROR OF SUCH PROHIBITED INTEREST TO REPURCHASE SUCH TRANSFERRED OR DISPOSED PROHIBITED INTEREST, AND MUST RESIGN FROM ALL THEIR PROSCRIBED POSITIONS IN THE ELECTRIC POWER INDUSTRY.

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."

SEC. 16. Section 41 of the Act is hereby amended as follows:

"SEC. 41. PROTECTION AND *Promotion of Consumer* RIGHTS AND *Interests.* — [The ERC shall handle consumer complaints and ensure the adequate promotion of consumer interests.]THE COMMISSION SHALL

ENSURE THE ADEQUATE PROTECTION AND PROMOTION OF THE INTERESTS OF THE ELECTRICITY CONSUMERS AND UPHOLD THEIR BASIC RIGHTS AS FOLLOWS:

A) TO HAVE QUALITY, RELIABLE, AFFORDABLE, SAFE, AND REGULAR SUPPLY OF ELECTRIC POWER;

B) TO BE ACCORDED *COURTEOUS*, PROMPT, AND NON-DISCRIMINATORY SERVICE BY THE ELECTRIC SERVICE PROVIDER;

C) TO BE GIVEN A TRANSPARENT, NON-DISCRIMINATORY AND REASONABLE PRICE OF ELECTRICITY CONSISTENT WITH THE PROVISIONS OF THIS ACT;

D) TO BE AN INFORMED ELECTRIC CONSUMER AND GIVEN ADEQUATE ACCESS TO INFORMATION ON MATTERS AFFECTING THE ELECTRIC SERVICE OF THE CONSUMER CONCERNED;

E) TO BE ACCORDED PROMPT AND SPEEDY RESOLUTION OF COMPLAINTS BY BOTH THE DISTRIBUTION UTILITY AND/OR THE COMMISSION;

F) TO KNOW AND CHOOSE THE ELECTRIC SERVICE RETAILER UPON THE IMPLEMENTATION OF RETAIL COMPETITION; AND

G) TO ORGANIZE THEMSELVES AS A CONSUMER ORGANIZATION IN THE FRANCHISE AREA WHERE THEY BELONG AND WHERE THEY ARE SERVED BY THE DISTRIBUTION UTILITY OR AS A NETWORK OF ORGANIZATION.

The [ERC] COMMISSION shall [handle] ATTEND AND RESPOND EXPEDITIOUSLY TO THE [consumer] complaints OF END-USERS OF ELECTRICITY, and IT SHALL ensure AND SAFEGUARD the adequate,

EFFECTIVE, AND SUSTAINED promotion [of consumer interests.] AND PROTECTION OF THE INTERESTS OF END-USERS OF ELECTRICITY.

THE COMMISSION SHALL ALSO DETERMINE THE MANNER AND MECHANISM BY WHICH DISTRIBUTION UTILITIES SHALL SUPPLY THE LEAST COST ELECTRICITY FOR THEIR CAPTIVE END-USERS."

Sec. 17. Section 43 of the Act is hereby amended as follows:

"SEC. 43. *Functions of the [ERC.] COMMISSION.* — The [ERC] COMMISSION shall, AMONG OTHERS, promote competition[,];encourage market development[,];PROTECT END-USERS OF ELECTRICITY FROM DISCRIMINATORY, UNFAIR, OR OPPRESSIVE RATES; ensure [customer], UPON THE ESTABLISHMENT OF THE CONTESTABLE MARKET, END-USER'S choice; and CONTROL, PREVENT, AND penalize abuse of market power in the restructured [electricity] ELECTRIC POWER industry.

[In appropriate cases, the ERC] THE COMMISSION is authorized to issue A cease and desist order, WHENEVER IT IS NEEDED TO SERVE THE INTEREST OF THE PUBLIC OR THE INTEREST OF JUSTICE, after due notice TO ALL INTERESTED PARTIES and PUBLIC hearing.

THE COMMISSION, ACTING AS A QUASI-JUDICIAL BODY, SHALL CONDUCT PUBLIC HEARINGS ON ALL APPLICATIONS FOR RATE INCREASE AND ON ANY ISSUE, THE RESOLUTION OF WHICH, WILL AFFECT PRIVATE RIGHTS OR IMPOSE OBLIGATIONS OR WILL RESULT IN ANY INCREASE IN THE PRICE OF ELECTRICITY TO THE CONSUMERS. HENCEFORTH, NO PROVISIONAL AUTHORITY SHALL BE ISSUED FOR APPLICATIONS FOR RATE ADJUSTMENTS THAT PERTAIN TO BASIC RATE COMPONENTS ATTRIBUTABLE TO THE REGULATED ENTITY SUCH AS, BUT NOT LIMITED TO THE BASIC GENERATION RATE OF NPC, TRANSMISSION WHEELING RATES FOR TRANSCO, TRANSCO CONCESSIONAIRE, AND DISTRIBUTION

RELATED CHARGES FOR DISTRIBUTION COMPANIES. SUCH HEARINGS SHALL BE COMPLETED WITHIN A REASONABLE PERIOD OF TIME WITH REGARD TO FULL DISCUSSION OF ISSUES AS WELL AS ENSURING A TIMELY RESOLUTION OF ISSUES FOR THE DISTRIBUTION COMPANIES: *PROVIDED,* THAT A FINAL DECISION IN FULL SHALL BE RENDERED BY THE COMMISSION NO LATER THAN ONE (1) YEAR FROM THE FILING OF THE RATE APPLICATION: *PROVIDED, FURTHER,* THAT THE RATE APPLICATION SHALL BE AUTOMATICALLY DEEMED APPROVED BY THE COMMISSION IMMEDIATELY UPON THE LAPSE OF THE ONE (1) YEAR PERIOD WITHOUT THE FINAL DECISION RENDERED IN FULL.

