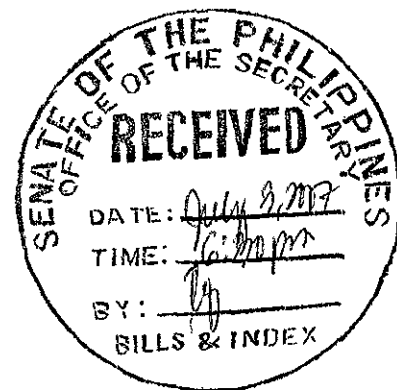


FOURTEENTH CONGRESS OF THE  
REPUBLIC OF THE PHILIPPINES  
*First Regular Session*

SENATE

S. B. No. 899



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Introduced by SENATOR EDGARDO J. ANGARA

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**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.

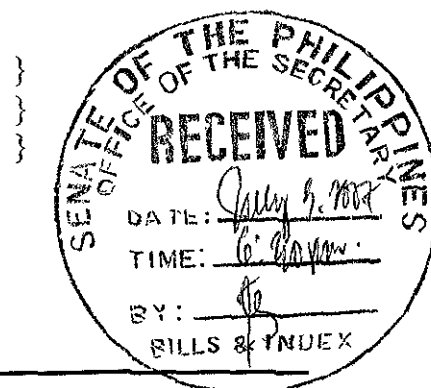
In view of the foregoing, approval of this bill is earnestly requested.

  
EDGARDO J. ANGARA  
Senator

FOURTEENTH CONGRESS OF THE  
REPUBLIC OF THE PHILIPPINES  
*First Regular Session*

SENATE

S. B. No. 899



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Introduced by SENATOR EDGARDO J. ANGARA

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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  
4 of the State:

- 5           (a) To ensure and accelerate the total electrification of the country;
- 6           (b) To ensure the quality, reliability, security and affordability of the  
7 supply of electric power;
- 8           (c) To ensure transparent and reasonable prices of electricity in a  
9 regime of free and fair competition and full public accountability to  
10 achieve
- 11           (d) To enhance the inflow of private capital and broaden the greater  
12 operational and economic efficiency and enhance the  
13 competitiveness of Philippine products in the global market;  
14 ownership base of the power generation, transmission and  
15 distribution sectors;
- 16           (e) To ensure fair and non-discriminatory treatment of public and  
17 private sector entities in the process of restructuring the electric  
18 power industry;
- 19           (f) To protect the public interest as it is affected by the rates and  
20 services of electric utilities and other providers of electric power;
- 21           (g) To assure socially and environmentally compatible energy sources  
22 and infrastructure;

- 1 (h) To promote the utilization of indigenous and new and renewable  
2 energy resources in power generation in order to reduce dependence  
3 on imported energy;
- 4 (i) To provide for an orderly and transparent privatization of the  
5 assets and liabilities of the National Power Corporation (NPC),  
6 THE DILIGENT MITIGATION, SEGREGATION AND FAIR  
7 DISTRIBUTION OF ITS STRANDED OBLIGATIONS AND THE  
8 ORDERLY LIQUIDATION OF ITS STRANDED COSTS;
- 9 (j) To establish a strong and purely independent regulatory body and  
10 system to ensure consumer protection and enhance the competitive  
11 operation of the electricity market; [and]
- 12 (k) To encourage the efficient use of energy and other modalities of  
13 demand side management [.] INCLUDING ENSURING, TO THE  
14 GREATEST POSSIBLE EXTENT, THAT ELECTRIC SUPPLY  
15 DOES NOT OVERLY EXCEED DEMAND;
- 16 (l) TO DEVELOP CONCRETE STRATEGIES TO STRENGTHEN  
17 RURAL ELECTRIC COOPERATIVES “.
- 18

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

20 “**Sec. 6. Generation Sector.** -- Generation of electric power, a  
21 business affected with public interest, shall be competitive and open.

