

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

8 MAR 12 2008

SENATE

RECEIVED BY

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COMMITTEE REPORT NO. 42

Submitted jointly by the Committees on Energy; Finance; Public Services; and
Ways and Means on MAR 12 2008.

Re: Senate Bill No. 2121, prepared by the Committees.

Recommending its approval in substitution of Senate Bill Nos. 52, 160, 308, 899,
and 1234.

Sponsors: Senators Enrile, Lapid, Estrada, and Angara

Mr. President:

The Committees on Energy; Finance; Public Services; and Ways and Means, to
which were referred Senate Bill No. 52, introduced by Sen. Lapid, entitled:

"AN ACT
PROVIDING FOR A DEVICE TO DECREASE THE COST OF ELECTRIC
POWER CONSUMPTION OF END CONSUMERS, BY WAY OF LIMITING THE
PASS ON CHARGES OF DISTRIBUTION UTILITIES TO CONSUMERS AS
WELL AS COMPLETELY BANNING CROSS-OWNERSHIP FROM AND
AMONG POWER UTILITY COMPANIES, AMENDING FOR THE PURPOSE
CERTAIN PROVISIONS OF REPUBLIC ACT NO. 9136 OTHERWISE KNOWN
AS THE "ELECTRIC POWER INDUSTRY REFORM ACT OF 2001," AND FOR
OTHER PURPOSES

Senate Bill No. 160, introduced by Sen. Estrada, entitled:

"AN ACT
REVISING REPUBLIC ACT NO. 9136 ENTITLED "AN ACT ORDAINING
REFORMS IN THE ELECTRIC POWER INDUSTRY, AMENDING FOR THE
PURPOSE CERTAIN LAWS AND FOR OTHER PURPOSES"

Senate Bill No. 308, introduced by Sen. Estrada, entitled:

"AN ACT
REPEALING REPUBLIC ACT NUMBERED 9136, OTHERWISE KNOWN AS
THE ELECTRIC POWER INDUSTRY REFORM ACT OF 2001"

Senate Bill No. 899, introduced by Sen. Angara, entitled:

"AN ACT
AMENDING REPUBLIC ACT NO. 9136, OTHERWISE KNOWN AS THE
ELECTRIC POWER INDUSTRY REFORM ACT OF 2001 AND FOR OTHER
PURPOSES"

Senate Bill No. 1234, introduced by Sen. Enrile, entitled:

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

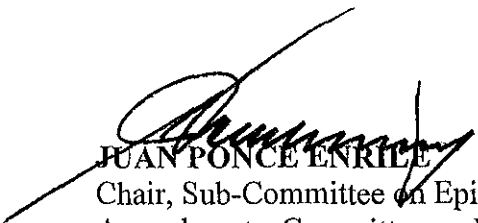
have considered the same and have the honor to report them back to the Senate with the recommendation that the attached S.B. No. 2121, prepared by the Committees, entitled:


"AN ACT
AMENDING SECTIONS 4,9,20,21,23,25,26,30,31,32,33,34,35,38,41,43,48,51 OF
REPUBLIC ACT NO.9136 ENTITLED "AN ACT ORDAINING REFORMS IN
THE ELECTRIC POWER INDUSTRY AND FOR OTHER PURPOSES"

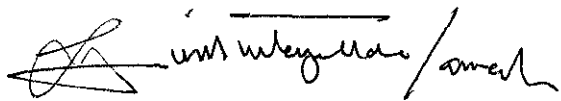
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be approved in substitution of S.B. Nos. 52, 160, 308, 899, and 1234 with Senators Lapid, Estrada, Angara, and Enrile, as authors thereof.

RESPECTFULLY SUBMITTED:


JUAN PONCE ENRILE
Chair, Sub-Committee on Epira
Amendments, Committee on Energy
Chair, Committee on Finance
Chair, Committee on Public Services
Member, Committee on Energy
Member, Committee on Ways and Means


MIRIAM DEFENSOR SANTIAGO
Chair, Committee on Energy
Vice-Chair, Committee on Finance


FRANCIS G. ESCUDERO
Chair, Committee on Ways & Means
Member, Committee on Finance

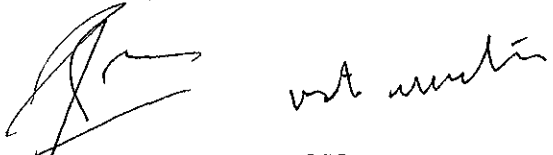
MEMBERS:


PIA "COMPAÑERA" S. CAYETANO
Chair, Committee on Environment
and Natural Resources
Member, Committee on Finance


EDGARDO J. ANGARA
Member, Committee on Energy
Member, Committee on Ways & Means
Vice-Chair, Committee on Finance
Member, Committee on Public Services

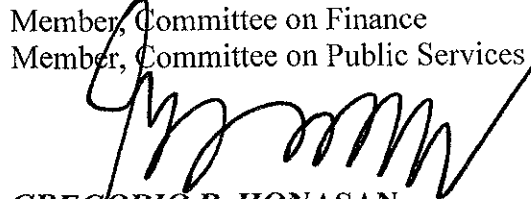
LOREN B. LEGARDA
Member, Committee on Energy
Member, Committee on Ways & Means
Member, Committee on Finance


RAMON H. REVILLA JR.
Member, Committee on Energy
Member, Committee on Ways & Means
Member, Committee on Finance



RICHARD GORDON
Member, Committee on Energy
Member, Committee on Ways & Means
Member, Committee on Finance


MAR A. ROXAS
Member, Committee on Energy
Member, Committee on Ways & Means
Member, Committee on Finance
Member, Committee on Public Services

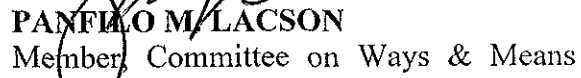

RODOLFO G. BIAZON
Member, Committee on Energy
Member, Committee on Finance
Member, Committee on Public Services


GREGORIO B. HONASAN
Member, Committee on Energy
Member, Committee on Ways & Means
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JUAN MIGUEL F. ZUBIRI
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MANUEL M. LAPID
Member, Committee on Energy
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PANFILO M. LACSON
Member, Committee on Ways & Means
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Member, Committee on Public Services

ALAN PETER S. CAYETANO
Member, Committee on Ways & Means

Member, Committee on Ways & Means

EX-OFFICIO MEMBERS:

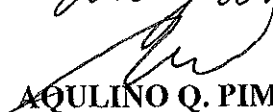
may amend



JINGGOY EJERCITO ESTRADA
President Pro-Tempore

FRANCIS N. PANGILINAN
Majority Floor Leader

may amend:

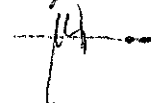


AQUILINO Q. PIMENTEL JR.
Minority Floor Leader

HON. MANNY VILLAR
Senate President
Senate of the Philippines
Pasay City

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

8 MAR 12 2012

RECEIVED BY: 

SENATE
S. B. No. 2121

Prepared jointly by the Committees on Energy, Finance, Public Services and Ways and Means with Senators Enrile, Lapid, Estrada and Angara as authors thereof.

AN ACT
AMENDING SECTIONS 4,9,20,21,23,25,26,30,31,32,33,34,35,38,41,43,45,48,51 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 "SEC. 4. Definition of Terms. —

6

7 (A) "AFFILIATE"/"ASSOCIATED ENTITY OR PERSON" REFERS TO
8 ANY ENTITY OR PERSON WHICH, ALONE OR TOGETHER WITH ANY
9 OTHER ENTITY OR PERSON, DIRECTLY OR INDIRECTLY, THROUGH
10 ONE OR MORE INTERMEDIARIES, CONTROLS, IS CONTROLLED BY, OR
11 IS UNDER COMMON CONTROL WITH ANOTHER ENTITY OR PERSON.
12 FOR PURPOSES OF THIS ACT, A HOLDING COMPANY SHALL BE DEEMED
13 AN "AFFILIATE" OF THE GENERATION AND/OR DISTRIBUTION
14 COMPANY IN WHICH IT HOLDS INTERESTS.

15

16 [(a)] (B) "Aggregator" refers to a person or entity[, engaged] WHICH,
17 WITHOUT A LEGISLATIVE FRANCHISE, IS DULY LICENSED BY THE
18 COMMISSION TO ENGAGE in consolidating electric power demand of end-users OF



1 **ELECTRICITY** in [the] A contestable market[,] **WITHIN A FRANCHISE**
2 **TERRITORY OF ANOTHER PARTY** for the purpose of purchasing and reselling
3 electricity **TO SUCH END-USERS** on a group basis;

4
5 [(b)] (C) "Ancillary Services" refer to those services that are necessary to
6 support the transmission of capacity and energy from resources to loads while
7 *maintaining reliable* operation of the transmission system in accordance with good utility
8 practice and the Grid Code to be adopted in accordance with this Act;

9
10 [(c)] (D) "Captive Market" refers to [electricity end-users who do not have
11 the choice of a supplier of electricity, as may be determined by the Energy Regulatory
12 Commission (ERC) in accordance with this Act;] **THAT MARKET WITH RESPECT**
13 **TO A DISTRIBUTION UTILITY WHICH, AS DETERMINED BY THE**
14 **COMMISSION IN ACCORDANCE WITH THIS ACT, AFTER DUE NOTICE TO**
15 **ALL INTERESTED PARTIES AND PUBLIC HEARING, CONSISTS OF END-**
16 **USERS OF ELECTRICITY WITH LOAD REQUIREMENTS THAT DO NOT**
17 **MEET THE THRESHOLD OF CONTESTABILITY AND MUST THEN BE**
18 **SUPPLIED WITH ELECTRICITY EXCLUSIVELY BY THE DISTRIBUTION**
19 **UTILITY HOLDING FRANCHISE OVER SUCH AREA;**

20
21 [(d)] (E) "Central Dispatch" refers to the process of issuing direct
22 instructions to electric power industry participants by the grid operator to achieve the
23 economic operation, and maintenance of quality, stability, reliability, and security, of the
24 transmission system;

25
26 [(e)] (F) "Co-Generation Facility" refers to a facility which produces
27 electrical and/or mechanical energy and forms of useful thermal energy, such as heat or
28 steam, which are used for industrial, commercial heating or cooling purposes through the
29 sequential use of energy;

1 [(f)] (G) "Commission" refers to the decision-making body of the [ERC]
2 **ENERGY REGULATORY COMMISSION (ERC)** composed of a Chairman and four
3 (4) members as provided under Section 38 [hereof] **OF THIS ACT[;]. FOR**
4 **PURPOSES OF CONSTRUING AND INTERPRETING THE RELEVANT**
5 **PROVISIONS OF THIS ACT, THE TERMS "COMMISSION", "ENERGY**
6 **REGULATORY COMMISSION", AND "ERC" SHALL, UNLESS THE**
7 **CONTEXT CLEARLY INDICATES OTHERWISE, SHALL REFER TO THE**
8 **ONE AND THE SAME ENTITY;**

9
10 [(g)] (H) "Concession Contract" refers to the award by the government to a
11 qualified private entity of the responsibility for financing, operating, expanding,
12 maintaining, and managing specific Government-owned assets;

13
14 [(h)] (I) "Contestable Market" refers to [the electricity end-users who have
15 a choice of a supplier of electricity, as may be determined by the ERC in accordance with
16 this Act;] **THAT MARKET, WHICH SHALL BE DETERMINED BY THE**
17 **COMMISSION IN ACCORDANCE WITH THIS ACT, AFTER DUE NOTICE TO**
18 **ALL INTERESTED PARTIES AND PUBLIC HEARING, CONSISTING OF END-**
19 **USERS OF ELECTRICITY WITHIN A FRANCHISE TERRITORY OF A**
20 **DISTRIBUTION UTILITY THAT CAN CHOOSE THEIR SUPPLIER OF**
21 **ELECTRICITY;**

22
23 (J) "CONTROL" REFERS TO THE POWER TO DIRECT OR CAUSE
24 **THE DIRECTION OF THE MANAGEMENT POLICIES OF AN ENTITY OR**
25 **PERSON BY CONTRACT, AGENCY, OR SIMILAR ARRANGEMENTS.**

26
27 [(i)] (K) "Customer Service Charge" refers to the component in the retail
28 rate intended for the cost recovery of customer-related services including, but not limited
29 to, meter reading, billing administration and collection;

30



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

4
5 [(k)] (M) "Department of Energy" or "DOE" refers to the government
6 agency created pursuant to Republic Act No. 7638 whose expanded functions are
7 provided herein;

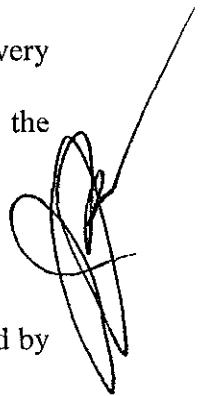
8
9 [(l)] (N) "Department of Finance" or "DOF" refers to the government
10 agency created pursuant to Executive Order No. 127;

11
12 [(m)] (O) "Distribution Code" refers to a compilation of rules and regulations
13 governing electric utilities in the, operation, and maintenance of their distribution
14 systems, which includes, among others, the standards for service and performance, and
15 defines and establishes the relationship of the distribution systems with the facilities or
16 installations of the parties connected thereto;

17
18 [(n)] (P) "Distribution of Electricity" refers to the conveyance of electric
19 power by a distribution utility through its distribution system pursuant to the provisions
20 of this Act;

21
22 [(o)] (Q) "Distribution System" refers to the system of wires and associated
23 facilities belonging to a franchised distribution utility, extending between the delivery
24 points on the transmission or sub-transmission system or generator connection and the
25 point of connection to the premises of the end-user;

26
27 [(p)] (R) "Distribution Wheeling Charge" refers to the cost or charge regulated by
28 the ERC for the use of a distribution system and/or the availment of related services;

A handwritten signature in black ink, consisting of several loops and a long tail extending upwards and to the right.