THE COMMISSION MAY GRANT PROVISIONAL AUTHORITY FOR OPERATIONAL APPLICATIONS OR PASS-THROUGH CHARGES PROVIDED THAT IN OPERATIONAL APPLICATIONS, THE COMMISSION SHALL IMMEDIATELY SUBJECT SUCH APPLICATIONS TO PUBLIC HEARINGS AND RENDER A FINAL DETERMINATION AND DECISION THEREON NOT LATER THAN ONE HUNDRED TWENTY (120) DAYS FROM THE ISSUANCE OF THE PROVISIONAL AUTHORITY: *PROVIDED, FURTHER*, THAT WITH RESPECT TO APPLICATIONS FOR IMPLEMENTATION OF PASS THROUGH CHARGES ALREADY APPROVED BY THE COMMISSION, THE PROVISIONAL AUTHORITY GRANTED SHALL ONLY BE SUBJECT TO VERIFICATION BY THE COMMISSION.

[Towards this end, it shall] IN ADDITION, THE COMMISSION SHALL PERFORM AND EXERCISE AND be responsible for the following [key] POWERS AND functions [in the restructured industry]:

(a) Enforce the implementing rules and regulations of this Act;

(b) Within six (6) months from the effectivity of this Act, promulgate and enforce, in accordance with law, a National Grid Code and a Distribution Code, which shall include, but not limited to, the following:

(i) Performance standards for TRANSCO O & M Concessionaire, distribution utilities, and suppliers: *Provided*, That in the establishment of the performance standards, the nature and function of the entities shall be considered; [and]

(ii) Financial capability standards for the generating companies, the TRANSCO, distribution utilities, and suppliers: *Provided*, That in the formulation of the financial capability standards, the nature and function of the entity shall be considered: *Provided, further*, That such standards are set to ensure that the electric power industry participants meet the minimum financial standards to protect the public interest[. Determine fix, and approve, after due notice and public hearings the universal charge, to be imposed on all electricity end-users pursuant to Section 34 hereof]; AND

(III) DETERMINE, FIX, AND APPROVE, AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND PUBLIC HEARING, THE ITEMIZED AMOUNTS OF THE UNIVERSAL CHARGE TO BE IMPOSED ON ALL END-USERS OF ELECTRICITY PURSUANT TO SECTION 34 OF THIS ACT.

(c) Enforce the rules and regulations governing the operations of the electricity spot market and the activities of the spot market operator and other participants in the spot market, for the purpose of ensuring a greater supply and rational pricing of electricity;

(d) Determine the level of cross subsidies in the existing retail rate until the same is removed pursuant to Section 74 hereof;

(e) Amend, REVISE, or revoke, after due notice TO ALL INTERESTED PARTIES and PUBLIC hearing, the authority to operate [of]

GRANTED TO any person or entity which fails to comply with the PERTINENT provisions [hereof, the IRR, or any] OF THIS ACT, OR WITH ANY OF THE IMPLEMENTING RULES AND REGULATIONS OF THIS ACT, OR WITH ANY DECISION, order, or resolution of the [ERC.] COMMISSION. In the event a divestment, CESSATION, OR DESISTANCE is required, the [ERC] COMMISSION shall, THROUGH A FORMAL ORDER FOR THAT PURPOSE, allow the affected party [sufficient time] A REASONABLE TIME to remedy the infraction, or [for] TO UNDERTAKE an orderly disposal OF THE MATTER, ACTIVITY, OR BUSINESS INVOLVED, AS THE CASE MAY BE, but [shall] in no case SHALL THE SAID REASONABLE TIME exceed twelve (12) months from the issuance of the SAID FORMAL order[;] OF THE COMMISSION;

(f) [In the public interest establish] ESTABLISH and enforce [a methodology for setting] IN THE INTEREST OF THE GENERAL PUBLIC AND IN THE INTEREST OF THE END-USERS OF ELECTRICITY, AFTER TAKING INTO ACCOUNT ALL RELEVANT CONSIDERATIONS, INCLUDING THE EFFICIENCY OR INEFFICIENCY OF THE REGULATED ENTITIES, AND AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND PUBLIC HEARING, JUST AND REASONABLE transmission and distribution NON-DISCRIMINATORY wheeling [rates and] CHARGES, AS WELL AS JUST AND REASONABLE NON-DISCRIMINATORY 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 rates must be such as to] UTILITIES, WHICH SHALL allow the recovery of ALL just and reasonable costs[,] and [a] GIVE A JUST AND reasonable return on THE rate base (RORB) OF THE REGULATED ENTITIES INCLUDING THE TRANSCO CONCESSIONAIRE to enable [the entity] THEM to operate viably[. The ERC may adopt alternative forms of internationally-accepted rate-setting methodology as it may deem appropriate. The rate-setting methodology so adopted and applied must ensure a reasonable price of electricity. The rates

prescribed shall be non-discriminatory. 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 of rate-setting methodology, which shall promote efficiency. In case the rate setting methodology used is RORB, it shall be subject to the following guidelines:], AND WHICH SHALL ENSURE A JUST AND REASONABLE PRICE OF ELECTRICITY.

