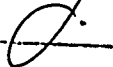


**EIGHTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Second Regular Session)**

Office of the Secretary
'21 APR 15 P3 57

SENATE

S. No. 2136

RECEIVED 

INTRODUCED BY SENATOR RISA HONTIVEROS

**AN ACT
PROVIDING FOR THE NATIONAL POLICY AND FRAMEWORK FOR ENERGY
ADVOCACY THROUGH THE CREATION OF THE OFFICE OF THE CONSUMER
ENERGY COUNSEL**

EXPLANATORY NOTE

Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 or EPIRA, makes it State policy to ensure the quality, reliability, security and affordability of the supply of electric power, as well as protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power. Despite this guarantee in the EPIRA, electricity prices in the Philippines remain among the most expensive in Asia; a factor which, studies have shown, negatively affects economic growth and development. Recent controversies regarding charges for electric consumption during the pandemic have also raised serious consumer-protection concerns. While power sector participants such as distribution and transmission utilities possess the financial resources to hire lawyers and lobbyists to represent their interests before regulatory agencies and Congress, consumers often struggle to have their voices heard.

Hence, the need to establish an independent and autonomous office to promote and safeguard the interests of electricity consumers to be called the Office of the Consumer Energy Counsel, which shall have the power to, among others, investigate complaints received from consumers, and represent their interests in proceedings before any department, commission, agency, or court. The mandate of this Office shall include rate-setting, rule-making, and other energy-related cases, complaints, proceedings, and consultations before the Department of Energy (DOE), Energy Regulatory Commission (ERC), National Electrification Administration (NEA), Philippine Competition Commission (PCC), and other judicial and quasi-judicial bodies.

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


RISA HONTIVEROS
Senator

Office of the Secretary

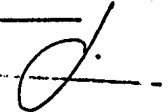
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Be it enacted by the Senate and the House of Representatives on the Philippines in Congress assembled:

1 **SEC. 1. Short Title.** — This Act shall be referred to as the "Energy Counsel Act of 2020."

2 **SEC. 2. Declaration of Policy.** — It is hereby declared the policy of the State to recognize
3 the right of end-users to reasonable rates, to adequate and reliable services, and to
4 transparent processes involving these rates and services. Towards this end, there is a
5 need for institutionalized and independent end-user representation in rate-setting, rule-
6 making, and other energy related cases and proceedings before government agencies
7 including judicial and quasi-judicial bodies.

8 **SEC. 3. The Office of the Consumer Energy Counsel (OCEC).** — The OCEC is hereby
9 created which shall be an independent and autonomous office attached to the Department
10 of Justice (DOJ) for purposes of policy and coordination in accordance with Section 38(3),
11 Chapter 7, Book IV of Executive Order No. 292, as amended.

12 **SEC. 4. Powers and Functions.** - The OCEC shall be a public legal office that shall
13 represent all captive market end-users in the energy sector, and matters affecting the
14 public interest before any department, commission, agency, or court requiring the services
15 of a lawyer. It shall independently discharge its mandate towards the best interest of all
16 captive end-users, ensuring least cost without compromising safety, reliability, and
17 sufficient service. Towards this end, the OCEC shall:

18 (1) Initiate, intervene, and represent all end-users, in the following:

19 (a) Rate-setting, rule-making, and other energy related cases, complaints,
20 proceedings, and consultations before the Department of Energy (DOE),
21 Energy Regulatory Commission (ERC), National Electrification Administration
22 (NEC), Philippine Competition Commission (PCC), and other judicial and
23 quasi-judicial bodies; and

24 (b) Actions before any trial or appellate court, including the Supreme Court,
25 which involve the validity of any decision, memoranda, rule, regulation,

1 circular, or order of the DOE, ERC, NEC, PCC, and other departments,
2 commissions, and agencies insofar as these decisions and policy issuances
3 affect energy rates and services;

4 (2) Monitor all issuances of the DOE, ERC, NEC, PCC, and other departments,
5 commissions, and agencies and formulate and issue the necessary comments or
6 legal memoranda insofar as these affect energy rates and services;

7 (3) Evaluate and act upon requests and complaints from end-users concerning the
8 matters set forth in items (1) and (2), except that any court proceedings initiated
9 by the OCEC must be brought on behalf of the Republic of the Philippines and not
10 on behalf of the captive market end-user. The initiation or continuation of any
11 proceedings is in the sole discretion of the OCEC.