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

4
5 [(r)] (T) "Electric Cooperative" refers to a distribution utility organized
6 pursuant to Presidential Decree No. 269, as amended, or as otherwise provided in this
7 Act;

8
9 [(s)] (U) "Electric Power Industry Participant" refers to any person or entity
10 engaged in the generation, transmission, distribution, or supply of electricity;

11
12 [(t)] (V) "End-user" refers to any person or entity requiring the supply and
13 delivery of electricity for its own use;

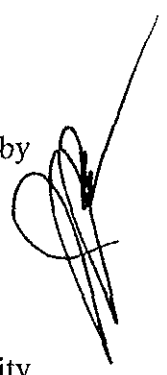
14
15 [(u)] (W) "Energy Regulatory Board" or "ERB" refers to the [independent,]
16 **NOW DEFUNCT** quasi-judicial regulatory body created under Executive Order No.
17 172, as amended;

18
19 [(v)] (X) "Energy Regulatory Commission" or "ERC" refers to the
20 regulatory agency created herein;

21
22 [(w)] (Y) "Franchise Area" refers to a geographical area exclusively assigned
23 or granted to a distribution utility for distribution of electricity;

24
25 [(x)] (Z) "Generation Company" refers to any person or entity authorized by
26 the ERC to operate facilities used in the generation of electricity;

27
28 [(y)] (AA) "Generation of Electricity" refers to the production of electricity
29 by a generation company, or a co-generation facility, pursuant to the provisions of this
30 Act;



1
2 [(z)] (BB) "Grid" refers to the high voltage backbone system of
3 interconnected transmission lines, substations, and related facilities;


4
5 [(aa)] (CC) "Grid Code" refers to the set of rules and regulations governing
6 the safe, and reliable operation, maintenance, and development, of the high voltage
7 backbone transmission system and its related facilities;

8
9 [(bb)] (DD) "Independent Power Producer" or "IPP" refers to an existing
10 [power generating entity] **GENERATION COMPANY**, which is not owned by NPC[;]
11 **AND WITH WHOM NPC OR A DISTRIBUTION UTILITY HAS A VALID AND**
12 **EXISTING PURCHASED POWER CONTRACT;**

13
14 [(cc)] (EE) "Inter-Class Cross Subsidy" refers to an amount charged by
15 distribution utilities to industrial and commercial end-users as well as to other subsidizing
16 customer sectors in order to reduce electricity rates of other customer sectors , such as
17 the residential end-users, hospitals, and streetlights;

18
19 [(dd)] (FF) "Inter-Regional Grid Cross Subsidy" refers to an amount
20 embedded in the electricity rates of NPC charged to its customers located in a viable
21 regional grid in order to reduce the electricity rates in a less viable regional grid;

22
23 [(ee)] (GG) "Intra-Regional Grid Cross Subsidy" refers to an amount
24 embedded in the electricity rates of NPC charged to distribution utilities and non-utilities
25 with higher load factor and/or delivery voltage in order to reduce the electricity rates
26 charged to distribution utilities with lower load factor and/or delivery voltage located in
27 the same regional grid;



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

4
 5 [(gg)] (II) "Isolated Distribution System" refers to the backbone system of
 6 wires and associated facilities not directly connected to the national transmission system;

7
 8 [(hh)] (JJ) "Lifeline Rate" refers to the subsidized rate given to low-income
 9 captive market end-users who cannot afford to pay at full cost;

10
 11 [(ii)] (KK) "National Electrification Administration" or "NEA" refers to the
 12 government agency created under Presidential Decree No. 269, as amended, and whose
 13 additional mandate is further set forth herein;

14
 15 [(jj)] (LL) "National Power Corporation" or "NPC" refers to the government
 16 corporation created under Republic Act No. 6395, as amended;

17
 18 [(kk)] (MM) "National Transmission Corporation" or "TRANSCO" refers to the
 19 corporation organized pursuant to this Act to acquire all the transmission assets of the
 20 NPC;

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

29



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

4
5 [(nn)] (PP) "Power Development Program" or "PDP" refers to the indicative
6 plan for managing electricity demand through energy-efficient programs and for the
7 upgrading, expansion, rehabilitation, repair, and maintenance of power generation and
8 transmission facilities, formulated and updated yearly by the DOE in coordination with
9 the generation, transmission and distribution utility companies;

10
11 [(oo)] (QQ) "Power Sector Assets and Liabilities Management Corporation" or
12 "PSALM Corp." refers to the corporation created pursuant to Section 49 hereof;

13
14 [(pp)] (RR) "Privatization" refers to the sale, disposition, change, and transfer
15 of ownership and control of assets and IPP contracts, from the Government or a
16 government corporation to a private person or entity;

17
18 (SS) "PUBLIC HEARING" REFERS TO A PROCEEDING
19 CONDUCTED BY THE COMMISSION AFTER ITS MEMBERS ARE
20 FORMALLY CONVENED TO HEAR, AFTER DUE NOTICE TO ALL
21 INTERESTED PARTIES, THE TESTIMONY OF WITNESSES UNDER OATH,
22 SUBJECT TO CROSS-EXAMINATION BY ADVERSE PARTIES, AND TO
23 FORMALLY RECEIVE DOCUMENTARY EVIDENCE, IN ORDER TO
24 DISPOSE ANY ISSUE BROUGHT TO THE ATTENTION OF THE
25 COMMISSION THROUGH MOTIONS, COMPLAINTS OR PETITION FILED
26 WITH THE COMMISSION.

27
28 [(qq)] (TT) "Renewable Energy Resources" refers to energy resources, that do
29 not have an upper limit on the total quantity to be used. Such resources are renewable on
30 a regular basis and the renewable rate is rapid enough to consider, availability over an

1 indefinite time. These include, among others, biomass, solar, wind, hydro, and ocean
2 energy;

3
4 [(rr)] (UU) "Restructuring" refers to the process of reorganizing the electric
5 power industry in order to introduce higher efficiency, greater innovation and end-user
6 choice. It shall be understood as covering a range of alternatives enhancing exposure of
7 the industry to competitive market forces;


8
9 [(ss)] (VV) "Retail Rate" refers to the total price paid by end-users consisting
10 of the charges for generation, transmission and related ancillary services, distribution,
11 supply, and other related charges for electric service;

12
13 [(tt)] (WW) "Small Power Utilities Group" or SPUG" refers to the functional
14 unit of NPC created to pursue missionary electrification function;

15
16 [(uu)] (XX) "Stranded contract costs of NPC or distribution utility" refer to the
17 excess of the contracted cost of electricity under eligible contracts over the actual selling
18 price of the contracted energy output of such contracts in the market. Such contracts
19 shall have been approved by the ERB as of December 31, 2000;

20
21 [(vv)] (YY) "Stranded Debts of NPC" refer to any unpaid financial obligations
22 of NPC which have not been liquidated by the proceeds from the sales and privatization
23 of NPC assets;

24
25 [(ww)] (ZZ) "Sub-transmission Assets" refer to the facilities related to the
26 power delivery service below the transmission voltages and, based on the functional
27 assignment of assets including, but not limited to, step-down transformers used solely by
28 load customers, associated switchyard/substation, control and protective equipment,
29 reactive compensation equipment to improve customer power factor, overhead lines, and
30 the land where such facilities/equipment are located. These include NPC assets linking



1 the transmission system and the distribution system which are neither classified as
2 generation nor transmission. **REGARDLESS OF VOLTAGE, ANY FACILITY**
3 **DIRECTLY SERVING AN END-USER SHALL BE CLASSIFIED AS A**
4 **DISTRIBUTION ASSET ;**

5
6 [(xx)] (AAA) "Supplier" refers, to any person or entity authorized by the ERC to
7 sell, broker, market, or aggregate electricity to the end-users;

8
9 [(yy)] (BBB) "Supplier's Charge" refers to the charge imposed by electricity
10 suppliers for the sale of electricity to end-users, excluding the charges for generation
11 transmission and distribution wheeling;

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

24
25 [(aaa)] (DDD) "Transmission Charge" refers to the regulated cost or charges for
26 the use of a transmission system which may include the availment of ancillary services;

27
28 [(bbb)] (EEE) "Transmission Development Plan" or "TDP" refers to the program
29 for managing the transmission system through efficient planning for the expansion,

1 upgrading, rehabilitation, repair, and maintenance, to be formulated by DOE and
 2 implemented by the TRANSCO pursuant to this Act;

3
 4 [(ccc)] (FFF) "Transmission of Electricity" refers to the conveyance of
 5 electricity through the high voltage backbone system; and


6
 7 [(ddd)] (GGG) "Universal Charge" refers to the charge, if any, [imposed
 8 for the recovery of the stranded cost and other purposes pursuant to Section 34 hereof.]
 9 **TO BE DETERMINED, FIXED, AND APPROVED BY THE COMMISSION,**
 10 **AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND PUBLIC**
 11 **HEARING, IN ACCORDANCE WITH AND FOR THE PURPOSES**
 12 **MENTIONED IN SECTION 34 OF THIS ACT.**

13
 14 **Sec. 2.** Section 9, Chapter 11 of the Act is hereby amended to read as follows:

15
 16 "SEC. 9. *Functions and Responsibilities.* – Upon the effectivity of this Act, the
 17 TRANSCO shall have the following functions and responsibilities:

18
 19 (a) [Act] **TO ACT** as the [system] **GRID** operator of the nationwide
 20 electrical transmission and subtransmission system, **THAT SHALL** be transferred to it
 21 by NPC;


22
 23 (b) [Provide open and] **TO PROVIDE POWER DELIVERY SERVICE**
 24 **THROUGH** non-discriminatory **OPEN** access to its transmission system to all
 25 [electricity] **QUALIFIED AND AUTHORIZED** users[;], **SUBJECT TO THE**
 26 **PAYMENT OF TRANSMISSION WHEELING CHARGE APPROVED BY THE**
 27 **COMMISSION, AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND**
 28 **PUBLIC HEARING. TRANSCO SHALL NOT IN ANY WAY ENGAGE IN THE**
 29 **DISTRIBUTING AND RETAILING OF ELECTRICITY, WHICH IS A**
 30 **FUNCTION OF DISTRIBUTION UTILITIES;**



1 (c) [Ensure] **TO ENSURE** and maintain the reliability, adequacy, security,
2 stability, and integrity of the nationwide electrical **TRANSMISSION** grid in accordance
3 with the performance standards for the operation and maintenance of the
4 **NATIONWIDE ELECTRICAL TRANSMISSION** grid, as set forth in a Grid Code to
5 be adopted and promulgated by the [ERC] **COMMISSION** within six (6) months from
6 the effectivity of this Act;

7
8 (d) [Improve] **TO IMPROVE** and expand its transmission **ASSETS AND**
9 facilities, consistent with the Grid Code and the Transmission Development Plan [TDP]
10 to be promulgated pursuant to this Act, **IN ORDER** to adequately serve generation
11 companies, distribution utilities, and suppliers [requiring] **THAT REQUIRE**
12 transmission service and/or **[AND OR]** ancillary services through the transmission
13 system; *Provided*, That **THE** TRANSCO shall submit any plan for **THE** expansion or
14 improvement of its **ASSETS AND** facilities for approval by the [ERC;] **COMMISSION**,
15 **AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND PUBLIC**
16 **HEARING;**

17
18 (e) Subject to **SUCH** technical constraints **THAT MAY EXIST OR ARISE**,
19 **IF ANY, AND TAKING INTO ACCOUNT ANY OUTSTANDING BILATERAL**
20 **CONTRACTS**, the [grid] **SYSTEM** operator of the TRANSCO shall provide central
21 dispatch of all **ELECTRIC** generation **PLANT** facilities connected, directly or
22 indirectly, to the transmission system in accordance with the dispatch schedule submitted
23 by the market operator[, *taking into account outstanding bilateral contracts*];
24 **PROVIDED HOWEVER, THAT SUCH SYSTEM OPERATOR SHALL BE**
25 **ALLOWED TO SPIN-OFF USING TRANSCO'S SYSTEM OPERATION**
26 **CHARGES AS THE OPERATING BUDGET WHEN ITS SCHEDULE AND**
27 **DISPATCH FUNCTIONS REQUIRE COMPLETE INDEPENDENCE FROM**
28 **TRANSCO AS THE GRID OWNER; and**
29



1 (f) **THE TRANSCO, JOINTLY WITH THE DOE**, shall undertake the
2 preparation **AND FORMULATION** of the TDP, **WHICH SHALL BE APPROVED**
3 **BY THE DOE.**

4
5 In the preparation **AND FORMULATION** of the TDP, **THE TRANSCO AND**
6 **THE DOE** shall consult the other [participants of the] electric power industry [such as]
7 **PARTICIPANTS, ESPECIALLY** the generation companies, distribution utilities, and
8 the [electricity] end-users[.] **OF ELECTRICITY.** The TDP shall be [submitted to the
9 DOE for integration] **INTEGRATED** with the Power Development Program and the
10 *Philippine Energy Plan*, **BOTH OF WHICH ARE** provided for in Republic Act No.
11 7683, otherwise known as “the Department of Energy Act of 1992”.