22 “Upon the effectivity of this Act, any new generation company  
23 shall, before it operates, secure from the Energy Regulatory  
24 Commission (ERC) a certificate of compliance pursuant to the  
25 standards set forth in this Act, INCLUDING, BUT NOT LIMITED TO,  
26 COMPLIANCE WITH A MINIMUM LEVEL OF CAPACITY TO BE  
27 DETERMINED BY THE ERC, THE GRID CODE, DISPATCH  
28 SYSTEM AND WHOLESALE SPOT MARKET RULES, as well as  
29 health, safety and environmental clearances from the appropriate  
30 government agencies under existing laws.

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

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

5           Pursuant to the objective of lowering electricity rates to end-  
6 users, sales of generated power by generation companies shall be value  
7 added tax zero-rated. The ERC shall, in determining the existence of  
8 market power abuse or anti-competitive behavior, require from  
9 generation companies the submission of their INDIVIDUAL PRICING  
10 FORMULA, AS WELL AS THEIR financial statements, POWER  
11 PURCHASE AGREEMENTS, AND ANY AGREEMENTS THAT  
12 AFFECT COSTS, TERMS, AND GUARANTEES, AMONG OTHERS."

13  
14       **SECTION 3.** Section 31 of the Act is hereby amended to read as  
15 follows:

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

- 21 (a) Establishment of the wholesale electricity spot market;  
22 (b) Approval of unbundled transmission and distribution wheeling  
23 charges;  
24 (c) Initial implementation of the cross subsidy removal scheme;  
25 (d) Privatization of at least seventy (70%) percent of the total capacity  
26 of generating assets of NPC in Luzon and Visayas; and  
27 (e) Transfer of the management and control of at least seventy percent  
28 (70%) of the total energy output of power plants under contract with  
29 NPC to the IPP Administrators.]

30           Upon the initial implementation of open access, the ERC shall  
31 allow all electricity end-users with a monthly average peak demand of  
32 at least one megawatt (1MW) for the preceding twelve (12) months to  
33 be the contestable market. Two (2) years thereafter, the threshold level  
34 for the contestable market shall be reduced to seven hundred fifty  
35 kilowatts (750kW). At this level, aggregators shall be allowed to supply  
36 electricity to end-users whose aggregate demand within a contiguous

1 area is at least seven hundred fifty kilowatts (7501W). Subsequently  
2 and every year thereafter, the ERC shall evaluate the performance of  
3 the market. On the basis of such evaluation, it shall gradually reduce  
4 threshold level until it reaches the household demand level. In the case  
5 of electric cooperatives, retail competition and open access shall be  
6 implemented not earlier than five (5) years upon the effectivity of this  
7 Act."

8  
9 **SECTION 4.** Section 32 of the Act is hereby amended to read as  
10 follows:

11 **"Sec. 32. NPC Stranded Debt and Contract Cost Recovery.**

12 - Stranded debt of NPC shall refer to any unpaid financial obligations  
13 of NPC.

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

19 TO PROTECT THE PUBLIC FROM ONEROUS AND  
20 GROSSLY DISADVANTAGEOUS PROVISIONS ARISING FROM  
21 PRIVATELY NEGOTIATED CONTRACTS, [t]he national government  
22 shall be made to assume a portion of the financial obligations of NPC  
23 in an amount not to exceed FIVE [Two] hundred billion pesos /P500,  
24 000,000,000.00) [(P200, 000,000,000.00) UPON SHOWING OF PROOF  
25 TO THE ERC THAT THE NPC HAS UNDERTAKEN A STRINGENT  
26 AND EXHAUSTIVE PROCESS OF MITIGATION, SEGREGATION  
27 AND DISPOSITION.

28 *The ERC shall verify the reasonable amounts and determine the*  
29 *manner and duration for the full recovery of stranded debt and*  
30 *stranded costs as defined herein; Provided, That the duration for such*  
31 *recovery shall not be shorter than fifteen (15) years not longer than*  
32 *twenty-five (25) years. The ERC shall, at the end of the first year of the*  
33 *implementation of stranded cost recovery and every year thereafter,*  
34 *conduct a review to determine whether there is under-recovery or over-*  
35 *recovery and adjust (true-up) the level of stranded cost recovery charge*

1 accordingly. Any amount to be included for stranded cost recovery shall  
2 be reflected as a separate item in the consumer billing statement.

