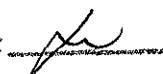


FOURTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

7 JUL 16 P1:15

SENATE

RECEIVED BY: 

S. B. No. 1234

Introduced by Senator JUAN PONCE ENRILE

EXPLANATORY NOTE

The Electric Power Industry Reform Act, also known as the EPIRA law, was enacted into law in 2001 to ensure the quality and reliability of the supply of electric power that would translate to lower consumption costs.

However, the passage of the law was accompanied by increases in electric bills, confusion in the implementation and enforcement of the provisions of the law and inevitably caused a haphazard market behavior in the electric power industry.

The EPIRA law became evidently anti-poor, anti-people, benefiting only a selected number of power generators and distributors. It resulted in electricity cost that is more burdensome on the part of the consumers. At the same time, the issues the law originally intended to resolve were not properly addressed.

It is therefore in our national interest to pass an amendatory bill that will clarify vague and conflicting provisions of the law, afford protection to end-users of electricity and to level the playing field for all the industry players. We need a pragmatic and substantial solution to make the cost of electricity affordable to the consumers while recognizing the right of the electric power industry players to a just and reasonable return on their investments.

This bill seeks to lessen the hardship on electricity consumers by preventing certain industry players to pass on the costs of their inefficiencies, mistakes and questionable onerous contracts or dealings.

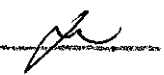
In view of the foregoing, approval of this bill is earnestly sought.


JUAN PONCE ENRILE
Senator

FOURTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
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Introduced by Senator JUAN PONCE ENRILE

AN ACT

AMENDING SECTIONS 4,20, 21,26,30,31,32,33,34,38,41,43,46 OF REPUBLIC ACT NO. 9136 ENTITLED "AN ACT ORDAINING REFORMS IN THE ELECTRIC POWER INDUSTRY AND FOR OTHER PURPOSES"

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

1 Section 1. Section 4, Chapter 1, of Republic Act No. 9136, otherwise known as the Electric
2 Power Industry Reform Act of 2001, hereinafter referred to as "the Act", is hereby amended to
3 read as follows:
4
5
6

7 "SEC. 4. Definition of Terms. —
8

9 (A) "AFFILIATE"/"ASSOCIATED ENTITY OR PERSON" REFERS TO
10 ANY ENTITY OR PERSON WHICH, ALONE OR TOGETHER WITH ANY
11 OTHER ENTITY OR PERSON, DIRECTLY OR INDIRECTLY, THROUGH
12 ONE OR MORE INTERMEDIARIES, CONTROLS, IS CONTROLLED BY, OR
13 IS UNDER COMMON CONTROL WITH ANOTHER ENTITY OR PERSON.
14

15 [(a)] (B) "Aggregator" refers to a person or entity[, engaged] WHICH,
16 WITHOUT A LEGISLATIVE FRANCHISE, IS DULY LICENSED BY THE
17 COMMISSION TO ENGAGE in consolidating electric power demand of end-users OF
18 ELECTRICITY in [the] A contestable market[,] WITHIN A FRANCHISE
19 TERRITORY OF ANOTHER PARTY for the purpose of purchasing and reselling
20 electricity TO SUCH END-USERS on a group basis;
21

22 [(b)] (C) "Ancillary Services" refer to those services that are necessary to
23 support the transmission of capacity and energy from resources to loads while
24 maintaining reliable operation of the transmission system in accordance with good utility
25 practice and the Grid Code to be adopted in accordance with this Act;
26

27 [(c)] (D) "Captive Market" refers to [electricity end-users who do not have
28 the choice of a supplier of electricity, as may be determined by the Energy Regulatory
29 Commission (ERC) in accordance with this Act;] THAT MARKET, WHICH SHALL
30 BE DETERMINED BY THE COMMISSION IN ACCORDANCE WITH THIS
31 ACT, AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND PUBLIC
32 HEARING, CONSISTING OF END-USERS OF ELECTRICITY IN A
33 FRANCHISE TERRITORY OF A DISTRIBUTION UTILITY THAT CANNOT
34 CHOOSE THEIR SUPPLIER OF ELECTRICITY;
35

1 [(d)] (E) "Central Dispatch" refers to the process of issuing direct
2 instructions to electric power industry participants by the grid operator to achieve the
3 economic operation, and maintenance of quality, stability, reliability, and security, of the
4 transmission system;

5
6
7 [(e)] (F) "Co-Generation Facility" refers to a facility which produces
8 electrical and/or mechanical energy and forms of useful thermal energy, such as heat or
9 steam, which are used for industrial, commercial heating or cooling purposes through the
10 sequential use of energy;

11
12 [(f)] (G) "Commission" refers to the decision-making body of the [ERC]
13 **ENERGY REGULATORY COMMISSION (ERC)** composed of a Chairman and four
14 (4) members as provided under Section 38 [hereof] **OF THIS ACT[;]. FOR**
15 **PURPOSES OF CONSTRUING AND INTERPRETING THE RELEVANT**
16 **PROVISIONS OF THIS ACT, THE TERMS "COMMISSION", "ENERGY**
17 **REGULATORY COMMISSION", AND "ERC" SHALL, UNLESS THE**
18 **CONTEXT CLEARLY INDICATES OTHERWISE, SHALL REFER TO THE**
19 **ONE AND THE SAME ENTITY;**

20
21
22 [(g)] (H) "Concession Contract" refers to the award by the government to a
23 qualified private entity of the responsibility for financing, operating, expanding,
24 maintaining, and managing specific Government-owned assets;

25
26 [(h)] (I) "Contestable Market" refers to [the electricity end-users who have
27 a choice of a supplier of electricity, as may be determined by the ERC in accordance with
28 this Act;] **THAT MARKET, WHICH SHALL BE DETERMINED BY THE**
29 **COMMISSION IN ACCORDANCE WITH THIS ACT, AFTER DUE NOTICE TO**
30 **ALL INTERESTED PARTIES AND PUBLIC HEARING, CONSISTING OF END-**
31 **USERS OF ELECTRICITY WITHIN A FRANCHISE TERRITORY OF A**
32 **DISTRIBUTION UTILITY THAT CAN CHOOSE THEIR SUPPLIER OF**
33 **ELECTRICITY;**

34
35 **(J) "CONTROL" REFERS TO THE POWER TO DIRECT OR CAUSE**
36 **THE DIRECTION OF THE MANAGEMENT POLICIES OF AN ENTITY OR**
37 **PERSON BY CONTRACT, AGENCY, OR OTHERWISE.**

38
39 [(i)] (K) "Customer Service Charge" refers to the component in the retail
40 rate intended for the cost recovery of customer-related services including, but not limited
41 to, meter reading, billing administration and collection;

42
43 [(j)] (L) "Demand Side Management" refers to measures, undertaken by
44 distribution utilities to encourage end-users in the proper management of their load to
45 achieve efficiency in the utilization of fixed infrastructures in the system;

46
47 [(k)] (M) "Department of Energy" or "DOE" refers to the government
48 agency created pursuant to Republic Act No. 7638 whose expanded functions are
49 provided herein;

50
51 [(l)] (N) "Department of Finance" or "DOF" refers to the government
52 agency created pursuant to Executive Order No. 127;

53
54
55 [(m)] (O) "Distribution Code" refers to a compilation of rules and regulations
56 governing electric utilities in the, operation, and maintenance of their distribution
57 systems, which includes, among others, the standards for service and performance, and
58 defines and establishes the relationship of the distribution systems with the facilities or
59 installations of the parties connected thereto;

1
2 [(n)] (P) "Distribution of Electricity" refers to the conveyance of electric
3 power by a distribution utility through its distribution system pursuant to the provisions
4 of this Act;

5
6 [(o)] (Q) "Distribution System" refers to the system of wires and associated
7 facilities belonging to a franchised distribution utility, extending between the delivery
8 points on the transmission or sub-transmission system or generator connection and the
9 point of connection to the premises of the end-user;

10
11 [(p)] (R) "Distribution Wheeling Charge" refers to the cost or charge regulated by
12 the ERC for the use of a distribution system and/or the availment of related services;

13
14 [(q)] (S) "Distribution Utility" refers to any electric cooperative, private
15 corporation, government-owned utility, or existing local government unit, which has an
16 exclusive franchise to operate a distribution system in accordance with this Act;

17
18 [(r)] (T) "Electric Cooperative" refers to a distribution utility organized
19 pursuant to Presidential Decree No. 269, as amended, or as otherwise provided in this
20 Act;

21
22 [(s)] (U) "Electric Power Industry Participant" refers to any person or entity
23 engaged in the generation, transmission, distribution, or supply of electricity;

24
25 [(t)] (V) "End-user" refers to any person or entity requiring the supply and
26 delivery of electricity for its own use;

27
28 [(u)] (W) "Energy Regulatory Board" or "ERB" refers to the [independent,]
29 **NOW DEFUNCT** quasi-judicial regulatory body created under Executive Order No.
30 172, as amended;

31
32 [(v)] (X) "Energy Regulatory Commission" or "ERC" refers to the
33 regulatory agency created herein;

34
35 [(w)] (Y) "Franchise Area" refers to a geographical area exclusively assigned
36 or granted to a distribution utility for distribution of electricity;

37
38 [(x)] (Z) "Generation Company" refers to any person or entity authorized by
39 the ERC to operate facilities used in the generation of electricity;

40
41 [(y)] (AA) "Generation of Electricity" refers to the production of electricity
42 by a generation company, or a co-generation facility, pursuant to the provisions of this
43 Act;

44
45 [(z)] (BB) "Grid" refers to the high voltage backbone system of
46 interconnected transmission lines, substations, and related facilities;

47
48 [(aa)] (CC) "Grid Code" refers to the set of rules and regulations governing
49 the safe, and reliable operation, maintenance, and development, of the high voltage
50 backbone transmission system and its related facilities;

51
52 [(bb)] (DD) "Independent Power Producer" or "IPP" refers to an existing
53 [power generating entity] **GENERATION COMPANY**, which is not owned by NPC[;]
54 **AND WITH WHOM NPC OR A DISTRIBUTION UTILITY HAS A VALID AND**
55 **EXISTING PURCHASED POWER CONTRACT**;

56
57 [(cc)] (EE) "Inter-Class Cross Subsidy" refers to an amount charged by
58 distribution utilities to industrial and commercial end-users as well as to other subsidizing

1 customer sectors in order to reduce electricity rates of other customer sectors , such as
2 the residential end-users, hospitals, and streetlights;

3
4 [(dd)] (FF) "Inter-Regional Grid Cross Subsidy" refers to an amount
5 embedded in the electricity rates of NPC charged to its customers located in a viable
6 regional grid in order to reduce the electricity rates in a less viable regional grid;

7
8 [(ee)] (GG) "Intra-Regional Grid Cross Subsidy" refers to an amount
9 embedded in the electricity rates of NPC charged to distribution utilities and non-utilities
10 with higher load factor and/or delivery voltage in order to reduce the electricity rates
11 charged to distribution utilities with lower load factor and/or delivery voltage located in
12 the same regional grid;

13
14 [(ff)] (HH) "IPP Administrator" refers to qualified independent entities
15 appointed by PSALM Corporation who shall administer, conserve, and manage the
16 contracted energy output of NPC IPP contracts;

17
18 [(gg)] (II) "Isolated Distribution System" refers to the backbone system of
19 wires and associated facilities not directly connected to the national transmission system;

20
21 [(hh)] (JJ) "Lifeline Rate" refers to the subsidized rate given to low-income
22 captive market end-users who cannot afford to pay at full cost;

23
24 [(ii)] (KK) "National Electrification Administration" or "NEA" refers to the
25 government agency created under Presidential Decree No. 269, as amended, and whose
26 additional mandate is further set forth herein;

27
28 [(jj)] (LL) "National Power Corporation" or "NPC" refers to the government
29 corporation created under Republic Act No. 6395, as amended;

30
31 [(kk)] (MM) "National Transmission Corporation" or "TRANSCO" refers to
32 the corporation organized pursuant to this Act to acquire all the transmission assets of the
33 NPC;

34 [(ll)] (NN) "Open Access" refers to the [system of allowing] **PRIVILEGE**
35 **GRANTED TO** any qualified person [the use of] **TO USE THE** transmission[, and/or]
36 **AND SUB-TRANSMISSION FACILITIES AND ASSETS AND/OR THE**
37 **distribution system and associated facilities OF ANY PUBLIC OR PRIVATE**
38 **PERSON OR ENTITY**, subject to the payment of **JUST AND REASONABLE**
39 **transmission and/or distribution [retail] wheeling [rates] CHARGES** duly approved by
40 the ERC, **AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND PUBLIC**
41 **HEARING;**

42
43 [(mm)] (OO) "Philippine Energy Plan" or "PEP" refers to the overall energy
44 program formulated and updated yearly by the DOE and submitted to Congress pursuant
45 to Republic Act No. 7638;

46
47 [(nn)] (PP) "Power Development Program" or "PDP" refers to the indicative
48 plan for managing electricity demand through energy-efficient programs and for the
49 upgrading, expansion, rehabilitation, repair, and maintenance of power generation and
50 transmission facilities, formulated and updated yearly by the DOE in coordination with
51 the generation, transmission and distribution utility companies;

52
53 [(oo)] (QQ) "Power Sector Assets and Liabilities Management Corporation" or
54 "PSALM Corp." refers to the corporation created pursuant to Section 49 hereof;

55
56 [(pp)] (RR) "Privatization" refers to the sale, disposition, change, and transfer
57 of ownership and control of assets and IPP contracts, from the Government or a
58 government corporation to a private person or entity;

59

1 (SS) "PUBLIC HEARING" REFERS TO A PROCEEDING
2 CONDUCTED BY THE COMMISSION AFTER ITS MEMBERS ARE
3 FORMALLY CONVENED TO HEAR, AFTER DUE NOTICE TO ALL
4 INTERESTED PARTIES, THE TESTIMONY OF WITNESSES UNDER OATH,
5 SUBJECT TO CROSS-EXAMINATION BY ADVERSE PARTIES, AND TO
6 FORMALLY RECEIVE DOCUMENTARY EVIDENCE, IN ORDER TO
7 DISPOSE ANY ISSUE BROUGHT TO THE ATTENTION OF THE
8 COMMISSION THROUGH MOTIONS, COMPLAINTS OR PETITION FILED
9 WITH THE COMMISSION.