12
13 **[A] SUBJECT TO THE PRIOR AUTHORIZATION OF THE**
14 **COMMISSION, AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND**
15 **PUBLIC HEARING, A** generation company may develop and own or operate dedicated
16 **AND LIMITED** point-to-point [limited] transmission **ASSETS AND** facilities that are
17 consistent with the TDP[: *Provided, That*], **IF IT IS CLEARLY SHOWN THAT** such
18 **TRANSMISSION ASSETS AND** facilities are required [only for the purpose of
19 connecting] **AND TO BE USED SOLELY BY THE GENERATION COMPANY**
20 **TO CONNECT ITSELF** to the transmission system[,and are used solely by the
21 generating facility, subject to prior authorization by the ERC: *Provide, further, That in* [
22 **OF THE TRANSCO. IN** the event that such **LIMITED TRANSMISSION** assets
23 **AND FACILITIES** are required for competitive purposes, ownership of the same shall
24 be transferred to the TRANSCO at a fair market price[: *Provided, finally, That in*]. **IN**
25 case of **ANY DISPUTE OR** disagreement on the fair market price **OF SUCH**
26 **TRANSMISSION ASSETS AND FACILITES**, the [ERC] **COMMISSION** shall
27 determine the fair market [value of the asset.] **PRICE OF SAID LIMITED**
28 **TRANSMISSION ASSETS AND FACILITES, AFTER DUE NOTICE TO ALL**
29 **INTERESTED PARTIES AND PUBLIC HEARING.**



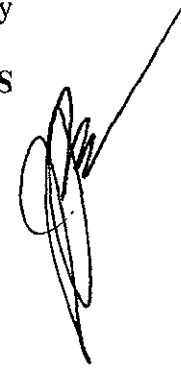
1 **Sec 3.** Section 20, Chapter II of the Act is hereby amended to read as follows:

2
3 "SEC. 20. *TRANSCO Related Businesses.* — **THE TRANSCO [may] IS**
4 **HEREBY AUTHORIZED TO** engage, **DIRECTLY OR INDIRECTLY**, in any
5 **BUSINESS related TO ITS MAIN** business [which maximizes] **IN ORDER TO**
6 **MAXIMIZE THE** utilization of its assets[:] **AND RESOURCES:** *Provided, That*
7 **WHERE ASSETS FORMING PART OF THE RATE BASE OF THE TRANSCO**
8 **ARE UTILIZED IN SUCH RELATED BUSINESS**, a portion of the net income
9 derived from such [undertaking utilizing assets which form part of the rate base]
10 **RELATED BUSINESS, WHICH PORTION SHALL NOT BE LESS THAN FIFTY**
11 **PERCENT (50%) OF SUCH NET INCOME**, shall be used to reduce **THE**
12 **transmission RATE OR** wheeling [rates as determined by the ERC. Such portion of net
13 income used to reduce the transmission wheeling rates shall not exceed fifty percent
14 (50%) of the net income derived from such undertaking.] **CHARGE PASSED-ON TO**
15 **THE END-USERS OF ELECTRICITY.**

16
17 Separate accounts shall be maintained for each **RELATED** business
18 [undertaking] to ensure that the transmission business shall neither subsidize in any way
19 such **RELATED** business [undertaking] nor encumber [its] **THE TRANSCO'S**
20 transmission assets in any way to support such **RELATED** business.


21
22 **Sec 4.** Section 21 of the Act is hereby amended to read as follows:

23
24 "SEC. 21. *TRANSCO Privatization.* — Within six (6) months from the
25 effectivity of this Act, the PSALM Corp. shall submit a plan **ON THE**
26 **PRIVATIZATION OF THE TRANSCO** for the endorsement by the Joint
27 **CONGRESSIONAL Power Commission TO**, and **FOR** the approval of, the President of
28 the Philippines. [The] **THEREAFTER, THE** President of the Philippines [thereafter]
29 shall direct **THE PSALM Corp.** to [award, in] **CONDUCT AN** open competitive
30 **PUBLIC** bidding, **AND AWARD THE OWNERSHIP AND CONTROL OF THE**



1 **TRANSCO THROUGH A CONTRACT OF SALE, OR AWARD THE**
2 **ADMINISTRATION, MANAGEMENT, OPERATION, AND MAINTENANCE,**
3 **AS WELL AS THE PRESERVATION, IMPROVEMENT, AND/OR EXPANSION**
4 **OF** the transmission **ASSETS AND** facilities, including **THE** grid interconnections and
5 ancillary services **THROUGH A CONCESSION CONTRACT** to [a] **THE** qualified
6 [party either through an outright sale or a concession contract.] **WINNING BIDDER.**
7 The buyer/concessionaire, **AS THE CASE MAY BE,** shall be responsible for the
8 **EFFICIENT ADMINISTRATION, MANAGEMENT, OPERATION, AND**
9 **MAINTENANCE, AS WELL AS FOR THE PRESERVATION,** improvement,
10 **AND/OR** expansion[, operation, and/or maintenance of its] **OF THE** transmission assets
11 and [the] **FACILITIES, INCLUDING THE GRID INTERCONNECTIONS AND**
12 **ANCILLARY SERVICES AND THE ADMINISTRATION, MANAGEMENT,**
13 **AND FOR THE** operation of any related business[.] **OR BUSINESSES.** The award
14 [shall result in maximum] **TO THE QUALIFIED WINNING BIDDER MUST BE**
15 **BASED ON THE MOST ADVANTAGEOUS, BENEFICIAL, AND OPTIMAL**
16 present value [of proceeds] to the national government. In case a concession contract is
17 awarded, the concessionaire shall [have a] **BE GIVEN AN INITIAL CONCESSION**
18 contract period of twenty-five (25) years, subject to review and renewal for a maximum
19 period of another twenty-five (25) years.


20
21 **IF THE AWARDEE OF THE CONCESSION CONTRACT IS MERELY**
22 **HIRED UNDER A COMPENSATION SCHEME TO ADMINISTER, MANAGE,**
23 **OPERATE, MAINTAIN, PRESERVE, AND TO FINANCE AND SUPERVISE**
24 **THE IMPROVEMENTS AND/OR EXPANSIONS OF THE ELECTRIC**
25 **TRANSMISSION ASSETS AND FACILITIES AND THE GRID**
26 **INTERCONNECTIONS AND THE ANCILLARY SERVICES FOR THE**
27 **TRANSCO, THE AWARDEE OF THE CONCESSION CONTRACT SHALL NOT**
28 **BE REQUIRED TO OBTAIN A NATIONAL FRANCHISE, AND NEITHER**
29 **SHALL HE OR IT BE REQUIRED TO QUALIFY UNDER THE NATIONALITY**



1 **REQUIREMENTS OF THE CONSTITUTION FOR PUBLIC UTILITY**
2 **OPERATORS.**

3
4 **HOWEVER, IF THE WINNING BIDDER OR AWARDEE OF THE**
5 **CONCESSION CONTRACT TAKES OVER THE POSSESSION AND CONTROL**
6 **OF THE ELECTRIC TRANSMISSION ASSETS AND FACILITIES AND THE**
7 **GRID INTERCONNECTIONS AND ANCILLARY SERVICES, AS BUYER OR**
8 **LESSEE THEREOF, AND ADMINISTERS, MANAGES, MAINTAINS,**
9 **OPERATES, IMPROVES, AND EXPANDS THEM AS HIS OR ITS OWN**
10 **BUSINESS, THEN IN THAT CASE THE AWARDEE OF THE CONCESSION**
11 **CONTRACT MUST OBTAIN A NATIONAL FRANCHISE THEREFOR, AND**
12 **HE OR IT MUST QUALIFY UNDER THE NATIONALITY REQUIREMENTS**
13 **OF THE CONSTITUTION FOR PUBLIC UTILITY OPERATORS.**

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



1 The awardee [shall] **MUST** be financially and technically capable **AND**
2 **SOUND**, with proven domestic and/or international experience and expertise as a leading
3 transmission system operator. Such experience must be with a transmission system of
4 comparable capacity and coverage as **THAT OF** the Philippines.

5
6 **Sec. 5.** Section 23 of the Act is hereby amended to read as follows:

7
8 **SEC. 23. Functions of Distribution Utilities.** – A distribution utility shall have the
9 obligation to provide distribution services and connections to its system for any end-user
10 within its franchise area consistent with the distribution code. Any entity engaged therein
11 shall provide open and non-discriminatory access to its distribution system to all users.

12
13 Any distribution utility shall be entitled to impose and collect distribution
14 wheeling charges and connection fees from such end-users as approved by the ERC.

15
16 A distribution utility shall have the obligation to supply electricity in the least cost
17 manner to its captive market[.],[subject to the collection of retail rate duly approved by
18 the ERC.]

19
20 **FOR THIS PURPOSE, “LEAST COST” SHALL MEAN THE EFFICIENT**
21 **EFFECTIVE RATE THAT WOULD BE INCURRED TO MEET THE**
22 **REQUIREMENT OF THE CAPTIVE MARKET OF EACH DISTRIBUTION**
23 **UTILITY.**

24
25 **FOR THE PURPOSE OF ENCOURAGING GREATER COMPETITION,**
26 **THE DOE, WITHIN SIX MONTHS FROM THE EFFECTIVITY OF THIS**
27 **AMENDATORY ACT, SHALL ESTABLISH THE MANNER AND MECHANISM**
28 **OF DETERMINING “LEAST COST”.**


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1 To achieve economies of scale in utility operations, distribution utilities may,
2 after due notice and public hearing, pursue structural and operational reforms such as but
3 not limited to, joint actions between or among the distribution utilities, subject to the
4 guidelines issued by the ERC. Such joint actions shall result in improved efficiencies,
5 reliability of service, reduction of costs and compliance to the performance standards
6 prescribed in the IRR of this Act.

7
8 Distribution utilities shall submit to the ERC a statement of their compliance with
9 the technical specifications prescribed in the Distribution Code and the performance
10 standards prescribed in the IRR of this Act. Distribution utilities which do not comply
11 with any of the prescribed technical specifications and performance standards shall
12 submit to the ERC a plan to comply, within three (3) years, with said prescribed technical
13 specifications and performance standards. The ERC shall, within sixty (60) days upon
14 receipt of such plan, evaluate the same and notify the distribution utility concerned of its
15 action. Failure to submit a feasible and credible plan and/or failure to implement the same
16 shall serve as grounds for the imposition of appropriate sanctions, fines or penalties.

17
18 Distribution utilities shall prepare and submit to the DOE their annual
19 distributions development plans. In the case of electric cooperatives, such plans shall be
20 submitted through the National Electrification Administration.

21
22 Distribution utilities shall provide universal service within their franchise, over a
23 reasonable time from the requirement thereof, including unviable areas, as part of their
24 social obligations, in a manner that shall sustain the economic viability of the utility,
25 subject to the approval by the ERC in the case of private or government-owned utilities.
26 To this end, distribution utilities shall submit to the DOE their plans for serving such
27 areas as part of their distribution development plans. Areas which a franchised
28 distribution utility cannot or does not find viable may be transferred to another
29 distribution utility, if any is available, who will provide the service, subject to approval
30 by ERC. In cases where franchise holders fail and/or refuse to service any area within



1 this franchise territory and allowed another utility to service the same, then the status quo
2 shall be respected.

3
4 Distribution utilities may exercise the power of eminent domain subject to the
5 requirements of the Constitution and existing laws.


6
7 Sec. 6 Section 25 of the Act is hereby amended to read as follows:

8
9 SEC.25. Retail Rate – The retail rates charged by distribution utilities for the
10 supply of electricity in their captive market shall be subject to regulation by the
11 [ERC]COMMISSION based on the principle of [full recovery of prudent and reasonable
12 economic costs incurred,] **LEAST COST SUPPLY** or such other principles that will
13 promote **ECONOMIC** efficiency as may be determined by the [ERC]COMMISSION.

14
15 Every distribution utility shall identify and segregate in its bills to end-users the
16 components of the retail rate, as defined in this Act.

17
18 Sec. 7. Section 26 of the Act is hereby amended to read as follows:

19
20 "SEC. 26. *Distribution Related Businesses.* — [Distribution utilities]
21 **SUBJECT TO THE APPROVAL OF THE COMMISSION, AFTER DUE NOTICE**
22 **TO ALL INTERESTED PARTIES AND PUBLIC HEARING, A DISTRIBUTION**
23 **UTILITY** may, directly or indirectly, engage in any **BUSINESS** related **TO ITS MAIN**
24 **business [undertaking which maximizes] IN ORDER TO MAXIMIZE** the utilization of
25 [their] **ITS** assets[:] **AND RESOURCES: Provided, That WHERE ASSETS**
26 **FORMING PART OF THE RATE BASE ARE UTILIZED IN SUCH RELATED**
27 **BUSINESS, a portion of the net income derived from such [undertaking utilizing assets**
28 **which form part of the rate base] RELATED BUSINESS, WHICH PORTION SHALL**
29 **NOT BE LESS THAN FIFTY PERCENT (50%) OF SUCH NET INCOME,** shall be
30 used to reduce its distribution wheeling [charges] **CHARGE AND RETAIL RATE** [as




1 determined] **APPROVED** by the [ERC: *Provided, further,* That such portion of net
 2 income used to reduce their distribution wheeling charges shall not exceed fifty percent
 3 (50%) of the net income derived from such undertaking: *Provided, finally,* That separate
 4 accounts are maintained for each business undertaking to ensure that the distribution
 5 business shall neither subsidize in any way such business undertaking nor encumber its
 6 distribution assets in any way to support such business.] **COMMISSION. IN THE**
 7 **CASE OF THE ELECTRIC COOPERATIVES, A REASONABLE TRANSITION**
 8 **PERIOD SHALL BE PROVIDED UNTIL SUCH TIME THAT A NEW RATE**
 9 **METHODOLOGY IS ADOPTED BY THE COMMISSION.**

10
 11 **SEPARATE ACCOUNTS SHALL BE MAINTAINED FOR EACH**
 12 **RELATED BUSINESS TO ENSURE THAT THE DISTRIBUTION BUSINESS**
 13 **SHALL NEITHER SUBSIDIZE, IN ANY WAY, SUCH RELATED BUSINESS**
 14 **NOR ENCUMBER, IN ANY WAY, ITS DISTRIBUTION ASSETS TO SUPPORT**
 15 **SUCH RELATED BUSINESS.**

16
 17 Sec. 8. Section 30 of the Act is hereby amended to read as follows:

18
 19 "SEC. 30. *Wholesale Electricity Spot Market.* — Within one (1) year from the
 20 effectivity of this Act, the DOE shall establish a wholesale electricity spot market,
 21 **HEREINAFTER REFERRED TO AS THE WESM**, composed of the [wholesale
 22 electricity spot market] **WESM** participants. The market shall provide the mechanism for
 23 identifying and setting the price of actual variations from the quantities transacted under
 24 contracts between sellers and purchasers of electricity.

