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SEVENTEENTH CONGRESS OF THE]
REPUBLIC OF THE PHILIPPINES]
FIRST REGULAR SESSION]

SENATE

Senate Bill No. 1308

Introduced by Sen. Win Gatchalian

AN ACT
INSTITUTIONALIZING REFORMS
IN THE PROCUREMENT BY DISTRIBUTION UTILITIES
OF SUPPLY FOR THE CAPTIVE MARKET

EXPLANATORY NOTE

Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 declares it the policy of the State to ensure the quality, reliability, security, and affordability of the supply of electric power, to ensure transparent and reasonable prices of electricity in the regime of free and fair competition and full public accountability, and to protect the public interest as it is effected by the rates and services of electric utilities and other providers of electric power.

The use of a competitive process to cultivate private sector participation in the generation sector has long been recognized by the Department of Energy (DOE). In 2004, the first Competitive Selection Process (CSP) was mandated in National Power Corporation – Small Power Utilities Group (NPC-SPUG) areas.¹ In 2015, the scope of the CSP was extended to all distribution utilities in procuring their respective power supply agreements.² The DOE and the Energy Regulatory

¹ DOE Circular DC2004-01-001 entitled "Prescribing the Rules and Procedures for Private Sector Participation in Existing NPC-SPUG Areas Pursuant to Rule 13 of the Implementing Rules and Regulations of the Electric Power Industry Reform Act of 2001." 26 January 2004.

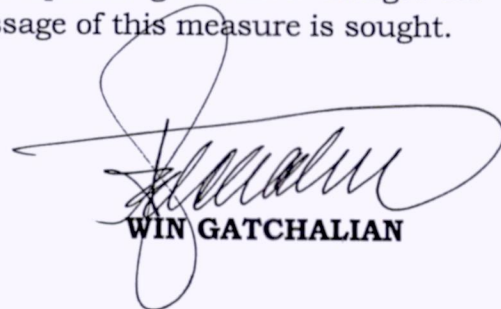
² DOE Circular DC2015-06-008 entitled "Mandating All Distribution Utilities to Undergo Competitive Selection Process (CSP) in Securing Power Supply Agreements (PSA). 11 June 2015.

Commission (ERC) then released a Joint Resolution³ entrusting to the latter the responsibility of issuing the appropriate regulations to implement the CSP and pending the issuance of such regulations, ERC has allowed distribution utilities to conduct CSPs on their own, subject to the review of the regulatory body.⁴

Towards this end, this bill seeks to institutionalize the CSP in order to enhance *first*, competition and *second*, transparency.

For competition, a centralized CSP, to be conducted by a Third Party Auctioneer, shall be required for all the uncontracted demand of the captive market. Also, the CSP can only be undertaken if it is in accordance with the approved Power Supply Procurement Management Plan of each distribution utility. While for transparency, power supply agreements, contracts, and forms shall be standardized for ease of review and comprehension. Furthermore, these, as well as other information related to the CSP, shall be available to the public through an online electronic portal.

All the foregoing are towards the enhancement of the security of supply and ultimately the attainment of optimal generation charges for the consumer. Thus, the immediate passage of this measure is sought.



WIN GATCHALIAN

³ DOE ERC Joint Resolution No. 1 entitled "A Resolution Enjoining All Distribution Utilities to Conduct Competitive Selection Process (CSP) in the Procurement of Supply for their Captive Market". 20 October 2015.

⁴ ERC Resolution No. 13 entitled "A Resolution Directing All Distribution Utilities (DUs) to Conduct a Competitive Selection Process (CSP) in the Procurement of their Supply to Captive Market." 4 November 2015.