10
11 [(qq)] (TT) "Renewable Energy Resources" refers to energy resources, that do
12 not have an upper limit on the total quantity to be used. Such resources are renewable on
13 a regular basis and the renewable rate is rapid enough to consider, availability over an
14 indefinite time. These include, among others, biomass, solar, wind, hydro, and ocean
15 energy;

16
17 [(rr)] (UU) "Restructuring" refers to the process of reorganizing the electric
18 power industry in order to introduce higher efficiency, greater innovation and end-user
19 choice. It shall be understood as covering a range of alternatives enhancing exposure of
20 the industry to competitive market forces;

21
22 [(ss)] (VV) "Retail Rate" refers to the total price paid by end-users consisting
23 of the charges for generation, transmission and related ancillary services, distribution,
24 supply, and other related charges for electric service;

25
26
27
28 [(tt)] (WW) "Small Power Utilities Group" or SPUG" refers to the functional
29 unit of NPC created to pursue missionary electrification function;

30
31 [(uu)] (XX) "Stranded contract costs of NPC or OF A distribution utility" refer
32 to the excess of the contracted cost of electricity under [eligible contracts] **THE**
33 **ELIGIBLE INDEPENDENT POWER PRODUCER (IPP) CONTRACTS OF NPC**
34 **OR OF A DISTRIBUTION UTILITY** over the actual selling price of [the contracted
35 energy output of such contracts in the market. Such contracts shall have been approved
36 by the ERB as of December 31, 2000;] **THAT CONTRACTED ELECTRICITY**
37 **FROM SUCH IPP CONTRACTS IN THE MARKET: PROVIDED, THAT IPP**
38 **CONTRACTS, TO BE DEEMED ELIGIBLE, HAD BEEN APPROVED BY THE**
39 **ERB ON OR BEFORE DECEMBER 31, 2000;**

40
41 [(vv)] (YY) "Stranded Debts of NPC" refer to [any] ITS unpaid financial
42 obligations [of NPC which have not been liquidated by the proceeds from the sales and
43 privatization of NPC assets;], **WHICH HAVE NOT BEEN LIQUIDATED OR**
44 **OFFSET BY THE PROCEEDS FROM THE SALE, DISPOSITION, AND/OR**
45 **PRIVATIZATION OF NPC'S GENERATION, TRANSMISSION AND SUB-**
46 **TRANSMISSION ASSETS AND FACILITIES, REAL ESTATE ASSETS, OTHER**
47 **DISPOSABLE ASSETS, AND IPP CONTRACTS;**

48
49 [(ww)] (ZZ) "Sub-transmission Assets" refer to the facilities related to the
50 power delivery service below the transmission voltages and, based on the functional
51 assignment of assets including, but not limited to, step-down transformers used solely
52 by load customers, associated switchyard/substation, control and protective equipment,
53 reactive compensation equipment to improve customer power factor, overhead lines, and
54 the land where such facilities/equipment are located. These include NPC assets linking
55 the transmission system and the distribution system which are neither classified as
56 generation nor transmission;

57
58 [(xx)] (AAA) "Supplier" refers, to any person or entity authorized by the ERC to
59 sell, broker, market, or aggregate electricity to the end-users;

1
2 [(yy)] (BBB) "Supplier's Charge" refers to the charge imposed by electricity
3 suppliers for the sale of electricity to end-users, excluding the charges for generation
4 transmission and distribution wheeling;

5
6 [(zz)] (CCC) "Supply of Electricity" [means the sale of electricity by a party
7 other than a generator or a distributor in the franchise area of a distribution utility, using
8 the wires of the distribution utility concerned;] **SHALL REFER, UNLESS THE
9 CONTEXT SUGGESTS OTHERWISE, TO THE BUSINESS OF BUYING AND
10 SELLING, BROKERING, MARKETING ELECTRICITY BY A PERSON OR
11 ENTITY, OTHER THAN A GENERATION COMPANY OR A DISTRIBUTION
12 UTILITY, TO END-USERS OF ELECTRICITY, OR OF AGGREGATING
13 DEMANDS FOR SUCH END-USERS OF ELECTRICITY, IN THE FRANCHISE
14 TERRITORY OF A DISTRIBUTION UTILITY, USING FOR THE PURPOSE
15 THE WIRES AND FACILITIES OF THE DISTRIBUTION UTILITY
16 CONCERNED;**

17
18
19 [(aaa)] (DDD) "Transmission Charge" refers to the regulated cost or charges for
20 the use of a transmission system which may include the availment of ancillary services;

21
22 [(bbb)] (EEE) "Transmission Development Plan" or "TDP" refers to the program
23 for managing the transmission system through efficient planning for the expansion,
24 upgrading, rehabilitation, repair, and maintenance, to be formulated by DOE and
25 implemented by the TRANSCO pursuant to this Act;

26
27 [(ccc)] (FFF) "Transmission of Electricity" refers to the conveyance of
28 electricity through the high voltage backbone system; and

29
30 [(ddd)] (GGG) "Universal Charge" refers to the charge, if any, [imposed
31 for the recovery of the stranded cost and other purposes pursuant to Section 34 hereof.]
32 **TO BE DETERMINED, FIXED, AND APPROVED BY THE COMMISSION,
33 AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND PUBLIC
34 HEARING, IN ACCORDANCE WITH AND FOR THE PURPOSES
35 MENTIONED IN SECTION 34 OF THIS ACT.**

36
37
38
39 Sec 2. Section 20, Chapter II of the Act is hereby amended to read as follows:

40
41
42 "SEC. 20. *TRANSCO Related Businesses.* — **THE TRANSCO [may] IS
43 HEREBY AUTHORIZED TO engage, DIRECTLY OR INDIRECTLY, in any
44 BUSINESS related TO ITS MAIN business [which maximizes] IN ORDER TO
45 MAXIMIZE THE utilization of its assets[:] AND RESOURCES: *Provided,* That
46 WHERE ASSETS FORMING PART OF THE RATE BASE OF THE TRANSCO
47 ARE UTILIZED IN SUCH RELATED BUSINESS, a portion of the net income
48 derived from such [undertaking utilizing assets which form part of the rate base]
49 RELATED BUSINESS, WHICH PORTION SHALL NOT BE LESS THAN FIFTY
50 PERCENT (50%) OF SUCH NET INCOME, shall be used to reduce THE
51 transmission RATE OR wheeling [rates as determined by the ERC. Such portion of net
52 income used to reduce the transmission wheeling rates shall not exceed fifty percent
53 (50%) of the net income derived from such undertaking.] CHARGE PASSED-ON TO
54 THE END-USERS OF ELECTRICITY.**

55
56 Separate accounts shall be maintained for each **RELATED** business
57 [undertaking] to ensure that the transmission business shall neither subsidize in any way
58 such **RELATED** business [undertaking] nor encumber [its] **THE TRANSCO'S**
59 transmission assets in any way to support such **RELATED** business.

1
2
3
4
5 Sec 3. Section 21 of the Act is hereby amended to read as follows:
6
7

8 "SEC. 21. *TRANSCO Privatization.* — Within six (6) months from the
9 effectivity of this Act, the PSALM Corp. shall submit a plan **ON THE**
10 **PRIVATIZATION OF THE TRANSCO** for the endorsement by the Joint
11 **CONGRESSIONAL Power Commission TO**, and **FOR** the approval of, the President of
12 the Philippines. [The] **THEREAFTER, THE** President of the Philippines [thereafter]
13 shall direct **THE PSALM Corp.** to [award, in] **CONDUCT AN** open competitive
14 **PUBLIC bidding, AND AWARD THE OWNERSHIP AND CONTROL OF THE**
15 **TRANSCO THROUGH A CONTRACT OF SALE, OR AWARD THE**
16 **ADMINISTRATION, MANAGEMENT, OPERATION, AND MAINTENANCE,**
17 **AS WELL AS THE PRESERVATION, IMPROVEMENT, AND/OR EXPANSION**
18 **OF** the transmission **ASSETS AND** facilities, including **THE** grid interconnections and
19 ancillary services **THROUGH A CONCESSION CONTRACT** to [a] **THE** qualified
20 [party either through an outright sale or a concession contract.] **WINNING BIDDER.**
21 The buyer/concessionaire, **AS THE CASE MAY BE**, shall be responsible for the
22 **EFFICIENT ADMINISTRATION, MANAGEMENT, OPERATION, AND**
23 **MAINTENANCE, AS WELL AS FOR THE PRESERVATION,** improvement,
24 **AND/OR** expansion[, operation, and/or maintenance of its] **OF THE** transmission assets
25 and [the] **FACILITIES, INCLUDING THE GRID INTERCONNECTIONS AND**
26 **ANCILLARY SERVICES AND THE ADMINISTRATION, MANAGEMENT,**
27 **AND FOR THE** operation of any related business[.] **OR BUSINESSES.** The award
28 [shall result in maximum] **TO THE QUALIFIED WINNING BIDDER MUST BE**
29 **BASED ON THE MOST ADVANTAGEOUS, BENEFICIAL, AND OPTIMAL**
30 present value [of proceeds] to the national government. In case a concession contract is
31 awarded, the concessionaire shall [have a] **BE GIVEN AN INITIAL CONCESSION**
32 contract period of twenty-five (25) years, subject to review and renewal for a maximum
33 period of another twenty-five (25) years.
34

35 **IF ALL OR A CONTROLLING PORTION OF THE SHARES OF STOCK OF**
36 **TRANSCO ARE SOLD, THE BUYER OR BUYERS WILL NOT NEED A**
37 **CONGRESSIONAL FRANCHISE SEPARATE FROM THAT OF TRANSCO TO**
38 **OPERATE THE BUSINESS OF THE LATTER; PROVIDED HOWEVER, THAT THE**
39 **NATIONALITY REQUIREMENTS OF THE CONSTITUTION MUST BE COMPLIED**
40 **WITH.**
41

42 **IF THE AWARDEE OF THE CONCESSION CONTRACT IS MERELY**
43 **HIRED UNDER A COMPENSATION SCHEME TO ADMINISTER, MANAGE,**
44 **OPERATE, MAINTAIN, PRESERVE, AND TO FINANCE AND SUPERVISE**
45 **THE IMPROVEMENTS AND/OR EXPANSIONS OF THE ELECTRIC**
46 **TRANSMISSION ASSETS AND FACILITIES AND THE GRID**
47 **INTERCONNECTIONS AND THE ANCILLARY SERVICES FOR THE**
48 **TRANSCO, THE AWARDEE OF THE CONCESSION CONTRACT SHALL NOT**
49 **BE REQUIRED TO OBTAIN A NATIONAL FRANCHISE, AND NEITHER**
50 **SHALL HE OR IT BE REQUIRED TO QUALIFY UNDER THE NATIONALITY**
51 **REQUIREMENTS OF THE CONSTITUTION FOR PUBLIC UTILITY**
52 **OPERATORS.**
53

54 **HOWEVER, IF THE WINNING BIDDER OR AWARDEE OF THE**
55 **CONCESSION CONTRACT TAKES OVER THE POSSESSION AND CONTROL OF**
56 **THE ELECTRIC TRANSMISSION ASSETS AND FACILITIES AND THE GRID**
57 **INTERCONNECTIONS AND ANCILLARY SERVICES, AS BUYER OR LESSEE**
58 **THEREOF, AND ADMINISTERS, MANAGES, MAINTAINS, OPERATES, IMPROVES,**
59 **AND EXPANDS THEM AS HIS OR ITS OWN BUSINESS, THEN IN THAT CASE THE**
60 **AWARDEE OF THE CONCESSION CONTRACT MUST OBTAIN A NATIONAL**

1 FRANCHISE THEREFOR, AND HE OR IT MUST QUALIFY UNDER THE
 2 NATIONALITY REQUIREMENTS OF THE CONSTITUTION FOR PUBLIC UTILITY
 3 OPERATORS.
 4