25
 26 Jointly with the electric power industry participants, the DOE shall formulate the
 27 detailed rules for the wholesale electricity spot market.. Said rules shall provide the
 28 mechanism for determining the price of electricity not covered by bilateral contracts
 29 between sellers and purchasers of electricity users. [The price determination
 30 methodology contained in said rules] **THE METHOD CONTAINED IN THE SAID**



1 **RULES FOR DETERMINING THE PRICE OF ELECTRICITY IN THE WESM**
2 shall be subject to the approval of [ERC.] **THE COMMISSION, AFTER DUE**
3 **NOTICE TO ALL INTERESTED PARTIES AND PUBLIC HEARING.** Said rules
4 shall also reflect accepted economic principles and provide a level playing field to all
5 electric power industry participants. The rules shall provide, among others, procedures
6 for:

7
8 (a) Establishing the merit order dispatch instructions for each time period;
9 **PROVIDED HOWEVER, THAT IN EVERY CASE, AS A GENERAL RULE,**
10 **THE CHEAPER ELECTRICITY SHALL BE DISPATCHED AHEAD OF THE**
11 **HIGHER PRICED ELECTRICITY.**


12
13 (b) Determining the market-clearing price for each time period;

14
15 (c) Administering the market, including criteria for admission to [and
16 termination] **OR DISMISSAL** from the market [which includes], **AS WELL AS ANY**
17 **REQUIRED** security or performance [bond requirements] **BOND**, voting rights of the
18 participants, surveillance, [and] assurance of compliance [of] **BY** the participants with the
19 rules, and the formation of the [wholesale electricity spot market governing body]
20 **GOVERNING BODY OF THE WESM;**

21
22 (d) Prescribing guidelines for the market operation in system emergencies;
23 and

24
25 (e) Amending the rules.
26

27 The wholesale electricity spot market shall be implemented by a market operator
28 in accordance with the wholesale electricity spot markets rules. The market operator shall
29 be an autonomous group, to be constituted by DOE, with equitable representation from
30 electric power industry participants, initially under the administrative supervision of the




1 TRANSCO. The market operator shall undertake the preparatory work and initial
2 operation of the wholesale electricity spot market. Not later than one (1) year after the
3 implementation of the wholesale electricity spot market , an independent entity shall be
4 formed and the functions, assets and liabilities of the market operator shall be transferred
5 to such entity with the joint endorsement of the DOE and the electric power industry
6 participants. Thereafter, the administrative supervision of the TRANSCO over [such
7 entity shall cease.] **THE WESM AND THE INDEPENDENT MARKET**
8 **OPERATOR SHALL CEASE AND TERMINATE.**

9
10 Subject to the compliance with the membership criteria, all generating
11 companies, distribution utilities, suppliers, bulk consumers/end-users and other similar
12 entities authorized by the ERC shall be eligible to become members of the wholesale
13 electricity spot market.

14
15 The ERC may authorize other similar entities to become eligible as members,
16 either directly or indirectly, of the wholesale electricity spot market. All generating
17 companies, distribution utilities, suppliers , bulk consumers/end-users and other similar
18 entities authorized by the ERC, whether direct or indirect members of the wholesale
19 electricity spot market, shall be bound by the wholesale electricity spot market rules with
20 respect to transactions in that market.

21
22 NEA may, in exchange for adequate security and a guarantee fee, act as a
23 guarantor for purchases of electricity in the wholesale electricity spot market by any
24 electric cooperative or small distribution utility to support their credit standing consistent
25 with the provisions hereof. For this purpose, the authorized capital stock of NEA is
26 hereby increased, to Fifteen billion pesos (P15,000,000,000.00).

27
28 All electric cooperatives which have outstanding uncollected billings to any local
29 government unit shall report such billings to NEA which shall, in turn, report the same to



1 the Department of Budget and Management (DBM) for collection pursuant to Executive
2 Order 190, issued on December 21, 1999.

3
4 The cost of administering and operating the wholesale electricity spot market
5 shall be recovered by the market operator through a charge imposed to all market
6 members: *Provided*, That such charge shall be filed with and approved by the [ERC.]
7 **COMMISSION, AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND**
8 **PUBLIC HEARING.**

9
10 In cases of national and international security emergencies or natural calamities,
11 the ERC is hereby empowered to suspend the operation of the wholesale electricity spot
12 market or declare a temporary wholesale electricity spot market failure.

13
14 **TO ENCOURAGE AND PROMOTE THE DEVELOPMENT OF THE**
15 **WESM, THE COMMISSION MAY, FROM TIME TO TIME, EITHER *MOTU***
16 ***PROPIO*, OR UPON THE PETITION OF ANY DISTRIBUTION UTILITY,**
17 **REVIEW THE APPROPRIATE LEVEL OF DEMAND TO BE SOURCED FROM**
18 **THE WESM , SUBJECT TO A PUBLIC HEARING.**

19
20 Sec. 9. Section 31 of the Act is hereby amended to read as follows:

21
22 "SEC. 31. *Retail Competition and Open Access.* — Any law to the contrary
23 notwithstanding, retail competition and open access on distribution wires shall be
24 implemented not later than three (3) years upon the effectivity of this Act, subject to the
25 following conditions:

- 26
27 (a) Establishment of the wholesale electricity spot market ;
28 (b) Approval of unbundled transmission and distribution wheeling charges;
29 (c) Initial implementation of the cross subsidy removal scheme;

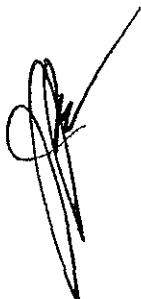
30


1 (d) Privatization of at least [seventy (70%) percent] **FIFTY PERCENT (50%)**
2 of the total capacity of [generating] **THE GENERATION** assets of NPC in Luzon and
3 Visayas; and

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


7
8 **PROVIDED THAT, WITH RESPECT TO THE CONDITIONS UNDER**
9 **SUBSECTIONS (D) AND (E) ABOVE ,(i) THE COMMISSION SHALL ENSURE**
10 **THAT NECESSARY SAFEGUARDS ARE ESTABLISHED TO AVOID ABUSE**
11 **OF MARKET POWER BY NPC AND PSALM AND IN FURTHERANCE**
12 **THEREOF, PSALM AND NPC SHALL SUBMIT TO THE JOINT**
13 **CONGRESSIONAL POWER COMMISSION A COMMITTED AND DETAILED**
14 **SCHEDULE OF THE PRIVATIZATION OF NPC'S GENERATION ASSETS IN**
15 **LUZON AND VISAYAS TO THE LEVEL OF SEVENTY PERCENT (70%); AND**
16 **(ii) FULL OPEN ACCESS TO THE HOUSEHOLD LEVEL SHALL BE**
17 **IMPLEMENTED SUBJECT TO COMPLIANCE WITH THE GRID AND**
18 **NATIONAL LIMITS FOR MAXIMUM INSTALLED GENERATING CAPACITY**
19 **AS MAY BE PROMULGATED BY THE COMMISSION.**

20
21 **THE ERC MAY DECLARE OPEN ACCESS PRIOR TO THE**
22 **FULFILLMENT OF THE CONDITIONS UNDER SUBSECTIONS (D) AND (E)**
23 **ABOVE , ON THE CONDITION THAT GENERATION PARTICIPANTS IN THE**
24 **OPEN ACCESS ELECTRICITY MARKET SHALL BE LIMITED TO THOSE**
25 **GENERATION COMPANIES THAT COMPLY WITH THE LIMITS SET**
26 **FORTH IN SEC. 45 (A)OF THIS ACT. FOR PURPOSES HEREOF, ALL**
27 **GOVERNMENT ENTITIES SUCH AS THE NPC, PSALM OR ANY OTHER**
28 **GOVERNMENT AGENCY AND GOVERNMENT OWNED OR CONTROLLED**
29 **CORPORATIONS SHALL BE DEEMED AS ONE RELATED GROUP.**



1 PEZA SHALL, IN THE EXERCISE OF ITS AUTHORITY OVER
2 DISTRIBUTION UTILITIES WITHIN ITS ECONOMIC ZONES, ADHERE TO
3 THE POLICIES AND STANDARDS SET FORTH IN THIS ACT AND SHALL
4 ADOPT RULES AND GUIDELINES IN COMPLIANCE WITH AND
5 CONSISTENT HERETO. WITH RESPECT TO NEW ECONOMIC ZONES
6 ESTABLISHED UNDER REPUBLIC ACT 7916, PEZA SHALL GIVE PRIORITY
7 TO THE INCUMBENT DISTRIBUTION UTILITY SERVING THE FRANCHISE
8 AREA OF SUCH ECONOMIC ZONES, PROVIDED THAT SUCH INCUMBENT
9 DISTRIBUTION UTILITY IS QUALIFIED AND IS ADEQUATELY SERVING
10 SUCH FRANCHISE AREA.

11
12 Upon the initial implementation of open access, the [ERC] COMMISSION shall
13 [allow] CONSTITUTE IN A FORMAL ORDER TO BE ISSUED AFTER DUE
14 NOTICE TO ALL INTERESTED PARTIES AND PUBLIC HEARING all
15 [electricity] end-users OF ELECTRICITY with a monthly average peak demand of [at
16 least] NOT LESS THAN one megawatt (1MW) for the IMMEDIATELY preceding
17 twelve (12) BILLING months to be the contestable market. [Two] AFTER TWO (2)
18 years [thereafter,] IMMEDIATELY FOLLOWING THE INITIAL
19 IMPLEMENTATION OF OPEN ACCESS, the threshold level for the contestable
20 market shall be reduced to seven hundred fifty kilowatts (750kW). At [this] THAT level,
21 aggregators shall be allowed to supply electricity to end-users whose aggregate demand
22 within a contiguous area is at least seven hundred fifty kilowatts (750kW). [Subsequently
23 and every] EVERY year thereafter, the [ERC] COMMISSION shall REVIEW AND
24 evaluate the performance of the CONTESTABLE market[. On] AND, ON the basis of
25 such YEARLY REVIEW AND evaluation, [it] THE COMMISSION shall gradually
26 reduce the threshold level until [it reaches] THE CONTESTABLE MARKET SHALL
27 FINALLY COVER the household [demand level.] END-USERS OF ELECTRICITY.
28 In the case of electric cooperatives, retail competition and open access shall be
29 implemented not earlier than five (5) years upon the effectivity of this Act.
30



1 Sec. 10. Section 32 of the Act is hereby deleted

2
3 ["SEC. 32. *NPC Stranded Debt and Contract Cost Recovery.* — Stranded
4 debt of NPC shall refer to any unpaid financial obligations of NPC.

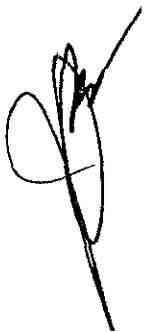
5
6 Stranded contract costs of NPC shall refer to the excess of the contracted cost of
7 electricity under eligible IPP contracts of NPC over the actual selling price of the
8 *contracted energy output of such contracts in the market.* Such contracts shall have been
9 approved by the ERB as of December 31, 2000.

10
11 The national government shall directly assume a portion of the financial
12 obligations of NPC in an amount not to exceed Two hundred billion pesos (P200,
13 000,000,000.00).

14
15 The ERC shall verify the reasonable amounts and determine the manner and
16 duration for the full recovery of stranded debt and stranded contract costs as defined
17 herein., *Provided,* That the duration for such recovery shall not be shorter than fifteen
18 (15) years nor longer than twenty-five (25) years. The ERC shall, at the end of the first
19 year of the implementation of stranded cost recovery, and every year thereafter, conduct a
20 review to determine whether there is under-recovery or over-recovery and adjust (true-
21 up) the level of stranded cost recovery charge accordingly. Any amount to be included
22 for stranded cost recovery shall be reflected as a separate item in the consumer billing
23 statement.]

24
25 Sec. 11. Section 33 of the Act is hereby deleted:

26
27 ["SEC. 33. *Distribution Utilities Stranded Contract Costs Recovery.* —
28 Stranded contract costs of distribution utilities shall refer to the excess of the contracted
29 cost of electricity under eligible contracts of such utilities over the actual selling price of



1 such contracts in the market. Such contracts shall have been approved by the ERB as of
2 December 31, 2000.

3
4 A distribution utility shall recover stranded contract costs: *Provided, however*
5 That such costs of the IPPs of distribution utilities are subject to review by ERC in order
6 to determine fairness and reasonableness in relation to the average price of land-based
7 IPP projects entered into by NPC, at the time they were contracted. The ERC shall take
8 into consideration all factors that affect the total cost of NPC IPP generation projects,
9 including direct or indirect subsidies or incentives provided by the Government.

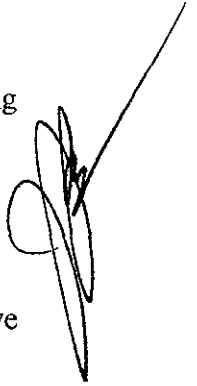
10
11 Within one (1) year from the start of open access, any distribution utility that
12 seeks recovery of stranded contract costs shall file with the ERC notice of such intent
13 together with, an estimate of such obligations, including the present value thereof and
14 such other supporting data as may be required by the ERC. Any distribution utility that
15 does not file within the date specified shall not be eligible for such recovery.

