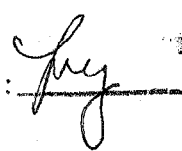


THIRTEENTH CONGRESS OF THE REPUBLIC }
OF THE PHILIPPINES }
First Regular Session }

'04 JUN 30 P10:12

SENATE

RECEIVED BY: 

S. No. 1062

Introduced by Senator Edgardo J. Angara

EXPLANATORY NOTE

From 1998 to 2002, the electric bills of end-users for the same usage tripled, increasing by 201%. Nearly half of the amount billed to end-users consists of the Purchase Power Adjustment, or PPA. The PPA is an automatic monthly adjustment to *basic electric bills to recover the changes in the cost of power purchased from private producers*. The PPA is broad enough to allow power generators and distributors to pass on to consumers the cost of its mistakes and inefficiencies as well as the burden of the onerous contracts entered into by the National Power Corporation and distribution utilities with independent power producers.

Although end-users have been charged the PPA since the early 1990's, it was only during the passage of Republic Act No. 9136, or the Electric Power Industry Reform Act ("EPIRA"), in 2001 that charging the PPA to end-users was recognized. The EPIRA also authorizes the imposition of a "universal charge" on end-users to replace the PPA.

It is no coincidence therefore, that the passage of the EPIRA was accompanied by increases in electric bills.

This, despite the escalating poverty in the country and the assurances by President Arroyo that the EPIRA would translate to lower electric bills.

The EPIRA is evidently anti-poor and anti-people, benefiting only a few power generators and distributors. It results in electricity cost that is ore burdensome on consumers.

It is in our national interest to pass an amendatory law that is pro-people, lessening the hardship of the majority of consumers that can no longer afford to pay for their electric bills. We need a drastic, real and substantial solution to make the cost of electricity affordable to the consumers.

This bill seeks to lessen the hardships on consumers by preventing power generators and distributors from passing on the costs of their inefficiency, mistakes and questionable onerous contracts they have entered into to the end-users through the following means:

- 1) Cost-sharing of stranded costs of NPC between the NPC and the end-users, the amount to be shouldered by end-users shall be limited to twenty three centavos (P0.23);
- 2) Mandatory requirement by distribution utilities to refinance their stranded contract costs, the cost of refinancing together with the stranded cost recovery being capped at a maximum of twenty three centavos per kilowatt hour (P0.23/kwh);
- 3) Limitation of PPA charged by distribution utilities to twenty three centavos (P0.23);
- 4) Exemption from PPA of end-users consuming less than 100 KWH a month;
- 5) 50% discount on PPA or universal charge for end-users consuming 100 KWH to less than 300KWH a month;
- 6) Retail competition and open access on distribution wires by 1 June 2004, subject only to the conditions of establishment of the wholesale electricity spot market and approval of unbundled transmission and distribution wheeling charges;
- 7) Stringent review by the NPC of its stranded costs;
- 8) Performance Based Revenue forms of rate setting for transmission and distribution utilities by June 2003; and a review of the Return on Rate Base method currently adopted, including disallowance of certain deductions from the return on rate base;
- 9) Prohibition of cross-ownership and bilateral contracts between generation companies and distribution utilities and limited cross-ownership among generation companies; and
- 10) Arms-length review and renegotiation of all IPP contracts, the benefits from the renegotiation directly translating the lower PPA and stranded cost charges to the end-users by an international panel of experts.

Through these measures, it is anticipated that both the PPA and the basic rate will be significantly reduced, directly translating to lower cost of electricity to end-users.

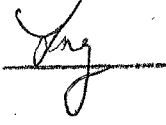
In view of the foregoing, approval of this bill is earnestly requested.


EDGARDO J. ANGARA

THIRTEENTH CONGRESS OF THE REPUBLIC
OF THE PHILIPPINES
First Regular Session

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} '04 JUN 30 P10:13

SENATE
S. No. 1062

RECEIVED BY: 

Introduced by Senator Edgardo J. Angara

AN ACT
AMENDING REPUBLIC ACT NO. 9136, OTHERWISE KNOWN AS THE
ELECTRIC POWER INDUSTRY REFORM ACT OF 2001 AND FOR OTHER
PURPOSES