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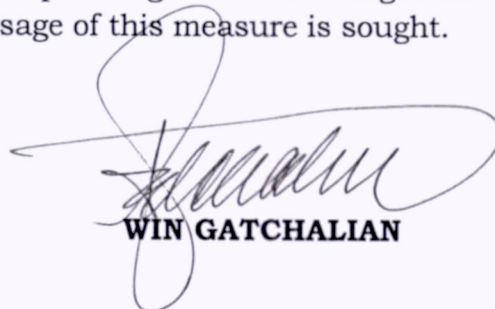
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AN ACT
INSTITUTIONALIZING REFORMS
IN THE PROCUREMENT BY DISTRIBUTION UTILITIES
OF SUPPLY FOR THE CAPTIVE MARKET

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

CHAPTER I
GENERAL PROVISIONS

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4 SECTION 1. Title. - This Act shall be known as the "Energy
5 Procurement Act of 2016".
6

7 SECTION 2. Declaration of Policy. - It is hereby declared the policy
8 of the State to ensure the quality, reliability, security, and affordability of

1 supply of electric power. To protect public interest, as it is affected by the rates
2 and services of electrical utilities and other providers of electric power, the
3 State recognizes that a Competitive Selection Process in the procurement of
4 Power Supply Agreements by distribution utilities engenders transparency,
5 enhances security of supply, and ensures stability of electricity prices to
6 captive electricity end-users in the long term.

7

8 **SECTION 3. Scope and Application.** - This Act shall apply to any
9 distribution utility that owns, operates, or controls one or more distribution
10 systems in the main grid and off-grid in the procurement of supply for their
11 captive market, the manner in which the procurement is to be undertaken, the
12 review process to be required, and the timelines to be observed in such
13 processes.

14

15 **SECTION 4. Definition of Terms.** - For purposes of this Act, the
16 following shall be defined as:

- 17 a) Aggregated Demand - refers to the distribution utilities' consolidated
18 level of hourly, daily, monthly, or annual electric power demand;
- 19 b) Captive Market - refers to the electricity end-users who do not have the
20 choice of a supplier of electricity, as may be determined by the ERC, in
21 accordance with EPIRA;
- 22 c) Competitive Selection Process (CSP) - refers to a process wherein a
23 generation company is selected through transparent and competitive
24 bidding undertaken by a distribution utility to secure supply of power at
25 the least cost;
- 26 d) Competitive Bidding - refers to a method of procurement which is open
27 to participation by generation companies and distribution utilities and
28 which consists of the following process: advertisement or publication,

- 1 pre-qualification conference, eligibility screening, determination of price
2 for the procurement through competition of participating bidders,
3 evaluation, post-qualification, and award of contract;
- 4 e) Demand Aggregation – refers to the process where distribution utilities
5 group together to combine their demand or energy requirements in order
6 to subject it to a CSP;
- 7 f) Distribution Utility – refers to any electric cooperative, private
8 corporation, government-owned utility, existing local government unit
9 which has an exclusive franchise to operate a distribution system in
10 accordance with EPIRA, multi-purpose cooperatives duly authorized by
11 appropriate government agencies to operate electric power system, or any
12 other duly authorized entity engaged in the distribution of electricity to
13 captive customers;
- 14 g) Energy Regulatory Commission – refers to the regulatory body created
15 pursuant to EPIRA;
- 16 h) EPIRA – refers to Republic Act No. 9136, otherwise known as the Electric
17 Power Industry Reform Act of 1991;
- 18 i) Electric Cooperative – refers to a distribution utility organized pursuant
19 to Presidential Decree No. 269, as amended, or as otherwise provided in
20 EPIRA;
- 21 j) Generation Company – refers to any person or entity authorized to
22 operate facilities used in the generation of electricity;
- 23 k) Grid – refers to the high voltage backbone system of interconnected
24 transmission lines, substations and related facilities;
- 25 l) Power Supply Agreement (PSA) – refers to a contract between a
26 generation company and a distribution utility whereby the latter
27 purchases power from the former;
- 28 m) Power Supply Procurement Management Plan (PSPMP) – refers to a
29 distribution utility’s assessment of a variety of its demand side and
30 supply side resources to cost-effectively meet customer electricity service
31 needs; and

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CHAPTER II
COMPETITIVE SELECTION PROCESS

SECTION 5. Competitive Selection Process (CSP). – All distribution utilities are mandated to subject all the uncontracted demand of their captive market to a CSP in accordance with this Act, its implementing rules and regulations (IRR), and the CSP framework. All PSAs shall only be awarded after the conduct of a CSP except as otherwise provided in this Act: *Provided*, That the entire CSP process shall not exceed sixty (60) days from the advertisement or publication of the call for bidders, unless exigent circumstances warrant the extension of the period.