16
17 Any distribution utility which seeks to recover stranded cost shall have a duty to
18 mitigate its potential stranded contract costs by making reasonable best efforts to:

19
20 (a) Reduce the costs of its existing contracts with IPPs to a level not exceeding
21 the average buying price of other land-based electric power generators; and

22
23 (b) Submit to an annual earnings review by the ERC and use its earnings above
24 its authorized rate of return, to reduce the book value of contracts until the end of the
25 stranded cost recovery period.

26 Other mitigating measures which are reasonably known and generally accepted
27 within the electric power industry shall be utilized. The ERC shall not require the
28 distribution utility to take a loss to reduce stranded contract costs or divest assets, unless
29 the divestiture is imposed as a penalty as provided herein.

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1 The relevant distribution utility shall submit to the ERC quarterly reports showing
2 the amount of stranded costs recovered and the balance remaining to be recovered.


3
4 Within three (3) months from the submission of the application for stranded cost
5 recovery by the relevant distribution utilities, , the ERC shall verify the reasonable
6 amounts, and determine the manner and duration for the full recovery of stranded
7 contract costs as defined herein: *Provided*, That the duration for such recovery shall not
8 be shorter than fifteen (15) years nor longer than twenty-five (25) years. Any amount to
9 be included for stranded cost recovery shall be reflected as a separate item in the
10 consumer billing statement.

11
12 The ERC shall, at the end of the first year of the implementation of stranded cost
13 recovery, and every year thereafter, conduct a review to determine whether there is
14 under-recovery or over-recovery and adjust (true-up) the level of stranded cost recovery
15 charge accordingly. In case of an over-recovery, the ERC shall ensure that any excess
16 amount shall be remitted to the Special Trust Fund created under Section 34 hereof. A
17 separate account shall be created for these amounts, which shall be held in trust for any
18 future claims of distribution utilities for stranded cost recovery. At the end of the stranded
19 cost recovery period, any remaining amount in this account shall be used to reduce the
20 electricity rates to the end-users.]

21
22 Sec. 12. A new Section is added to read as follows:

23
24 Sec. 32 ***NON-RECOVERY OF STRANDED DEBTS AND CONTRACT***
25 ***COSTS OF ALL INDUSTRY PARTICIPANTS-***

26
27 **IN ORDER TO REFLECT THE TRUE COST OF POWER AND TO**
28 **AVOID ADDITIONAL BURDEN TO THE CONSUMERS , THERE SHALL**
29 **HENCEFORTH BE NO RECOVERY OF STRANDED DEBTS AND CONTRACT**



1 **COSTS FOR THE NATIONAL POWER CORPORATION, PSALM,**
2 **GENERATION COMPANIES, AND DISTRIBUTION UTILITIES.**

3
4 Sec. 13. Section 34 of the Act is hereby amended to read as follows:

5
6 "SEC. 34. *Universal Charge.* — Within one (1) year from the effectivity of
7 this Act, a universal charge to be determined, fixed, and approved by the [ERC,]
8 **COMMISSION, AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND**
9 **PUBLIC HEARING,** shall be imposed on all [electricity] end-users **OF**
10 **ELECTRICITY, ON THE BASIS OF THE NUMBER OF KILOWATT HOURS**
11 **OF ELECTRICITY RESPECTIVELY CONSUMED BY THEM,** for the following
12 purposes:


13
14 [(a) Payment for the stranded debts in excess of the amount assumed by the
15 National Government and stranded contract costs of NPC and as well as qualified
16 stranded contract costs of distribution utilities resulting from the restructuring of the
17 industry;]

18
19 [(b)](A) Missionary electrification;

20
21 [(c)](B). The equalization of the taxes and royalties applied to indigenous or
22 renewable sources of energy vis-à-vis imported energy fuels;]

23
24 [(d)](B) An environmental charge equivalent to one-fourth of one centavo per
25 kilowatt-hour (P0.0025/kWh), which shall accrue to an environmental fund to be used
26 solely for watershed rehabilitation and management. Said fund shall be managed by NPC
27 under existing arrangements; and


28
29 [(e)](C) A charge to account for all forms of cross-subsidies for a period
30 not exceeding three (3) years.



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

12 **THE SELF-GENERATED ELECTRICITY OF AN END-USER WHO OR**
13 **WHICH IS NOT DIRECTLY CONNECTED TO THE DISTRIBUTION SYSTEM**
14 **OF A DISTRIBUTION UTILITY OR TO THE TRANSMISSION GRID AND ITS**
15 **SUBTRANSMISSION FACILITIES SHALL NOT BE SUBJECT TO OR LIABLE**
16 **FOR THE UNIVERSAL CHARGE IMPOSED IN THIS SECTION, EXCEPT**
17 **FOR THE PAYMENT OF THE OBLIGATION SPECIFIED IN SUBSECTION**
18 **(d) OF THIS ACT, IF THE SELF GENERATED ELECTRICITY OF THE END**
19 **USER COMES FROM THE UTILIZATION AND EXPLOITATION OF THE**
20 **NATURAL RESOURCES OF THE COUNTRY.**

21
22 **EVEN IF THE END USER WHO OR WHICH GENERATES**
23 **ELECTRICITY FOR ITS OWN USE FROM ITS OWN GENERATION**
24 **FACILITY IS CONNECTED TO THE DISTRIBUTION SYSTEM OF A**
25 **DISTRIBUTION UTILITY OR TO THE TRANSMISSION SYSTEM OF**
26 **TRANSCO, THE SAME SHALL NOT BE SUBJECT TO THE UNIVERSAL**
27 **CHARGE IF THE SELF GENERATED ELECTRICITY DOES NOT PASS**
28 **THROUGH THE DISTRIBUTION SYSTEM OF A DISTRIBUTION UTILITY**
29 **OR OF THE TRANSMISSION SYSTEM OF TRANSCO, EXCEPT FOR THE**
30 **PAYMENT OF THE OBLIGATION SPECIFIED IN SUBSECTION (d) OF THIS**



1 SECTION, IF THE SELF GENERATED ELECTRICITY OF THE END USER
 2 COMES FROM THE UTILIZATION AND EXPLOITATION OF THE
 3 NATURAL RESOURCES OF THE COUNTRY.

4
 5 The PSALM Corp., [as] **BEING THE CUSTODIAN AND** administrator of the
 6 [fund,] **UNIVERSAL CHARGE HEREIN PROVIDED**, shall create a Special Trust
 7 Fund **ACCOUNT**, which shall be **USED, AND FROM WHICH SHALL BE** disbursed
 8 only **SUCH AMOUNTS AS MAY BE NEEDED STRICTLY**, for the purposes
 9 specified [herein] **IN THIS SECTION** in an open and transparent manner. **THE**
 10 **RECORDS OF DISBURSEMENTS FROM SUCH SPECIAL TRUST FUND**
 11 **ACCOUNT SHALL BE OPEN FOR MONITORING AND INSPECTION UPON**
 12 **WRITTEN REQUEST OF CONSUMERS, CONSUMER REPRESENTATIVES**
 13 **OR ORGANIZATIONS.** All amounts collected for the universal charge shall be
 14 **ALLOCATED AND** distributed **EXPEDITIOUSLY FOR THE PAYMENT OF THE**
 15 **OBLIGATIONS SPECIFIED IN (A), (B), AND (C) ABOVE AND** to [the] **THEIR**
 16 respective beneficiaries, within [a] **SUCH** reasonable period [to be provided by the
 17 **ERC.] OF TIME AS SHALL BE DETERMINED BY THE COMMISSION.**

18
 19 Sec. 14. Section 35 of this Act is hereby amended to read as follows:

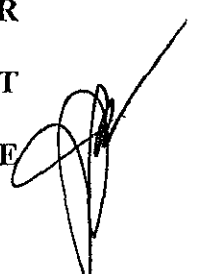
20
 21 *“SEC. 35. Royalties, Returns and Tax Rates for Indigenous Energy Resources. —*
 22 The provisions of Section 79 of Commonwealth Act No. 136 (C.A. No. 137) and any
 23 law to the contrary notwithstanding **AND FOR THE PURPOSE OF LOWERING**
 24 **RATES OF ELECTRICITY TO END USERS**, the President of the Philippines shall
 25 reduce the royalties, returns, and taxes [collected] **OF THE NATIONAL**
 26 **GOVERNMENT** for the exploitation of all indigenous sources of energy, including but
 27 not limited to, natural gas and geothermal steam, [so as to effect parity of tax treatment
 28 with the existing rates for, and other imported fuels.] **WHENEVER THE INTEREST**
 29 **OF THE GENERAL PUBLIC SO REQUIRES.**

1 To ensure [lower rates] **CHEAPER ELECTRICITY** for end-users, the [ERC
2 shall] **COMMISSION, AFTER DUE NOTICE TO ALL INTERESTED PARTIES**
3 **AND PUBLIC HEARING, SHALL** forthwith **CORRESPONDINGLY** reduce the
4 **PRICES AND/OR** rates of **ELECTRIC** power from all indigenous sources of energy
5 **AND IMPROVE THE GRID'S GENERATION MIX OR PORTFOLIO OF**
6 **PLANTS.**

7
8 **FRANCHISE TAXES IMPOSED BY LOCAL GOVERNMENT UNITS**
9 **SHALL BE LIMITED ONLY TO THE DISTRIBUTION AND WHEELING**
10 **CHARGES OF THE DISTRIBUTION UTILITIES WHICH IS PASSED ON TO**
11 **THE END-USERS.**

12
13 Sec. 15. Section 38, Chapter IV, of the Act is hereby amended to read as follows:

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



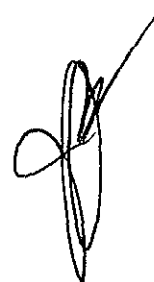
1 The Commission shall be composed of a Chairman and four (4) members to be
2 appointed by the President of the Philippines. The Chairman and the members of the
3 Commission shall be natural-born citizens and residents of the Philippines, persons of
4 good moral character, at least thirty-five (35) years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

11
12 Within three (3) months from the creation of the ERC, the Chairman shall submit
13 for the approval by the President of the Philippines the new organizational structure and
14 *plantilla* positions necessary to carry out the powers and functions of the ERC.

15
16 The Chairman of the Commission, who shall be a member of the Philippine Bar,
17 shall act as the Chief Executive Officer of the Commission.

18
19 All members of the Commission shall have a term of seven (7) years: *Provided*,
20 That for the first appointees, the Chairman shall hold office for seven (7) years, two (2)
21 members shall hold office for five (5) years; and the other two (2) members shall hold
22 office for three (3) years: *Provided, further*, That appointment to any future vacancy shall
23 only be for the unexpired term of the predecessor: *Provided, finally*, That there shall be
24 no reappointment and in no case shall any member serve for more than seven (7) years in
25 the Commission.

26
27 The Chairman and members of the Commission shall assume office at the
28 beginning of their terms: *Provided*, That, if upon the effectivity of this Act, the
29 Commission has not been constituted, and the new staffing pattern and *plantilla*



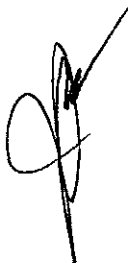
1 positions have not been approved and filled-up, the current Board and existing personnel
2 of ERB shall continue to hold office.

3
4 The existing personnel of the ERB, if qualified , shall be given preference in the
5 filling up of *plantilla* positions created in the ERC, subject to existing civil service rules
6 and regulations.

7
8 Members of the Commission shall enjoy security of tenure, and shall not be
9 suspended or removed from office except for just cause as specified by law.

10
11 The Chairman and the members of the Commission [or any of] **AND** their
12 relatives within the fourth civil degree of consanguinity or affinity, **WHETHER SUCH**
13 **PERSONAL RELATIONS ARE** legitimate, [or] common law, [shall be] **OR**
14 **OTHERWISE, ARE** prohibited from holding any interest whatsoever, either as investor,
15 stockholder, officer, or director, in any company or entity engaged in the business of
16 transmitting, generating, supplying, **AGGREGATING**, or distributing [any form of
17 energy and must, therefore, divest through sale or legal disposition of any and all interests
18 in the energy sector upon assumption of office.] **ELECTRICITY.**

19
20 **UPON THE ASSUMPTION BY THE CHAIRMAN AND THE ASSOCIATE**
21 **MEMBERS OF THE COMMISSION OF THEIR RESPECTIVE POSITIONS,**
22 **THE CHAIRMAN AND THE ASSOCIATE MEMBERS OF THE COMMISSION**
23 **AND THEIR RESPECTIVE RELATIVES WITHIN THE PROSCRIBED**
24 **DEGREE OF PERSONAL RELATIONS MUST DIVEST THEMSELVES OF ALL**
25 **THEIR PROHIBITED INTEREST, THROUGH REAL ARMS LENGTH**
26 **TRANSACTIONS OR OTHER VALID FORMS OF DISPOSITION, WITH**
27 **CORRESPONDING PAYMENT OF ALL TAXES DUE, IF ANY, ON SUCH**
28 **TRANSACTION OR OTHER FORMS OF DISPOSITION AND WITHOUT ANY**
29 **PROVISION GRANTING A RIGHT TO THE TRANSFEROR OF SUCH**
30 **PROHIBITED INTEREST TO REPURCHASE SUCH TRANSFERRED OR**



1 **DISPOSED PROHIBITED INTEREST, AND MUST RESIGN FROM ALL THEIR**
 2 **PROSCRIBED POSITIONS IN THE ELECTRIC POWER INDUSTRY.**

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

10
 11 Sec. 16. Section 41 of the Act is hereby amended as follows:


12
 13 "SEC. 41. **PROTECTION AND** *Promotion of Consumer* **RIGHTS AND**
 14 *Interests.* — [The ERC shall handle consumer complaints and ensure the adequate
 15 promotion of consumer interests.]**THE COMMISSION SHALL ENSURE THE**
 16 **ADEQUATE PROTECTION AND PROMOTION OF THE INTERESTS OF THE**
 17 **ELECTRICITY CONSUMERS AND UPHOLD THEIR BASIC RIGHTS AS**
 18 **FOLLOWS:**