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

- 1 SECTION 1. Section 2 of Republic Act No. 9136 is hereby amended to
2 read as follows:
- 3 "Sec. 2. Declaration of Policy. It is hereby declared the policy of the State:
- 4 (a) To ensure and accelerate the total electrification of the country;
- 5 (b) To ensure the quality, reliability, security and affordability of the
6 supply of electric power;
- 7 (c) To ensure transparent and reasonable prices of electricity in a
8 regime of free and fair competition and full public accountability to achieve
9 greater operational and economic efficiency and enhance the competitiveness of
10 Philippine products in the global market;
- 11 (d) To enhance the inflow of private capital and broaden the
12 ownership base of the power generation, transmission and distribution sectors;
- 13 (e) To ensure fair and non-discriminatory treatment of public and
14 private sector entities in the process of restructuring the electric power industry;

1 (f) To protect the public interest as it is affected by the rates and
2 services of electric utilities and other providers of electric power;

3 (g) To assure socially and environmentally compatible energy sources
4 and infrastructure;

5 (h) To promote the utilization of indigenous and new and renewable
6 energy resources in power generation in order to reduce dependence on
7 imported energy;

8 (i) To provide for an orderly and transparent privatization of the assets
9 and liabilities of the National Power Corporation (NPC), THE DILIGENT
10 MITIGATION, SEGREGATION AND FAIR DISTRIBUTION OF ITS
11 STRANDED OBLIGATIONS AND THE ORDERLY LIQUIDATION OF ITS
12 STRANDED COSTS;

13 (j) To establish a strong and purely independent regulatory body and
14 system to ensure consumer protection and enhance the competitive operation
15 of the electricity market; [and]

16 (k) To encourage the efficient use of energy and other modalities of
17 demand side management[.], INCLUDING ENSURING, TO THE GREATEST
18 POSSIBLE EXTENT, THAT ELECTRIC SUPPLY DOES NOT OVERLY
19 EXCEED DEMAND;

20 (L) TO DEVELOP CONCRETE STRATEGIES TO STRENGTHEN RURAL
21 ELECTRIC COOPERATIVES."

22 **SEC. 2.** Section 6 of the Act is hereby amended to read as follows:

23 "Sec. 6. *Generation Sector.* -- Generation of electric power, a business
24 affected with public interest, shall be competitive and open.

25 "Upon the effectivity of this Act, any new generation company shall,
26 before it operates, secure from the Energy Regulatory Commission (ERC) a
27 certificate of compliance pursuant to the standards set forth in this Act,

1 INCLUDING, BUT NOT LIMITED TO, COMPLIANCE WITH A MINIMUM
2 LEVEL OF CAPACITY TO BE DETERMINED BY THE ERC, THE GRID CODE,
3 DISPATCH SYSTEM AND WHOLESALE SPOT MARKET RULES, as well as
4 health, safety and environmental clearances from the appropriate government
5 agencies under existing laws.

6 Any law to the contrary notwithstanding, power generation shall not be
7 considered a public utility operation. For this purpose, any person or entity
8 engaged or which shall engage in power generation and supply of electricity
9 shall not be required to secure a national franchise.

10 Upon implementation of retail competition and open access, the prices
11 charged by a generation company for the supply of electricity shall not be subject
12 to regulation by the ERC except as otherwise provided in this Act.

13 Pursuant to the objective of lowering electricity rates to end-users, sales of
14 generated power by generation companies shall be value added tax zero-rated.

15 The ERC shall, in determining the existence of market power abuse or
16 anti-competitive behavior, require from generation companies the submission of
17 their INDIVIDUAL PRICING FORMULA, AS WELL AS THEIR financial
18 statements, POWER PURCHASE AGREEMENTS, AND ANY AGREEMENTS
19 THAT AFFECT COSTS, TERMS, AND GUARANTEES, AMONG OTHERS."

20 **SECTION 3.** Section 31 of the Act is hereby amended to read as follows:

21 "SEC. 31. *Retail Competition and Open Access.* - Any law to the
22 contrary notwithstanding, retail competition and open access on
23 distribution wires shall be implemented BY 1 JUNE 2003[. not later than
24 three (3) years upon the effectivity of this Act], subject to the following
25 conditions:

26 a. Establishment of the wholesale electricity spot market;

- 1 b. Approval of unbundled transmission and distribution wheeling
2 charges;
- 3 [c. Initial implementation of the cross subsidy removal scheme;
- 4 [d. Privatization of at least seventy (70%) percent of the total capacity
5 of generating assets of NPC in Luzon and Visayas; and
- 6 [e. Transfer of the management and control of at least seventy percent
7 (70%) of the total energy output of power plants under contract
8 with NPC to the IPP Administrators.]