3 THE ERC SHALL CONDUCT A COMPREHENSIVE REVIEW  
4 OF THE EXTENT OF THE STRANDED COSTS OF NPC ON A SEMI-  
5 ANNUAL BASIS AND ENSURE THAT THE NPC HAS  
6 UNDERTAKEN A STRINGENT AND EXHAUSTIVE PROCESS OF  
7 MITIGATION, SEGREGATION AND DISPOSITION.”

8  
9 SECTION 5. Section 33 of the Act is hereby amended to read as  
10 follows:

11 “SEC. 33. *Distribution Utilities Stranded Contract Costs*  
12 *Recovery.* - Stranded contract costs of distribution utilities shall refer  
13 to the excess of the contracted cost of electricity under eligible  
14 contracts of such utilities over the actual selling price of such contracts  
15 in the market. Such contracts shall have been approved by the ERB as  
16 of December 31, 2000.

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

1            "A DISTRIBUTION UTILITY SHALL BE ENTITLED TO  
2 RECOVER FROM THE UNIVERSAL CHARGE OVER A PERIOD OF  
3 NOT LESS THAN FIFTEEN (15) YEARS BUT NOT MORE THAN  
4 TWENTY-FIVE (25) YEARS, AN AMOUNT DETERMINED BY THE  
5 ERC AND IN ACCORDANCE WITH THE PROVISIONS OF THIS  
6 SECTION REPRESENTING ITS STRANDED CONTRACT COSTS  
7 FROM ELIGIBLE CONTRACTS AND THE COST OF REFINANCING  
8 DIRECTLY ATTRIBUTABLE TO THE DEBT RAISED FOR THE  
9 PURPOSE OF LENGTHENING THE PERIOD FOR THE FULL  
10 RECOVERY OF ITS OWN STRANDED CONTRACT COSTS;  
11 *PROVIDED*, THAT IN NO CASE SHALL THE AMOUNT OF  
12 RECOVERABLE STRANDED CONTRACT COSTS OF A  
13 DISTRIBUTION UTILITY EXCEED TWENTY THREE CENTAVOS  
14 PER KILOWATT HOUR (P0.23/KWH).

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

31            "Within one (1) year from the start of open access, any  
32 distribution utility that seeks recovery of stranded contract costs shall  
33 file with the ERC notice of such intent together with an estimate of  
34 such obligations, including the present value thereof and such other  
35 supporting data as may be required by the ERC. Any distribution



1 utility that does not file within the date specified shall not be eligible  
2 for such recovery.

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

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

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

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

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

20 "Within three (3) months from the submission of the application  
21 for stranded cost recovery by the relevant distribution utilities, the  
22 ERC shall verify the reasonable amounts and determine the manner  
23 and duration for the full recovery of stranded contract costs as defined  
24 herein: Provided, That the duration for such recovery shall not be  
25 shorter than fifteen (15) years nor longer than twenty-five (25) years.  
26 *PROVIDED, FURTHER, THAT IN NO CASE SHALL THE AMOUNT*  
27 *OF RECOVERABLE STRANDED CONTRACT COSTS OF A*  
28 *DISTRIBUTION UTILITY EXCEED TWENTY THREE CENTAVOS*  
29 *PER KILOWATT HOUR (P0.23/KWH).*

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

32 "The ERC shall, at the end of the first year of the  
33 implementation of stranded cost recovery and every year thereafter,  
34 conduct a review to determine whether there is under recovery or over  
35 recovery and adjust (true-up) the level of stranded cost recovery charge  
36 accordingly. In case of an over-recovery, the ERC shall ensure that any

1 excess amount shall be remitted to the Special Trust Fund created  
2 under Section 34 hereof. A separate account shall be created for these  
3 amounts which shall be held in trust for any future claims of  
4 distribution utilities for stranded cost recovery. At the end of the  
5 stranded cost recovery period, any remaining amount in the account  
6 shall be used to reduce the electricity rates to the end-users.  
7 *PROVIDED, THAT IN NO CASE SHALL THE AMOUNT OF*  
8 *RECOVERABLE STRANDED CONTRACT COSTS OF A*  
9 *DISTRIBUTION UTILITY EXCEED TWENTY THREE CENTAVOS*  
10 *PER KILOWATT HOUR (P0. 23/KWH).*