19
 20 A) **TO HAVE QUALITY, RELIABLE, AFFORDABLE, SAFE, AND**
 21 **REGULAR SUPPLY OF ELECTRIC POWER;**

22
 23 B) **TO BE ACCORDED COURTEOUS, PROMPT, AND NON-**
 24 **DISCRIMINATORY SERVICE BY THE ELECTRIC SERVICE**
 25 **PROVIDER;**

26
 27 C) **TO BE GIVEN A TRANSPARENT, NON-DISCRIMINATORY AND**
 28 **REASONABLE PRICE OF ELECTRICITY CONSISTENT WITH**
 29 **THE PROVISIONS OF THIS ACT.**

30



1 **D) TO BE AN INFORMED ELECTRIC CONSUMER AND GIVEN**
2 **ADEQUATE ACCESS TO INFORMATION ON MATTERS**
3 **AFFECTING THE ELECTRIC SERVICE OF THE CONSUMER**
4 **CONCERNED;**

5
6 **E) TO BE ACCORDED PROMPT AND SPEEDY RESOLUTION OF**
7 **COMPLAINTS BY BOTH THE DISTRIBUTION UTILITY**
8 **AND/OR THE COMMISSION;**

9
10 **F) TO KNOW AND CHOOSE THE ELECTRIC SERVICE RETAILER**
11 **UPON THE IMPLEMENTATION OF RETAIL COMPETITION;**
12 **AND**

13
14 **G) TO ORGANIZE THEMSELVES AS A CONSUMER**
15 **ORGANIZATION IN THE FRANCHISE AREA WHERE THEY**
16 **BELONG AND WHERE THEY ARE SERVED BY THE**
17 **DISTRIBUTION UTILITY OR AS A NETWORK OF**
18 **ORGANIZATION.**

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

25
26 **THE COMMISSION SHALL ALSO ENSURE THAT DISTRIBUTION**
27 **UTILITIES SHALL SUPPLY THE LEAST COST ELECTRICITY FOR THEIR**
28 **CAPTIVE END-USERS.**




1 Sec. 17. Section 43 of the Act is hereby amended as follows:

2
3 "SEC. 43. *Functions of the [ERC.] COMMISSION.* — The [ERC]
4 COMMISSION shall, AMONG OTHERS, promote competition[,];encourage market
5 development[,];PROTECT END-USERS OF ELECTRICITY FROM
6 DISCRIMINATORY, UNFAIR, OR OPPRESSIVE RATES; ensure [customer],
7 UPON THE ESTABLISHMENT OF THE CONTESTABLE MARKET, END-
8 USER'S choice; and CONTROL, PREVENT, AND penalize abuse of market power in
9 the restructured [electricity] ELECTRIC POWER industry.

10
11 [In appropriate cases, the ERC] THE COMMISSION is authorized to issue A
12 cease and desist order, WHENEVER IT IS NEEDED TO SERVE THE INTEREST
13 OF THE PUBLIC OR THE INTEREST OF JUSTICE, after due notice TO ALL
14 INTERESTED PARTIES and PUBLIC hearing.

15
16 THE COMMISSION, ACTING AS A QUASI-JUDICIAL BODY, SHALL
17 CONDUCT PUBLIC HEARINGS ON ALL APPLICATIONS FOR RATE
18 INCREASE AND ON ANY ISSUE, THE RESOLUTION OF WHICH, WILL
19 AFFECT PRIVATE RIGHTS OR IMPOSE OBLIGATIONS OR WILL RESULT
20 IN ANY INCREASE IN THE PRICE OF ELECTRICITY TO THE CONSUMERS.
21 HENCEFORTH, NO PROVISIONAL AUTHORITY SHALL BE ISSUED FOR
22 APPLICATIONS FOR RATE ADJUSTMENTS THAT PERTAIN TO BASIC
23 RATE COMPONENTS ATTRIBUTABLE TO THE REGULATED ENTITY
24 SUCH AS TRANSMISSION WHEELING RATES FOR TRANSCO AND
25 DISTRIBUTION RELATED CHARGES FOR DISTRIBUTION COMPANIES .

26
27 THE COMMISSION MAY GRANT PROVISIONAL AUTHORITY FOR
28 OPERATIONAL APPLICATIONS OR PASS-THROUGH CHARGES
29 PROVIDED THAT IN SUCH CASES, THE COMMISSION SHALL
30 IMMEDIATELY SUBJECT SUCH APPLICATIONS TO PUBLIC HEARINGS



1 **AND RENDER A FINAL DETERMINATION AND DECISION THEREON NOT**
 2 **LATER THAN ONE HUNDRED TWENTY (120) DAYS FROM THE ISSUANCE**
 3 **OF THE PROVISIONAL AUTHORITY.**

4
 5 [Towards this end, it shall] **IN ADDITION, THE COMMISSION SHALL**
 6 **PERFORM AND EXERCISE AND** be responsible for the following [key] **POWERS**
 7 **AND** functions [in the restructured industry]:


8
 9 (a) Enforce the implementing rules and regulations of this Act;

10
 11 (b) Within six (6) months from the effectivity of this Act, promulgate and
 12 enforce, in accordance with law, a National Grid Code and a Distribution Code, which
 13 shall include, but not limited to, the following:

14
 15 (i) Performance standards for TRANSCO O & M Concessionaire,
 16 distribution utilities, and suppliers: *Provided*, That in the establishment of the
 17 performance standards, the nature and function of the entities shall be considered;
 18 and

19
 20 (ii) Financial capability standards for the generating companies, the
 21 TRANSCO, distribution utilities, and suppliers: *Provided*, That in the formulation
 22 of the financial capability standards, the nature and function of the entity shall be
 23 considered: *Provided, further*, That such standards are set to ensure that the
 24 electric power industry participants meet the minimum financial standards to
 25 protect the public interest[. Determine fix, and approve, after due notice and
 26 public hearings the universal charge, to be imposed on all electricity end-users
 27 pursuant to Section 34 hereof]; **AND**

28
 29 **(III) DETERMINE, FIX, AND APPROVE, AFTER DUE NOTICE**
 30 **TO ALL INTERESTED PARTIES AND PUBLIC HEARING, THE**



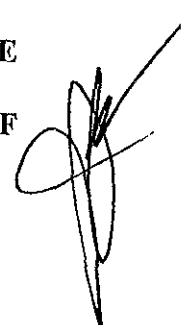
1 **ITEMIZED AMOUNTS OF THE UNIVERSAL CHARGE TO BE**
2 **IMPOSED ON ALL END-USERS OF ELECTRICITY PURSUANT TO**
3 **SECTION 34 OF THIS ACT.**

4
5 (c) Enforce the rules and regulations governing the operations of the
6 electricity spot market and the activities of the spot market operator and other participants
7 in the spot market, for the purpose of ensuring a greater supply and rational pricing of
8 electricity;

9
10 (d) Determine the level of cross subsidies in the existing retail rate until the
11 same is removed pursuant to Section 74 hereof;

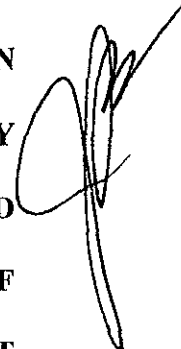
12
13 (e) Amend, **REVISE**, or revoke, after due notice **TO ALL INTERESTED**
14 **PARTIES** and **PUBLIC** hearing, the authority to operate [of] **GRANTED TO** any
15 person or entity which fails to comply with the **PERTINENT** provisions [hereof, the
16 IRR, or any] **OF THIS ACT, OR WITH ANY OF THE IMPLEMENTING RULES**
17 **AND REGULATIONS OF THIS ACT, OR WITH ANY DECISION**, order, or
18 resolution of the [ERC.] **COMMISSION**. In the event a divestment, **CESSATION, OR**
19 **DESISTANCE** is required, the [ERC] **COMMISSION** shall, **THROUGH A**
20 **FORMAL ORDER FOR THAT PURPOSE**, allow the affected party [sufficient time]
21 **A REASONABLE TIME** to remedy the infraction, or [for] **TO UNDERTAKE** an
22 orderly disposal **OF THE MATTER, ACTIVITY, OR BUSINESS INVOLVED, AS**
23 **THE CASE MAY BE**, but [shall] in no case **SHALL THE SAID REASONABLE**
24 **TIME** exceed twelve (12) months from the issuance of the **SAID FORMAL order[;]** **OF**
25 **THE COMMISSION;**

26
27 (f) [In the public interest establish] **ESTABLISH** and enforce [a
28 methodology for setting] **IN THE INTEREST OF THE GENERAL PUBLIC AND IN**
29 **THE INTEREST OF THE END-USERS OF ELECTRICITY, AFTER TAKING**
30 **INTO ACCOUNT ALL RELEVANT CONSIDERATIONS, INCLUDING THE**



1 **EFFICIENCY OR INEFFICIENCY OF THE REGULATED ENTITIES, AND**
2 **AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND PUBLIC**
3 **HEARING, JUST AND REASONABLE** transmission and distribution **NON-**
4 **DISCRIMINATORY** wheeling [rates and] **CHARGES, AS WELL AS JUST AND**
5 **REASONABLE NON-DISCRIMINATORY** retail rates for the captive market of [a]
6 distribution [utility, taking into account all relevant considerations, including the
7 efficiency or inefficiency of the regulated entities. The rates must be such as to]
8 **UTILITIES, WHICH SHALL** allow the recovery of **ALL** just and reasonable costs[,]
9 and [a] **GIVE A JUST AND** reasonable return on **THE** rate base (RORB) **OF THE**
10 **REGULATED ENTITIES** to enable [the entity] **THEM** to operate viably[. The ERC
11 may adopt alternative forms of internationally-accepted rate-setting methodology as it
12 may deem appropriate. The rate-setting methodology so adopted and applied must ensure
13 a reasonable price of electricity. The rates prescribed shall be non-discriminatory. To
14 achieve this objective and to ensure the complete removal of cross subsidies, the cap on
15 the recoverable rate of system losses prescribed in Section 10 of Republic Act No. 7832,
16 is hereby amended and shall be replaced by caps which shall be determined by the ERC
17 based on load density, sales mix, cost of service, delivery voltage and other technical
18 considerations it may promulgate. The ERC shall determine such form of rate-setting
19 methodology, which shall promote efficiency. In case the rate setting methodology used
20 is RORB, it shall be subject to the following guidelines:], **AND WHICH SHALL**
21 **ENSURE A JUST AND REASONABLE PRICE OF ELECTRICITY.**

22
23 **THE COMMISSION, TO PROMOTE EFFICIENCY AND**
24 **FAIRNESS IN THE ELECTRIC POWER INDUSTRY AND WHEN**
25 **JUSTIFIED AND DEMANDED BY THE NATIONAL INTEREST, MAY**
26 **ADOPT, AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND**
27 **PUBLIC HEARING, ANY OTHER ALTERNATIVE FORM OF**
28 **INTERNATIONALLY-ACCEPTED METHOD OF RATEMAKING THAT**
29 **SHALL BEST SERVE THE MUTUAL INTEREST OF THE GENERAL**




1 PUBLIC, THE END-USERS OF ELECTRICITY, AND THE ELECTRIC
2 INDUSTRY PARTICIPANTS.

3
4 IN EVERY CASE, THE RATEMAKING METHOD SO ADOPTED
5 AND APPLIED MUST BE NEITHER EXTORTIONARY TO THE END-
6 USERS OF ELECTRICITY NOR CONFISCATORY TO THE TRANSCO
7 OR TO THE DISTRIBUTION UTILITIES, AND MUST FURTHERMORE
8 ENSURE THAT THE PRICE OF ELECTRICITY IS JUST AND
9 REASONABLE. TOWARDS THIS END, THE COMMISSION SHALL
10 PUBLISH THE REGULATORY GUIDELINES ON THE RATEMAKING
11 METHODOLOGY ADOPTED AND ALL DOCUMENTS RELATED TO
12 ANY DECISIONS SHALL BE CONSIDERED PUBLIC DOCUMENTS
13 FOR PURPOSES OF TRANSPARENCY.

14
15 THE RATEMAKING POWER HEREIN GRANTED TO THE
16 COMMISSION MUST BE EXERCISED IN SUCH A MANNER THAT
17 EVERY DOUBT MUST BE RESOLVED IN FAVOR OF THE
18 PROTECTION OF THE RIGHTS OF THE GENERAL PUBLIC.

19
20 IN ALL CASES OF RATE-MAKING, THE SOLICITOR GENERAL
21 OR HIS REPRESENTATIVE MUST BE NOTIFIED OF AND SHALL
22 APPEAR IN THE PROCEEDINGS SO THAT THE INTEREST OF THE
23 GENERAL PUBLIC AND THE INTEREST OF THE END-USERS OF
24 ELECTRICITY WILL BE PROTECTED.