9 Upon the initial implementation of open access, the ERC shall allow all
10 electricity end-users with a monthly average peak demand of at least one
11 megawatt (1MW) for the preceding twelve (12) months to be the contestable
12 market. Two (2) years thereafter, the threshold level for the contestable market
13 shall be reduced to seven hundred fifty kilowatts (750kW). At this level,
14 aggregators shall be allowed to supply electricity to end-users whose aggregate
15 demand within a contiguous area is at least seven hundred fifty kilowatts
16 (750kW). Subsequently and every year thereafter, the ERC shall evaluate the
17 performance of the market. On the basis of such evaluation, it shall gradually
18 reduce threshold level until it reaches the household demand level. In the case of
19 electric cooperatives, retail competition and open access shall be implemented
20 not earlier than five (5) years upon the effectivity of this Act.”

21 **SECTION 4.** Section 32 of the Act is hereby amended to read as follows:

22 “Sec. 32. *NPC Stranded Debt and Contract Cost Recovery.* – Stranded debt of
23 NPC shall refer to any unpaid financial obligations of NPC.

24 Stranded contract costs of NPC shall refer to the excess of the contracted
25 cost of electricity under eligible IPP contracts of NPC over the actual selling price
26 of the contracted energy output of such contracts in the market. Such contract
27 shall have been approved by the ERB as of December 31, 2000.

1 TO PROTECT THE PUBLIC FROM ONEROUS AND GROSSLY
2 DISADVANTAGEOUS PROVISIONS ARISING FROM PRIVATELY
3 NEGOTIATED CONTRACTS, [t]he national government shall be made to
4 assume a portion of the financial obligations of NPC in an amount not to exceed
5 FIVE [Two] hundred billion pesos (P500,000,000,000.00) [(P200,000,000,000.00)]
6 UPON SHOWING OF PROOF TO THE ERC THAT THE NPC HAS
7 UNDERTAKEN A STRINGENT AND EXHAUSTIVE PROCESS OF
8 MITIGATION, SEGREGATION AND DISPOSITION.

9 The ERC shall verify the reasonable amounts and determine the manner
10 and duration for the full recovery of stranded debt and stranded costs as defined
11 herein; *Provided*, That the duration for such recovery shall not be shorter than
12 fifteen (15) years not longer than twenty-five (25) years. The ERC shall, at the end
13 of the first year of the implementation of stranded cost recovery and every year
14 thereafter, conduct a review to determine whether there is under-recovery or
15 over-recovery and adjust (true-up) the level of stranded cost recovery charge
16 accordingly. Any amount to be included for stranded cost recovery shall be
17 reflected as a separate item in the consumer billing statement.

18 THE ERC SHALL CONDUCT A COMPREHENSIVE REVIEW OF THE
19 EXTENT OF THE STRANDED COSTS OF NPC ON A SEMI-ANNUAL BASIS
20 AND ENSURE THAT THE NPC HAS UNDERTAKEN A STRINGENT AND
21 EXHAUSTIVE PROCESS OF MITIGATION, SEGREGATION AND
22 DISPOSITION."

23 **SECTION 5.** Section 33 of the Act is hereby amended to read as follows:

24 "SEC. 33. *Distribution Utilities Stranded Contract Costs Recovery.* -
25 Stranded contract costs of distribution utilities shall refer to the excess of
26 the contracted cost of electricity under eligible contracts of such utilities

1 over the actual selling price of such contracts in the market. Such contracts
2 shall have been approved by the ERB as of December 31, 2000.

3 "A distribution utility shall recover stranded contract costs:
4 *Provided, however,* That such costs of the IPPs of distribution utilities are
5 subject to review by ERC in order to determine fairness and
6 reasonableness in relation to the average price of land-based IPP projects
7 entered into by NPC at the time they were contracted. The ERC shall take
8 into consideration all factors that affect the total cost of NPC IPP
9 generation projects, including direct or indirect subsidies or incentives
10 provided by the Government; *PROVIDED, FURTHER,* THAT THE
11 AMOUNT OF STRANDED CONTRACT COSTS OF THE DISTRIBUTION
12 UTILITY FROM ITS ELIGIBLE CONTRACTS SHALL NOT EXCEED
13 TWENTY THREE CENTAVOS PER KILOWATT HOUR (P0.23/KWH);
14 *PROVIDED, FINALLY,* THAT THE DISTRIBUTION UTILITY SHALL
15 REFINANCE THEIR STRANDED CONTRACT COSTS ARISING FROM
16 ELIGIBLE CONTRACTS OR UNDERTAKE OTHER SIMILAR
17 ARRANGEMENT IN ORDER TO IMMEDIATELY MITIGATE THE
18 IMPACT ON END-USERS. THE DISTRIBUTION UTILITY SHALL
19 SUBMIT THE REFINANCING SCHEME TO THE ERC FOR ITS
20 APPROVAL PRIOR TO ITS IMPLEMENTATION.