The CSP shall be conducted by a Third Party Auctioneer and shall be operational not later than six (6) months from the effectivity of this Act. To this end, the DOE shall establish a CSP framework which, at the minimum, shall contain the following:

- a) Procedure and schedule for a centralized CSP which shall incorporate the competitive bidding rules and design;
- b) Comprehensive terms of reference, payment structure, and prohibited acts as well as corresponding fines and penalties for the Third Party Auctioneer;
- c) Standardized forms and bid documents which shall contain, among others:
 - i) Requirement for eligibility of prospective bidders,
 - ii) Required Capacity and/or Energy Volumes,
 - iii) Generation sources, if applicable,
 - iv) Load requirement (base load, mid-merit, or peaking), if applicable,
 - v) Method of procurement for fuel, if applicable,
 - vi) Cooperation/Contract Period (short-term, medium-term, long-term),

- 1 vii) An unbundled tariff structure including but not limited to capacity
2 fees, variable and fixed operating and maintenance fee, fuel fee,
3 and others, including the derivation of each component, base fee
4 adjustment formula, if any,
5 viii) The form and method of payment,
6 ix) Bonds and guarantees,
7 x) Penalties for delay, non-performance of contract, and breach of
8 confidentiality, and
9 xi) For greenfield power generation projects, the grid impact study
10 and/or similar requirements prescribed by DOE;
11 d) Standardized PSA and any other necessary contracts for the CSP;
12 e) Qualification criteria to determine the winning bidder;
13 f) Procedure for the Swiss Challenge Procurement;
14 g) Timelines to be observed;
15 h) Instances, requirements, and procedures for demand aggregation;
16 i) Procedure and requirements for expedited CSP for emergency
17 procurements by distribution utilities; and
18 j) Other such procedures that will ensure an open, transparent, and
19 competitive bidding.

20 The CSP framework shall be regularly reviewed by the DOE to reflect
21 existing policies and to facilitate a more streamlined and transparent CSP for
22 distribution utilities.

23 The ERC shall have the power to review whether the parties have
24 complied with the requirements of CSP established under this Act, its IRR, and
25 the CSP framework, as provided for under Section 14 of this Act.

26
27 **SECTION 6. Swiss Challenge Procurement.** – Upon two (2) failed
28 CSPs, a generation company may submit an unsolicited proposal to a
29 distribution utility which shall then invite competitive counterproposals in

1 such manner as may be provided in the IRR and CSP framework. Thereafter,
2 the original bidder shall be given the opportunity to match the best bid which
3 comes out of the counterproposals.

4 A CSP is considered failed when, during its conduct, any of the following
5 circumstances exists:

- 6 a) Only one generation company submitted an offer; or
- 7 b) Generation companies failed to meet the requirements to participate as a
8 bidder, as determined by the Third Party Auctioneer.

9 Upon failure of each CSP, the Third Party Auctioneer shall submit a report
10 to the DOE and the ERC, the contents of which shall be provided in the IRR.

11

12 **SECTION 7. Power Supply Procurement Management Plan.** – Every
13 distribution utility shall develop its Power Supply Procurement Management
14 Plan (PSPMP) and undertake a cost-benefit analysis of the power supply
15 requirements for the captive market taking into consideration, among others,
16 prevailing price in the market, energy demand forecasting, load matrix, and
17 existing DOE policies.

18 The PSPMP shall be updated annually and approved by the Board of
19 Directors of the distribution utility and submitted to the ERC and DOE on or
20 before the 31st of March every year. In the case of electric cooperatives, the
21 report shall also be submitted to the NEA. In all cases, ERC, DOE, and NEA
22 shall act on the submission within sixty (60) days from receipt of the PSPMP.
23 For purposes of transparency, the approved PSPMPs shall be posted by the
24 DOE in the electronic portal as provided for under Section 12 of this Act.