THE COMMISSION, TO PROMOTE EFFICIENCY AND FAIRNESS IN THE ELECTRIC POWER INDUSTRY AND WHEN JUSTIFIED AND DEMANDED BY THE NATIONAL INTEREST, MAY ADOPT, AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND PUBLIC HEARING, ANY OTHER ALTERNATIVE FORM OF INTERNATIONALLY-ACCEPTED METHOD OF RATEMAKING THAT SHALL BEST SERVE THE MUTUAL INTEREST OF THE GENERAL PUBLIC, THE END-USERS OF ELECTRICITY, AND THE ELECTRIC INDUSTRY PARTICIPANTS.

THE COMMISSION MAY ADOPT COMMON OR UNIFORM DISTRIBUTION RATES FOR GEOGRAPHICALLY ADJACENT ELECTRIC COOPERATIVES WITHIN A REGION. SUCH UNIFORM RATES MUST BE IMPLEMENTED WITH A MECHANISM TO ACHIEVE A COST-REFLECTIVE TARIFF.

IN EVERY CASE, THE RATEMAKING METHOD SO ADOPTED AND APPLIED MUST BE NEITHER EXTORTIONARY TO THE END-USERS OF ELECTRICITY NOR CONFISCATORY TO THE TRANSCO, TO THE TRANSCO CONCESSIONAIRE OR TO THE DISTRIBUTION UTILITIES, AND MUST FURTHERMORE ENSURE THAT THE PRICE OF ELECTRICITY IS JUST AND REASONABLE. TOWARDS THIS END, THE

COMMISSION SHALL PUBLISH THE REGULATORY GUIDELINES ON THE RATEMAKING METHODOLOGY ADOPTED AND ALL DOCUMENTS RELATED TO ANY DECISIONS SHALL BE CONSIDERED PUBLIC DOCUMENTS FOR PURPOSES OF TRANSPARENCY.

THE RATEMAKING POWER HEREIN GRANTED TO THE COMMISSION MUST BE EXERCISED IN SUCH A MANNER THAT EVERY DOUBT MUST BE RESOLVED IN FAVOR OF THE PROTECTION OF THE RIGHTS OF THE GENERAL PUBLIC.

IN ALL CASES OF RATE-MAKING, THE SOLICITOR GENERAL OR HIS REPRESENTATIVE MUST BE NOTIFIED OF AND SHALL APPEAR IN THE PROCEEDINGS SO THAT THE INTEREST OF THE GENERAL PUBLIC AND THE INTEREST OF THE END-USERS OF ELECTRICITY WILL BE PROTECTED.

IN DETERMINING A JUST AND REASONABLE RETURN ON RATE BASE OF THE TRANSCO, TRANSCO CONCESSIONAIRE OR OF A DISTRIBUTION UTILITY, THE COMMISSION MUST OBSERVE THE FOLLOWING GUIDELINES:

(I) THE RATE BASE SHALL CONSIST OF THE AVERAGE VALUE OF ALL ASSETS, FACILITIES, PROPERTY, AND PERMANENT IMPROVEMENTS OF THE TRANSCO, THE TRANSCO CONCESSIONAIRE OR OF THE DISTRIBUTION UTILITY, AT THE BEGINNING AND AT THE END OF ITS FISCAL YEAR, AS SHOWN IN THE PROPERTY ACCOUNTS OF THE TRANSCO OR OF THE DISTRIBUTION UTILITY, AS THE CASE MAY BE, WHICH ARE DIRECTLY USED AND USEFUL IN PROVIDING THE SERVICE TO THE END-USERS OF ELECTRICITY, LESS THE ACCRUED ALLOWANCE FOR DEPRECIATION TAKEN FOR THE YEAR ON THE REGULATED ENTITY'S DEPRECIABLE ASSETS, FACILITIES, PROPERTY, AND PERMANENT IMPROVEMENTS, PLUS TWO MONTHS PRUDENT OPERATING CAPITAL.

(II) THE VALUE OF THE FRANCHISE OF THE TRANSCO, THE CONCESSION OR OF THE DISTRIBUTION UTILITY SHALL NOT BE INCLUDED IN THE RATE BASE FOR PURPOSES OF RATEMAKING.