21 "A DISTRIBUTION UTILITY SHALL BE ENTITLED TO RECOVER
22 FROM THE UNIVERSAL CHARGE OVER A PERIOD OF NOT LESS
23 THAN FIFTEEN (15) YEARS BUT NOT MORE THAN TWENTY-FIVE
24 (25) YEARS, AN AMOUNT DETERMINED BY THE ERC AND IN
25 ACCORDANCE WITH THE PROVISIONS OF THIS SECTION
26 REPRESENTING ITS STRANDED CONTRACT COSTS FROM ELIGIBLE
27 CONTRACTS AND THE COST OF REFINANCING DIRECTLY

1 ATTRIBUTABLE TO THE DEBT RAISED FOR THE PURPOSE OF
2 LENGTHENING THE PERIOD FOR THE FULL RECOVERY OF ITS
3 OWN STRANDED CONTRACT COSTS; *PROVIDED*, THAT IN NO
4 CASE SHALL THE AMOUNT OF RECOVERABLE STRANDED
5 CONTRACT COSTS OF A DISTRIBUTION UTILITY EXCEED TWENTY
6 THREE CENTAVOS PER KILOWATT HOUR (P0.23/KWH).

7 TO PROTECT THE PUBLIC FROM ONEROUS AND GROSSLY
8 DISADVANTAGEOUS PROVISIONS ARISING FROM PRIVATELY
9 NEGOTIATED CONTRCTS, THE ERC SHALL STRICTLY REVIEW THE
10 FAIRNESS AND REASONABLENESS OF THE STRANDED COSTS OF
11 THE DISTRIBUTION UTILITIES IN RELATION TO THE AVERAGE
12 PRICE OF IPP PROJECTS ENTERED INTO BY IT AT THE TIME THEY
13 WERE CONTRACTED, TAKING INTO CONSIDERATION ALL
14 FACTORS THAT AFFECT THE TOTAL COST OF IPP CONTRACTS OF
15 THE DISTRIBUTION UTILITY, INCLUDING BUT NOT LIMITED TO
16 DIRECT AND INDIRECT SUBSIDIES OR INCENTIVES PROVIDED BY
17 THE GOVERNMENT, BEFORE IT WOULD ALLOW RECOVERY OF
18 STRANDED COSTS; *PROVIDED*, THAT THE DISTRIBUTION UTILITY
19 MUST PROVE TO THE SATISFACTION OF THE ERC THAT THE
20 STRANDED COST COULD NO LONGER BE FURTHER MITIGATED,
21 SEGREGATED AND DISPOSED.

22 "Within one (1) year from the start of open access, any distribution
23 utility that seeks recovery of stranded contract costs shall file with the
24 ERC notice of such intent together with an estimate of such obligations,
25 including the present value thereof and such other supporting data as
26 may be required by the ERC. Any distribution utility that does not file
27 within the date specified shall not be eligible for such recovery.

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

4 "a. reduce the costs of its existing contracts with IPPs to a
5 level not exceeding the average buying price of other land-based
6 electric power generators; and

7 "b. submit to an annual earnings review by the ERC and use
8 its earnings above its authorized rate of return to reduce the book
9 value of contracts until the end of the stranded cost recovery
10 period.

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

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

19 "Within three (3) months from the submission of the
20 application for stranded cost recovery by the relevant distribution
21 utilities, the ERC shall verify the reasonable amounts and
22 determine the manner and duration for the full recovery of
23 stranded contract costs as defined herein: *Provided*, That the
24 duration for such recovery shall not be shorter than fifteen (15)
25 years nor longer than twenty-five (25) years. *PROVIDED*,
26 *FURTHER*, THAT IN NO CASE SHALL THE AMOUNT OF
27 RECOVERABLE STRANDED CONTRACT COSTS OF A

1 DISTRIBUTION UTILITY EXCEED TWENTY THREE CENTAVOS
2 PER KILOWATT HOUR (P0.23/KWH).

3 "Any amount to be included for stranded cost recovery shall
4 be reflected as a separate item in the consumer billing statement.