11  
12 **SECTION 6.** A new Section 33-A is hereby added, to read as follows:

13 "SECTION 33-A. A DISTRIBUTION UTILITY SHALL NOT  
14 BE ALLOWED TO CHARGE END-USERS POWER PURCHASE  
15 ADJUSTMENT (PPA) ARISING FROM ITS OWN IPP'S IN EXCESS  
16 OF TWENTY THREE CENTAVOS (P0.23) PER KILOWATT HOUR;  
17 *PROVIDED, THAT THIS SHALL BE WITHOUT PREJUDICE TO*  
18 *THE REVIEW AND RENEGOTIATION OF IPP CONTRACTS TO*  
19 *FURTHER REDUCE THE PPA AS REQUIRED IN SECTION 68 OF*  
20 *THIS ACT."*

21  
22 **SECTION 7.** Section 34 of the Act is hereby amended to read as  
23 follows:

24 "Sec. 34. *Universal Charge.* - Within one (1) year from the  
25 effectivity of this Act, a universal charge to be determined, fixed and  
26 approved by the ERC, shall be imposed on all electricity end-users for  
27 the following purposes:

28 (a) Payment for the stranded debts in excess of the amount assumed by  
29 the National Government and stranded contract costs of NPC and  
30 as well as qualified stranded contract costs of distribution utilities  
31 resulting from the restructuring of the industry [;]: *PROVIDED,*  
32 *THAT END-USERS SHALL BE CHARGED NOT MORE THAN*  
33 *TWENTY THREE CENTAVOS (P0.23) PER KWH FOR THE*  
34 *STRANDED COSTS OF NPC. THE BALANCE OF THE*  
35 *STRANDED COSTS OF NPC SHALL BE ASSUMED BY THE*  
36 *NATIONAL GOVERNMENT; PROVIDED, FURTHER, THAT IN*

1 NO CASE SHALL THE AMOUNT OF RECOVERABLE  
2 STRANDED CONTRACT COSTS OF A DISTRIBUTION UTILITY  
3 EXCEED TWENTY THREE CENTAVOS PER KILOWATT HOUR  
4 (P0 .23/KWH).

5 (b) Missionary electrification;

6 (c) The equalization of the taxes and royalties applied to indigenous or  
7 renewable sources of energy vis-a-vis imported energy fuels;

8 (d) An environmental charge equivalent to one-fourth of one centavo  
9 per kilowatt-hour (P0.0025/kwh), which shall accrue to an  
10 environmental fund to be used solely for watershed rehabilitation  
11 and management. Said fund shall be managed by NPC under  
12 existing arrangements; and

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

15 The universal charge shall be non-by passable charge, which  
16 shall be passed on and collected from all end-users on a monthly basis  
17 by the distribution utilities. Collections by the distribution utilities and  
18 the TRANSCO in any given month shall be remitted to the PSALM  
19 Corp. on or before the fifteenth (15th) of the succeeding month, net of  
20 any amount due to the distribution utility. Any end-user or self-  
21 generating entity not connected to a distribution utility shall remit its  
22 corresponding universal charge directly to the TRANSCO.

23 The PSALM Corp., as administrator of the fund, shall create a  
24 Special Trust Fund, which shall be disbursed only for the purposes  
25 specified herein in an open and transparent manner. All amounts  
26 collected for the universal charge shall be distributed to the respective  
27 beneficiaries within a reasonable period to be provided by the ERC."  
28

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

30 "SEC. 34-A. **EXEMPTIONS AND REDUCTION OF PPA.** –  
31 ENDUSERS CONSUMING LESS THAN ONE HUNDRED  
32 KILOWATT HOURS (100 KWH) PER MONTH ARE EXEMPTED  
33 FROM PAYMENT OF THE NPC'S PPA.