25 The contents of the PSPMP shall include but shall not be limited to the
26 following information:

- 1 a) Planning and acquisition period (short-term, medium-term, and long-
- 2 term);
- 3 b) Demand forecast, forecasted load profile, and load duration curve, if
- 4 applicable;
- 5 c) Additional resource requirements, if applicable;
- 6 d) Resource acquisition plan, if applicable;
- 7 e) Demand side management programs, if applicable;
- 8 f) Mandated renewable energy quota pursuant to the incentive mechanisms
- 9 under the Renewable Energy Act, if applicable; and
- 10 g) Any additional information that DOE may require.

11 No CSP shall be undertaken unless it is in accordance with the approved
12 PSPMP of a distribution utility. In cases of aggregated demand, concerned
13 distribution utilities shall prepare documentation to demonstrate that the
14 demand subjected to CSP is consistent with their respective approved
15 individual PSPMPs.

16
17 **SECTION 8. Third Party Auctioneer.** – The Third Party Auctioneer
18 shall undertake the CSP in accordance with this Act, its IRR, and the CSP
19 framework and shall ensure that parties abide by the standards set forth in the
20 same. Within sixty (60) days after the close of a competitive bidding, the Third
21 Party Auctioneer shall prepare a CSP Monitoring Report and submit it to the
22 ERC as part of its CSP review process. The DOE and ERC shall provide the
23 contents and coverage of the said report in the IRR.

24 The Third Party Auctioneer shall be the Market Operator: *Provided*, That
25 after five (5) years from the effectivity of this Act, the DOE shall review the
26 performance of the Market Operator according to a Performance Monitoring
27 and Evaluation Plan (PMEP) incorporated in the CSP framework.

1 Should the DOE find that the Market Operator did not substantially meet
2 the performance targets in the PMEPP, it may procure a new Third Party
3 Auctioneer in compliance with all laws and IRRs related to government
4 procurement. In this case, the DOE may determine the terms of reference of
5 the new Third Party Auctioneer: *Provided*, That it shall be a team of private
6 individuals or a private corporation duly recognized in the Philippines, with no
7 direct or indirect interest in any generation company and/or distribution
8 utility, having vast experience in competitive bidding, comprehensive
9 knowledge of the electric power industry, and a demonstrated ability to manage
10 and conduct the CSP while complying with the terms of reference and other
11 additional qualifications provided for in the CSP framework: *Provided, further*,
12 That the performance of the new Third Party Auctioneer, and any other Third
13 Party Auctioneer thereafter, shall be reviewed by the DOE after every five (5)
14 years according to the PMEPP.

15

16 **SECTION 9. Observers.** – The Third Party Auctioneer shall, in all
17 stages of the CSP, ensure that there shall be present at least one (1) observer
18 from the DOE, ERC, the Philippine Competitive Commission (PCC), or the
19 Commission on Audit (COA), or in the case of electric cooperatives, a member
20 of the NEA, in its proceedings: *Provided*, That the said person/s do not have
21 any direct or indirect interest in the PSAs subject to CSP.

22 The observers shall keep all information acquired by virtue of the
23 proceedings confidential while the competitive bidding is still on going. Any
24 observer who commits a breach of confidentiality shall be subject to the
25 administrative disciplinary action under this Act, without prejudice to any civil
26 or criminal action. Upon finality of the competitive bidding, the observer/s
27 shall, jointly or separately, file a report indicating their observations on the
28 procurement activities and submit it to DOE and ERC.

29

1 SECTION 10. Standardization of Contracts, Processes, and
2 Forms. – All PSAs, contracts, forms and documents used during the CSP shall
3 be standardized and unified. For this purpose, the DOE, with the assistance of
4 ERC, shall develop generic forms, standard bidding documents, PSAs, and
5 other contracts which, upon issuance, shall be mandatory among generation
6 companies and distribution utilities.

7
8 SECTION 11. Access To Information. – In all stages of CSP, the
9 generation companies and distribution utilities shall ensure equal access to
10 information: *Provided*, That prior to their official release, no aspect of the
11 documents used in any CSP shall be divulged or released to any prospective
12 generation company, distribution utility, or any other person or entity having
13 direct or indirect interest in the PSAs subject of CSP.