5 "The ERC shall, at the end of the first year of the
6 implementation of stranded cost recovery and every year
7 thereafter, conduct a review to determine whether there is under-
8 recovery or over recovery and adjust (true-up) the level of stranded
9 cost recovery charge accordingly. In case of an over-recovery, the
10 ERC shall ensure that any excess amount shall be remitted to the
11 Special Trust Fund created under Section 34 hereof. A separate
12 account shall be created for these amounts which shall be held in
13 trust for any future claims of distribution utilities for stranded cost
14 recovery. At the end of the stranded cost recovery period, any
15 remaining amount in this account shall be used to reduce the
16 electricity rates to the end-users. *PROVIDED*, THAT IN NO CASE
17 SHALL THE AMOUNT OF RECOVERABLE STRANDED
18 CONTRACT COSTS OF A DISTRIBUTION UTILITY EXCEED
19 TWENTY THREE CENTAVOS PER KILOWATT HOUR
20 (P0.23/KWH).

21
22 **SECTION 6.** A new Section 33-A is hereby added, to read as follows:

23 "SECTION 33-A. A DISTRIBUTION UTILITY SHALL NOT BE
24 ALLOWED TO CHARGE END-USERS POWER PURCHASE
25 ADJUSTMENT (PPA) ARISING FROM ITS OWN IPP'S IN EXCESS OF
26 TWENTY THREE CENTAVOS (P0.23) PER KILOWATT HOUR;
27 *PROVIDED*, THAT THIS SHALL BE WITHOUT PREJUDICE TO THE

1 REVIEW AND RENEGOTIATION OF IPP CONTRACTS TO FURTHER
2 REDUCE THE PPA AS REQUIRED IN SECTION 68 OF THIS ACT.”

3 **Section 7.** Section 34 of the Act is hereby amended to read as follows:

4 “Sec. 34. *Universal Charge.*— Within one (1) year from the effectivity
5 of this Act, a universal charge to be determined, fixed and approved by
6 the ERC, shall be imposed on all electricity end-users for the following
7 purposes:

8 (a) Payment for the stranded debts in excess of the amount
9 assumed by the National Government and stranded contract costs of NPC
10 and as well as qualified stranded contract costs of distribution utilities
11 resulting from the restructuring of the industry[;]: PROVIDED, THAT
12 END-USERS SHALL BE CHARGED NOT MORE THAN TWENTY
13 THREE CENTAVOS (P0.23) PER KWH FOR THE STRANDED COSTS OF
14 NPC. THE BALANCE OF THE STRANDED COSTS OF NPC SHALL BE
15 ASSUMED BY THE NATIONAL GOVERNMENT; *PROVIDED, FURTHER,*
16 THAT IN NO CASE SHALL THE AMOUNT OF RECOVERABLE
17 STRANDED CONTRACT COSTS OF A DISTRIBUTION UTILITY
18 EXCEED TWENTY THREE CENTAVOS PER KILOWATT HOUR
19 (P0.23/KWH).

20 (b) Missionary electrification;

21 (c) The equalization of the taxes and royalties applied to
22 indigenous or renewable sources of energy vis-à-vis’ imported energy
23 fuels;

24 (d) An environmental charge equivalent to one-fourth of one
25 centavo per kilowatt-hour (P0.0025/kWh), which shall accrue to an
26 environmental fund to be used solely for watershed rehabilitation and

1 management. Said fund shall be managed by NPC under existing
2 arrangements; and

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

5 The universal charge shall be non-bypassable charge, which shall
6 be passed on and collected from all end-users on a monthly basis by the
7 distribution utilities. Collections by the distribution utilities and the
8 TRANSCO in any given month shall be remitted to the PSALM Corp. on
9 or before the fifteenth (15th) of the succeeding month, net of any amount
10 due to the distribution utility. Any end-user or self-generating entity not
11 connected to a distribution utility shall remit its corresponding universal
12 charge directly to the TRANSCO.

13 The PSALM Corp., as administrator of the fund, shall create a
14 Special Trust Fund, which shall be disbursed only for the purposes
15 specified herein in an open and transparent manner. All amounts
16 collected for the universal charge shall be distributed to the respective
17 beneficiaries within a reasonable period to be provided by the ERC."