34 END-USERS CONSUMING ONE HUNDRED KILOWATT  
35 HOURS BUT NOT MORE THAN THREE HUNDRED KILOWATT  
36 HOURS (300/KWH) PER MONTH SHALL ONLY BE REQUIRED TO

1 PAY FOR FIFTY PER CENT (50%) OF THE PPA CORRESPONDING  
2 TO NPC.

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

11  
12 **SECTION 9.** Section 43(f) of the Act is hereby amended as follows:

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

14 (a) xxx

15 (f) In the public interest, establish and enforce a methodology for  
16 setting transmission and distribution wheeling rates and retail  
17 rates for the captive market of a distribution utility, taking into  
18 account all relevant considerations, including the efficiency or  
19 inefficiency of the regulated entities. THE ERC SHALL ADOPT  
20 PERFORMANCE BASED REVENUE ("PBR") FORMS OF RATE-  
21 SETTING BY JUNE 1, 2003. PRIOR TO SUCH DATE, THE ERC  
22 SHALL ADOPT RATE-SETTING FORMS WHERE t [T]he rates  
23 must be such as to allow the recovery of just and reasonable costs  
24 and a reasonable return on rate base (RORB) to enable the entity to  
25 operate viably. The ERC may adopt alternative forms of  
26 internationally accepted rate-setting methodology as it may deem  
27 appropriate. The rate-setting methodology so adopted and applied  
28 must ensure a reasonable price of electricity. The rates prescribed  
29 shall be non-discriminatory. To achieve this objective and to ensure  
30 the complete removal of cross subsidies, the cap on the recoverable  
31 rate of system losses prescribed in Section 10 of Republic Act No.  
32 7832, is hereby amended and shall be replaced by caps which shall  
33 be determined by the ERC based on load density, sales mix, cost of  
34 service, delivery voltage and other technical considerations it may  
35 promulgate, The ERC shall determine such form or rate-setting  
36 methodology, which shall promote efficiency. In case the rate

1 setting methodology used is RORB, it shall be subject to the  
2 following guidelines:

- 3 (i) For purposes of determining the rate base, the TRANSCO or any  
4 distribution utility SHALL NOT BE ALLOWED TO REVALUE ITS  
5 ELIGIBLE ASSETS FOR PURPOSES OF INCREASING ITS  
6 RATE BASE: *PROVIDED*, THAT ASSETS WHICH ARE NOT  
7 USED AND USEFUL FOR THE TRANSMISSION OR  
8 DISTRIBUTION OF ELECTRICITY SHALL

9 NOT BE INCLUDED BY. THE TRANSCO OR ANY  
10 DISTRIBUTION UTILITY IN COMPUTING THE RATE BASE  
11 [may be allowed to revalue its eligible assets not more than once  
12 every three (3) years by an independent appraisal company;  
13 *Provided, however*, That ERC may give an exemption in case of  
14 unusual devaluation: *Provided, further*, That the ERC shall exert  
15 efforts to minimize price shocks in order to protect the consumers];

- 16 (ii) Interest expenses, INCOME TAX, FRANCHISE TAX, WORKING  
17 CAPITAL, AND SYSTEMS LOSSES IN EXCESS OF FOUR AND A  
18 HALF PER CENT (4%%) OF TOTAL ENERGY PURCHASED are  
19 fiat allowable deductions from permissible return on rate base;

- 20 (iii) In determining eligible cost of services that will be 26 passed on to  
21 the end-users, the ERC shall establish minimum efficiency  
22 performance standards for the TRANSCO and distribution utilities  
23 including systems losses, interruption frequency rates, and  
24 collection efficiency;

- 25 iv. Further, in determining rate base, the TRANSCO or any  
26 distribution utility shall not be allowed to include management  
27 inefficiencies like cost of project delays not excused by *force*  
28 *majeure*, penalties and related interest during construction  
29 applicable to these unexcused delays; and

- 30 v. Any significant operating costs or project investments of the  
31 TRANSCO and distribution utilities which shall become part of the  
32 RETURN ON rate base AND SIGNIFICANT OPERATING COSTS  
33 THAT ARE PASSED ON TO THE CONSUMERS shall be subject to  
34 verification by the ERC to ensure that the contracting and  
35 procurement of the equipment, assets and services have been  
36 subjected to [transparent and accepted industry procurement and

1 purchasing practices] PROCUREMENT PROCEDURES NO LESS  
2 STRINGENT AND TRANSPARENT THAN GOVERNMENT  
3 PROCUREMENT GUIDELINES, AND SUBJECT TO OPEN  
4 COMPETITIVE PUBLIC BIDDING IN ORDER to protect the  
5 public interest.”

