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SENATE

S. No. 2051

RECEIVED BY: *jni*

Introduced by Senator Antonio "Sonny" F. Trillanes IV

EXPLANATORY NOTE

When President Fidel V. Ramos assumed presidency in 1992, he was welcomed by a crippling power crisis throughout the country prompting him to seek emergency powers from Congress. Republic Act No. 7648, otherwise known as the "Electric Power Crisis Act of 1993", granted emergency powers to then President Ramos to respond to the alarming shortage of the supply of electricity during that period.

RA 7648 allowed special constitutional powers to issue licenses to independent power producers (IPP) for the construction, repair, rehabilitation, improvement or maintenance of power plants, projects and facilities. This effectively fast tracked the usually long and tedious process required to bid out government projects. Moreover, said law also created an oversight committee in each House of Congress to monitor the implementation of the same and the exercise of authority granted under the law.

However, the authority granted under RA 7648 was only valid for a period of one (1) year from its effectivity.

Sadly, challenges that beset the power industry have not ceased. Early last year saw the recurrence of intermittent power brownouts in Mindanao, and no less than the President admitting that said power problem has been neglected for years.

Moreover, just before 2013 ended, Manila Electric Company (Meralco), the largest power distributor in the country, announced its plan to raise electricity rates by Php 4.15 per kilowatt hour, the highest in the country's history, when it was forced to buy expensive electricity from the Wholesale Electricity Spot Market (WESM) after its major source of power, the Malampaya natural gas platform, went on a maintenance shutdown from November 10 to December 11.

Thereafter, at the start of the year, following the High Court's 60-day freeze on the planned power rate hike this January, Meralco warned of rotating blackouts in the summer if the bleak possibility that generation companies might altogether refuse to sell electricity to Meralco ensues. Worse, Meralco adds that said generation companies may decide to sell only such amount of electricity as is commensurate to the resulting rate of P5.6673 per kilowatt-hour.

It is therefore not surprising that renewed calls on the grant of emergency powers to the President to expeditiously address the looming energy crisis have surfaced.

It is in light of all the foregoing that this measure granting emergency powers to the President to address the looming power crises is being put forward.

With the powers granted under this Bill, the President can expedite and fast track the approval, establishment and operationalization of power generation projects. With more players and alternative sources of power, it is expected that the additional capacity will not only address the growing demand but also promote competition and result to lower power rates.

Out of the abundance of caution, however, this measure expressly prohibits the government from granting sovereign guarantee for the payment of obligations incurred by the Independent Power Producers (IPPs).

Likewise, this measure proscribes the inclusion of onerous "take or pay" contracts or similar provisions which appeared to have been abused in the past.


Whenever it is necessary for the national welfare and in the public interest, and pursuant to the policy declared under the Bill, the President is likewise authorized to compel IPPs to supply power to distribution utilities and power distribution cooperatives to ensure the availability of power to end-users, with the power to fix a reasonable rate of return on rate base for the concerned IPPs, not to exceed twelve percent (12%) per annum.

Finally, in order to prevent the imposition of the additional burden unto consumers who are already reeling not only from the recent calamities but also from seemingly endless actual and/or threatened increases in the cost of gasoline and diesel, liquefied petroleum gas (LPG), water, transport fare as well as in the premium contributions imposed by the Social Security System and PhilHealth, the President shall also be empowered to authorize and allow the use of the Special Funds which include the Malampaya Fund to finance the maintenance, rehabilitation, and replacement of energy infrastructure in preparation for and/or in response to natural and man-made calamities, as well as to finance subsidy for energy consumption by end users in case of market failure.

Armed with the extra-ordinary powers granted under this Bill, it is expected that the President would be able to address and ultimately resolve the looming power crisis, if not immediately, at least in the short and medium term.

More importantly, the President would also be in a better position to protect consumers and the public-at-large from the debilitating effects not only of rotating blackouts but also from the unprecedented and record-setting increases in the cost of power.


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


ANTONIO "SONNY" F. TRILLANES IV
Senator

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AN ACT
PRESCRIBING URGENT MEASURES NECESSARY AND PROPER TO
EFFECTIVELY ADDRESS THE ELECTRIC POWER CRISIS AND FOR OTHER
RELATED PURPOSES

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

1 SECTION 1. *Short Title.* – This Act shall be known as the “*Electric Power Crisis Act of*
2 *2014*”.

3

4 SEC. 2. *Declaration of Policy.* – It is hereby declared the policy of the State to adopt
5 adequate and effective measures to address electric power crisis which threatens to disrupt the
6 country’s economic and social life and which is looming to assume the nature and magnitude of
7 a public crisis if not a calamity, if not properly addressed.