25
26 IN DETERMINING A JUST AND REASONABLE RETURN ON RATE
27 BASE OF THE TRANSCO OR OF A DISTRIBUTION UTILITY, THE
28 COMMISSION MUST OBSERVE THE FOLLOWING GUIDELINES:
29



1 **(I) THE RATE BASE SHALL CONSIST OF THE AVERAGE**
2 **VALUE OF ALL ASSETS, FACILITIES, PROPERTY, AND**
3 **PERMANENT IMPROVEMENTS OF THE TRANSCO OR OF THE**
4 **DISTRIBUTION UTILITY, AT THE BEGINNING AND AT THE END OF**
5 **ITS FISCAL YEAR, AS SHOWN IN THE PROPERTY ACCOUNTS OF**
6 **THE TRANSCO OR OF THE DISTRIBUTION UTILITY, AS THE CASE**
7 **MAY BE, WHICH ARE DIRECTLY USED AND USEFUL IN**
8 **PROVIDING THE SERVICE TO THE END-USERS OF ELECTRICITY,**
9 **LESS THE ACCRUED ALLOWANCE FOR DEPRECIATION TAKEN**
10 **FOR THE YEAR ON THE REGULATED ENTITY'S DEPRECIABLE**
11 **ASSETS, FACILITIES, PROPERTY, AND PERMANENT**
12 **IMPROVEMENTS, PLUS TWO MONTHS PRUDENT OPERATING**
13 **CAPITAL.**

14
15 **(II) THE VALUE OF THE FRANCHISE OF THE TRANSCO OR**
16 **OF THE DISTRIBUTION UTILITY SHALL NOT BE INCLUDED IN**
17 **THE RATE BASE FOR PURPOSES OF RATEMAKING.**

18
19 **[(i)] (III) [For purposes of determining the rate base, the] THE**
20 **TRANSCO or [any] A distribution utility [may be allowed] IS AUTHORIZED**
21 **to revalue its [eligible] assets [not more than], FACILITIES, PROPERTY,**
22 **AND PERMANENT IMPROVEMENTS CONSTITUTING ITS RATE**
23 **BASE once every three (3) years [by an] THROUGH THE SERVICES OF AN**
24 **EXPERIENCED, WELL-ESTABLISHED, REPUTABLE, AND independent**
25 **appraisal company[:], IN ACCORDANCE WITH SOUND AND**
26 **CONSISTENTLY MAINTAINED METHOD OF VALUATION: *Provided,***
27 ***however,* That [ERC] THE COMMISSION may [give an exemption in case of**
28 **unusual] TEMPORARILY SUSPEND THE AFORESAID THREE YEAR**
29 **LIMITATION IN THE EVENT OF EXTRAORDINARY INFLATION OR**
30 **devaluation[:] OF THE PESO AND ONLY FOR THE PERIOD THAT**



1 **SUCH EXTRAORDINARY INFLATION OR DEVALUATION LASTS:**
2 *Provided, further,* That the [ERC] COMMISSION, IN THAT EVENT, shall
3 exert [efforts to] EVERY EFFORT TO PREVENT AND/OR minimize THE
4 **STEEP AND RAPID ESCALATION OF THE** price [shocks] **OF**
5 **ELECTRICITY** in order to protect the [consumers;] **END-USERS OF**
6 **ELECTRICITY.**

7
8 **(IV) THE CAP ON THE RECOVERABLE RATE OF A JUST AND**
9 **REASONABLE SYSTEMS LOSS PRESCRIBED IN SECTION 10 OF**
10 **REPUBLIC ACT NO. 7832 SHALL BE MAINTAINED IN THE DENSELY**
11 **POPULATED CITIES, URBAN CENTERS, AND MUNICIPALITIES OF**
12 **THE COUNTRY: PROVIDED, THAT IT SHALL BE ACCORDINGLY**
13 **AMENDED AND REPLACED IN AREAS OTHER THAN THE DENSELY**
14 **POPULATED CITIES, URBAN CENTERS, AND MUNICIPALITIES OF**
15 **THE COUNTRY BY CAPS WHICH SHALL BE DETERMINED AND**
16 **FIXED BY THE COMMISSION, AFTER DUE NOTICE TO ALL**
17 **INTERESTED PARTIES AND PUBLIC HEARING, BASED ON LOAD**
18 **DENSITY, SALES MIX, COST OF SERVICE, DELIVERY VOLTAGE,**
19 **AND OTHER TECHNICAL CONSIDERATIONS THAT THE**
20 **COMMISSION MAY PROMULGATE: PROVIDED FURTHER, THAT**
21 **ANY NEW CAP FOR RECOVERABLE SYSTEMS LOSS IN AREAS**
22 **OTHER THAN THE DENSELY POPULATED CITIES, URBAN**
23 **CENTERS, AND MUNICIPALITIES OF THE COUNTRY SHALL ALSO**
24 **TAKE INTO CONSIDERATION AND PROVIDE FOR A JUST AND**
25 **REASONABLE SYSTEMS LOSS FOR THE INEFFICIENCIES OF THE**
26 **SYSTEMS OF ELECTRIC COOPERATIVES IN PERFORMING THEIR**
27 **MISSIONARY ELECTRIFICATION FUNCTIONS.**

28
29 **(V) CORPORATE INCOME TAX LEVIED ON THE NET**
30 **TAXABLE INCOME OF THE TRANSCO OR OF A DISTRIBUTION**




1 **UTILITY SHALL NOT, DIRECTLY OR INDIRECTLY, BE PASSED ON**
2 **TO THE END-USERS OF ELECTRICITY.**

3
4 [(ii)] (VI) Interest expenses [are not allowable] **OF THE**
5 **TRANSCO OR OF A DISTRIBUTION UTILITY SHALL NOT BE**
6 **ALLOWED AS** deductions [from permissible] **FOR PURPOSES OF**
7 **DETERMINING A JUST AND REASONABLE** return on rate base[;].

8
9 [(iii)] (VII) [In] **FOR PURPOSES OF** determining [eligible] **THE**
10 **JUST AND REASONABLE** cost of services that will be passed on to the end-
11 users[,] **OF ELECTRICITY**, the [ERC] **THE COMMISSION** shall establish
12 minimum efficiency performance standards for the TRANSCO and **THE**
13 distribution utilities, including systems losses, interruption frequency rates, and
14 collection efficiency[;] **OF THE REGULATED ENTITIES.**

15
16 [(iv)] (VIII) [Further, in] **IN** determining **THE** rate base[,] **OF THE**
17 **TRANSCO OR OF ANY DISTRIBUTION UTILITY, THE COMMISSION**
18 **SHALL NOT ALLOW** the TRANSCO or any distribution utility [shall not be
19 allowed] to include **THE COSTS OF** management inefficiencies [like cost],
20 **SUCH AS, BUT NOT LIMITED TO, THE COSTS** of project delays not
21 [excused] **EXCUSABLE** by *force majeure*[,] **OR THE** penalties and related
22 interest **CHARGES ARISING** during construction [applicable to these
23 unexcused delays; and] **PERIOD BECAUSE OF SAID INEXCUSABLE**
24 **DELAYS.**

25
26 [(v)] (IX) Any significant operating costs or project investments of
27 the TRANSCO and **OF A** distribution [utilities] **UTILITY**, which shall become
28 part of the rate base, shall be subject to [verification by the ERC] **THE**
29 **APPROVAL OF THE COMMISSION, AFTER DUE NOTICE TO ALL**
30 **INTERESTED PARTIES AND PUBLIC HEARING, IN ORDER** to ensure



1 that the [contracting and] procurement of the equipment, assets, and **OR**
2 services [have been subjected to] **AS WELL AS THE TERMS AND**
3 **CONDITIONS OF THE CONTRACT OR CONTRACTS COVERING**
4 **SUCH PROCUREMENT SHALL BE DONE IN ACCORDANCE WITH**
5 **OPEN COMPETITIVE PUBLIC BIDDING AND IN COMPLIANCE WITH**
6 **THE REQUIREMENTS OF EXISTING APPLICABLE PROCUREMENT**
7 **LAWS, AS WELL AS IN ACCORDANCE WITH** transparent and accepted
8 industry procurement and purchasing practices to protect the public interest.

9
10 (g) Three (3) years after the imposition of the universal charge, ensure that the
11 charges of the TRANSCO or any distribution utility shall bear no cross subsidies between
12 *grids, within grids, or between classes of customers, except as provided herein;*

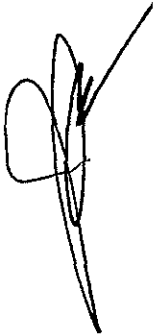
13
14 (h) Review and approve any changes on the terms and conditions of service of
15 the TRANSCO or any distribution utility;

16
17 (i) Allow the TRANSCO to charge user fees for ancillary services to all
18 electric power industry participants or self-generating entities connected to the grid. Such
19 fees shall be fixed by the ERC after due notice and public hearing;

20
21 (j) Set a lifeline rate for the marginalized end-users;

22
23 (k) Monitor and take measures in accordance with this Act to penalize abuse
24 of market power, cartelization, and anti-competitive or discriminatory behavior by any
25 electric power industry participant;

26
27 (l) Impose fines or penalties for any non-compliance with or breach of this
28 Act, the IRR of this Act, and the rules and regulations which it promulgates or
29 administers;

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

2
3 (n) Before the end of April of each year, submit to the Office of the President
4 of the Philippines and Congress, copy furnished the DOE, an annual report containing
5 such matters or cases which have been filed before or referred to it during the preceding
6 year, the actions and proceedings undertaken, and its decision or resolution in each case.
7 The ERC shall make copies of such reports available to any interested party upon
8 payment of a charge which reflects the printing costs. The ERC shall publish all its
9 decisions involving rates and anti-competitive cases in at least one (1) newspaper of
10 *general circulation*, and/or post electronically, and circulate to all interested electric
11 power industry participants copies of its resolutions to ensure fair and impartial
12 treatment;

13
14 (o) Monitor the activities in the generation and supply of the electric power
15 industry with the end in view of promoting free market competition and ensuring that the
16 allocation or pass through of bulk purchase cost by distributors is transparent, non-
17 discriminatory and that any existing subsidies, shall be divided pro-rata among all retail
18 suppliers;

19
20 (p) Act on applications for or modifications of certificates of public
21 convenience and/or necessity, licenses, or permits of franchised electric utilities in
22 accordance with law; and revoke, review, and modify such certificates, licenses or
23 permits in appropriate cases, such as in cases of violations of the Grid Code, Distribution
24 Code, and other rules and regulations issued by the ERC in accordance with law;

25
26 (q) Act on applications for cost recovery and return on demand side
27 management projects;

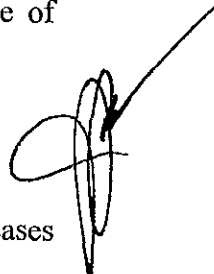
28
29 (r) In the exercise of its investigative and quasi-judicial powers, act against
30 any participant or player in the energy sector for violations of any law, rule, and

1 regulation governing the same, including the rules on cross-ownership, anti-competitive
2 practices, abuse of market positions, and similar or related acts by any participant in the
3 energy sector or by any person, as may be provided by law, and require any person or
4 entity to submit any report or data relative to any investigation or hearing conducted
5 pursuant to this Act;

6
7 (s) Inspect, on its own or through duly authorized representatives, the
8 premises, books of accounts, and records of any person or entity at any time, in the
9 exercise of its quasi-judicial power for purposes of determining the existence of any anti-
10 competitive behavior and/or market power abuse and any violation of rules and
11 regulations issued by the ERC;

12
13 (t) Perform such other regulatory functions as are appropriate and necessary
14 in order to ensure the successful restructuring and modernization of the electric power
15 industry, such as, but not limited to, the rules and guidelines, under which generation
16 companies, distribution utilities which are not publicly listed shall offer and sell to the
17 public a portion, not less than fifteen percent (15%) of their common shares of stocks:
18 *Provided, however,* That generation companies, distribution utilities or their respective
19 holding companies that are already listed in the PSE are deemed in compliance. For
20 existing companies, such public offering shall be implemented not later than five (5)
21 years from the effectivity of this Act. New companies shall implement their respective
22 public offerings not later than five (5) years from the issuance of their certificate of
23 compliance; and

24
25 (u) The ERC shall have the original and exclusive jurisdiction over all cases
26 contesting rates, fees, fines, and penalties imposed by the ERC in the exercise of the
27 above-mentioned powers, functions and responsibilities, and over all cases involving
28 disputes between and among participants or players in the energy sector.
29

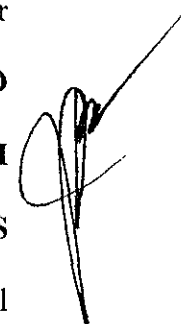


1 All notices of hearings to be conducted by the ERC for the purpose of fixing rates
2 or fees shall be published at least twice for two successive weeks in two (2) newspapers
3 of nationwide circulation.

4
5 Sec. 18. Section 45 of the Act is hereby amended to read as follows:

6
7 "SEC. 45. *Cross Ownership, Market Power Abuse and Anti-Competitive*
8 *Behavior.* — No participant in the electricity industry or any other person [may]
9 **SHALL** engage in any **KIND OF** anti-competitive behavior, including, but not limited
10 to, cross-subsidization, price or market manipulation, or **ANY** other unfair trade practices
11 **THAT ARE** detrimental to the **DEVELOPMENT**, encouragement, and protection of
12 **THE** contestable markets.