[(i)] (III) [For purposes of determining the rate base, the] THE TRANSCO, TRANSCO CONCESSIONAIRE or [any] A distribution utility [may be allowed] IS AUTHORIZED to revalue its [eligible] assets [not more than], FACILITIES, PROPERTY, AND PERMANENT IMPROVEMENTS CONSTITUTING ITS RATE BASE once every three (3) years [by an] THROUGH THE SERVICES OF AN EXPERIENCED, WELL-ESTABLISHED, REPUTABLE, AND independent appraisal company[:], IN ACCORDANCE WITH SOUND AND CONSISTENTLY MAINTAINED METHOD OF VALUATION: *Provided, however*, That [ERC] THE COMMISSION may [give an exemption in case of unusual] TEMPORARILY SUSPEND THE AFORESAID THREE YEAR LIMITATION IN THE EVENT OF EXTRAORDINARY INFLATION OR devaluation[:] OF THE PESO AND ONLY FOR THE PERIOD THAT SUCH EXTRAORDINARY INFLATION OR DEVALUATION LASTS: *Provided, further*, That the [ERC] COMMISSION, IN THAT EVENT, shall exert [efforts to] EVERY EFFORT TO PREVENT AND/OR minimize THE STEEP AND RAPID ESCALATION OF THE price [shocks] OF ELECTRICITY in order to protect the [consumers;] END-USERS OF ELECTRICITY.

(IV) THE ONE PERCENT (1%) ADMINISTRATIVE USE OF ELECTRICITY BY DISTRIBUTION UTILITIES SHALL BE REMOVED AS PART OF THE SYSTEM LOSS CHARGE THAT MAY BE PASSED ON TO THE END-USERS. THE ERC SHALL ENSURE THAT ALL DISTRIBUTION UTILITIES SHALL BILL ELECTRICITY FOR THEIR RESPECTIVE OWN COMPANY USE AT EFFICIENT LEVELS AND WHICH SHALL BE TREATED AS PART OF NECESSARY OPERATING EXPENSES. THE ERC IS LIKEWISE MANDATED TO TAKE MEASURES FOR THE PROPER

ALLOCATION AND REDUCTION OF SYSTEM LOSS BY REVIEWING THE ALLOWABLE SYSTEMS LOSS CAPS PRESCRIBED IN SECTION 10 OF REPUBLIC ACT NO. 7832, OR THE ANTI-ELECTRICITY PILFERAGE ACT OF 1994, AND TO GRANT INCENTIVES TO DISTRIBUTION UTILITIES FOR REDUCING SYSTEM LOSSES BELOW THE MANDATED CAPS, SUCH THAT CONSUMERS AND DISTRIBUTION UTILITIES SHARE EQUITABLY IN THE EFFICIENCY GAINS.

(V) CORPORATE INCOME TAX LEVIED ON THE NET TAXABLE INCOME OF THE TRANSCO, TRANSCO CONCESSIONAIRE OR OF A DISTRIBUTION UTILITY SHALL NOT BE PASSED ON TO THE END-USERS OF ELECTRICITY WHILE STILL PROVIDING AN ALLOWABLE AFTER TAX RETURN TO THE TRANSCO AND THE DISTRIBUTION UTILITY COMPARABLE TO OTHER INDUSTRIES WITH SIMILAR INVESTMENT RISK PROFILE.

[(ii)] (VI) Interest expenses [are not allowable] OF THE TRANSCO, TRANSCO CONCESSIONAIRE OR OF A DISTRIBUTION UTILITY SHALL NOT BE ALLOWED AS deductions [from permissible] FOR PURPOSES OF DETERMINING A JUST AND REASONABLE return on rate base[;].

[(iii)] (VII) [In] FOR PURPOSES OF determining [eligible] THE JUST AND REASONABLE cost of services that will be passed on to the end-users[,] OF ELECTRICITY, the [ERC] THE COMMISSION shall establish minimum efficiency performance standards for the TRANSCO and THE distribution utilities, including systems losses, interruption frequency rates, and collection efficiency[;] OF THE REGULATED ENTITIES[.] INCLUDING THE TRANSCO CONCESSIONAIRE. THE COMMISSION SHALL DETERMINE AND FIX, FOLLOWING DUE NOTICE TO ALL INTERESTED PARTIES AND PUBLIC HEARING, A CAP ON THE MAXIMUM TRANSMISSION SYSTEM LOSSES THAT TRANSCO SHALL MAINTAIN FOR THE EFFICIENT OPERATION OF THE LUZON,

VISAYAS AND MINDANAO GRIDS, INCLUDING A PENALTY/INCENTIVE SYSTEM.

[(iv)] (VIII) [Further, in] IN determining THE rate base[,] OF THE TRANSCO OR OF ANY DISTRIBUTION UTILITY, THE COMMISSION SHALL NOT ALLOW the TRANSCO or any distribution utility [shall not be allowed] to include THE COSTS OF management inefficiencies [like cost], SUCH AS, BUT NOT LIMITED TO,. THE COSTS of project delays not [excused] EXCUSABLE by *force majeure*[,] OR THE penalties and related interest CHARGES ARISING during construction [applicable to these unexcused delays; and] PERIOD BECAUSE OF SAID INEXCUSABLE DELAYS.