5 [In any case, the awardee shall] **THE AWARDEE, WHETHER UNDER A**
 6 **CONTRACT OF SALE OR UNDER A CONCESSION CONTRACT, MUST**
 7 comply with the Grid Code and the TDP [as approved]. The **CONTRACT OF sale**
 8 [agreement/concession] **OR THE CONCESSION contract, AS THE CASE MAY BE,**
 9 shall [include, but not limited to, the provision for] **PROVIDE, AMONG OTHERS,**
 10 **SUCH performance and financial guarantees or [any] other covenants [which] THAT**
 11 the national government may require. [Failure to comply with such obligations shall result in
 12 the imposition of appropriate sanctions or penalties by the ERC.] **THE FAILURE OF**
 13 **THE AWARDEE TO COMPLY WITH ANY OF SUCH GUARANTEES OR**
 14 **COVENANTS SHALL CONSTITUTE A DEFAULT ON THE PART OF THE**
 15 **AWARDEE AND SHALL CAUSE THE IMMEDIATE RESCISSION AND**
 16 **CANCELLATION OF THE CONTRACT OF SALE OR OF THE CONCESSION**
 17 **CONTRACT AND, IN ADDITION, THE IMPOSITION OF APPROPRIATE**
 18 **SANCTIONS, FINES, OR PENALTIES BY THE COMMISSION IN**
 19 **ACCORDANCE WITH SECTION 44 OF THIS ACT.**
 20

21 The awardee [shall] **MUST** be financially and technically capable **AND**
 22 **SOUND**, with proven domestic and/or international experience and expertise as a leading
 23 transmission system operator. Such experience must be with a transmission system of
 24 comparable capacity and coverage as **THAT OF** the Philippines.
 25
 26
 27

28 Sec. 4. Section 26 of the Act is hereby amended to read as follows:
 29
 30

31 "SEC. 26. *Distribution Related Businesses.* — [Distribution utilities]
 32 **SUBJECT TO THE APPROVAL OF THE COMMISSION, AFTER DUE NOTICE**
 33 **TO ALL INTERESTED PARTIES AND PUBLIC HEARING, A DISTRIBUTION**
 34 **UTILITY may, directly or indirectly, engage in any BUSINESS related TO ITS MAIN**
 35 **business [undertaking which maximizes] IN ORDER TO MAXIMIZE** the utilization of
 36 [their] **ITS assets[:] AND RESOURCES: Provided,** That **WHERE ASSETS**
 37 **FORMING PART OF THE RATE BASE ARE UTILIZED IN SUCH RELATED**
 38 **BUSINESS, a portion of the net income derived from such [undertaking utilizing assets**
 39 **which form part of the rate base] RELATED BUSINESS, WHICH PORTION SHALL**
 40 **NOT BE LESS THAN FIFTY PERCENT (50%) OF SUCH NET INCOME,** shall be
 41 used to reduce its distribution wheeling [charges] **CHARGE AND RETAIL RATE** [as
 42 determined] **APPROVED** by the [ERC: *Provided, further,* That such portion of net
 43 income used to reduce their distribution wheeling charges shall not exceed fifty percent
 44 (50%) of the net income derived from such undertaking: *Provided, finally,* That separate
 45 accounts are maintained for each business undertaking to ensure that the distribution
 46 business shall neither subsidize in any way such business undertaking nor encumber its
 47 distribution assets in any way to support such business.] **COMMISSION.**
 48

49 **SEPARATE ACCOUNTS SHALL BE MAINTAINED FOR EACH**
 50 **RELATED BUSINESS TO ENSURE THAT THE DISTRIBUTION BUSINESS**
 51 **SHALL NEITHER SUBSIDIZE, IN ANY WAY, SUCH RELATED BUSINESS**
 52 **NOR ENCUMBER, IN ANY WAY, ITS DISTRIBUTION ASSETS TO SUPPORT**
 53 **SUCH RELATED BUSINESS.**
 54
 55
 56
 57
 58
 59

1
2 Sec. 5. Section 30 of the Act is hereby amended to read as follows:
3
4

5 "SEC. 30. *Wholesale Electricity Spot Market.* — Within one (1) year from the
6 effectivity of this Act, the DOE shall establish a wholesale electricity spot market,
7 **HEREINAFTER REFERRED TO AS THE WESM**, composed of the [wholesale
8 electricity spot market] **WESM** participants. The market shall provide the mechanism for
9 identifying and setting the price of actual variations from the quantities transacted under
10 contracts between sellers and purchasers of electricity.
11

12 Jointly with the electric power industry participants, the DOE shall formulate the
13 detailed rules for the wholesale electricity spot market.. Said rules shall provide the
14 mechanism for determining the price of electricity not covered by bilateral contracts
15 between sellers and purchasers of electricity users. [The price determination
16 methodology contained in said rules] **THE METHOD CONTAINED IN THE SAID
17 RULES FOR DETERMINING THE PRICE OF ELECTRICITY IN THE WESM**
18 shall be subject to the approval of [ERC.] **THE COMMISSION, AFTER DUE
19 NOTICE TO ALL INTERESTED PARTIES AND PUBLIC HEARING.** Said rules
20 shall also reflect accepted economic principles and provide a level playing field to all
21 electric power industry participants. The rules shall provide, among others, procedures
22 for:
23

24 (a) Establishing the merit order dispatch instructions for each time period;
25 **PROVIDED HOWEVER, THAT IN EVERY CASE, AS A GENERAL RULE,
26 THE CHEAPER ELECTRICITY SHALL BE DISPATCHED AHEAD OF THE
27 HIGHER PRICED ELECTRICITY.**
28

29 (b) Determining the market-clearing price for each time period;
30

31 (c) Administering the market, including criteria for admission to [and
32 termination] **OR DISMISSAL** from the market [which includes], **AS WELL AS ANY
33 REQUIRED** security or performance [bond requirements] **BOND**, voting rights of the
34 participants, surveillance, [and] assurance of compliance [of] **BY** the participants with the
35 rules, and the formation of the [wholesale electricity spot market governing body]
36 **GOVERNING BODY OF THE WESM;**
37

38 (d) Prescribing guidelines for the market operation in system emergencies;
39 and
40

41 (e) Amending the rules.
42

43 The wholesale electricity spot market shall be implemented by a market operator
44 in accordance with the wholesale electricity spot markets rules. The market operator shall
45 be an autonomous group, to be constituted by DOE, with equitable representation from
46 electric power industry participants, initially under the administrative supervision of the
47 TRANSCO. The market operator shall undertake the preparatory work and initial
48 operation of the wholesale electricity spot market. Not later than one (1) year after the
49 implementation of the wholesale electricity spot market , an independent entity shall be
50 formed and the functions, assets and liabilities of the market operator shall be transferred
51 to such entity with the joint endorsement of the DOE and the electric power industry
52 participants. Thereafter, the administrative supervision of the TRANSCO over [such
53 entity shall cease.] **THE WESM AND THE INDEPENDENT MARKET
54 OPERATOR SHALL CEASE AND TERMINATE.**
55

56 Subject to the compliance with the membership criteria, all generating
57 companies, distribution utilities, suppliers, bulk consumers/end-users and other similar
58 entities authorized by the ERC shall be eligible to become members of the wholesale
59 electricity spot market.

1
2 The ERC may authorize other similar entities to become eligible as members,
3 either directly or indirectly, of the wholesale electricity spot market. All generating
4 companies, distribution utilities, suppliers, bulk consumers/end-users and other similar
5 entities authorized by the ERC, whether direct or indirect members of the wholesale
6 electricity spot market, shall be bound by the wholesale electricity spot market rules with
7 respect to transactions in that market.
8

9 NEA may, in exchange for adequate security and a guarantee fee, act as a
10 guarantor for purchases of electricity in the wholesale electricity spot market by any
11 electric cooperative or small distribution utility to support their credit standing consistent
12 with the provisions hereof. For this purpose, the authorized capital stock of NEA is
13 hereby increased, to Fifteen billion pesos (P15,000,000,000.00).
14

15 All electric cooperatives which have outstanding uncollected billings to any local
16 government unit shall report such billings to NEA which shall, in turn, report the same to
17 the Department of Budget and Management (DBM) for collection pursuant to Executive
18 Order 190, issued on December 21, 1999.
19

20 The cost of administering and operating the wholesale electricity spot market
21 shall be recovered by the market operator through a charge imposed to all market
22 members: *Provided*, That such charge shall be filed with and approved by the [ERC.]
23 **COMMISSION, AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND**
24 **PUBLIC HEARING.**
25

26 In cases of national and international security emergencies or natural calamities,
27 the ERC is hereby empowered to suspend the operation of the wholesale electricity spot
28 market or declare a temporary wholesale electricity spot market failure.
29

30 **TO ENCOURAGE AND PROMOTE THE DEVELOPMENT OF THE**
31 **WESM, DISTRIBUTION UTILITIES WITH DEMAND LEVELS OF NOT LESS**
32 **THAN 100 MEGAWATTS ARE REQUIRED, FOR THE FIRST THREE (3)**
33 **YEARS IMMEDIATELY FOLLOWING THE ESTABLISHMENT OF THE**
34 **WESM, TO SOURCE FROM THE WESM AT LEAST TEN PERCENT (10%) OF**
35 **THEIR SUPPLY OF ELECTRICITY FOR RETAIL TO END-USERS. THE**
36 **COMMISSION MAY, FROM TIME TO TIME, REVIEW THE APPROPRIATE**
37 **LEVEL OF DEMAND TO BE SOURCED FROM THE WESM AND, IN**
38 **MERITORIOUS INSTANCES, WAIVE IMPLEMENTATION OF SUCH**
39 **REQUIREMENT, SUBJECT TO A PUBLIC HEARING.**
40

41
42
43 Sec. 6. Section 31 of the Act is hereby amended to read as follows:
44

45
46 "SEC. 31. *Retail Competition and Open Access.* — Any law to the contrary
47 notwithstanding, retail competition and open access on distribution wires shall be
48 implemented not later than three (3) years upon the effectivity of this Act, subject to the
49 following conditions:
50

51 (a) Establishment of the wholesale electricity spot market ;

52 (b) Approval of unbundled transmission and distribution wheeling charges;

53 (c) Initial implementation of the cross subsidy removal scheme;

54
55 (d) Privatization of at least [seventy (70%) percent] **FIFTY PERCENT (50%)**
56 of the total capacity of [generating] **THE GENERATION** assets of NPC in Luzon and
57 Visayas; and
58
59

1
2 (e) Transfer of the management and control of at least [seventy percent (70%)]
3 **FIFTY PERCENT (50%)** of the total energy output of power plants under contract
4 with NPC to the IPP Administrators.
5

6 Upon the initial implementation of open access, the [ERC] **COMMISSION** shall
7 [allow] **CONSTITUTE IN A FORMAL ORDER TO BE ISSUED AFTER DUE**
8 **NOTICE TO ALL INTERESTED PARTIES AND PUBLIC HEARING** all
9 [electricity] end-users **OF ELECTRICITY** with a monthly average peak demand of [at
10 least] **NOT LESS THAN** one megawatt (1MW) for the **IMMEDIATELY** preceding
11 twelve (12) **BILLING** months to be the contestable market. [Two] **AFTER TWO (2)**
12 years [thereafter,] **IMMEDIATELY FOLLOWING THE INITIAL**
13 **IMPLEMENTATION OF OPEN ACCESS**, the threshold level for the contestable
14 market shall be reduced to seven hundred fifty kilowatts (750kW). At [this] **THAT** level,
15 aggregators shall be allowed to supply electricity to end-users whose aggregate demand
16 within a contiguous area is at least seven hundred fifty kilowatts (750kW). [Subsequently
17 and every] **EVERY** year thereafter, the [ERC] **COMMISSION** shall **REVIEW AND**
18 evaluate the performance of the **CONTESTABLE** market[. On] **AND, ON** the basis of
19 such **YEARLY REVIEW AND** evaluation, [it] **THE COMMISSION** shall gradually
20 reduce the threshold level until [it reaches] **THE CONTESTABLE MARKET SHALL**
21 **FINALLY COVER** the household [demand level.] **END-USERS OF ELECTRICITY**.
22 In the case of electric cooperatives, retail competition and open access shall be
23 implemented not earlier than five (5) years upon the effectivity of this Act.
24
25
26

27 Sec. 7. Section 32 of the Act is hereby amended to read as follows:
28
29

30 "SEC. 32. *NPC Stranded Debt and Contract Cost Recovery.* — [Stranded
31 debt] **THE STRANDED DEBTS** of NPC [shall] refer to [any] **ITS** unpaid financial
32 obligations [of NPC.], **WHICH ARE NOT LIQUIDATED OR OFFSET BY THE**
33 **PROCEEDS FROM THE SALE, DISPOSITION, AND/OR PRIVATIZATION OF**
34 **NPC'S GENERATION ASSETS, TRANSMISSION AND SUBTRANSMISSION**
35 **ASSETS AND FACILITIES, REAL ESTATE ASSETS, OTHER DISPOSABLE**
36 **ASSETS, AND IPP CONTRACTS.**
37

38 [Stranded] **THE STRANDED** contract costs of NPC [shall] refer to the excess of
39 the contracted cost of electricity under **THE** eligible [IPP] **INDEPENDENT POWER**
40 **PRODUCER (IPP)** contracts of NPC **WITH ITS IPPs** over the actual selling price of
41 [the] **THAT** contracted [energy output of such contracts] **ELECTRICITY FROM**
42 **SUCH IPP CONTRACTS** in the market. [Such contracts shall] **INDEPENDENT**
43 **POWER PRODUCER CONTRACTS OF NPC SHALL BE DEEMED ELIGIBLE**
44 **CONTRACTS TO APPLY FOR STRANDED CONTRACT COSTS RECOVERY**
45 **ONLY IF SUCH CONTRACTS** have been approved by the ERB [as of] **ON OR**
46 **BEFORE** December 31, 2000.
47