18 **SECTION 8.** A new Section 34-A is hereby added, to read as follows:

19 "SEC. 34-A. EXEMPTIONS AND REDUCTION OF PPA. - END-
20 USERS CONSUMING LESS THAN ONE HUNDRED KILOWATT
21 HOURS (100KWH) PER MONTH ARE EXEMPTED FROM PAYMENT
22 OF THE NPC'S PPA.

23 END-USERS CONSUMING ONE HUNDRED KILOWATT HOURS
24 BUT NOT MORE THAN THREE HUNDRED KILOWATT HOURS (300/
25 KWH) PER MONTH SHALL ONLY BE REQUIRED TO PAY FOR FIFTY
26 PER CENT (50%) OF THE PPA CORRESPONDING TO NPC.

1 A DISTRIBUTION UTILITY MUST IMMEDIATELY EFFECT A
2 PROPORTIONATE REDUCTION IN THE POWER PURCHASE
3 ADJUSTMENT (PPA) AND SUBSEQUENTLY, THE COMPONENT OF
4 THE UNIVERSAL CHARGE PERTAINING TO THE STRANDED
5 CONTRACT COSTS OF ELIGIBLE CONTRACTS OF SUCH
6 DISTRIBUTION UTILITY BY REASON OF THE EXEMPTION AND
7 REDUCTION OF NPC'S PPA PURSUANT TO THE FIRST AND SECOND
8 PARAGRAPHS OF THIS SECTION."

9 **SECTION 9.** Section 43(f) of the Act is hereby amended as follows:

10 "Sec. 43. *Functions of the ERC.* -

11 "(a) xxx

12 (f) In the public interest, establish and enforce a methodology
13 for setting transmission and distribution wheeling rates and retail rates for
14 the captive market of a distribution utility, taking into account all relevant
15 considerations, including the efficiency or inefficiency of the regulated
16 entities. THE ERC SHALL ADOPT PERFORMANCE BASED REVENUE
17 ("PBR") FORMS OF RATE-SETTING BY JUNE 1, 2003. PRIOR TO SUCH
18 DATE, THE ERC SHALL ADOPT RATE-SETTING FORMS WHERE
19 t[T]he rates must be such as to allow the recovery of just and reasonable
20 costs and a reasonable return on rate base (RORB) to enable the entity to
21 operate viably. The ERC may adopt alternative forms of internationally-
22 accepted rate-setting methodology as it may deem appropriate. The rate-
23 setting methodology so adopted and applied must ensure a reasonable
24 price of electricity. The rates prescribed shall be non-discriminatory. To
25 achieve this objective and to ensure the complete removal of cross
26 subsidies, the cap on the recoverable rate of system losses prescribed in
27 Section 10 of Republic Act No. 7832, is hereby amended and shall be

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

7 i. For purposes of determining the rate base, the
8 TRANSCO or any distribution utility SHALL NOT BE ALLOWED
9 TO REVALUE ITS ELIGIBLE ASSETS FOR PURPOSES OF
10 INCREASING ITS RATE BASE: *PROVIDED*, THAT ASSETS
11 WHICH ARE NOT USED AND USEFUL FOR THE
12 TRANSMISSION OR DISTRIBUTION OF ELECTRICITY SHALL
13 NOT BE INCLUDED BY THE TRANSCO OR ANY
14 DISTRIBUTION UTILITY IN COMPUTING THE RATE BASE [may
15 be allowed to revalue its eligible assets not more than once every
16 three (3) years by an independent appraisal company; *Provided*,
17 *however*, That ERC may give an exemption in case of unusual
18 devaluation: *Provided, further*, That the ERC shall exert efforts to
19 minimize price shocks in order to protect the consumers];

20 ii. Interest expenses, INCOME TAX, FRANCHISE TAX,
21 WORKING CAPITAL, AND SYSTEMS LOSSES IN EXCESS OF
22 FOUR AND A HALF PER CENT (4½%) OF TOTAL ENERGY
23 PURCHASED are not allowable deductions from permissible
24 return on rate base;

25 iii. In determining eligible cost of services that will be
26 passed on to the end-users, the ERC shall establish minimum
27 efficiency performance standards for the TRANSCO and

1 distribution utilities including systems losses, interruption
2 frequency rates, and collection efficiency;

3 iv. Further, in determining rate base, the TRANSCO or
4 any distribution utility shall not be allowed to include management
5 inefficiencies like cost of project delays not excused by *force majeure*,
6 penalties and related interest during construction applicable to
7 these unexcused delays; and