[(v)] (IX) Any significant operating costs or project investments of the TRANSCO, THE TRANSCO CONCESSIONAIRE and OF A distribution [utilities] UTILITY, which shall become part of the rate base, shall be subject to [verification by the ERC] THE APPROVAL OF THE COMMISSION, AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND PUBLIC HEARING, IN ORDER to ensure that the [contracting and] procurement of the equipment, assets, and OR services [have been subjected to] AS WELL AS THE TERMS AND CONDITIONS OF THE CONTRACT OR CONTRACTS COVERING SUCH PROCUREMENT SHALL BE DONE IN ACCORDANCE WITH OPEN COMPETITIVE PUBLIC BIDDING AND IN COMPLIANCE WITH THE REQUIREMENTS OF EXISTING APPLICABLE PROCUREMENT LAWS, AS WELL AS IN ACCORDANCE WITH transparent and accepted industry procurement and purchasing practices to protect the public interest;

(g) Three (3) years after the imposition of the universal charge, ensure that the charges of the TRANSCO, THE TRANSCO CONCESSIONAIRE or any distribution utility shall bear no cross subsidies between grids, within grids, or between classes of customers, except as provided herein;

(h) Review and approve any changes on the terms and conditions of service of the TRANSCO, THE TRANSCO CONCESSIONAIRE or any distribution utility;

(i) Allow the TRANSCO OR TRANSCO 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;

(j) Set a lifeline rate for the marginalized end-users;

(k) Monitor and take measures in accordance with this Act to penalize abuse of market power, cartelization, and anti-competitive or discriminatory behavior by any electric power industry participant;

(l) Impose fines or penalties for any non-compliance with or breach of this Act, the IRR of this Act, and the rules and regulations which it promulgates or administers;

(m) Take any other action delegated to it pursuant to this Act;

(n) Before the end of April of each year, submit to the Office of the President of the Philippines and Congress, copy furnished the DOE, an annual report containing such matters or cases which have been filed before or referred to it during the preceding year, the actions and proceedings undertaken , and its decision or resolution in each case. The ERC shall make copies of such reports available to any interested party upon payment of a charge which reflects the printing costs. The ERC shall publish all its decisions involving rates and anti-competitive cases in at least one (1) newspaper of general circulation, and/or post electronically, and circulate to all interested electric power industry participants copies of its resolutions to ensure fair and impartial treatment;

(o) Monitor the activities in the generation and supply of the electric power industry with the end in view of promoting free market competition and ensuring that the allocation or pass through of bulk purchase cost by distributors

is transparent, non-discriminatory and that any existing subsidies, shall be divided pro-rata among all retail suppliers;

(p) Act on applications for or modifications of certificates of public convenience and/or necessity, licenses, or permits of franchised electric utilities in accordance with law; and revoke, review, and modify such certificates, licenses or permits in appropriate cases, such as in cases of violations of the Grid Code, Distribution Code, and other rules and regulations issued by the ERC in accordance with law;

(q) Act on applications for cost recovery and return on demand side management projects;

(r) In the exercise of its investigative and quasi-judicial powers, 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) 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) Perform such other regulatory functions as are appropriate and necessary in order to ensure the successful restructuring and modernization of the electric power industry, such as, but not limited to, the rules and guidelines, under which generation companies, distribution utilities which are not publicly listed shall offer and sell to the public a portion, not less than fifteen percent (15%) of their common shares of stocks: *Provided, however*, That generation companies, distribution utilities or their respective holding companies that are already listed

in the PSE are deemed in compliance. For existing companies, such public offering shall be implemented not later than five (5) years from the effectivity of this Act. New companies shall implement their respective public offerings not later than five (5) years from the issuance of their certificate of compliance; and

(u) The ERC shall have the original and exclusive jurisdiction over all cases contesting rates, fees, fines, and penalties imposed by the ERC in the exercise of the above-mentioned powers, functions and responsibilities, and over all cases involving disputes between and among participants or players in the energy sector.

All notices of hearings to be conducted by the ERC for the purpose of fixing rates or fees shall be published at least twice for two successive weeks in two (2) newspapers of nationwide circulation."

SEC. 18. Section 45 of the Act 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] SHALL engage in any KIND OF anti-competitive behavior, including, but not limited to, cross-subsidization, price or market manipulation, or ANY other unfair trade practices THAT ARE detrimental to the DEVELOPMENT, encouragement, and protection of THE contestable markets.

No generation company, distribution utility, A COMPANY SUPPLYING ELECTRICITY, or ANY OF its [respective subsidiary or affiliate or stockholder or official of a generation company or distribution utility, or other entity engaged in generating and supplying electricity specified by ERC] SUBSIDIARIES, AFFILIATES, STOCKHOLDERS, OFFICIALS, OR DIRECTORS, OR THE OFFICIALS, DIRECTORS, OR OTHER STOCKHOLDERS OF SUCH SUBSIDIARIES OR AFFILIATES, OR ANY RELATIVES OF SUCH STOCKHOLDERS, OFFICIALS, OR DIRECTORS within the fourth civil degree of consanguinity or affinity, shall be allowed to HAVE AND hold, DIRECTLY OR INDIRECTLY, any interest[, directly or indirectly,] in THE

TRANSCO or [its] IN THE TRANSCO'S concessionaire. Likewise, the TRANSCO, or its concessionaire, or any of [its] THE stockholders, [or] officials, OR DIRECTORS OF THE TRANSCO OR ITS CONCESSIONAIRE, or any [of their] relatives OF SUCH STOCKHOLDERS, OFFICIALS OR DIRECTORS OF THE TRANSCO OR ITS CONCESSIONAIRE within the fourth civil degree of consanguinity or affinity, shall not BE ALLOWED TO HAVE AND hold, DIRECTLY OR INDIRECTLY, any interest[, whether directly or indirectly,] in any generation company, [or] distribution utility[.], OR A COMPANY SUPPLYING ELECTRICITY. Except for *ex officio* government-appointed representatives, no [person who is an] officer or director, OR STOCKHOLDER of the TRANSCO or [its] OFFICER, DIRECTOR, OR STOCKHOLDER OF THE TRANSCO'S concessionaire shall be an officer or director of any generation company, distribution utility, or [supplier.] A COMPANY SUPPLYING ELECTRICITY.