48 The national government shall directly assume a portion of the financial
49 obligations of NPC in an amount not [to exceed] **LESS THAN** Two hundred billion
50 pesos (P200, 000,000,000.00).
51

52 The [ERC] **COMMISSION** shall verify the reasonable [amounts and determine
53 the manner and duration for the full recovery of stranded debt and stranded contract costs
54 as defined herein:], **ACTUAL, AND AGGREGATE AMOUNTS OF THE**
55 **STRANDED DEBTS AS WELL AS THE JUST AND REASONABLE, ACTUAL,**
56 **AND AGGREGATE AMOUNTS OF THE STRANDED CONTRACT COSTS OF**
57 **NPC THAT MUST BE RECOVERED, IF ANY, AND SHALL APPROVE AND**
58 **DETERMINE THE MANNER AND DURATION FOR THE FULL RECOVERY**
59 **OF BOTH, AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND**

1 **PUBLIC HEARING:** *Provided*, That the duration for such **FULL** recovery shall not be
 2 [shorter] **LESS** than fifteen (15) years nor [longer] **MORE** than twenty-five (25) years.
 3 The [ERC] **COMMISSION** shall, at the end of the first year [of] **FROM** the
 4 implementation of [stranded cost recovery] **THE STRANDED DEBTS AND**
 5 **STRANDED CONTRACT COSTS RECOVERY**, and every year thereafter, conduct a
 6 review **OF ALL RELEVANT FACTS** to determine whether there [is] **HAS BEEN AN**
 7 *under-recovery or over-recovery* [and adjust (true-up) the level of stranded cost recovery
 8 charge accordingly.] **FROM THE STRANDED DEBTS AND THE STRANDED**
 9 **CONTRACT COSTS RECOVERY CHARGE. IN THE EVENT OF UNDER-**
 10 **RECOVERY OR OVER-RECOVERY, THE COMMISSION SHALL, AFTER**
 11 **DUE NOTICE TO ALL INTERESTED PARTIES AND PUBLIC HEARING,**
 12 **ADJUST THE RATE OF THE SAID STRANDED DEBTS AND STRANDED**
 13 **CONTRACT COSTS RECOVERY CHARGE ACCORDINGLY.** Any amount [to be
 14 included for stranded cost recovery] **REPRESENTING THE STRANDED DEBTS**
 15 **AND STRANDED CONTRACT COSTS RECOVERY CHARGE** shall be reflected
 16 as a separate item in the [consumer billing statement.] **ELECTRIC END-USER'S**
 17 **MONTHLY BILLING STATEMENTS.**

18
 19 **IN CASE OF OVER-RECOVERY, THE AMOUNT OVER-RECOVERED**
 20 **SHALL BE REFUNDED TO THE END-USERS OF ELECTRICITY IN THE**
 21 **AREAS WHERE THE OVER-RECOVERY OCCURRED, WITH INTEREST**
 22 **EQUAL TO THE NATIONAL GOVERNMENT'S NINETY-DAY TREASURY**
 23 **BILL BORROWING RATE, COMPUTED ON THE BASIS OF THE AMOUNT**
 24 **OF EACH MONTHLY BILLING STATEMENT UNTIL THE TOTAL OVER-**
 25 **RECOVERED AMOUNT IS FULLY REFUNDED. THE COMMISSION IS**
 26 **HEREBY AUTHORIZED TO ADOPT SUCH FAIR AND REASONABLE**
 27 **FORMULA AND PROCEDURE TO EFFECT THE SAID REFUND.**

28
 29
 30
 31 Sec. 8. Section 33 of the Act is hereby amended to read as follows:

32
 33
 34 "SEC. 33. *Distribution Utilities Stranded Contract Costs Recovery.* —
 35 [Stranded] **THE STRANDED** contract costs of A distribution [utilities shall] **UTILITY**
 36 refer to the excess of the contracted cost of electricity under **THE** eligible
 37 **INDEPENDENT POWER PRODUCER (IPP)** contracts of [such utilities] **THE**
 38 **DISTRIBUTION UTILITY WITH ITS IPPs** over the actual selling price of [such
 39 contracts] **THAT CONTRACTED ELECTRICITY FROM SUCH IPP**
 40 **CONTRACTS** in the market. [Such contracts shall] **INDEPENDENT POWER**
 41 **PRODUCER CONTRACTS OF THE DISTRIBUTION UTILITY SHALL BE**
 42 **DEEMED ELIGIBLE CONTRACTS TO APPLY FOR STRANDED CONTRACT**
 43 **COSTS RECOVERY ONLY IF SUCH CONTRACTS** have been approved by the
 44 **ERB [as of] ON OR BEFORE** December 31, 2000.

45
 46 A distribution utility [shall] **WITH ELIGIBLE IPP CONTRACTS MAY BE**
 47 **ALLOWED TO** recover **ITS** stranded contract costs[: *Provided, however, That*] **ONLY**
 48 **IF** such **STRANDED CONTRACT** costs [of the IPPs of distribution utilities are
 49 subject to] **ARE FOUND, AFTER A THOROUGH** review by [ERC in order to
 50 determine fairness and reasonableness] **THE COMMISSION, TO BE FAIR AND**
 51 **REASONABLE** in relation to **OR IN COMPARISON WITH** the average price of
 52 **SIMILAR OR COMPARABLE** land-based [IPP projects] **IPP CONTRACTS** entered
 53 into by NPC, at the time [they were contracted. The ERC] **OR AS NEAR A TIME AS**
 54 **THE SAID IPP CONTRACTS OF THE DISTRIBUTION UTILITY WERE**
 55 **CONCLUDED. IN REVIEWING AND COMPARING THE SAID AVERAGE**
 56 **PRICE OF ELIGIBLE IPP CONTRACTS OF THE DISTRIBUTION UTILITY,**
 57 **THE COMMISSION** shall take into consideration all **RELEVANT** factors that affect
 58 the total cost of NPC IPP generation projects, including direct or indirect subsidies or
 59 incentives provided by the Government.

1
2 Within one (1) year from the start of open access, any distribution utility that
3 [seeks] **INTENDS TO SEEK THE** recovery of stranded contract costs shall file with the
4 [ERC] **COMMISSION A** notice of such intent [together with], **STATING WITH**
5 **SUFFICIENT PARTICULARITY** an estimate of **THE AGGREGATE AMOUNT**
6 **OF** such [obligations, including the] **STRANDED CONTRACT COSTS AND ITS**
7 present value [thereof] and **SUBMITTING AT THE SAME TIME** such [other]
8 supporting **EVIDENCE AND/OR** data as may be required by the [ERC.]
9 **COMMISSION TO ASSESS AND DETERMINE THE MERIT AND VALIDITY**
10 **OF THE ALLEGED STRANDED CONTRACT COSTS.** Any distribution utility that
11 does not file **SUCH NOTICE OF INTENT, WITH THE NECESSARY**
12 **SUPPORTING EVIDENTIAL REQUIREMENTS,** within the [date] specified
13 **PERIOD OF TIME** shall not be [eligible for such recovery.] **ENTITLED TO**
14 **RECOVER ANY STRANDED CONTRACT COSTS.**

15
16 Any distribution utility [which seeks] **THAT INTENDS** to recover stranded
17 [cost] **CONTRACT COSTS** shall have a duty to mitigate **BEFOREHAND** its potential
18 stranded contract costs by making [reasonable best] **REAL** efforts to:

19
20 (a) Reduce the costs of its existing contracts with [IPPs] **ITS INDEPENDENT**
21 **POWER PRODUCERS (IPPS)** to [a level not exceeding] **AN EXTENT AT LEAST**
22 **EQUAL TO** the average buying price [of] **FROM** other **COMPARABLE** land-based
23 electric power [generators;] **GENERATION COMPANIES;** and

24
25 (b) Submit to an annual [earnings] **FINANCIAL** review **AND AUDIT** by the
26 [ERC and use] **COMMISSION UNTIL THE END OF THE STRANDED**
27 **CONTRACT COSTS RECOVERY PERIOD SO THAT** its earnings above its
28 authorized rate of return, **IF ANY, SHALL BE USED** to reduce the book value of
29 [contracts until the end of the stranded cost recovery period.] **ITS IPP CONTRACTS.**

30
31 **BILATERAL CONTRACTS CONCLUDED BY A DISTRIBUTION**
32 **UTILITY WITHOUT OPEN COMPETITIVE PUBLIC BIDDING, SPECIALLY**
33 **WITH SISTER OR AFFILIATED GENERATION COMPANY OR COMPANIES,**
34 **MUST BE SUBJECTED TO STRINGENT MITIGATION EXAMINATION TO**
35 **ELIMINATE ABOVE MARKET PRICES, INDICES, COST FACTORS, OTHER**
36 **PREFERRED PROVISIONS AND ARRANGEMENTS THAT WILL INCREASE**
37 **THE PASS-ON COSTS TO THE END-USERS OF ELECTRICITY.**

38
39 **THE STRANDED CONTRACT COSTS RECOVERIES ALLOWED**
40 **AFTER THE ABOVE-MENTIONED MITIGATION EXAMINATION SHALL BE**
41 **COLLECTED ONLY FROM CUSTOMERS OF THE DISTRIBUTION UTILITY**
42 **CONCERNED IN ITS OWN FRANCHISE TERRITORY, AFTER THE**
43 **ELIMINATION OF THE INTER-GRID SUBSIDIES.**

44
45 [Other] **IN CONDUCTING THE REVIEW OF THE STRANDED**
46 **CONTRACT COSTS OF A DISTRIBUTION UTILITY, THE COMMISSION**
47 **MAY UTILIZE FOR THAT PURPOSE OTHER** mitigating measures which are
48 reasonably known and generally accepted within the electric power industry [shall be
49 utilized]. The [ERC] **COMMISSION** shall not require the distribution utility to take a
50 loss to reduce **ITS** stranded contract costs or **TO divest ITSELF OF** assets, unless the
51 divestiture is imposed as a penalty [as provided herein.] **IN ACCORDANCE WITH**
52 **THE APPLICABLE PROVISIONS OF THIS ACT.**

53
54 The [relevant] distribution utility **CONCERNED** shall submit to the [ERC]
55 **COMMISSION** quarterly reports showing the amount of **THE** stranded **CONTRACT**
56 costs **ALREADY** recovered and the **REMAINING** balance [remaining], **IF ANY, YET**
57 **to be recovered.**

1 Within three (3) months [from] **IMMEDIATELY FOLLOWING** the
 2 submission of the application for **THE** stranded [cost] **CONTRACT COSTS** recovery
 3 by the [relevant] distribution [utilities,] **UTILITY CONCERNED**, the [ERC]
 4 **COMMISSION** shall verify the **JUST AND** reasonable [amounts] **AMOUNT TO BE**
 5 **RECOVERED, IF ANY**, and **SHALL APPROVE THE SAME AND** determine the
 6 manner and duration for the full recovery of **THE** stranded contract costs [as defined
 7 herein:], **AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND PUBLIC**
 8 **HEARING: Provided**, That the duration for such recovery shall not be [shorter] **LESS**
 9 than fifteen (15) years nor [longer] **MORE** than twenty-five (25) years. Any amount [to
 10 be included for stranded cost recovery] **REPRESENTING THE STRANDED**
 11 **CONTRACT COSTS RECOVERY CHARGE** shall be reflected as a separate item in
 12 the [consumer billing statement.] **ELECTRIC END-USER'S MONTHLY BILLING**
 13 **STATEMENTS.**

14
 15 The [ERC] **COMMISSION** shall, at the end of the first year [of] **FROM** the
 16 implementation of **THE** stranded [cost] **CONTRACT COSTS** recovery, and every year
 17 thereafter, conduct [a] **AN ANALYSIS AND** review **OF ALL RELEVANT FACTS** to
 18 determine whether there [is] **HAS BEEN AN** under-recovery or over-recovery **FROM**
 19 **THE STRANDED CONTRACT COSTS RECOVERY CHARGE** and adjust [(true-
 20 up) the level of] **THE RATE OF THE SAID** stranded [cost] **CONTRACT COSTS**
 21 recovery charge accordingly. In case of an over-recovery, the [ERC] **COMMISSION**
 22 shall ensure that any excess amount shall be remitted to the Special Trust Fund created
 23 under Section 34 hereof. A separate **TRUST** account shall be created for these amounts,
 24 which shall be held in trust for any future claims of distribution utilities for stranded
 25 [cost] **CONTRACT COSTS** recovery. At the end of the stranded [cost] **CONTRACT**
 26 **COSTS** recovery period, any remaining amount in [this] **THE SAID TRUST** account
 27 shall be used to reduce the electricity rates **CHARGED** to the end-users[.] **OF**
 28 **ELECTRICITY.**

29
 30
 31
 32 Sec. 9. Section 34 of the Act is hereby amended to read as follows:

33
 34
 35 "SEC. 34. *Universal Charge.* — Within one (1) year from the effectivity of
 36 this Act, a universal charge to be determined, fixed, and approved by the [ERC,]
 37 **COMMISSION, AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND**
 38 **PUBLIC HEARING**, shall be imposed on all [electricity] end-users **OF**
 39 **ELECTRICITY, ON THE BASIS OF THE NUMBER OF KILOWATT HOURS**
 40 **OF ELECTRICITY RESPECTIVELY CONSUMED BY THEM**, for the following
 41 purposes:

42
 43 (a) Payment for the stranded debts **OF NPC** in excess of the amount **TO BE**
 44 assumed by the National Government [and] **AS PROVIDED UNDER SECTION 32**
 45 **OF THIS ACT, FOR THE PAYMENT OF JUST AND REASONABLE AMOUNT**
 46 **OF** stranded contract costs of NPC [and as well as qualified] **FROM ITS**
 47 **INDEPENDENT POWER PRODUCER CONTRACTS, AND FOR THE**
 48 **PAYMENT OF JUST AND REASONABLE AMOUNT OF** stranded contract costs of
 49 distribution utilities [resulting from] **THAT MAY ARISE FROM THEIR**
 50 **RESPECTIVE ELIGIBLE IPP CONTRACTS BECAUSE OF** the restructuring of the
 51 **ELECTRIC POWER** industry;

52
 53 (b) Missionary electrification;

54
 55 (c) The equalization of the taxes and royalties applied to indigenous or
 56 renewable sources of energy vis-à-vis imported energy fuels;

57
 58 (d) An environmental charge equivalent to one-fourth of one centavo per
 59 kilowatt-hour (P0.0025/kWh), which shall accrue to an environmental fund to be used

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

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

6
7 The universal charge [shall be a] **UNDER THIS SECTION** [non-bypassable
8 charge which] shall be passed on and collected **PER BILLING MONTH BY THE**
9 **DISTRIBUTION UTILITIES** from all **THEIR RESPECTIVE** end-users **OF**
10 **ELECTRICITY** on [a monthly] **THE** basis [by the distribution utilities.] **OF THE**
11 **NUMBER OF KILOWATT HOURS OF ELECTRICITY ACTUALLY**
12 **CONSUMED BY EACH OF SUCH END-USERS OF ELECTRICITY PER**
13 **BILLING MONTH.** Collections by the distribution utilities and the TRANSCO in any
14 given **BILLING** month shall be remitted to the PSALM Corp. on or before the fifteenth
15 (15th) **DAY** of the succeeding month, net of any amount due to the distribution utility.
16 [Any end-user or self-generating entity not connected to a distribution utility shall remit
17 its corresponding universal charge directly to the TRANSCO.]

18
19 **THE SELF-GENERATED ELECTRICITY OF AN END-USER WHO OR**
20 **WHICH IS NOT DIRECTLY CONNECTED TO THE DISTRIBUTION SYSTEM**
21 **OF A DISTRIBUTION UTILITY OR TO THE TRANSMISSION GRID AND ITS**
22 **SUBTRANSMISSION FACILITIES SHALL NOT BE SUBJECT TO OR LIABLE**
23 **FOR THE UNIVERSAL CHARGE IMPOSED IN THIS SECTION, EXCEPT**
24 **FOR THE PAYMENT OF THE OBLIGATIONS SPECIFIED IN (b) AND (d) IF**
25 **THE SELF GENERATED ELECTRICITY OF THE END USER COMES FROM**
26 **THE UTILIZATION AND EXPLOITATION OF THE NATURAL RESOURCES**
27 **OF THE COUNTRY.**

28
29 **HOWEVER, EVEN IF THE END USER WHO OR WHICH GENERATES**
30 **ELECTRICITY FOR ITS OWN USE FROM ITS OWN GENERATION**
31 **FACILITY IS CONNECTED TO THE DISTRIBUTION SYSTEM OF A**
32 **DISTRIBUTION UTILITY OR TO THE TRANSMISSION SYSTEM OF**
33 **TRANSCO, THE SAME SHALL NOT BE SUBJECT TO THE UNIVERSAL**
34 **CHARGE IF THE SELF GENERATED ELECTRICITY DOES NOT PASS**
35 **THROUGH THE DISTRIBUTION SYSTEM OF A DISTRIBUTION UTILITY**
36 **OR OF THE TRANSMISSION SYSTEM OF TRANSCO, EXCEPT FOR THE**
37 **PAYMENT OF THE OBLIGATIONS SPECIFIED IN (b) AND (d) IF THE SELF**
38 **GENERATED ELECTRICITY OF THE END USER COMES FROM THE**
39 **UTILIZATION AND EXPLOITATION OF THE NATURAL RESOURCES OF**
40 **THE COUNTRY.**

41
42
43 The PSALM Corp., [as] **BEING THE CUSTODIAN AND** administrator of the
44 **{fund,} UNIVERSAL CHARGE HEREIN PROVIDED,** shall create a Special Trust
45 **Fund ACCOUNT,** which shall be **USED, AND FROM WHICH SHALL BE** disbursed
46 only **SUCH AMOUNTS AS MAY BE NEEDED STRICTLY,** for the purposes
47 specified [herein] **IN THIS SECTION** in an open and transparent manner. **PSALM**
48 **SHALL APPOINT A CONSUMER REPRESENTATIVE ACTIVE IN THE**
49 **ELECTRICITY INDUSTRY WHO SHALL MONITOR THE DISBURSEMENT**
50 **OF FUNDS.** All amounts collected for the universal charge shall be **ALLOCATED**
51 **AND distributed EXPEDITIOUSLY FOR THE PAYMENT OF THE**
52 **OBLIGATIONS SPECIFIED IN (A), (B), (C), (D), AND (E) ABOVE AND** to [the]
53 **THEIR** respective beneficiaries, within [a] **SUCH** reasonable period [to be provided by
54 the ERC.] **OF TIME AS SHALL BE DETERMINED BY THE COMMISSION.**

55
56
57
58
59

1
2
3 Sec. 10. Section 38, Chapter IV, of the Act is hereby amended to read as follows:
4
5

6 "SEC. 38. *Creation of the Energy Regulatory Commission.* — [There is
7 hereby created an independent, quasi-judicial regulatory body to be named the Energy
8 Regulatory Commission (ERC). For this purpose, the existing Energy Regulatory Board
9 (ERB) created under Executive Order No. 172, as amended, is hereby abolished.] **THE
10 ENERGY REGULATORY BOARD (ERB) CREATED UNDER EXECUTIVE
11 ORDER NO. 172, AS AMENDED, IS HEREBY ABOLISHED. IN LIEU
12 THEREOF, THERE IS HEREBY CREATED AN IMPARTIAL, INDEPENDENT,
13 AND QUASI-JUDICIAL REGULATORY BODY TO BE NAMED THE ENERGY
14 REGULATORY COMMISSION (ERC), WHICH FOR PURPOSES OF THIS ACT
15 IS REFERRED TO AS THE "COMMISSION". ALL THE POWERS
16 FORMERLY VESTED IN THE ENERGY REGULATORY BOARD UNDER
17 EXECUTIVE ORDER NO. 172, AS AMENDED, THAT ARE CONSISTENT
18 WITH THE PROVISIONS OF THIS ACT MAY BE EXERCISED BY THE
19 COMMISSION.**
20

21
22 The Commission shall be composed of a Chairman and four (4) members to be
23 appointed by the President of the Philippines. The Chairman and the members of the
24 Commission shall be natural-born citizens and residents of the Philippines, persons of
25 good moral character, at least thirty-five (35) years of age, and of recognized
26 competence in any of the following fields: energy, law, economics, finance, commerce,
27 or engineering, with at least three (3) years actual, and distinguished experience in their
28 respective fields of expertise: *Provided*, That out of the four (4) members of the
29 Commission, at least one (1) shall be a member of the Philippine Bar with at least ten
30 (10) years experience in the active practice of law, and one (1) shall be a certified public
31 accountant, with at least ten (10) years experience in active practice.
32

33 Within three (3) months from the creation of the ERC, the Chairman shall submit
34 for the approval by the President of the Philippines the new organizational structure and
35 *plantilla* positions necessary to carry out the powers and functions of the ERC.
36

37 The Chairman of the Commission, who shall be a member of the Philippine Bar,
38 shall act as the Chief Executive Officer of the Commission.
39

40 All members of the Commission shall have a term of seven (7) years: *Provided*,
41 That for the first appointees, the Chairman shall hold office for seven (7) years, two (2)
42 members shall hold office for five (5) years; and the other two (2) members shall hold
43 office for three (3) years: *Provided, further*, That appointment to any future vacancy shall
44 only be for the unexpired term of the predecessor: *Provided, finally*, That there shall be
45 no reappointment and in no case shall any member serve for more than seven (7) years in
46 the Commission.
47

48 The Chairman and members of the Commission shall assume office at the
49 beginning of their terms: *Provided*, That, if upon the effectivity of this Act, the
50 Commission has not been constituted, and the new staffing pattern and *plantilla*
51 positions have not been approved and filled-up, the current Board and existing personnel
52 of ERB shall continue to hold office.
53

54 The existing personnel of the ERB, if qualified, shall be given preference in the
55 filling up of *plantilla* positions created in the ERC, subject to existing civil service rules
56 and regulations.
57

58 Members of the Commission shall enjoy security of tenure, and shall not be
59 suspended or removed from office except for just cause as specified by law.

1
2 The Chairman and the members of the Commission [or any of] **AND** their
3 relatives within the fourth civil degree of consanguinity or affinity, **WHETHER SUCH**
4 **PERSONAL RELATIONS ARE** legitimate, [or] common law, [shall be] **OR**
5 **OTHERWISE, ARE** prohibited from holding any interest whatsoever, either as
6 investor, stockholder, officer, or director, in any company or entity engaged in the
7 business of transmitting, generating, supplying, **AGGREGATING**, or distributing [any
8 form of energy and must, therefore, divest through sale or legal disposition of any and all
9 interests in the energy sector upon assumption of office.] **ELECTRICITY.**

10
11 **UPON THE ASSUMPTION BY THE CHAIRMAN AND THE ASSOCIATE**
12 **MEMBERS OF THE COMMISSION OF THEIR RESPECTIVE POSITIONS,**
13 **THE CHAIRMAN AND THE ASSOCIATE MEMBERS OF THE COMMISSION**
14 **AND THEIR RESPECTIVE RELATIVES WITHIN THE PROSCRIBED**
15 **DEGREE OF PERSONAL RELATIONS MUST DIVEST THEMSELVES OF ALL**
16 **THEIR PROHIBITED INTEREST, THROUGH REAL ARMS LENGTH**
17 **TRANSACTIONS OR OTHER VALID FORMS OF DISPOSITION, WITH**
18 **CORRESPONDING PAYMENT OF ALL TAXES DUE, IF ANY, ON SUCH**
19 **TRANSACTION OR OTHER FORMS OF DISPOSITION AND WITHOUT ANY**
20 **PROVISION GRANTING A RIGHT TO THE TRANSFEROR OF SUCH**
21 **PROHIBITED INTEREST TO REPURCHASE SUCH TRANSFERRED OR**
22 **DISPOSED PROHIBITED INTEREST, AND MUST RESIGN FROM ALL THEIR**
23 **PROSCRIBED POSITIONS IN THE ELECTRIC POWER INDUSTRY.**

24
25 The presence of at least three (3) members of the Commission shall constitute a
26 quorum and the majority vote of two (2) members in a meeting where a quorum is
27 present shall be necessary for the adoption of any rule, ruling, order, resolution, decision
28 or other act of the Commission in the exercise of its quasi-judicial functions: *Provided,*
29 *That in fixing rates and tariffs, an affirmative vote of three (3) members shall be*
30 *required.*

31
32
33
34 Sec. 11. Section 41 of the Act is hereby amended as follows:

35
36
37 "SEC. 41. **PROTECTION AND** *Promotion of Consumer* **RIGHTS AND**
38 *Interests.* — [The ERC shall handle consumer complaints and ensure the adequate
39 promotion of consumer interests.]**THE COMMISSION SHALL ENSURE THE**
40 **ADEQUATE PROTECTION AND PROMOTION OF THE INTERESTS OF THE**
41 **ELECTRICITY CONSUMERS AND UPHOLD THEIR BASIC RIGHTS AS**
42 **FOLLOWS:**

- 43
44 A) **TO HAVE QUALITY, RELIABLE, AFFORDABLE, SAFE, AND**
45 **REGULAR SUPPLY OF ELECTRIC POWER;**
46
47 B) **TO BE ACCORDED COURTEOUS, PROMPT, AND NON-**
48 **DISCRIMINATORY SERVICE BY THE ELECTRIC SERVICE**
49 **PROVIDER;**
50
51 C) **TO BE GIVEN A TRANSPARENT, NON-DISCRIMINATORY AND**
52 **REASONABLE PRICE OF ELECTRICITY CONSISTENT WITH**
53 **THE PROVISIONS OF THIS ACT.**
54
55 D) **TO BE AN INFORMED ELECTRIC CONSUMER AND GIVEN**
56 **ADEQUATE ACCESS TO INFORMATION ON MATTERS**
57 **AFFECTING THE ELECTRIC SERVICE OF THE CONSUMER**
58 **CONCERNED;**
59

- 1 E) **TO BE ACCORDED PROMPT AND SPEEDY RESOLUTION OF**
 2 **COMPLAINTS BY BOTH THE DISTRIBUTION UTILITY**
 3 **AND/OR THE COMMISSION;**
 4
 5 F) **TO KNOW AND CHOOSE THE ELECTRIC SERVICE RETAILER**
 6 **UPON THE IMPLEMENTATION OF RETAIL COMPETITION;**
 7 **AND**
 8
 9 G) **TO ORGANIZE THEMSELVES AS A CONSUMER**
 10 **ORGANIZATION IN THE FRANCHISE AREA WHERE THEY**
 11 **BELONG AND WHERE THEY ARE SERVED BY THE**
 12 **DISTRIBUTION UTILITY OR AS A NETWORK OF**
 13 **ORGANIZATION.**