8 v. Any significant operating costs or project investments
9 of the TRANSCO and distribution utilities which shall become part
10 of the RETURN ON rate base AND SIGNIFICANT OPERATING
11 COSTS THAT ARE PASSED ON TO THE CONSUMERS shall be
12 subject to verification by the ERC to ensure that the contracting and
13 procurement of the equipment, assets and services have been
14 subjected to [transparent and accepted industry procurement and
15 purchasing practices] PROCUREMENT PROCEDURES NO LESS
16 STRINGENT AND TRANSPARENT THAN GOVERNMENT
17 PROCUREMENT GUIDELINES, AND SUBJECT TO OPEN
18 COMPETITIVE PUBLIC BIDDING IN ORDER to protect the public
19 interest."

20 **SECTION 10.** - Section 45 of the Act is hereby amended to read as
21 follows:

22 "Sec. 45. Cross Ownership, Market Power Abuse and Anti-
23 Competitive Behavior. - No participant in the electricity industry or any
24 other person may engage in any anti-competitive behavior including, but
25 not limited to, cross-subsidization, price or market manipulation, or other
26 unfair trade practices detrimental to the encouragement and protection of
27 contestable markets.

1 NO DISTRIBUTION UTILITY, ITS RESPECTIVE SUBSIDIARY OR
2 AFFILIATE OR STOCKHOLDER OR OFFICIAL OF A DISTRIBUTION
3 UTILITY SHALL BE ALLOWED TO HOLD ANY INTEREST, DIRECTLY
4 OR INDIRECTLY, IN ANY GENERATION COMPANY: PROVIDED,
5 THAT THE DISTRIBUTION UTILITY HOLDING AN INTEREST IN ANY
6 GENERATION COMPANY AT THE TIME OF THE PASSAGE OF THIS
7 ACT SHALL BE REQUIRED TO DIVEST THE SAME WITHIN ONE (1)
8 YEAR FROM THE EFFECTIVITY OF THIS ACT.

9 No generation company, distribution utility, or its respective
10 subsidiary or affiliate or stockholder or official of a generation company or
11 distribution utility, or other entity engaged in generating and supplying
12 electricity specified by ERC within the fourth civil degree of consanguinity
13 or affinity, shall be allowed to hold any interest, directly or indirectly, in
14 TRANSCO or its concessionaire. Likewise, the TRANSCO, or its
15 concessionaire or any of its stockholders or officials or any of their
16 relatives within the fourth civil degree of consanguinity or affinity, shall
17 not hold any interest, whether directly or indirectly, in any generation
18 company or distribution utility. Except for *ex officio* government-
19 appointed representatives, no person who is an officer or director of the
20 TRANSCO or its concessionaire shall be an officer or director of any
21 generation company, distribution utility or supplier. A GENERATION
22 COMPANY MAY BE PERMITTED TO HOLD INTEREST, DIRECTLY OR
23 INDIRECTLY, IN ANOTHER GENERATION COMPANY: PROVIDED,
24 THAT THE EXTENT OF SUCH INTEREST SHALL BE LESS THAN THE
25 AMOUNT OF SHARES NEEDED TO VOTE ONE MEMBER OF THE
26 BOARD OF DIRECTORS.

1 An "affiliate" means any person which, alone or together with any
2 other person, directly or indirectly, through one or more intermediaries,
3 controls, is controlled by, or is under common control with another
4 person. As used herein, "control" shall mean the power to direct or cause
5 the direction of the management policies of a person by contract, agency
6 or otherwise.

7 To promote true market competition and prevent harmful monopoly
8 and market power abuse, the ERC shall enforce the following safeguards:

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

16 (b) Distribution utilities may enter into bilateral power supply
17 contracts subject to review by the ERC: *Provided*, That such review
18 shall not only be required for distribution utilities whose markets have
19 not reached household demand level. For the purpose of preventing
20 market power abuse between associated firms engaged in generation
21 and distribution, [no] A distribution utility shall NOT be allowed to
22 source from bilateral power supply contracts [more than fifty percent
23 (50%) of its total demand] from an associated firm engaged in
24 generation but such limitation, however, shall not prejudice contracts
25 entered into prior to the effectivity of this Act. An associated firm with

1 respect to another entity refers to any person which, alone or together
2 with any other person, directly or indirectly, through one or more
3 intermediaries, controls, is controlled by, or is under common control
4 with, such entity; and