6  
7 **SECTION 10.** - Section 45 of the Act is hereby amended to read as  
8 follows:

9 **“Sec. 45. Cross Ownership, Market Power Abuse and Anti-**  
10 **Competitive Behavior.** - No participant in the electricity industry or  
11 any other person may engage in any anti-competitive behavior  
12 including, but not limited to, cross-subsidization, price or market  
13 manipulation, or other unfair trade practices detrimental to the  
14 encouragement and protection of contestable markets.

15 NO DISTRIBUTION UTILITY, ITS RESPECTIVE  
16 SUBSIDIARY OR AFFILIATE OR STOCKHOLDER OR OFFICIAL  
17 OF A DISTRIBUTION UTILITY SHALL BE ALLOWED TO HOLD  
18 ANY INTEREST, DIRECTLY OR INDIRECTLY, IN ANY  
19 GENERATION COMPANY: *PROVIDED*, THAT THE DISTRIBUTION  
20 UTILITY HOLDING AN INTEREST IN ANY GENERATION  
21 COMPANY AT THE TIME OF THE PASSAGE OF THIS ACT SHALL  
22 BE REQUIRED TO DIVEST THE SAME WITHIN ONE (1) YEAR  
23 FROM THE EFFECTIVITY OF THIS ACT.

24 No generation company, distribution utility, or its respective  
25 subsidiary or affiliate or stockholder or official of a generation company  
26 or distribution utility, or other entity engaged in generating and  
27 supplying electricity specified by ERC within the fourth civil degree of  
28 consanguinity or affinity, shall be allowed to hold any interest, directly  
29 or indirectly, in TRANSCO or its concessionaire. Likewise, the  
30 TRANSCQ, or its concessionaire or any of its stockholders or officials  
31 or any of their relatives within the fourth civil degree of consanguinity  
32 or affinity, shall not hold any interest, whether directly or indirectly, in  
33 any generation company or distribution utility. Except for *ex officio*  
34 government-appointed representatives, no person who is an officer or  
35 director of the TRANSCO or its concessionaire shall be an officer or  
36 director of any generation company, distribution utility or supplier. A

1 GENERATION COMPANY MAY BE PERMITTED TO HOLD  
2 INTEREST, DIRECTLY OR INDIRECTLY, IN ANOTHER  
3 GENERATION COMPANY: PROVIDED, THAT THE EXTENT OF  
4 SUCH INTEREST SHALL BE LESS THAN THE AMOUNT OF  
5 SHARES NEEDED TO VOTE ONE MEMBER OF THE BOARD OF  
6 DIRECTORS.

7 An "affiliate" means any person which, alone or together with  
8 any other person, directly or indirectly, through one or more  
9 intermediaries, controls, is controlled by, or is under common control  
10 with another person. As used herein, "control" shall mean the power to  
11 direct or cause the direction of the management policies of a person by  
12 contract, agency or otherwise.

13 To promote true market competition and prevent harmful  
14 monopoly and market power abuse, the ERC shall enforce the  
15 following safeguards:

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

23 (b) Distribution utilities may enter into bilateral power supply  
24 contracts subject to review by the ERC: *Provided*, That such review  
25 shall not only be required for distribution utilities whose markets  
26 have not reached household demand level. For the purpose of  
27 preventing market power abuse between associated firms engaged  
28 in generation and distribution, [no] A distribution utility shall NOT  
29 be allowed to source from bilateral power supply contracts [more  
30 than fifty percent (50%) of its total demand] from an associated firm  
31 engaged in generation but such limitation, however, shall not  
32 prejudice contracts entered into prior to the effectivity of this Act.  
33 An associated firm with respect to another entity refers to any  
34 person which, alone or together any other person, directly or  
35 indirectly, through one or more intermediaries, controls, is  
36 controlled by, or is under common control with, such entity; and

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

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

20 Exceptions from these limitations shall be allowed for  
21 isolated grids that are not connected to the high voltage  
22 transmission system. Except as otherwise provided for in this  
23 Section, any restriction on ownership and/ or control between or  
24 within sectors of the electricity industry may be imposed by ERC  
25 only insofar as the enforcement of the provisions of this Section is  
26 concerned.

