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SENATE
S.B. No. 2217

RECEIVED BY: _____

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Introduced by Senator WIN GATCHALIAN

**AN ACT REMOVING THE PUBLIC OFFERING REQUIREMENT OF
GENERATION COMPANIES, AMENDING FOR THE PURPOSE SECTION 43(T)
OF REPUBLIC ACT NO. 9136, OTHERWISE KNOWN AS THE ELECTRIC
POWER INDUSTRY REFORM ACT OF 2001**

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

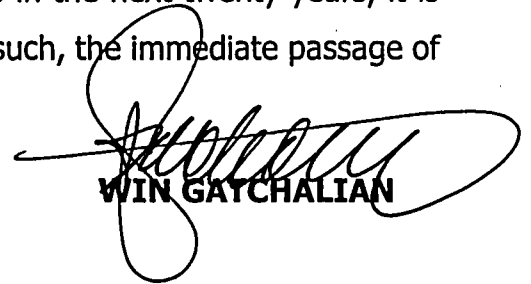
EXPLANATORY NOTE

Republic Act No. (RA) 9136, otherwise known as the Electric Power Industry Reform Act of 2001, provides that it is the declared policy of the State (i) to ensure the quality, reliability, security and affordability of the electric power supply; (ii) to enhance the inflow of private capital and broaden the ownership base of the power generation sector; and (iii) "to ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability." Towards these ends, RA 9136 requires generation companies (GenCos) which are not publicly listed to offer and sell to the public not less than 15% of their common shares of stock "to ensure the successful restructuring and modernization of the electric power industry."

However, after almost 20 years since RA 9136 was passed, for various reasons this requirement no longer serves its purpose. *First*, at present, the electric power industry has already been restructured with into four sectors: generation, transmission, distribution, and supply; *Second*, the generation sector is "competitive and open" in that it is not considered a public utility operation. This enabled more

players to enter the market,¹ evidenced by 96 generation companies with on-grid power plants in Luzon alone comprising about 17,354 megawatts (MW) installed capacity in 2020;² *Third*, as a business affected with public interest, there are policies in place to ensure the protection of consumers in particular and the public in general, such as the requirement of a Certificate of Compliance from the ERC,³ the reliability index which provides for a cap in the allowed outages of power plants,⁴ and the competitive selection process requirement in the procurement of power supply by distribution utilities.⁵ All these policies require generation companies to modernize their facilities to meet regulatory standards and ensure market competitiveness; *Fourth*, there is a need to attract more investments in the generation sector as the next twenty years will require an additional total installed capacity of 71,817 MW under a clean energy scenario from 2018's total installed capacity of 23,815 MW to meet projected peak demand of 57,303 MW by 2040.⁶ In particular, 9,508 MW or 13.24% of the additional total installed capacity will come from renewable energy capacity to meet the 1% renewable portfolio standard requirement under the Renewable Energy Act of 2008.

As can be seen above, the initial purpose of the public offering requirement for generation companies in the EPIRA has been rendered irrelevant given all the developments in the electric power sector. Moreover, if we were to encourage more investments in generation to meet our demand needs in the next twenty years, it is crucial to eliminate this additional barrier to entry. As such, the immediate passage of this measure is sought.



WIN GATCHALIAN

¹ What Is Energy Deregulation. Constellation. Available at <https://www.constellation.com/energy-101/energy-choice/what-is-energy-deregulation.html#:~:text=Energy%20deregulation%20is%20the%20restructuring,needs%20and%20specialized%20product%20offerings>. Accessed on 19 May 2021.

² List of Existing Power Plants (Grid Connected) as of December 2020.DOE.

³ Section 6 of RA 9136.

⁴ ERC Resolution No. 10 Series of 2020. A Resolution Adopting the Interim Reliability Performance Indices and Equivalent Outage Days Per Year of Generating Units. Issued on 16 November 2020. Effective on 3 January 2021.

⁵ Department of Energy (DOE) Department Circular No. DC 2018-02-0003. Adopting and Prescribing the Policy for the Competitive Selection Process In the Procurement by the Distribution Utilities of Power Supply Agreement for the Captive Market. Signed on 1 February 2018. Effective on 10 February 2018.

⁶ Page 36.PEP 2018-2040. Available at https://www.doe.gov.ph/sites/default/files/pdf/pep/pep-2018-2040_20210323.pdf. Accessed on 22 May 2021.

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Office of the Secretary

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

1 **SECTION 1.** *Removal of Public Offering Requirement of Generation Companies. –*
2 Section 43(t) of Republic Act No. 9136, otherwise known as the Electric Power Industry
3 Reform Act of 2001, is hereby amended to read as follows:

4 "SEC. 43. *Functions of the ERC.* – The ERC shall promote competition, encourage
5 market development, ensure customer choice and penalize abuse of market
6 power in the restructured electricity industry. In appropriate cases, the ERC is
7 authorized to issue cease and desist order after due notice and hearing. Towards
8 this end, it shall be responsible for the following key functions in the restructured
9 industry:

10 X X X

11 (t) Perform such other regulatory functions as are appropriate and
12 necessary in order to ensure the successful restructuring and modernization
13 of the electric power industry, such as, but not limited to, the rules and

1 guidelines under which [~~generation companies,~~] distribution utilities
2 which are not publicly listed shall offer and sell to the public a portion not
3 less than fifteen percent (15%) of their common share of stocks: *Provided,*
4 *however,* That [~~generation companies,~~] distribution utilities or their
5 respective holding companies that are already listed in the PSE are deemed
6 in compliance. For existing [~~companies~~] **DISTRIBUTION UTILITIES,**
7 such public offering shall be implemented not later than five (5) years from
8 the effectivity of this Act. New [~~companies~~] **DISTRIBUTION**
9 **UTILITIES** shall implement their respective public offerings not later than
10 five (5) years from the issuance of their certificate [~~of compliance~~] **OF**
11 **PUBLIC CONVENIENCE AND NECESSITY;** and

12 X X X."

13 **SECTION 2. *Implementing Rules and Regulations.*** – The Energy Regulatory
14 Commission shall, in consultation with the Department of Energy, other relevant
15 government agencies, the electric power industry participants, consumers, and other
16 public and private stakeholders, promulgate the Implementing Rules and Regulations
17 of the Act within ninety (90) calendar days from its effectivity.

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

21 **SECTION 4. *Repealing Clause.*** – All laws, decrees, orders, rules and regulations or
22 parts thereof which are inconsistent with or contrary to the provisions of this Act are
23 hereby repealed, amended or modified accordingly.

24 **SECTION 5. *Effectivity.*** – This Act shall take effect fifteen (15) days after its complete
25 publication in the Official Gazette or in a national newspaper of general circulation.

26 *Approved,*