8

9 SEC. 3. *Negotiated Contracts.* – Pursuant to the above declared policy and in the public
10 interest and whenever it is advantageous to the Government and the public, the President may
11 enter into negotiated contracts for the construction, repair, rehabilitation, improvement and/or
12 maintenance of power plants, projects and facilities, subject to the following requirements:

13 a) In order to inform competitive contractors, the list of projects to be undertaken under
14 this Act, together with their description, the budgetary estimates involved and other
15 salient features, shall be published in a newspaper of general circulation thirty (30)
16 days after the effectivity of this Act;

- 1 b) Upon perfection of the contract, the terms and conditions of the same, with the name
2 and qualifications of the contractor, shall likewise be published in a newspaper of
3 general circulation two (2) weeks before the signing of the contract;
- 4 c) The contracts shall be awarded only to contractors with:
- 5 i) proven competence and experience in similar projects;
- 6 ii) competent key personnel and sufficient and reliable equipment; and
- 7 iii) sound financial capacity; and
- 8 d) All the awarded projects shall be subject to existing government auditing rules and
9 regulations governing negotiated contracts.

10 *Provided*, That the President shall not grant sovereign guarantee for the payment of
11 obligations incurred by the independent power producers (IPPs); *Provided further*, That the
12 President shall not enter into negotiated contracts which will bring the total production capacity
13 in excess of the power requirement of the country as projected by the Department of Energy
14 (DOE); *Provided finally*, that no take-or-pay contracts or similar onerous provisions shall be
15 entered into in the exercise of the powers provided in this Act.

16

17 **SEC. 4. Power To Compel IPPs To Supply Power; Return on Rate Base.** – Further
18 pursuant to the above declared policy, the President is hereby authorized, whenever it is
19 necessary for the national welfare and in the public interest, to compel IPPs to supply power to
20 distribution utilities and/or power distribution cooperatives and to fix the rate of return of the
21 IPPs to a reasonable percentage of their rate base, as may be determined by the President in
22 consultation with IPPs and other stakeholders; *Provided*, That said rate of return on rate base
23 shall not exceed twelve percent (12%) per annum.

24 Any increase in power rates shall take effect only upon approval of the Energy
25 Regulatory Commission (ERC), and only after proper notice, hearing and due proceedings.

1 **SEC. 5. Authority Of The President To Tap Available Funds Including Special Funds.**

2 – Likewise pursuant to the above declared policy and whenever it is necessary for the national
3 welfare and in the public interest, the President is hereby empowered to authorize and allow the
4 use of all available funds, including the savings of the Government from its operations in the
5 current and previous years, as well as Special Funds, including the Special Fund created under
6 Presidential Decree No. 910 otherwise known as the “*Malampaya Fund*”, to finance the
7 maintenance, rehabilitation, and replacement of energy infrastructure in preparation for and/or in
8 response to natural and man-made calamities, as well as to finance subsidy for energy
9 consumption by end users in case of market failure.

10
11 **SEC. 6. Duration of Grant of Powers.** – The authority granted to the President under this

12 Act shall subsist, be valid and effective for a period of one (1) year from the effectivity of this
13 Act, unless sooner withdrawn by a resolution of Congress, without prejudice to rights and
14 benefits that may have been vested, and culpabilities and liabilities that may have been incurred.

15
16 **SEC. 7. Oversight Committees.** – There is hereby created an Oversight Committee in

17 each House of Congress to be composed of five (5) members each, as may be designed by the
18 Senate President and the Speaker of the House of Representatives, to monitor the implementation
19 of this Act and ensure compliance with the provisions hereof and the proper exercise of the
20 authority granted thereunder.

21 The Oversight Committees shall submit periodic reports, evaluations and
22 recommendations to the Senate and the House of Representatives.

23
24 **SEC. 8. Report to Congress.** – The President shall submit a quarterly report to Congress

25 on the implementation of this Act.

1 **SEC. 9. Separability Clause.** – If for any reason any provision of this Act is declared
2 unconstitutional or invalid, other parts or provisions hereof which are not affected thereby shall
3 continue to be in full force and effect.

4

5 **SEC. 10. Repealing Clause.** – All laws, decrees, orders, rules and regulations, or portions
6 thereof, inconsistent with this Act are hereby expressly repealed and/or modified accordingly.

7

8 **SEC. 11. Effectivity Clause.** – This Act shall take effect on the day following its
9 publication in at least two (2) national newspapers of general circulation in the country or the
10 Official Gazette.

Approved,