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




1 utility[.], **OR A COMPANY SUPPLYING ELECTRICITY.** Except for *ex officio*
2 government-appointed representatives, no [person who is an] officer or director, **OR**
3 **STOCKHOLDER** of the TRANSCO or [its] **OFFICER, DIRECTOR, OR**
4 **STOCKHOLDER OF THE TRANSCO'S** concessionaire shall be an officer or director
5 of any generation company, distribution utility, or [supplier.] **A COMPANY**
6 **SUPPLYING ELECTRICITY.**

7
8 To promote true market competition and prevent harmful monopoly and market
9 power abuse, the [ERC] **COMMISSION** shall enforce the following safeguards:

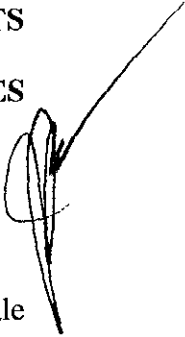
10
11 (a) No company or related group [can] **SHALL BE ALLOWED TO** own,
12 operate or control more than thirty percent (30%) of the installed generating capacity of a
13 grid and/or twenty-five (25%) of the [national] installed **NATIONAL** generating
14 capacity. "Related group" includes a person's business interests, including its subsidiaries,
15 affiliates, directors or officers or any of their relatives by consanguinity or affinity,
16 legitimate or common law, within the fourth civil degree;

17
18 (b) Distribution utilities may enter into bilateral power supply **CONTRACT**
19 **OR** contracts subject to review **AND APPROVAL** by the [ERC:] **COMMISSION,**
20 **AFTER DUE NOTICE TO ALL INTERESTED PARTIES AND PUBLIC**
21 **HEARING[:].** [*Provided,* That such review shall only be required for distribution
22 utilities whose markets have not reached household demand level. For the purpose of
23 preventing market power abuse between associated firms engaged in generation and
24 distribution, no distribution utility shall be allowed to source from bilateral power supply
25 contracts more than fifty percent (50%) of its total demand from an associated firm
26 engaged in generation but such limitation, however, shall not prejudice contracts entered
27 into prior to the effectivity of this Act. An associated firm with respect to another entity
28 refers to any person which, alone or together with any other person, directly or indirectly,
29 through one or more intermediaries, controls, is controlled by, or is under common
30 control with, such entity; and]



1 IN ORDER TO PREVENT ABUSE OF MARKET POWER AND ANTI-
2 COMPETITIVE BEHAVIOR, NO DISTRIBUTION UTILITY SHALL BE
3 ALLOWED TO SOURCE FROM A BILATERAL ELECTRIC POWER SUPPLY
4 CONTRACT OR CONTRACTS MORE THAN FIFTY PERCENT (50%) OF ITS
5 TOTAL ELECTRIC POWER SUPPLY REQUIREMENTS FROM ANY
6 GENERATION COMPANY OR GROUP OF GENERATING COMPANIES
7 WHOLLY OWNED OR CONTROLLED BY THE SAME INTERESTS,
8 PROVIDED FURTHER, THAT SUCH BILATERAL CONTRACTED CAPACITY
9 SHALL NOT EXCEED TWENTY PERCENT (20%) OF THE INSTALLED
10 CAPACITY OF THE GRID AS MAY BE DETERMINED BY THE ERC. ANY
11 DISTRIBUTION UTILITY THAT HAS, ON THE EFFECTIVITY OF THIS ACT,
12 SUCH CONTRACT OR CONTRACTS WHICH EXCEED THE ALLOWABLE
13 FIFTY PERCENT (50%) LIMIT SET FORTH HEREIN SHALL DESIST FROM
14 FURTHER AWARDING ADDITIONAL ELECTRIC POWER SUPPLY
15 CONTRACT OR CONTRACTS WITH ANY GENERATION COMPANY OR
16 GROUP OF GENERATING COMPANIES WHOLLY OWNED OR
17 CONTROLLED BY THE SAME INTERESTS, UNTIL ITS PRESENT ELECTRIC
18 POWER SUPPLY REQUIREMENTS, WHEN ADDED TO THE PROPOSED
19 ADDITIONAL ELECTRIC POWER SUPPLY CONTRACT OR CONTRACTS
20 WITH ANY GENERATION COMPANY OR GROUP OF GENERATING
21 COMPANIES WHOLLY OWNED OR CONTROLLED BY THE SAME
22 INTERESTS SHALL COMPLY WITH THE FIFTY PERCENT (50%) LIMIT
23 AND TWENTY PERCENT (20%) GRID CAPACITY LIMIT SET FORTH
24 HEREIN: *PROVIDED*, THAT ANY EXTENSION OR EXPANSION OF
25 EXISTING ELECTRIC POWER SUPPLY CONTRACT OR CONTRACTS
26 SHALL BE DEEMED AS NEW CONTRACT OR CONTRACTS FOR PURPOSES
27 OF THE LIMITATION SET FORTH HEREIN.

28
29 (c) For the first five (5) years from the establishment of the wholesale
30 electricity spot market, [no distribution utility shall source more than ninety percent




1 (90%) of its total demand from bilateral power supply contracts] **THE**
2 **DISTRIBUTION UTILITIES SHALL SUBMIT OR FILE WITH THE**
3 **COMMISSION ITS SUPPLY MANAGEMENT PROGRAM TO ENSURE**
4 **COMPLIANCE WITH ITS OBLIGATION TO SUPPLY ELECTRICITY IN THE**
5 **LEAST COST MANNER TO ITS CAPTIVE MARKET. THIS SUBMISSION**
6 **SHALL BE CONSIDERED CONFIDENTIAL AND PROPRIETARY, PROVIDED**
7 **THAT THE COMMISSION, MAY, *MOTU PROPRIO*, COMMENCE**
8 **INVESTIGATION AND PROCEEDINGS AGAINST THE DISTRIBUTION**
9 **UTILITY FOR FAILURE TO COMPLY WITH THE OBLIGATION TO SUPPLY**
10 **ELECTRICITY IN THE LEAST COST MANNER.**

11
12 For purposes of this Section, the grid basis shall consist of three (3) separate grids,
13 namely: Luzon , Visayas , and Mindanao . The ERC shall have the authority to modify or
14 amend this definition of a grid when two or more of the three separate grids become
15 sufficiently interconnected to constitute a single grid, or as conditions may otherwise
16 permit.

17
18 Exceptions from these limitations shall be allowed for isolated grids that are not
19 connected to the high voltage transmission system. [Except as otherwise provided for in
20 this Section, any restriction on ownerships and/or control between or within sectors of the
21 electricity industry may be imposed by ERC only insofar as the enforcement of the
22 provisions of this Section is concerned].

23
24 The [ERC] **COMMISSION** shall, within one (1) year from the effectivity of this
25 Act, promulgate rules and regulations, **CONSISTENT WITH THE PROVISIONS OF**
26 **THIS ACT**, to ensure and promote competition, encourage market development, [and]
27 customer choice, and [discourage/penalize] **DETER AND/OR PENALIZE ANY** abuse
28 of market power, cartelization, [and] **OR** any anti-competitive or discriminatory
29 behavior, in order to further the intent of this Act and **IN ORDER TO** protect the




1 [public] interest[.] **OF THE GENERAL PUBLIC AND THE END-USERS OF**
2 **ELECTRICITY.** Such rules and regulations shall **COVER AND** define the following:

3
4 (a) the relevant markets for purposes of establishing abuse or misuse of
5 monopoly or market position;

6
7 (b) areas of isolated grids; and

8
9 (c) the periodic reportorial requirements of electric power industry
10 participants as may be necessary to enforce the provisions of this Section.

11
12 The [ERC] **COMMISSION** shall, *motu proprio*, monitor and, **WHEN**
13 **WARRANTED BY THE ATTENDANT FACTS,** penalize any **SUCH**
14 **MONOPOLIZATION, CARTELIZATION, ABUSE OF** market power [abuse] or
15 anti-competitive **AND/or** discriminatory act or behavior by any [participant in the]
16 electric power industry[.] **PARTICIPANT.** Upon finding that [a market] **AN**
17 **ELECTRIC POWER INDUSTRY** participant has engaged in such
18 **MONOPOLIZATION, CARTELIZATION, ABUSE OF MARKET POWER, OR**
19 **ANTI-COMPETITIVE AND/OR DISCRIMINATORY** act or behavior, the [ERC]
20 **COMMISSION** shall **FORTHWITH ISSUE A CEASE AND DESIST ORDER TO**
21 **THE ERRING ELECTRIC POWER INDUSTRY PARTICIPANT, AND**
22 **THEREAFTER PERMANENTLY** stop and redress the same. Such [remedies shall,
23 without limitation, include] **REDRESS SHALL INCLUDE, AMONG OTHER**
24 **REMEDIES THAT MAY BE APPROPRIATE UNDER THE CIRCUMSTANCES,**
25 the imposition of price [controls,] **CONTROL, THE** issuance of [injunctions,
26 requirement of] **INJUNCTIVE RELIEF, AND THE** divestment or disgorgement of
27 excess profits, and **THE** imposition of fines and penalties pursuant to **THE**
28 **APPLICABLE PROVISIONS OF** this Act.



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

8
 9 Sec. 19. Section 48 of the Act is hereby amended to read as follows:

10
 11 SEC. 48. National Power Board of Directors. – Upon the passage of this Act,
 12 Section 6 of R.A. 6395, as amended, and Section 13 of RA 7683, as amended, referring
 13 to the composition of the National Power Board of Directors, are hereby repealed and a
 14 new Board shall be immediately organized. The new Board shall be composed of the
 15 Secretary of Finance as Chairman, with the following as members: the Secretary of
 16 Energy, the Secretary of Budget and management, the Secretary of Agriculture, the
 17 Director General of the National Economic and Development Authority, the Secretary of
 18 Environment and Natural Resources, the Secretary of Interior and Local Government, the
 19 Secretary of Trade and Industry, [and] the President of the National Power Corporation
 20 **AND THE PRESIDENT OF THE POWER SECTOR ASSETS AND LIABILITIES**
 21 **MANAGEMENT CORPORATION.”**

22
 23 Sec. 20. Section 51 of the Act is hereby amended to read as following:

24
 25 SEC. 51 Powers. – The Corporation shall, in the performance of its functions and
 26 for the attainment of its objective, have the following powers:

27
 28 (a.) To formulate and implement a program for the sale and
 29 privatization of the NPC assets and IPP contracts and the liquidation of NPC

1 debts and stranded contract costs, such liquidation to be completed within the
2 term of existence of the PSALM Corp.;

3 (b.) To take title to and possession of, administer and conserve the
4 assets transferred to it; to sell or dispose of the same at such price and under such
5 terms and conditions as it may deem necessary or proper, subject to applicable
6 laws, rules and regulations.

7 (c.) To take title to and possession of the NPC IPP contracts and to
8 appoint, after public bidding in transparent and open manner, qualified
9 independent entities who shall act as the IPP Administrators in accordance with
10 this Act;

11 (d.) To calculate the amount of the stranded debts and stranded contract
12 costs of NPC which shall form the basis for ERC in the determination of the
13 universal charge;

14 (e.) To liquidate the NPC stranded contract costs utilizing proceeds
15 from sales and other property contributed to it, including the proceeds from the
16 universal charge;

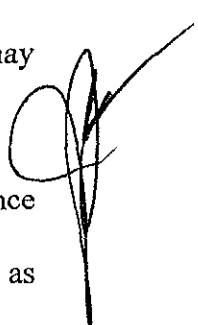
17 (f.) To adopt rules and regulations as may be necessary or proper for
18 the orderly conduct of its business or operations;

19 (g.) To sue and be sued in its name;

20 (h.) To appoint or hire, transfer, remove and fix the compensation of its
21 personnel: Provided, however, That the Corporation shall hire its own personnel
22 only if absolutely necessary, and as far as practicable, shall avail itself of the
23 services of personnel detailed from other government agencies;

24 (i.) To own, hold, acquire, or lease real and personal properties as may
25 be necessary or required in the discharge of its functions;

26 (j.) To borrow money and incur such liabilities, including the issuance
27 of bonds, securities or other evidences of indebtedness utilizing its assets as
28 collateral and/or through the guarantees of the National Government: Provided,
29 however, That all such debts or borrowings shall have been paid off before the
30 end of its corporate life;



1 (k.) To restructure existing loans of NPC;

2 (l.) To collect, administer, and apply NPC's portion of the universal
3 charge; and

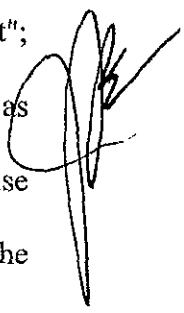
4 (m.) To restructure the sale, privatization or disposition of NPC assets
5 and IPP contracts which shall optimize the value and sale prices of said assets.

6
7 (n.) TO HAVE ACCESS AT ALL TIMES AND EXAMINE,
8 INSPECT, AUDIT, TAKE COPIES OF BOOKS OF ACCOUNTS,
9 FINANCIAL STATEMENTS, DOCUMENTS, PAPERS, CONTRACTS
10 ENTERED INTO, PERTAINING TO THE REMITTANCES AND
11 UTILIZATION OF THE UNIVERSAL CHARGE;

12
13 (o.) TO BRING OR DEFEND ACTIONS FOR THE
14 PROTECTION, PRESERVATION, RECOVERY OF THE SPECIAL
15 TRUST FUND TO THE BENEFICIARIES OF THE UNIVERSAL
16 CHARGE;

17
18
19 SEC. 21. *Separability Clause.* — If for any reason, any provision of this Act is
20 declared unconstitutional or invalid, the other parts or provisions hereof which are not affected
21 thereby shall continue to be in full force and effect.

22
23 SEC. 22. *Applicability and Repealing Clause.* — The applicable provisions of
24 Commonwealth Act No. 146, as amended, otherwise known as the "Public Services Act";
25 Republic Act 6395, as amended, revising the charter of NPC; Presidential Decree 269, as
26 amended, referred to as the National Electrification Decree; Republic Act 7638, otherwise
27 known as the Department of Energy Act of 1992; Republic Act 7832 otherwise known as the
28 Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994, shall continue
29 to have full force and effect, except insofar as such acts and decree, and only to that extent, are
30 inconsistent with any of the provisions of this Act.

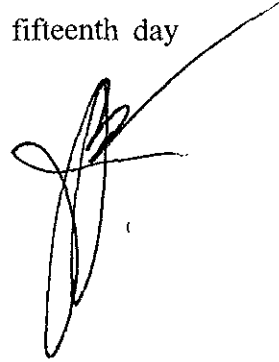


1 [The provisions with respect to electric power of Section 11(c) of Republic Act
2 7916, as amended, and Section 5(f) of Republic Act 7227, are hereby repealed or
3 modified accordingly.]

4
5 Presidential Decree No. 40 and all laws, decrees, rules and regulations, or portions
6 thereof, inconsistent with this Act are hereby repealed or modified accordingly.

7
8 SEC. 23. *Effectivity Clause.* — This Act shall take effect on the fifteenth day
9 following its publication in at least two (2) national papers of general circulation.

10
11 *Approved,*

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12
13
14
15
16