14
 15 The [ERC] COMMISSION shall [handle] **ATTEND AND RESPOND**
 16 **EXPEDITIOUSLY TO THE [consumer] complaints OF END-USERS OF**
 17 **ELECTRICITY, and IT SHALL ensure AND SAFEGUARD the adequate,**
 18 **EFFECTIVE, AND SUSTAINED promotion [of consumer interests.] AND**
 19 **PROTECTION OF THE INTERESTS OF END-USERS OF ELECTRICITY.**
 20

21 **THE COMMISSION SHALL ALSO ENSURE THAT DISTRIBUTION**
 22 **UTILITIES SHALL SUPPLY THE LEAST COST ELECTRICITY FOR THEIR**
 23 **CAPTIVE END-USERS.**
 24

25
 26
 27 Sec. 12. Section 43 of the Act is hereby amended as follows:
 28

29
 30 "SEC. 43. *Functions of the [ERC.] COMMISSION.* — The [ERC]
 31 **COMMISSION shall, AMONG OTHERS, [(1)] promote competition[.]; [(2)]**
 32 **encourage market development[.]; [(3)] PROTECT END-USERS OF ELECTRICITY**
 33 **FROM DISCRIMINATORY, UNFAIR, OR CONFISCATORY RATES; [(4)]**
 34 **ensure [customer], UPON THE ESTABLISHMENT OF THE CONTESTABLE**
 35 **MARKET, END-USER'S choice; and [(5)] CONTROL, PREVENT, AND penalize**
 36 **abuse of market power in the restructured [electricity] ELECTRIC POWER industry.**
 37

38 [In appropriate cases, the ERC] **THE COMMISSION** is authorized to issue A
 39 **cease and desist order, WHENEVER IT IS NEEDED TO SERVE THE INTEREST**
 40 **OF THE PUBLIC OR THE INTEREST OF JUSTICE, after due notice TO ALL**
 41 **INTERESTED PARTIES and PUBLIC hearing.**
 42

43 **THE COMMISSION, ACTING AS A QUASI-JUDICIAL BODY, SHALL**
 44 **CONDUCT PUBLIC HEARINGS ON ALL APPLICATIONS FOR RATE**
 45 **INCREASE AND ON ANY ISSUE, THE RESOLUTION OF WHICH, WILL**
 46 **AFFECT PRIVATE RIGHTS OR IMPOSE OBLIGATIONS OR WILL RESULT**
 47 **IN ANY INCREASE IN THE PRICE OF ELECTRICITY TO THE CONSUMERS.**
 48 **HENCEFORTH, NO PROVISIONAL AUTHORITY FOR ELECTRICITY RATE**
 49 **INCREASE MAY BE ISSUED.**
 50

51 [Towards this end, it shall] **IN ADDITION, THE COMMISSION SHALL**
 52 **PERFORM AND EXERCISE AND be responsible for the following [key] POWERS**
 53 **AND functions [in the restructured industry]:**
 54

55 (a) Enforce the implementing rules and regulations of this Act;
 56

57 (b) Within six (6) months from the effectivity of this Act, promulgate and
 58 enforce, in accordance with law, a National Grid Code and a Distribution Code, which
 59 shall include, but not limited to, the following:

1
2 (i) Performance standards for TRANSCO O & M Concessionaire,
3 distribution utilities, and suppliers: *Provided*, That in the establishment of the
4 performance standards, the nature and function of the entities shall be considered;
5 and
6

7 (ii) Financial capability standards for the generating companies, the
8 TRANSCO, distribution utilities, and suppliers: *Provided*, That in the formulation
9 of the financial capability standards, the nature and function of the entity shall be
10 considered: *Provided, further*, That such standards are set to ensure that the
11 electric power industry participants meet the minimum financial standards to
12 protect the public interest[. Determine fix, and approve, after due notice and
13 public hearings the universal charge, to be imposed on all electricity end-users
14 pursuant to Section 34 hereof]; **AND**
15

16 **(III) DETERMINE, FIX, AND APPROVE, AFTER DUE NOTICE**
17 **TO ALL INTERESTED PARTIES AND PUBLIC HEARING, THE**
18 **ITEMIZED AMOUNTS OF THE UNIVERSAL CHARGE TO BE**
19 **IMPOSED ON ALL END-USERS OF ELECTRICITY PURSUANT TO**
20 **SECTION 34 OF THIS ACT.**
21

22 (c) Enforce the rules and regulations governing the operations of the
23 electricity spot market and the activities of the spot market operator and other participants
24 in the spot market, for the purpose of ensuring a greater supply and rational pricing of
25 electricity;
26

27 (d) Determine the level of cross subsidies in the existing retail rate until the
28 same is removed pursuant to Section 74 hereof;
29

30 (e) Amend, **REVISE**, or revoke, after due notice **TO ALL INTERESTED**
31 **PARTIES** and **PUBLIC** hearing, the authority to operate [of] **GRANTED TO** any
32 person or entity which fails to comply with the **PERTINENT** provisions [hereof, the
33 IRR, or any] **OF THIS ACT, OR WITH ANY OF THE IMPLEMENTING RULES**
34 **AND REGULATIONS OF THIS ACT, OR WITH ANY DECISION**, order, or
35 resolution of the [ERC.] **COMMISSION**. In the event a divestment, **CESSATION, OR**
36 **DESISTANCE** is required, the [ERC] **COMMISSION** shall, **THROUGH A**
37 **FORMAL ORDER FOR THAT PURPOSE**, allow the affected party [sufficient time]
38 **A REASONABLE TIME** to remedy the infraction, or [for] **TO UNDERTAKE** an
39 orderly disposal **OF THE MATTER, ACTIVITY, OR BUSINESS INVOLVED, AS**
40 **THE CASE MAY BE**, but [shall] in no case **SHALL THE SAID REASONABLE**
41 **TIME** exceed twelve (12) months from the issuance of the **SAID FORMAL** order[;] **OF**
42 **THE COMMISSION;**
43

44 (f) [In the public interest establish] **ESTABLISH** and enforce [a
45 methodology for setting] **IN THE INTEREST OF THE GENERAL PUBLIC AND IN**
46 **THE INTEREST OF THE END-USERS OF ELECTRICITY, AFTER TAKING**
47 **INTO ACCOUNT ALL RELEVANT CONSIDERATIONS, INCLUDING THE**
48 **EFFICIENCY OR INEFFICIENCY OF THE REGULATED ENTITIES, AND**
49 **AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND PUBLIC**
50 **HEARING, JUST AND REASONABLE** transmission and distribution **NON-**
51 **DISCRIMINATORY** wheeling [rates and] **CHARGES, AS WELL AS JUST AND**
52 **REASONABLE NON-DISCRIMINATORY** retail rates for the captive market of [a]
53 distribution [utility, taking into account all relevant considerations, including the
54 efficiency or inefficiency of the regulated entities. The rates must be such as to]
55 **UTILITIES, WHICH SHALL** allow the recovery of **ALL** just and reasonable costs[,]
56 and [a] **GIVE A JUST AND** reasonable return on **THE** rate base (RORB) **OF THE**
57 **REGULATED ENTITIES** to enable [the entity] **THEM** to operate viably[. The ERC
58 may adopt alternative forms of internationally-accepted rate-setting methodology as it
59 may deem appropriate. The rate-setting methodology so adopted and applied must ensure

1 a reasonable price of electricity. The rates prescribed shall be non-discriminatory. To
2 achieve this objective and to ensure the complete removal of cross subsidies, the cap on
3 the recoverable rate of system losses prescribed in Section 10 of Republic Act No. 7832,
4 is hereby amended and shall be replaced by caps which shall be determined by the ERC
5 based on load density, sales mix, cost of service, delivery voltage and other technical
6 considerations it may promulgate. The ERC shall determine such form of rate-setting
7 methodology, which shall promote efficiency. In case the rate setting methodology used
8 is RORB, it shall be subject to the following guidelines:], **AND WHICH SHALL**
9 **ENSURE A JUST AND REASONABLE PRICE OF ELECTRICITY.**

10
11 **THE COMMISSION, TO PROMOTE EFFICIENCY AND**
12 **FAIRNESS IN THE ELECTRIC POWER INDUSTRY AND WHEN**
13 **JUSTIFIED AND DEMANDED BY THE NATIONAL INTEREST, MAY**
14 **ADOPT, AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND**
15 **PUBLIC HEARING, ANY OTHER ALTERNATIVE FORM OF**
16 **INTERNATIONALLY-ACCEPTED METHOD OF RATEMAKING THAT**
17 **SHALL BEST SERVE THE MUTUAL INTEREST OF THE GENERAL**
18 **PUBLIC, THE END-USERS OF ELECTRICITY, AND THE ELECTRIC**
19 **INDUSTRY PARTICIPANTS.**

20
21 **IN EVERY CASE, THE RATEMAKING METHOD SO ADOPTED**
22 **AND APPLIED MUST BE NEITHER EXTORTIONARY TO THE END-**
23 **USERS OF ELECTRICITY NOR CONFISCATORY TO THE TRANSCO**
24 **OR TO THE DISTRIBUTION UTILITIES, AND MUST FURTHERMORE**
25 **ENSURE THAT THE PRICE OF ELECTRICITY IS JUST AND**
26 **REASONABLE.**

27
28
29 **THE RATEMAKING POWER HEREIN GRANTED TO THE**
30 **COMMISSION MUST BE EXERCISED IN SUCH A MANNER THAT**
31 **EVERY DOUBT MUST BE RESOLVED IN FAVOR OF THE**
32 **PROTECTION OF THE RIGHTS OF THE GENERAL PUBLIC.**

33
34
35 **IN ALL CASES OF RATE-MAKING, THE SOLICITOR GENERAL**
36 **MUST BE NOTIFIED OF AND SHALL APPEAR IN THE PROCEEDINGS**
37 **BEFORE THE COMMISSION TO REPRESENT THE GOVERNMENT**
38 **THEREIN SO THAT THE INTEREST OF THE GENERAL PUBLIC AND**
39 **THE INTEREST OF THE END-USERS OF ELECTRICITY WILL BE**
40 **PROTECTED.**

41
42 **IN DETERMINING A JUST AND REASONABLE RETURN ON RATE**
43 **BASE OF THE TRANSCO OR OF A DISTRIBUTION UTILITY, THE**
44 **COMMISSION MUST OBSERVE THE FOLLOWING GUIDELINES:**

45
46 **(I) THE RATE BASE SHALL CONSIST OF THE AVERAGE**
47 **VALUE OF ALL ASSETS, FACILITIES, PROPERTY, AND**
48 **PERMANENT IMPROVEMENTS OF THE TRANSCO OR OF THE**
49 **DISTRIBUTION UTILITY, AT THE BEGINNING AND AT THE END OF**
50 **ITS FISCAL YEAR, AS SHOWN IN THE PROPERTY ACCOUNTS OF**
51 **THE TRANSCO OR OF THE DISTRIBUTION UTILITY, AS THE CASE**
52 **MAY BE, WHICH ARE DIRECTLY USED AND USEFUL IN**
53 **PROVIDING THE SERVICE TO THE END-USERS OF ELECTRICITY,**
54 **LESS THE ACCRUED ALLOWANCE FOR DEPRECIATION TAKEN**
55 **FOR THE YEAR ON THE REGULATED ENTITY'S DEPRECIABLE**
56 **ASSETS, FACILITIES, PROPERTY, AND PERMANENT**
57 **IMPROVEMENTS, PLUS TWO MONTHS PRUDENT OPERATING**
58 **CAPITAL.**
59

1 **(II) THE VALUE OF THE FRANCHISE OF THE TRANSCO OR**
 2 **OF THE DISTRIBUTION UTILITY SHALL NOT BE INCLUDED IN**
 3 **THE RATE BASE FOR PURPOSES OF RATEMAKING.**
 4

5
 6 **[(i)] (III)** [For purposes of determining the rate base, the] **THE**
 7 **TRANSCO or [any] A distribution utility [may be allowed] IS AUTHORIZED**
 8 **to revalue its [eligible] assets [not more than], FACILITIES, PROPERTY,**
 9 **AND PERMANENT IMPROVEMENTS CONSTITUTING ITS RATE**
 10 **BASE** once every three (3) years [by an] **THROUGH THE SERVICES OF AN**
 11 **EXPERIENCED, WELL-ESTABLISHED, REPUTABLE, AND** independent
 12 appraisal company[:], **IN ACCORDANCE WITH SOUND AND**
 13 **CONSISTENTLY MAINTAINED METHOD OF VALUATION: *Provided,***
 14 ***however,*** That [ERC] **THE COMMISSION** may [give an exemption in case of
 15 unusual] **TEMPORARILY SUSPEND THE AFORESAID THREE YEAR**
 16 **LIMITATION IN THE EVENT OF EXTRAORDINARY INFLATION OR**
 17 **devaluation[:]** **OF THE PESO AND ONLY FOR THE PERIOD THAT**
 18 **SUCH EXTRAORDINARY INFLATION OR DEVALUATION LASTS:**
 19 ***Provided, further,*** That the [ERC] **COMMISSION,** **IN THAT EVENT,** shall
 20 exert [efforts to] **EVERY EFFORT TO PREVENT AND/OR minimize THE**
 21 **STEEP AND RAPID ESCALATION OF THE price [shocks] OF**
 22 **ELECTRICITY** in order to protect the [consumers:] **END-USERS OF**
 23 **ELECTRICITY.**
 24