12 (4) Conduct investigations, initiate studies, conduct research, present comments and
13 testimony before governmental bodies, issue reports, *and* engage in regular
14 information, education, and communication programs for all captive market end-
15 users on laws, rules, regulations, decisions, circulars, and orders that affect energy
16 rates and services, including end-user rights and remedies

17 (5) Consult directly with end-users on a regular basis in order to determine the
18 concerns of end-users with respect to electricity rates;

19 (6) Be furnished or served, as the case may be, by departments, commissions, and
20 agencies with all documents, notices, petitions, applications, complaints, answers,
21 motions, and other pleadings in all related cases, complaints, proceedings, and
22 consultations;

23 (7) Have the right to access, free of charge, all files, records, and documents in the
24 DOE, ERC, NEC, PCC and other departments, commissions, and agencies pertaining
25 to energy related cases, complaints, proceedings, and consultations: *Provided,*
26 That the files, records, and documents do not pertain to the following:

27 (a) Personnel information;

28 (b) Confidential communications between commissioners, judges, or justices
29 and general counsels on records relating to proceedings in which the OCEC
30 is a party to; and

31 (c) Confidential information declared as such by the ERC.

32 OCEC lawyers shall have the authority to administer oaths in connection with the
33 performance of their duty.

34
35 **SEC. 5. *Representation of indigent litigants*** - The OCEC shall independently discharge
36 its mandate to render, free of charge, legal representation, assistance, and counselling to
37 indigent persons in cases falling under Sec. 4(1) of this law. In the exigency of the service,
38 the OCEC may be called upon by proper government authorities to render such service to
39 other persons, subject to existing laws, rules and regulations.

1 **SEC. 6. *The Energy Counsel and Deputy Energy Counsels.*** — The Energy Counsel (EC)
2 shall head the OCEC, shall have the primary authority and responsibility for the effective
3 exercise of its mandate and the discharge of its powers and functions, and shall be
4 assisted by *three (3)* Deputy Energy Counsels. In case of temporary absence of the EC, a
5 Deputy EC shall be designated as the Officer-in-Charge of the OCEC.

6 The EC and Deputy ECs shall be natural-born citizens of the Philippines, at least
7 thirty-five (35) years of age, with at least seven (7) years of practice in law, and with
8 proven competence, integrity, probity, and independence: *Provided*, That the EC shall
9 have at least six (6) years of practice in the field of energy, and the Deputy EC shall have
10 at least four (4) years of practice in the field of energy. *Provided finally*, that they shall not
11 be affiliated with any energy company, as a member of the board, officer, employee, or
12 consultant, at least one (1) year before their respective appointments.

13 **SEC. 7. *Appointment, Term, and Rank.*** — The EC shall be appointed by the President,
14 who shall subsequently appoint the Deputy ECs. They shall serve for a term of six (6)
15 years and may be reappointed: *Provided*, That for the first appointees, the EC and Deputy
16 ECs shall hold office until the end of term of the appointing President.

17 The EC and Deputy ECs shall have the same rank, salaries, allowances, and
18 retirement benefits as the Prosecutor General and Senior Deputy State Prosecutor of the
19 National Prosecution Service respectively: *Provided*, That their retirement benefits shall
20 be prorated in accordance with Section 21 of Republic Act No. 10071, otherwise known
21 as the Prosecution Services Act.

22 **SEC 8. *Prohibitions.*** — The EC and Deputy EC shall be prohibited from:

23 (1) Serving as a member of the board, officer, employee, or consultant of any energy
24 company in the course of their respective terms of office: *Provided*, That this
25 prohibition shall also apply to their family members up to the third degree of
26 consanguinity or affinity;

27 (2) Having any interest, ownership, or stake in any energy company in the course of
28 their respective terms of office: *Provided*, That this prohibition shall also apply to
29 their family members up to the third degree of consanguinity or affinity;

30 (3) Being members of a political party and committee, or engaging in any partisan
31 political activity in the course of their respective terms of office; and

32 (4) To enter any energy-related businesses in the course of two (2) years after
33 relinquishing the post from any reason thereof.

34 When any of the foregoing acts is done in collusion with private individuals or
35 corporations, the private individuals or corporation shall likewise be liable for the
36 offense.

37 In addition, the public officer involved shall also suffer the penalty of temporary
38 disqualification from public office, while the private individual or corporation shall be
39 permanently disqualified from transacting business with the Government.

1 Private individuals who commit any of the following acts, including any public officer,
2 who conspires with them, shall suffer the penalty of *Prisión mayor* or not less than six
3 (6) years and one (1) day but not more than twelve (12) years:

4 **SEC 9. *Organizational Structure and Plantilla Positions.*** — The Department of Justice shall
5 submit its temporary organizational structure and plantilla positions to the Department of
6 Budget and Management (DBM) not later than six (6) months from the effectivity of this
7 Act.