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

(a) No company or related group [can] SHALL BE ALLOWED TO own, operate or control more than thirty percent (30%) of the installed generating capacity of a grid and/or twenty-five (25%) of the [national] installed NATIONAL generating capacity. "Related group" includes a person's business interests, including its subsidiaries, affiliates, directors or officers or any of their relatives by consanguinity or affinity, legitimate or common law, within the fourth civil degree;

(b) Distribution utilities may enter into bilateral power supply CONTRACT OR contracts FOR THEIR CAPTIVE CUSTOMERS subject to review AND APPROVAL by the [ERC:] COMMISSION, AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND PUBLIC HEARING FOR PURPOSES OF DETERMINING AND APPROVING THE ALLOWABLE

PASS-THROUGH GENERATION RATES[:]. [*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]

IN ORDER TO PREVENT ABUSE OF MARKET POWER AND ANTI-COMPETITIVE BEHAVIOR, NO DISTRIBUTION UTILITY SHALL BE ALLOWED TO SOURCE FROM A BILATERAL ELECTRIC POWER SUPPLY CONTRACT OR CONTRACTS MORE THAN FIFTY PERCENT (50%) OF ITS TOTAL ELECTRIC POWER SUPPLY REQUIREMENTS FROM ANY GENERATION COMPANY OR GROUP OF GENERATING COMPANIES WHOLLY OWNED OR CONTROLLED BY THE SAME INTERESTS: *PROVIDED, FURTHER,* THAT SUCH BILATERAL CONTRACTED CAPACITY SHALL NOT EXCEED TWENTY PERCENT (20%) OF THE INSTALLED CAPACITY OF THE GRID AS MAY BE DETERMINED BY THE ERC. ANY DISTRIBUTION UTILITY THAT HAS, ON THE EFFECTIVITY OF THIS ACT, SUCH CONTRACT OR CONTRACTS WHICH EXCEED THE ALLOWABLE FIFTY PERCENT (50%) LIMIT SET FORTH HEREIN SHALL DESIST FROM FURTHER AWARDING ADDITIONAL ELECTRIC POWER SUPPLY CONTRACT OR CONTRACTS WITH ANY GENERATION COMPANY OR GROUP OF GENERATING COMPANIES WHOLLY OWNED OR CONTROLLED BY THE SAME INTERESTS, UNTIL ITS PRESENT ELECTRIC POWER

SUPPLY REQUIREMENTS, WHEN ADDED TO THE PROPOSED ADDITIONAL ELECTRIC POWER SUPPLY CONTRACT OR CONTRACTS WITH ANY GENERATION COMPANY OR GROUP OF GENERATING COMPANIES WHOLLY OWNED OR CONTROLLED BY THE SAME INTERESTS SHALL COMPLY WITH THE FIFTY PERCENT (50%) LIMIT AND TWENTY PERCENT (20%) GRID CAPACITY LIMIT SET FORTH HEREIN: *PROVIDED,* THAT ANY EXTENSION OR EXPANSION OF EXISTING ELECTRIC POWER SUPPLY CONTRACT OR CONTRACTS SHALL BE DEEMED AS NEW CONTRACT OR CONTRACTS FOR PURPOSES OF THE LIMITATION SET FORTH HEREIN.

(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] THE DISTRIBUTION UTILITIES SHALL SUBMIT OR FILE WITH THE COMMISSION ITS SUPPLY MANAGEMENT PROGRAM TO ENSURE COMPLIANCE WITH ITS OBLIGATION TO SUPPLY ELECTRICITY IN THE LEAST COST MANNER TO ITS CAPTIVE MARKET. THIS SUBMISSION SHALL BE CONSIDERED CONFIDENTIAL AND PROPRIETARY: *PROVIDED,* THAT THE COMMISSION, MAY, *MOTU PROPRIO*, COMMENCE INVESTIGATION AND PROCEEDINGS AGAINST THE DISTRIBUTION UTILITY FOR FAILURE TO COMPLY WITH THE OBLIGATION TO SUPPLY ELECTRICITY IN THE LEAST COST MANNER: *PROVIDED,* THAT IF THE COMMISSION FINDS, AFTER AN INVESTIGATION CONDUCTED, FOR THAT PURPOSE, THAT THE COST OF THE PROCURING ELECTRIC POWER IN BILATERAL CONTRACTS IS MORE EXPENSIVE THAN THE PRICE OF ELECTRIC POWER IN THE WHOLESALE ELECTRICITY SPOT MARKET, THE DISTRIBUTION UTILITIES SHALL BE PENALIZED IN ACCORDANCE WITH THE SCALE OF PENALTIES HEREUNDER PROVIDED: (A) FIRST OFFENSE, FINE

RANGING FROM Php100,000.00 TO Php500,000.00; (B) SECOND OFFENSE, FINE RANGING FROM Php500,000.00 TO 1 MILLION PESOS: *PROVIDED,* THAT THE SECOND OFFENSE SHALL BE *PRIMA FACIE* EVIDENCE OF COLLUSSION AND THE GENERATION COMPANIES SHALL SUFFER THE SAME PENALTY AS THAT IMPOSED TO THE DISTRIBUTION UTILITY. THE COMMISSION IS HEREBY MANDATED TO REVIEW THE ELECTRICITY SUPPLY COST OF THE DISTRIBUTION UTILITIES EVERY THREE (3) MONTHS.