25
 26
 27 **(IV) THE CAP ON THE RECOVERABLE RATE OF A JUST AND**
 28 **REASONABLE SYSTEMS LOSS PRESCRIBED IN SECTION 10 OF**
 29 **REPUBLIC ACT NO. 7832 SHALL BE MAINTAINED IN THE DENSELY**
 30 **POPULATED CITIES, URBAN CENTERS, AND MUNICIPALITIES OF**
 31 **THE COUNTRY: *PROVIDED,*** THAT IT SHALL BE ACCORDINGLY
 32 **AMENDED AND REPLACED IN AREAS OTHER THAN THE DENSELY**
 33 **POPULATED CITIES, URBAN CENTERS, AND MUNICIPALITIES OF**
 34 **THE COUNTRY BY CAPS WHICH SHALL BE DETERMINED AND**
 35 **FIXED BY THE COMMISSION, AFTER DUE NOTICE TO ALL**
 36 **INTERESTED PARTIES AND PUBLIC HEARING, BASED ON LOAD**
 37 **DENSITY, SALES MIX, COST OF SERVICE, DELIVERY VOLTAGE,**
 38 **AND OTHER TECHNICAL CONSIDERATIONS THAT THE**
 39 **COMMISSION MAY PROMULGATE: *PROVIDED FURTHER,*** THAT
 40 **ANY NEW CAP FOR RECOVERABLE SYSTEMS LOSS IN AREAS**
 41 **OTHER THAN THE DENSELY POPULATED CITIES, URBAN**
 42 **CENTERS, AND MUNICIPALITIES OF THE COUNTRY SHALL ALSO**
 43 **TAKE INTO CONSIDERATION AND PROVIDE FOR A JUST AND**
 44 **REASONABLE SYSTEMS LOSS FOR THE INEFFICIENCIES OF THE**
 45 **SYSTEMS OF ELECTRIC COOPERATIVES IN PERFORMING THEIR**
 46 **MISSIONARY ELECTRIFICATION FUNCTIONS.**
 47

48 **(V) CORPORATE INCOME TAX LEVIED ON THE NET**
 49 **TAXABLE INCOME OF THE TRANSCO OR OF A DISTRIBUTION**
 50 **UTILITY SHALL NOT, DIRECTLY OR INDIRECTLY, BE PASSED ON**
 51 **TO THE END-USERS OF ELECTRICITY.**
 52

53 **[(ii)] (VI)** Interest expenses [are not allowable] **OF THE**
 54 **TRANSCO OR OF A DISTRIBUTION UTILITY SHALL NOT BE**
 55 **ALLOWED AS deductions [from permissible] FOR PURPOSES OF**
 56 **DETERMINING A JUST AND REASONABLE return on rate base[:].**
 57

58 **[(iii)] (VII)** [In] **FOR PURPOSES OF** determining [eligible] **THE**
 59 **JUST AND REASONABLE cost of services that will be passed on to the end-**

1 users[,] **OF ELECTRICITY**, the [ERC] **THE COMMISSION** shall establish
 2 minimum efficiency performance standards for the TRANSCO and **THE**
 3 distribution utilities, including systems losses, interruption frequency rates, and
 4 collection efficiency[;] **OF THE REGULATED ENTITIES**.

5
 6 [(iv)] **(VIII)** [Further, in] **IN** determining **THE** rate base[,] **OF THE**
 7 **TRANSCO OR OF ANY DISTRIBUTION UTILITY, THE COMMISSION**
 8 **SHALL NOT ALLOW** the TRANSCO or any distribution utility [shall not be
 9 allowed] to include **THE COSTS OF** management inefficiencies [like cost],
 10 **SUCH AS, BUT NOT LIMITED TO, THE COSTS** of project delays not
 11 [excused] **EXCUSABLE** by *force majeure*[.] **OR THE** penalties and related
 12 interest **CHARGES ARISING** during construction [applicable to these
 13 unexcused delays; and] **PERIOD BECAUSE OF SAID INEXCUSABLE**
 14 **DELAYS**.

15
 16 [(v)] **(IX)** Any significant operating costs or project investments of
 17 the TRANSCO and **OF A** distribution [utilities] **UTILITY**, which shall become
 18 part of the rate base, shall be subject to [verification by the ERC] **THE**
 19 **APPROVAL OF THE COMMISSION, AFTER DUE NOTICE TO ALL**
 20 **INTERESTED PARTIES AND PUBLIC HEARING, IN ORDER** to ensure
 21 that the [contracting and] procurement of the equipment, assets, and **OR**
 22 services [have been subjected to] **AS WELL AS THE TERMS AND**
 23 **CONDITIONS OF THE CONTRACT OR CONTRACTS COVERING**
 24 **SUCH PROCUREMENT SHALL BE DONE IN ACCORDANCE WITH**
 25 **OPEN COMPETITIVE PUBLIC BIDDING AND IN COMPLIANCE WITH**
 26 **THE REQUIREMENTS OF EXISTING APPLICABLE PROCUREMENT**
 27 **LAWS, AS WELL AS IN ACCORDANCE WITH** transparent and accepted
 28 industry procurement and purchasing practices to protect the public interest.

29
 30 (g) Three (3) years after the imposition of the universal charge, ensure that the
 31 charges of the TRANSCO or any distribution utility shall bear no cross subsidies between
 32 grids, within grids, or between classes of customers, except as provided herein;

33
 34 (h) Review and approve any changes on the terms and conditions of service of
 35 the TRANSCO or any distribution utility;

36
 37 (i) Allow the TRANSCO to charge user fees for ancillary services to all
 38 electric power industry participants or self-generating entities connected to the grid. Such
 39 fees shall be fixed by the ERC after due notice and public hearing;

40
 41 (j) Set a lifeline rate for the marginalized end-users;

42
 43 (k) Monitor and take measures in accordance with this Act to penalize abuse
 44 of market power, cartelization, and anti-competitive or discriminatory behavior by any
 45 electric power industry participant;

46
 47 (l) Impose fines or penalties for any non-compliance with or breach of this
 48 Act, the IRR of this Act, and the rules and regulations which it promulgates or
 49 administers;

50
 51 (m) Take any other action delegated to it pursuant to this Act;

52
 53 (n) Before the end of April of each year, submit to the Office of the President
 54 of the Philippines and Congress, copy furnished the DOE, an annual report containing
 55 such matters or cases which have been filed before or referred to it during the preceding
 56 year, the actions and proceedings undertaken, and its decision or resolution in each case.
 57 The ERC shall make copies of such reports available to any interested party upon
 58 payment of a charge which reflects the printing costs. The ERC shall publish all its
 59 decisions involving rates and anti-competitive cases in at least one (1) newspaper of

1 general circulation, and/or post electronically, and circulate to all interested electric
2 power industry participants copies of its resolutions to ensure fair and impartial
3 treatment;
4

5 (o) Monitor the activities in the generation and supply of the electric power
6 industry with the end in view of promoting free market competition and ensuring that the
7 allocation or pass through of bulk purchase cost by distributors is transparent, non-
8 discriminatory and that any existing subsidies, shall be divided pro-rata among all retail
9 suppliers;
10

11 (p) Act on applications for or modifications of certificates of public
12 convenience and/or necessity, licenses, or permits of franchised electric utilities in
13 accordance with law; and revoke, review, and modify such certificates, licenses or
14 permits in appropriate cases, such as in cases of violations of the Grid Code, Distribution
15 Code, and other rules and regulations issued by the ERC in accordance with law;
16

17 (q) Act on applications for cost recovery and return on demand side
18 management projects;
19

20 (r) In the exercise of its investigative and quasi-judicial powers, act against
21 any participant or player in the energy sector for violations of any law, rule, and
22 regulation governing the same, including the rules on cross-ownership, anti-competitive
23 practices, abuse of market positions, and similar or related acts by any participant in the
24 energy sector or by any person, as may be provided by law, and require any person or
25 entity to submit any report or data relative to any investigation or hearing conducted
26 pursuant to this Act;
27

28 (s) Inspect, on its own or through duly authorized representatives, the
29 premises, books of accounts, and records of any person or entity at any time, in the
30 exercise of its quasi-judicial power for purposes of determining the existence of any anti-
31 competitive behavior and/or market power abuse and any violation of rules and
32 regulations issued by the ERC;
33

34 (t) Perform such other regulatory functions as are appropriate and necessary
35 in order to ensure the successful restructuring and modernization of the electric power
36 industry, such as, but not limited to, the rules and guidelines, under which generation
37 companies, distribution utilities which are not publicly listed shall offer and sell to the
38 public a portion, not less than fifteen percent (15%) of their common shares of stocks:
39 *Provided, however,* That generation companies, distribution utilities or their respective
40 holding companies that are already listed in the PSE are deemed in compliance. For
41 existing companies, such public offering shall be implemented not later than five (5)
42 years from the effectivity of this Act. New companies shall implement their respective
43 public offerings not later than five (5) years from the issuance of their certificate of
44 compliance; and
45

46 (u) The ERC shall have the original and exclusive jurisdiction over all cases
47 contesting rates, fees, fines, and penalties imposed by the ERC in the exercise of the
48 above-mentioned powers, functions and responsibilities, and over all cases involving
49 disputes between and among participants or players in the energy sector.
50

51 All notices of hearings to be conducted by the ERC for the purpose of fixing rates
52 or fees shall be published at least twice for two successive weeks in two (2) newspapers
53 of nationwide circulation.
54
55
56
57
58
59

1
2
3 Sec. 13. Section 46 of the Act is hereby amended to read as follows:
4
5

6 "SEC. 46. *Cross Ownership, Market Power Abuse and Anti-Competitive*
7 *Behavior.* — No participant in the electricity industry or any other person [may]
8 **SHALL** engage in any **KIND OF** anti-competitive behavior, including, but not limited
9 to, cross-subsidization, price or market manipulation, or **ANY** other unfair trade practices
10 **THAT ARE** detrimental to the **DEVELOPMENT**, encouragement, and protection of
11 **THE** contestable markets.
12

13 No generation company, distribution utility, **A COMPANY SUPPLYING**
14 **ELECTRICITY**, or **ANY OF** its [respective subsidiary or affiliate or stockholder or
15 official of a generation company or distribution utility, or other entity engaged in
16 generating and supplying electricity specified by ERC] **SUBSIDIARIES,**
17 **AFFILIATES, STOCKHOLDERS, OFFICIALS, OR DIRECTORS, OR THE**
18 **OFFICIALS, DIRECTORS, OR OTHER STOCKHOLDERS OF SUCH**
19 **SUBSIDIARIES OR AFFILIATES, OR ANY RELATIVES OF SUCH**
20 **STOCKHOLDERS, OFFICIALS, OR DIRECTORS** within the fourth civil degree of
21 consanguinity or affinity, shall be allowed to **HAVE AND** hold, **DIRECTLY OR**
22 **INDIRECTLY**, any interest[, directly or indirectly,] in **THE** TRANSCO or [its] **IN**
23 **THE** TRANSCO'S concessionaire. Likewise, the TRANSCO, or its concessionaire, or
24 any of [its] **THE** stockholders, [or] officials, **OR DIRECTORS OF THE TRANSCO**
25 **OR ITS CONCESSIONAIRE**, or any [of their] relatives **OF SUCH**
26 **STOCKHOLDERS, OFFICIALS OR DIRECTORS OF THE TRANSCO OR ITS**
27 **CONCESSIONAIRE** within the fourth civil degree of consanguinity or affinity, shall
28 not **BE ALLOWED TO HAVE AND** hold, **DIRECTLY OR INDIRECTLY**, any
29 interest[, whether directly or indirectly,] in any generation company, [or] distribution
30 utility[.], **OR A COMPANY SUPPLYING ELECTRICITY.** Except for *ex officio*
31 government-appointed representatives, no [person who is an] officer or director, **OR**
32 **STOCKHOLDER** of the TRANSCO or [its] **OFFICER, DIRECTOR, OR**
33 **STOCKHOLDER OF THE TRANSCO'S** concessionaire shall be an officer or director
34 of any generation company, distribution utility, or [supplier.] **A COMPANY**
35 **SUPPLYING ELECTRICITY.**
36

37 **A DISTRIBUTION UTILITY, WHICH IS EXISTING AT THE TIME OF**
38 **THE EFFECTIVITY OF THIS ACT AND WHICH HOLDS SHARES OF STOCK**
39 **IN A GENERATION COMPANY AND/OR ANOTHER DISTRIBUTION**
40 **UTILITY ON OR BEFORE THE EFFECTIVITY OF THIS ACT, MAY**
41 **CONTINUE TO HOLD SUCH SHARES OF STOCK BUT SHALL NOT BE**
42 **AUTHORIZED TO INCREASE THE NUMBER OF SUCH SHARES OF STOCK**
43 **EXCEPT WHEN SUCH INCREASE IS THE RESULT OF A DECLARATION OF**
44 **CORPORATE STOCK DIVIDENDS.**
45

46 **AFTER THE EFFECTIVITY OF THIS ACT, NO NEW DISTRIBUTION**
47 **UTILITY OR ANY OF ITS SUBSIDIARIES, AFFILIATES, STOCKHOLDERS,**
48 **OFFICIALS, OR DIRECTORS, OR THE OFFICIALS, DIRECTORS, OR**
49 **OTHER STOCKHOLDERS OF SUCH SUBSIDIARIES OR AFFILIATES,**
50 **INCLUDING THE RELATIVES OF SUCH STOCKHOLDERS, OFFICIALS, OR**
51 **DIRECTORS WITHIN THE FOURTH CIVIL DEGREE OF CONSANGUINITY**
52 **OR AFFINITY SHALL BE ALLOWED TO HAVE AND HOLD, DIRECTLY OR**
53 **INDIRECTLY, ANY INTEREST IN ANY NEW OR EXISTING GENERATION**
54 **COMPANY.**
55

56 **NEITHER MAY A NEW GENERATION COMPANY OR ANY OF ITS**
57 **SUBSIDIARIES, AFFILIATES, STOCKHOLDERS, OFFICIALS, OR**
58 **DIRECTORS, OR THE OFFICIALS, DIRECTORS, OR OTHER**
59 **STOCKHOLDERS OF SUCH SUBSIDIARIES OR AFFILIATES, INCLUDING**

1 THE RELATIVES OF SUCH STOCKHOLDERS, OFFICIALS, OR DIRECTORS
2 WITHIN THE FOURTH CIVIL DEGREE OF CONSANGUINITY OR AFFINITY
3 BE ALLOWED TO HAVE AND HOLD, DIRECTLY OR INDIRECTLY, ANY
4 INTEREST IN ANOTHER GENERATION COMPANY, OR IN A NEW OR
5 EXISTING DISTRIBUTION UTILITY.