27 The ERC shall, within one (1) year from the effectivity of this  
28 Act, promulgate rules and regulations to ensure and promote  
29 competition, encourage market development and customer choice  
30 and discourage/ penalize abuse of market power, cartelization and  
31 any anti-competitive or discriminatory behavior, in order to further  
32 the intent of this Act and protect the public interest. Such rules and  
33 regulations shall define the following:

- 34 (a) the relevant markets for purposes of establishing abuse or misuse  
35 of monopoly or market position;  
36 (b) areas of isolated grids; and



1 (c) the periodic reportorial requirements of electric power industry  
2 participants as may be necessary to enforce the provisions of this  
3 Section.

4 The ERC shall, *motu proprio*, monitor and penalize any market  
5 power abuse or anti-competitive or discriminatory act or behavior by  
6 any participant in the electric power industry. Upon finding that a  
7 market participant has engaged in such act or behavior, the ERC shall  
8 stop and redress the same. Such remedies shall, without limitation,  
9 include the imposition of price controls, issuance of injunctions,  
10 requirement of divestment or disgorgement of excess profits and  
11 imposition of fines and penalties pursuant to this Act.

12 The ERC shall, within one (1) year from the effectivity of this  
13 Act, promulgate rules and regulations providing for a complaint  
14 procedure that, without limitation, provides the accused party with  
15 notice and an opportunity to be heard."  
16

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

19 "Section 68. *Review of IPP Contracts* - An inter-agency  
20 committee chaired by the Secretary of Finance AND CO-CHAIRER BY  
21 THE SECRETARY OF ENERGY, with [the Secretary of the  
22 Department of Justice and] the Director General of the National  
23 Economic and Development Authority AND FOUR (4)  
24 INTERNATIONAL ENERGY EXPERTS TO BE APPOINTED BY THE  
25 PRESIDENT as members thereof is hereby created upon the effectivity  
26 of this Act. The Committee shall immediately undertake a thorough  
27 ARMS-LENGTH Review of all IPP contracts ENTERED INTO BY  
28 NPC AND ANY DISTRIBUTION UTILITY. In cases where such  
29 contracts are found to have provisions which are grossly  
30 disadvantageous, or onerous to the Government OR THE END-  
31 USERS, the Committee shall RENEGOTIATE THE CONTRACTS  
32 WITH THE IPPS, IN ADDITION TO CAUSING [cause] the  
33 appropriate government agency to file an action under the arbitration  
34 clauses provided in said contracts or INITIATING [initiate] any  
35 appropriate action' under Philippine laws. The PSALM Corporation  
36 shall diligently seek to reduce stranded costs, if any; *PROVIDED,*

1            THAT ANY REDUCTION IN CONTRACT COST AS A RESULT OF  
2            ANY REVIEW OR RENEGOTIATION BY THE COMMITTEE SHALL  
3            TRANSLATE DIRECTLY INTO LOWER UNIVERSAL CHARGES  
4            FOR THE END-USER."  
5

6            **SECTION 12. *Separability Clause.*** - If any provision of this Act is  
7 held to be unconstitutional or invalid, the same shall not affect the remainder  
8 thereof.  
9

10           **SECTION 13. *Repealing Clause.*** --- All laws, presidential decrees,  
11 executive orders, rules and regulations, and part thereof, which are  
12 inconsistent with the provisions of this Act, are hereby repealed or modified  
13 accordingly.  
14

15           **SECTION 14. *Effectivity.*** --- This Act shall take effect fifteen (15)  
16 days after publication in the Official Gazette or two (2) newspapers of general  
17 circulation.  
18

19           *Approved,*