For purposes of this Section, the grid basis shall consist of three (3) separate grids, namely: Luzon, Visayas, and Mindanao. The ERC shall have the authority to modify or amend this definition of a grid when two or more of the three separate grids become sufficiently interconnected to constitute a single grid, or as conditions may otherwise permit.

Exceptions from these limitations shall be allowed for isolated grids that are not connected to the high voltage transmission system. [Except as otherwise provided for in this Section, any restriction on ownerships and/or control between or within sectors of the electricity industry may be imposed by ERC only insofar as the enforcement of the provisions of this Section is concerned].

The [ERC] COMMISSION shall, within one (1) year from the effectivity of this Act, promulgate rules and regulations, CONSISTENT WITH THE PROVISIONS OF THIS ACT, to ensure and promote competition, encourage market development, [and] customer choice, and [discourage/penalize] DETER AND/OR PENALIZE ANY abuse of market power, cartelization, [and] OR any anti-competitive or discriminatory behavior, in order to further the intent of this Act and IN ORDER TO protect the [public] interest[.] OF THE GENERAL PUBLIC AND THE END-USERS OF ELECTRICITY. Such rules and regulations shall COVER AND define the following:

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

(b) areas of isolated grids; and

(c) the periodic reportorial requirements of electric power industry participants as may be necessary to enforce the provisions of this Section.

The [ERC] COMMISSION shall, *motu proprio,* monitor and, WHEN WARRANTED BY THE ATTENDANT FACTS, penalize any SUCH MONOPOLIZATION, CARTELIZATION, ABUSE OF market power [abuse] or anti-competitive AND/or discriminatory act or behavior by any [participant in the] electric power industry[.] PARTICIPANT. Upon finding that [a market] AN ELECTRIC POWER INDUSTRY participant has engaged in such MONOPOLIZATION, CARTELIZATION, ABUSE OF MARKET POWER, OR ANTI-COMPETITIVE AND/OR DISCRIMINATORY act or behavior, the [ERC] COMMISSION shall FORTHWITH ISSUE A CEASE AND DESIST ORDER TO THE ERRING ELECTRIC POWER INDUSTRY PARTICIPANT, AND THEREAFTER PERMANENTLY stop and redress the same. Such [remedies shall, without limitation, include] REDRESS SHALL INCLUDE AMONG OTHER REMEDIES THAT MAY BE APPROPRIATE UNDER THE CIRCUMSTANCES, the imposition of price [controls,] CONTROL, THE issuance of [injunctions, requirement of] INJUNCTIVE RELIEF, AND THE divestment or disgorgement of excess profits, and THE imposition of fines and penalties pursuant to THE APPLICABLE PROVISIONS OF this Act: *PROVIDED, HOWEVER,* THAT ANY PERSON OR ENTITY FOUND GUILTY OF THE ABOVESTATED PROHIBITED ACTS IN THIS SECTION SHALL SUFFER THE FOLLOWING PENALTIES: (A) FIRST OFFENSE, *ARESTO MAYOR* OR FINE RANGING FROM Php100,000.00 TO Php500,000.00, OR BOTH AT THE DISCRETION OF THE COURT; (B) SECOND OFFENSE, *PRISION CORRECCIONAL* OR FINE RANGING FROM 1 MILLION PESOS TO 5 MILLION PESOS, OR BOTH AT THE DISCRETION OF THE COURT; AND (C) THIRD OFFENSE, *PRISION MAYOR* OR FINE RANGING FROM 6 MILLION PESOS TO 10 MILLION

PESOS, OR BOTH AT THE DISCRETION OF THE COURT: *PROVIDED,* THAT, THE THIRD OFFENSE WILL ALSO MERIT A SUSPENSION OF THE FRANCHISE OR LICENSE OF THE ERRING UTILITY.

IF THE OFFENDER IS A CORPORATE ENTITY, THE PENALTY OF IMPRISONMENT SHALL BE IMPOSED UPON THE OFFICERS, AND DIRECTORS WHO KNOWINGLY, OR BY NEGLECT ALLOWED THE COMMISSION OF THE PROHIBITED ACT.

The [ERC] COMMISSION shall, within one (1) year from the effectivity of this Act, promulgate SUCH rules [and regulations providing for a complaint procedure that, without limitation, provides] AS MAY BE NECESSARY, NOT INCONSISTENT WITH THE PROVISIONS OF THIS ACT, THAT WILL ESTABLISH A PROCEDURE WHEREBY the accused party, with DUE notice [and] TO ALL INTERESTED PARTIES AND PUBLIC HEARING, SHALL BE GIVEN BY THE COMMISSION an opportunity to be heard."