6
7 AFTER THE EFFECTIVITY OF THIS ACT AND EXCEPT AS
8 OTHERWISE AUTHORIZED AND PROVIDED HEREIN, NO HOLDING
9 COMPANY OR OTHER ENTITY, WHETHER IN THE FORM OF A
10 CORPORATION OR NOT, SHALL BE ALLOWED TO HAVE AND HOLD
11 VOTING SHARES OF STOCK SIMULTANEOUSLY IN A GENERATION
12 COMPANY AND IN A DISTRIBUTION UTILITY IN SUCH NUMBERS AS TO
13 ENABLE THE HOLDING COMPANY OR OTHER ENTITY TO ELECT A
14 DIRECTOR IN BOTH THE GENERATION COMPANY AND THE
15 DISTRIBUTION UTILITY.

16
17 To promote true market competition and prevent harmful monopoly and market
18 power abuse, the [ERC] COMMISSION shall enforce the following safeguards:

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

26
27 (b) Distribution utilities may enter into bilateral power supply **CONTRACT**
28 **OR** contracts subject to review **AND APPROVAL** by the [ERC:] **COMMISSION,**
29 **AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND PUBLIC**
30 **HEARING: Provided,** That [such review shall only be required for distribution utilities
31 whose markets have not reached household demand level. For the purpose of preventing
32 market power abuse between associated firms engaged in generation and distribution, no
33 distribution utility shall be allowed to source from bilateral power supply contracts more
34 than fifty percent (50%) of its total demand from an associated firm engaged in
35 generation but such limitation, however, shall not prejudice contracts entered into prior to
36 the effectivity of this Act. An associated firm with respect to another entity refers to any
37 person which, alone or together with any other person, directly or indirectly, through one
38 or more intermediaries, controls, is controlled by, or is under common control with, such
39 entity; and] **FOR THE PROTECTION OF CAPTIVE MARKETS AND IN ORDER**
40 **TO ENSURE HEALTHY COMPETITION IN THE GENERATION SECTOR OF**
41 **THE ELECTRIC POWER INDUSTRY, BILATERAL POWER SUPPLY**
42 **CONTRACT OR CONTRACTS OF SIXTY MEGAWATTS (60 MW) OR MORE**
43 **SHALL BE SUBJECT TO OPEN COMPETITIVE PUBLIC BIDDING**
44 **CONDUCTED BY A BID COMMITTEE UNDER THE SUPERVISION OF THE**
45 **COMMISSION AND COMPOSED OF REPRESENTATIVE EACH FROM THE**
46 **NATIONAL ECONOMIC DEVELOPMENT AUTHORITY (NEDA), THE**
47 **DEPARTMENT OF ENERGY (DOE), THE DISTRIBUTION UTILITY**
48 **CONCERNED, AND AN EXPERIENCED AND REPUTABLE**
49 **REPRESENTATIVE OF THE ELECTRIC END-USERS GROUPS SELECTED**
50 **BY THE COMMISSION.**

51
52 **IN ORDER TO PREVENT ABUSE OF MARKET POWER AND ANTI-**
53 **COMPETITIVE BEHAVIOR, NO DISTRIBUTION UTILITY SHALL BE**
54 **ALLOWED TO SOURCE FROM A BILATERAL ELECTRIC POWER SUPPLY**
55 **CONTRACT OR CONTRACTS MORE THAN THIRTY THREE PERCENT**
56 **(33%) OF ITS TOTAL ELECTRIC POWER SUPPLY REQUIREMENTS FROM**
57 **ANY GENERATION COMPANY OR GROUP OF GENERATING COMPANIES**
58 **WHOLLY OWNED OR CONTROLLED BY THE SAME INTERESTS. ANY**
59 **DISTRIBUTION UTILITY THAT HAS, ON THE EFFECTIVITY OF THIS ACT,**

1 SUCH CONTRACT OR CONTRACTS WHICH EXCEED THE ALLOWABLE
 2 THIRTY THREE PERCENT (33%) LIMIT SET FORTH HEREIN SHALL
 3 DESIST FROM FURTHER AWARDING ADDITIONAL ELECTRIC POWER
 4 SUPPLY CONTRACT OR CONTRACTS WITH ANY GENERATION
 5 COMPANY OR GROUP OF GENERATING COMPANIES WHOLLY OWNED
 6 OR CONTROLLED BY THE SAME INTERESTS, UNTIL ITS PRESENT
 7 ELECTRIC POWER SUPPLY REQUIREMENTS, WHEN ADDED TO THE
 8 PROPOSED ADDITIONAL ELECTRIC POWER SUPPLY CONTRACT OR
 9 CONTRACTS WITH ANY GENERATION COMPANY OR GROUP OF
 10 GENERATING COMPANIES WHOLLY OWNED OR CONTROLLED BY THE
 11 SAME INTERESTS SHALL COMPLY WITH THE THIRTY THREE PERCENT
 12 (33%) LIMIT SET FORTH HEREIN: *PROVIDED*, THAT ANY EXTENSION OR
 13 EXPANSION OF EXISTING ELECTRIC POWER SUPPLY CONTRACT OR
 14 CONTRACTS SHALL BE DEEMED AS NEW CONTRACT OR CONTRACTS
 15 FOR PURPOSES OF THE LIMITATION SET FORTH HEREIN.
 16

17 (c) For the first five (5) years from the establishment of the [wholesale
 18 electricity spot market] WESM, no distribution utility shall source more than ninety
 19 percent (90%) of its total demand from bilateral ELECTRIC power supply contracts.
 20 THE COMMISSION MAY, FROM TIME TO TIME, REVIEW THE
 21 APPROPRIATE LEVEL OF DEMAND TO BE SOURCED FROM THE WESM
 22 AND, IN MERITORIOUS INSTANCES, WAIVE IMPLEMENTATION OF SUCH
 23 REQUIREMENT, SUBJECT TO A PUBLIC HEARING.
 24

25 For purposes of this Section, the grid basis shall consist of three (3) separate grids,
 26 namely: Luzon , Visayas , and Mindanao . The ERC shall have the authority to modify or
 27 amend this definition of a grid when two or more of the three separate grids become
 28 sufficiently interconnected to constitute a single grid, or as conditions may otherwise
 29 permit.
 30

31 Exceptions from these limitations shall be allowed for isolated grids that are not
 32 connected to the high voltage transmission system. [Except as otherwise provided for in
 33 this Section, any restriction on ownerships and/or control between or within sectors of the
 34 electricity industry may be imposed by ERC only insofar as the enforcement of the
 35 provisions of this Section is concerned].
 36

37 The [ERC] COMMISSION shall, within one (1) year from the effectivity of this
 38 Act, promulgate rules and regulations, **CONSISTENT WITH THE PROVISIONS OF**
 39 **THIS ACT**, to ensure and promote competition, encourage market development, [and]
 40 customer choice, and [discourage/penalize] **DETER AND/OR PENALIZE ANY** abuse
 41 of market power, cartelization, [and] **OR** any anti-competitive or discriminatory
 42 behavior, in order to further the intent of this Act and **IN ORDER TO** protect the
 43 [public] interest[.] **OF THE GENERAL PUBLIC AND THE END-USERS OF**
 44 **ELECTRICITY**. Such rules and regulations shall **COVER AND** define the following:
 45

46 (a) the relevant markets for purposes of establishing abuse or misuse of
 47 monopoly or market position;
 48

49 (b) areas of isolated grids; and
 50

51 (c) the periodic reportorial requirements of electric power industry
 52 participants as may be necessary to enforce the provisions of this Section.
 53

54 The [ERC] COMMISSION shall, *motu proprio*, monitor and, **WHEN**
 55 **WARRANTED BY THE ATTENDANT FACTS**, penalize any **SUCH**
 56 **MONOPOLIZATION, CARTELIZATION, ABUSE OF** market power [abuse] or
 57 anti-competitive **AND/or** discriminatory act or behavior by any [participant in the]
 58 electric power industry[.] **PARTICIPANT**. Upon finding that [a market] **AN**
 59 **ELECTRIC POWER INDUSTRY** participant has engaged in such

1 **MONOPOLIZATION, CARTELIZATION, ABUSE OF MARKET POWER, OR**
 2 **ANTI-COMPETITIVE AND/OR DISCRIMINATORY** act or behavior, the [ERC]
 3 **COMMISSION shall FORTHWITH ISSUE A CEASE AND DESIST ORDER TO**
 4 **THE ERRING ELECTRIC POWER INDUSTRY PARTICIPANT, AND**
 5 **THEREAFTER PERMANENTLY** stop and redress the same. Such [remedies shall,
 6 without limitation, include] **REDRESS SHALL INCLUDE, AMONG OTHER**
 7 **REMEDIES THAT MAY BE APPROPRIATE UNDER THE CIRCUMSTANCES,**
 8 the imposition of price [controls,] **CONTROL, THE** issuance of [injunctions,
 9 requirement of] **INJUNCTIVE RELIEF, AND THE** divestment or disgorgement of
 10 excess profits, and **THE** imposition of fines and penalties pursuant to **THE**
 11 **APPLICABLE PROVISIONS OF** this Act.

12
 13 The [ERC] **COMMISSION** shall, within one (1) year from the effectivity of this
 14 Act, promulgate **SUCH** rules [and regulations providing for a complaint procedure that,
 15 without limitation, provides] **AS MAY BE NECESSARY, NOT INCONSISTENT**
 16 **WITH THE PROVISIONS OF THIS ACT, THAT WILL ESTABLISH A**
 17 **PROCEDURE WHEREBY** the accused party, with **DUE** notice [and] **TO ALL**
 18 **INTERESTED PARTIES AND PUBLIC HEARING, SHALL BE GIVEN BY THE**
 19 **COMMISSION** an opportunity to be heard.

20
 21
 22 **SEC. 14. Separability Clause.** — If for any reason, any provision of this
 23 Act is declared unconstitutional or invalid, the other parts or provisions hereof which are
 24 not affected thereby shall continue to be in full force and effect.

25
 26 **SEC. 15. Applicability and Repealing Clause.** — The applicable provisions
 27 of Commonwealth Act No. 146, as amended, otherwise known as the "Public Services
 28 Act"; Republic Act 6395, as amended, revising the charter of NPC; Presidential Decree
 29 269, as amended, referred to as the National Electrification Decree; Republic Act 7638,
 30 otherwise known as the Department of Energy Act of 1992; Republic Act 7832 otherwise
 31 known as the Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of
 32 1994, shall continue to have full force and effect, except insofar as such acts and decree,
 33 and only to that extent, are inconsistent with any of the provisions of this Act.

34
 35 The provisions with respect to electric power of Section 12(C) of Republic Act
 36 7916, as amended, and Section 5(f) of Republic Act 7227, are hereby repealed or
 37 modified accordingly, it being the clear intent of Congress that henceforth the generation,
 38 transmission, subtransmission, distribution, and/or supply of electric power shall be
 39 governed entirely by the provisions of this Act, and that no agency of the national
 40 government, other than the commission, shall be allowed to regulate the transmission,
 41 subtransmission, and distribution, or authorize the establishment of generation companies
 42 or suppliers of electricity.

43
 44 Presidential Decree No. 40 and all laws, decrees, rules and regulations, or portions
 45 thereof, inconsistent with this Act are hereby repealed or modified accordingly.

46
 47 Executive order no. 172, series of 1987, as amended, creating the Energy
 48 Regulatory Board, is hereby repealed except as otherwise provided in this act.

49
 50 **SEC. 16. Effectivity Clause.** — This Act shall take effect on the fifteenth
 51 day following its publication in at least two (2) national papers of general circulation.

52
 53 *Approved,*

54
 55
 56
 57
 58
 59