14
15 SECTION 12. Electronic Portal. – To further ensure transparency
16 and efficiency in all transactions, information and communications technology
17 shall be utilized in the conduct of CSP. The DOE shall develop a portal which
18 shall serve as the primary source of information on CSP, including the PSPMP:
19 *Provided*, That the DOE shall ensure the integrity, security, and confidentiality
20 of all documents submitted through the portal.

21
22 SECTION 13. Jurisdiction. – The ERC shall have primary and
23 exclusive jurisdiction over all contests and cases involving and relating to the
24 conduct of the CSP.

25
26 SECTION 14. ERC Review of PSAs. – For PSAs executed pursuant to
27 this Act and its IRR, the ERC review shall be limited to a determination of

1 whether or not there has been strict compliance with all the requirements
2 established: *Provided*, That the ERC may issue additional regulations to apply
3 to:

- 4 a) The review of PSAs procured through a Swiss Challenge;
- 5 b) Cases where the parties to the PSA under review are related parties; or
- 6 c) Other analogous cases.

7 In the three (3) abovementioned cases, the review will call for a cost-
8 based evaluation of the agreed pricing structure or winning bid as reflected in
9 the PSA or benchmarking of generation prices.

10 The ERC shall issue the final decision on its review of all PSAs submitted
11 to it pursuant to this Act within thirty (30) days from filing thereof.

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15

CHAPTER III PROHIBITED ACTS AND PENALTIES

16 **SECTION 15. Administrative Offenses.** – The following acts, when
17 committed by a government official and/or employee, shall be considered
18 administrative offenses:

- 19 a) Breach of confidentiality as provided under Section 9 of this Act;
- 20 b) Willful acts which delay the operationalization of the CSP; and
- 21 c) Failure to comply with the mandated timelines prescribed to perform
22 specific acts defined under this Act.

23

24 **SECTION 16. Penalties.** – Any person found guilty of the Act stated in
25 Sec. 15 (a), on the first offense shall be suspended from service for six (6)
26 months and one (1) day to one (1) year without pay, and on the second offense

1 shall be dismissed from service and shall be perpetually disqualified from re-
2 employment in any government agency or instrumentality.

3 Any person found guilty of the Act stated in Sec. 15 (b), on the first
4 offense shall be suspended from service for six (6) months and one (1) day to
5 one (1) year without pay, and on the second offense shall be dismissed from
6 service and shall be perpetually disqualified from re-employment in any
7 government agency or instrumentality.

8 Any person found guilty of the Act stated in Sec. 15 (c), on the first
9 offense shall be reprimanded, on the second offense shall be suspended from
10 service for one (1) to thirty (30) days, and on the third offense shall be
11 dismissed from service and shall be perpetually disqualified from re-
12 employment in any government agency or instrumentality.

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CHAPTER IV FINAL PROVISIONS

17 SECTION 17. *Transitory Provision.* – Pending the creation and
18 effectivity of the IRR and the CSP framework, the existing ERC Resolution
19 requiring a CSP shall continue to apply: *Provided*, That the ERC shall observe
20 the thirty (30) day period of approval of PSAs as provided for under this Act.

21

22 SECTION 18. *Implementing Rules and Regulations.* – Within
23 sixty (60) days from the effectivity of this Act, the DOE, in coordination with the
24 ERC, NEA, and the PCC, shall promulgate the necessary rules and regulations
25 to implement the provisions of this Act. Furthermore, the DOE shall
26 promulgate the CSP framework within sixty (60) days from the promulgation of
27 the IRR.

1

2 **SECTION 19. Separability Clause.** – If, for any reason, any provision
3 of this Act is declared to be unconstitutional or invalid, the other sections or
4 provisions hereof which are not affected thereby shall continue to be in full
5 force or effect.

6

7 **SECTION 20. Repealing Clause.** – All laws, decrees, orders, rules
8 and regulations or parts thereof which are inconsistent with or contrary to the
9 provisions of this Act are hereby repealed, amended or modified accordingly.

10

11 **SECTION 21. Effectivity.** – This Act shall take effect fifteen (15) days
12 after its publication in at least two (2) national newspapers of general
13 circulation.

Approved,