SEC. 19. Section 48 of the Act is hereby amended to read as follows:

"SEC. 48. *National Power Board of Directors.* – Upon the passage of this Act, Section 6 of R.A. 6395, as amended, and Section 13 of RA 7683, as amended, referring to the composition of the National Power Board of Directors, are hereby repealed and a new Board shall be immediately organized. The new Board shall be composed of the Secretary of Finance as Chairman, with the following as members: the Secretary of Energy, the Secretary of Budget and management, the Secretary of Agriculture, the Director General of the National Economic and Development Authority, the Secretary of Environment and Natural Resources, the Secretary of Interior and Local Government, the Secretary of Trade and Industry, [and] the President of the National Power Corporation AND THE PRESIDENT OF THE POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION."

SEC. 20. Section 51 of the Act is hereby amended to read as following:

"SEC. 51 *Powers.* – The Corporation shall, in the performance of its functions and for the attainment of its objective, have the following powers:

(a.) To formulate and implement a program for the sale and privatization of the NPC assets and IPP contracts and the liquidation of NPC debts and stranded contract costs, such liquidation to be completed within the term of existence of the PSALM Corp.;

(b.) To take title to and possession of, administer and conserve the assets transferred to it; to sell or dispose of the same at such price and under such terms and conditions as it may deem necessary or proper, subject to applicable laws, rules and regulations.

(c.) To take title to and possession of the NPC IPP contracts and to appoint, after public bidding in transparent and open manner, qualified independent entities who shall act as the IPP Administrators in accordance with this Act;

(d.) To calculate the amount of the stranded debts and stranded contract costs of NPC [which shall form the basis for ERC in the determination of the universal charge];

(e.) To liquidate the NPC stranded contract costs utilizing proceeds from sales and other property contributed to it, including the proceeds from the universal charge;

(f.) To adopt rules and regulations as may be necessary or proper for the orderly conduct of its business or operations;

(g.) To sue and be sued in its name;

(h.) To appoint or hire, transfer, remove and fix the compensation of its personnel: Provided, however, That the Corporation shall hire its own personnel only if absolutely necessary, and as far as practicable, shall avail itself of the services of personnel detailed from other government agencies;

(i.) To own, hold, acquire, or lease real and personal properties as may be necessary or required in the discharge of its functions;

(j.) To borrow money and incur such liabilities, including the issuance of bonds, securities or other evidences of indebtedness utilizing its assets as collateral and/or through the guarantees of the National Government: Provided, however, That all such debts or borrowings shall have been paid off before the end of its corporate life;

(k.) To restructure existing loans of NPC;

(l.) To collect, administer, and apply NPC's portion of the universal charge; and

(m.) To restructure the sale, privatization or disposition of NPC assets and IPP contacts which shall optimize the value and sale prices of said assets.

(n.) TO HAVE ACCESS AT ALL TIMES AND EXAMINE, INSPECT, AUDIT, TAKE COPIES OF BOOKS OF ACCOUNTS, FINANCIAL STATEMENTS, DOCUMENTS, PAPERS, CONTRACTS ENTERED INTO, PERTAINING TO THE REMITTANCES AND UTILIZATION OF THE UNIVERSAL CHARGE;

(o.) TO BRING OR DEFEND ACTIONS FOR THE PROTECTION, PRESERVATION, RECOVERY OF THE SPECIAL TRUST FUND TO THE BENEFICIARIES OF THE UNIVERSAL CHARGE; AND

(p.) TO EXERCISE THE POWER OF EMINENT DOMAIN SUBJECT TO THE REQUIREMENTS OF THE CONSTITUTION AND EXISTING LAWS.

SEC. 21. Section 70 of the Act is hereby amended as follows:

"SEC. 70. *Missionary Electrification.* – Notwithstanding the divestment and/or privatization of NPC assets, IPP contracts and spun-off corporations, NPC shall remain as a National Government-owned and –controlled corporation to

perform the missionary electrification function through the Small Power Utilities Group (SPUG) and shall be responsible for providing power generation and its associated power delivery systems in areas that are not connected to the transmission system. The missionary electrification function shall be funded from the revenues from sales in missionary areas and from the universal charge to be collected from all electricity end-users as determined by the ERC.

IN ADDITION TO THE NPCs SPUG, THE ELECTRIC COOPERATIVE SHALL ALSO HAVE ACCESS TO THE MISSIONARY ELECTRIFICATION FUND COLLECTED THROUGH THE UNIVERSAL CHARGES."

SEC. 22. *Separability Clause.* — If for any reason, any provision of this Act is declared unconstitutional or invalid, the other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

SEC. 23. *Applicability and Repealing Clause.* — The applicable provisions of Commonwealth Act No. 146, as amended, otherwise known as the "Public Services Act"; Republic Act 6395, as amended, revising the charter of NPC; Presidential Decree 269, as amended, referred to as the National Electrification Decree; Republic Act 7638, otherwise known as the Department of Energy Act of 1992; Republic Act 7832 otherwise known as the Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994, shall continue to have full force and effect, except insofar as such acts and decree, and only to that extent, are inconsistent with any of the provisions of this Act.

Presidential Decree No. 40 and all laws, decrees, rules and regulations, or portions thereof, inconsistent with this Act are hereby repealed or modified accordingly.

SEC. 24. *Effectivity Clause.* — This Act shall take effect on the fifteenth day following its publication in at least two (2) national papers of general circulation.

Approved,