8 The OCEC, upon approval of the DOJ, may request the DBM for any change in the
9 organizational structure and plantilla positions after a comprehensive review resulting to
10 a finding that any alteration will improve the discharge of the OCEC's powers and
11 functions: *Provided*, That the DBM shall render a decision on such request within *six (6)*
12 months from submission.

13 The OCEC shall have legal, technical, and administrative personnel in its organizational
14 structure and staffing complement, and may hire consultants as expert witnesses or
15 technical advisors as it finds necessary for the full and efficient discharge of its powers
16 and functions. All employees and consultants shall be subject to civil service laws, rules,
17 and regulations: *Provided*, That all employees shall be subject to Republic Act No. 6758,
18 otherwise known as the Salary Standardization Act.

19 **SEC 10. *Removal and Vacancy.*** — The EC and Deputy ECs shall not be removed or
20 suspended, except for cause provided by law. The President may remove the EC or Deputy
21 ECs for malfeasance, misfeasance, or nonfeasance in office, or for any reason which
22 renders any of them ineligible for appointment, incapable, or unfit to discharge the
23 mandate, powers, and functions of the OCEC.

24 In case of death, permanent incapacity, removal, or resignation of the incumbent EC
25 or Deputy ECs, the President may appoint or designate one, as the case may be, in an
26 acting capacity until a new EC or Deputy EC has been appointed: *Provided*, That the new
27 appointment shall only be for the unexpired term of the predecessor.

28 **SEC 11. *Exemption from Fees and Costs of Suits.*** — The OCEC shall be exempt from
29 payment of docket and other fees incidental to instituting an action in court and other
30 quasi-judicial bodies, as an original proceeding or on appeal.

31 **SEC. 12. *Costs of Suit.*** — The costs of the suit, attorney's fees, and contingent fees
32 imposed upon adversarial parties of the OCEC after a successful litigation shall be
33 deposited in the National Treasury.

34 **SEC. 13. *Franking Privilege.*** — The OCEC may, free of charge, transmit through ordinary
35 mail, registered mail, or courier service for the transmittal of official communications and
36 papers directly connected with the conduct of its powers, functions, or exercise of
37 administrative supervision over its personnel.

38 **SEC. 14. *Grant of Special Allowances.*** — The EC, Deputy EC, service or division heads,
39 and lawyers shall be granted special allowances in amounts to be determined by the DBM:
40 *Provided*, That the grant of said special allowances shall not exceed one hundred percent
41 (100%) of the basic salary of the OCEC officials and lawyers: *Provided further*, That special

1 allowances shall be paid from costs of suit, attorney's fees and contingent fees deposited
2 In the National Treasury pursuant to Section 11 of this Act: Provided finally, That whenever
3 the funding source is insufficient, the special allowance shall be paid through the General
4 Appropriations Act.

5 **SEC. 15. Appropriations.** — The amount necessary for the initial implementation of this
6 Act in the amount of two hundred million pesos (P200,000,000.00) shall be taken from
7 the budget of the DOJ. Thereafter, the amount of two hundred million pesos
8 (P200,000,000.00) shall be automatically appropriated and included in the annual General
9 Appropriations Act every year which may be increased as may be necessary for the
10 continued implementation of this Act.

11 **SEC. 16. Implementing Rules and Regulations.** — Within ninety (90) calendar days from
12 the approval of this Act, the DOJ, in consultation with the DBM, government energy
13 agencies, and private energy stakeholders, shall adopt and issue the rules and regulations
14 for the effective implementation of this Act.

15 **SEC. 17. Congressional Oversight.** — The Joint Congressional Energy Commission shall
16 exercise oversight powers over the implementation of this Act.

17 **SEC. 18. Amendatory Clause.** — Section 13 of Republic Act No. 7638, otherwise known
18 as the Department of Energy Act of 1992, as amended, is hereby further amended.

19 **SEC. 19. Separability Clause.** — Any portion or provision of this Act, which may be
20 declared unconstitutional or invalid shall not have the effect of nullifying other portions or
21 provisions hereof.

22 **SEC. 20. Repealing Clauses.** — All laws, ordinances, rules, regulations and other issuance
23 or parts thereof, which are inconsistent with this Act, are hereby amended, modified, or
24 repealed accordingly.

25 **SEC. 21. Effectivity Clause.** — This Act shall take effect fifteen (15) days after its
26 publication in the Official Gazette or at least two (2) newspapers of general circulation.

27 Approved,