5 (c) For the first five (5) years from the establishment of the
6 wholesale electricity spot market, no distribution utility shall source
7 more than 90% of its total demand from bilateral power supply
8 contracts: PROVIDED, THAT NO BILATERAL POWER SUPPLY
9 CONTRACT SHALL BE ENTERED INTO EXCEPT PURSUANT TO
10 AN OPEN, COMPETITIVE AND TRANSPARENT BIDDING
11 SUPERVISED BY THE ERC: PROVIDED FURTHER, THAT AFTER
12 THE FIRST FIVE (5) YEARS FROM THE ESTABLISHMENT OF THE
13 WHOLESALE ELECTRICITY SPOT MARKET, THE ERC SHALL
14 ISSUE GUIDELINES GOVERNING BILATERAL POWER SUPPLY
15 CONTRACTS TO ENSURE INCREASED USAGE OF WHOLESALE
16 ELECTRICITY SPOT MARKET.

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

23 Exceptions from these limitations shall be allowed for isolated
24 grids that are not connected to the high voltage transmission system.
25 Except as otherwise provided for in this Section, any restriction on
26 ownership and/or control between or within sectors of the electricity

1 industry may be imposed by ERC only insofar as the enforcement of
2 the provisions of this Section is concerned.

3 The ERC shall, within one (1) year from the effectivity of this
4 Act., promulgate rules and regulations to ensure and promote
5 competition, encourage market development and customer choice and
6 discourage/penalize abuse of market power, cartelization and any
7 anti-competitive or discriminatory behavior, in order to further the
8 intent of this Act and protect the public interest. Such rules and
9 regulations shall define the following:

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

12 (b) areas of isolated grids; and

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

16 The ERC shall, *motu proprio*, monitor and penalize any market
17 power abuse or anti-competitive or discriminatory act or behavior by any
18 participant in the electric power industry. Upon finding that a market
19 participant has engaged in such act or behavior, the ERC shall stop and
20 redress the same. Such remedies shall, without limitation, include the
21 imposition of price controls, issuance of injunctions, requirement of
22 divestment or disgorgement of excess profits and imposition of fines and
23 penalties pursuant to this Act.

1 The ERC shall, within one (1) year from the effectivity of this Act,
2 promulgate rules and regulations providing for a complaint procedure
3 that, without limitation, provides the accused party with notice and an
4 opportunity to be heard."

5 **SECTION 11.** Section 68 of the Act is hereby amended to read as follows:

6 "*Section 68. Review of IPP Contracts* - An inter-agency committee chaired
7 by the Secretary of Finance AND CO-CHAIRER BY THE SECRETARY OF
8 ENERGY, with [the Secretary of the Department of Justice and] the Director
9 General of the National Economic and Development Authority AND FOUR (4)
10 INTERNATIONAL ENERGY EXPERTS TO BE APPOINTED BY THE
11 PRESIDENT as members thereof is hereby created upon the effectivity of this
12 Act. The Committee shall immediately undertake a thorough ARMS-LENGTH
13 review of all IPP contracts ENTERED INTO BY NPC AND ANY DISTRIBUTION
14 UTILITY. In cases where such contracts are found to have provisions which are
15 grossly disadvantageous, or onerous to the Government OR THE END-USERS,
16 the Committee shall RENEGOTIATE THE CONTRACTS WITH THE IPPS, IN
17 ADDITION TO CAUSING [cause] the appropriate government agency to file an
18 action under the arbitration clauses provided in said contracts or INITIATING
19 [initiate] any appropriate action under Philippine laws. The PSALM Corporation
20 shall diligently seek to reduce stranded costs, if any; *PROVIDED, THAT ANY*
21 REDUCTION IN CONTRACT COST AS A RESULT OF ANY REVIEW OR
22 RENEGOTIATION BY THE COMMITTEE SHALL TRANSLATE DIRECTLY
23 INTO LOWER UNIVERSAL CHARGES FOR THE END-USER."

24 **SECTION 12. Separability Clause.** --- If any provision of this Act is held
25 to be unconstitutional or invalid, the same shall not affect the remainder thereof.

1 **SECTION 13. *Repealing Clause.*** --- All laws, presidential decrees,
2 executive orders, rules and regulations, and part thereof, which are inconsistent
3 with the provisions of this Act, are hereby repealed or modified accordingly.

4 **SECTION 14. *Effectivity.*** --- This Act shall take effect fifteen (15) days
5 after publication in the Official Gazette or two (2) newspapers of general
6 circulation.

7 Approved,